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JUDICIAL PANEL  
MULTIDISTRICT  
LITIGATION

**BEFORE THE JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION**

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IN RE FAIRFIELD GREENWICH  
LITIGATION  
\_\_\_\_\_  
\_\_\_\_\_

MDL DOCKET NO. \_\_\_\_\_

**FAIRFIELD GREENWICH ADVISORS' MOTION TO TRANSFER AND  
COORDINATE RELATED ACTIONS IN THE SOUTHERN DISTRICT OF NEW YORK  
PURSUANT TO 28 U.S.C. § 1407**

Movant, Fairfield Greenwich Advisors LLC, respectfully requests, pursuant to 28 U.S.C. § 1407, that the Judicial Panel on Multidistrict Litigation issue an order transferring *Headway Investment Corporation v. American Express Bank Ltd., et al.*, 09-CV-21395 (S.D. Fla.) ("*Headway*") from the United States District Court for the Southern District of Florida to the United States District Court for the Southern District of New York, and with the consent of that Court, assign the transferred case to the Honorable Victor Marrero, before whom all ten of the other federal court lawsuits against Movant relating to the fraud perpetrated by Bernard L. Madoff ("*Madoff*") and/or Bernard L. Madoff Investment Securities ("*BLMIS*") have already been consolidated into the action captioned *Anwar, et al. v. Fairfield Greenwich Limited, et al.*,

09-CV-00118 (S.D.N.Y) (“*Anwar*”).<sup>1</sup> Accompanying this Motion are the Declaration of Peter E. Kazanoff (and exhibits thereto), a Schedule of Actions, and a Memorandum of Law in support of the Motion. As set forth more fully in the Memorandum of Law, Movant avers that:

1. Movant is a defendant in the *Headway* action, pending in the United States District Court for the Southern District of Florida, and in the *Anwar* consolidated action, pending in the United States District Court for the Southern District of New York.

2. *Headway* and *Anwar* involve numerous “common questions of fact.” Both actions name as defendants entities and individuals, including Movant, affiliated with the marketing name Fairfield Greenwich Group (collectively, for purposes of this Motion, the “Fairfield Defendants”) and arise out of alleged losses by or on behalf of Fairfield Greenwich investors in connection with investments made through or with Madoff and/or BLMIS. The gravamen of both complaints is that the Fairfield Defendants and other defendants failed to perform adequate due diligence on Madoff and/or misrepresented the extent of the diligence they had performed and as a result, plaintiffs lost their investment.

3. The *Headway* plaintiff is already part of the putative *Anwar* class, as in one of the consolidated cases pending before Judge Marrero, *Bhatia, et al. v. Standard Chartered International (USA) Ltd., et al.*, 09-CV-2410, the *Headway* plaintiff alleges to have made its investments through Defendant Standard Chartered.

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<sup>1</sup> This Motion is supported by all other defendants that have been served in *Headway* – Standard Chartered Bank International (Americas) Limited (“Standard Chartered”), Standard Chartered Bank, Raul N. Mas, Robert Friedman, Rodolfo Pages, and John G. Dutkowski. The Motion is also supported by defendant Walter M. Noel, Jr., and defendants Fairfield Greenwich Limited, Fairfield Greenwich (Bermuda) Ltd., Jeffrey H. Tucker, Andres Piedrahita, Amit Vijayvergiya, and Citco Fund Services (Europe) B.V., who have not been served in *Headway*. *Headway* defendants Samuel Perruchoud, Carlos Gadala-Maria, and PricewaterhouseCoopers LLP, who have also not been served, have not taken a position on this Motion at this time. See accompanying Declaration of Peter E. Kazanoff, dated June 18, 2009.

4. All of the claims alleged in *Headway* are alleged in *Anwar*: Breach of Fiduciary Duty, Negligence/Gross Negligence, and Unjust Enrichment/Imposition of Constructive Trust.

5. Because *Headway* and *Anwar* involve overlapping factual questions, both actions will likely focus on a significant number of common events, defendants and/or witnesses. As such, centralization of the actions before Judge Marrero will significantly advance “the just and efficient conduct” of the litigation and “the convenience of the parties and witnesses.” 28 U.S.C. § 1407(a). Centralization will also provide a ready forum for any subsequent tag-along actions. Centralization will eliminate the need for duplicative discovery, reduce the costs of litigation and the chance of conflicting pre-trial rulings, and conserve judicial resources while allowing the actions to proceed most efficiently to trial.

6. The Southern District of New York is the appropriate forum for these cases because: (a) all of the federal court actions against Movant relating to the Madoff fraud have already been consolidated before Judge Marrero in the Southern District of New York except for *Headway*; (b) many of the key parties, witnesses and documents are located in and around that District; (c) none of the Fairfield Defendants reside in Florida or are based there; (d) the *Anwar* action is more procedurally advanced than *Headway*, as it was removed to the Southern District of New York over four months before *Headway* was removed to the Southern District of Florida; and (e) on information and belief, the *Headway* plaintiff (and many of the *Anwar* plaintiffs) irrevocably submitted to the jurisdiction of New York pursuant to subscription agreements in connection with their investments. See accompanying Declaration of Peter E. Kazanoff, dated June 18, 2009.


WHEREFORE, Movant respectfully requests that the Judicial Panel on Multidistrict Litigation assume jurisdiction over the *Headway* action, the *Anwar* consolidated action, and any future tag-along actions and transfer *Headway* to the Southern District of New York for assignment, with that Court's consent, to Judge Marrero for coordinated or consolidated pretrial proceedings.

Dated: June 18, 2009  
New York, New York

Respectfully submitted,

SIMPSON THACHER & BARTLETT LLP

By:



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