

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PASHA ANWAR, et al.,
Plaintiffs,
v.
FAIRFIELD GREENWICH LIMITED, et al.,
Defendants.
Master File No. 09-CV-118 (VM)
This Document Relates to: Bhatia v. Standard Chartered Int'l (USA) Ltd., No. 09-CV-2410; Tradewaves Ltd. v. Standard Chartered International (USA) Ltd., No. 09-CV-9423; Headway Investment Corp. v. American Express Bank Ltd., No. 09-CV-08500; Lopez v. Standard Chartered Bank International (Americas) Ltd., No. 10-CV-00919; Maridom Ltd. v. Standard Chartered Bank International (Americas) Ltd., No. 10-CV-00920; and Valladolid v. American Express Bank Ltd., No. 10-CV-00918.

STANDARD CHARTERED DEFENDANTS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL MEMORANDUM IN SUPPORT OF THEIR MOTIONS TO DISMISS ON THE NEWLY-ARISEN GROUND THAT PLAINTIFFS' COMMON-LAW CLAIMS ARE PREEMPTED BY SLUSA

Pursuant to the Scheduling Order entered by this Court on January 29, 2010, on March 10, 2010, Standard Chartered Defendants filed a motion to dismiss Bhatia v. Standard Chartered International (USA) Ltd., No. 09-CV-2410, and Tradewaves Ltd. v. Standard Chartered International (USA) Ltd., No. 09-CV-9423 under Rules 12(b)(1), (3) and (6) of the Federal Rules of Civil Procedure and the doctrine of forum non conveniens. On the same date, Standard Chartered Defendants filed a motion to dismiss Headway Investment Corp. v. American Express Bank, No. 09-CV-08500, Lopez v. Standard Chartered International (Americas) Ltd.,

No. 10-CV-00919, *Maridom Ltd. v. Standard Chartered International (Americas) Ltd.*, No. 10-CV-00920, and *Valladolid v. American Express Bank Ltd.*, No. 10-CV-00918 under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Yesterday, Standard Chartered Defendants filed supplemental motion papers that raise an additional ground for dismissal that was not available at the time Standard Chartered Defendants filed their motions to dismiss. In so doing, Standard Chartered Defendants erred in requesting leave to file the supplemental papers within the motion papers themselves, rather than making a separate request for leave to file and awaiting this Court's ruling on that request prior to filing the supplemental papers. The supplemental papers (docket entries 436 and 437) were thus stricken because this Court had not granted leave prior to filing. Standard Chartered Defendants regret their error and apologize to the Court and to plaintiffs.

Despite their error, Standard Chartered Defendants respectfully request that this Court grant them permission to file a supplemental memorandum of law in support of their motion to dismiss.¹ Courts possess discretion to grant such requests, and often exercise that discretion where there was an intervening event that creates a reasonable need for supplemental briefing. *See Am. Home Assur. Co. v. Altman Specialty Plants, Inc.*, No. 08-CV-7504, 2009 U.S. Dist. LEXIS 6046 (S.D.N.Y. Jan. 26, 2009) (granting defendants permission to file supplemental reply memorandum of law because such a supplement was "reasonable" in light of change of circumstances); *Hill v. Rayboy-Brauestein*, No. 02-CV-3770, 2008 U.S. Dist. LEXIS 5461 (S.D.N.Y. Jan. 24, 2008) (granting leave to supplement motion for summary judgment because of change of law).

¹ The supplemental memorandum that Standard Chartered Defendants request permission to file is attached hereto as Exhibit A.

Standard Chartered Defendants' request is made on the ground that a change in circumstances has made available a new basis for dismissing plaintiffs' complaints. Specifically, with the consolidation of *Pujals v. Standard Chartered Bank International (Americas) Ltd.*, No. 10-CV-2878 ("*Pujals*") into *Anwar v. Fairfield Greenwich Group*, No. 09-CV-00118 on April 16, 2010, the cases against Standard Chartered Defendants now constitute a "covered class action" under the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"), 15 U.S.C. §§ 78bb(f)(1), 78bb(f)(5)(B), 77p(b), 77p(f)(2)(A), and plaintiffs' common law claims are therefore preempted for the reasons set forth in Exhibit A.²

Standard Chartered Defendants respectfully submit that although the issue of SLUSA preemption may be raised and considered at a later stage of the case (*e.g.*, a motion on the pleadings or on motion for summary judgment), it is best considered by the Court at this juncture when motions to dismiss are pending. Because SLUSA arguments were raised by defendants in *Anwar*, the Court will be considering the scope of SLUSA preemption on Madoff-related claims. *See* Memorandum of Law in Support of Motion to Dismiss the Second Amended Complaint on Behalf of Daniel Lipton, Mark McKeefry, Walter Noel, Andres Piedrahita, Jeffrey Tucker, Amit Vijayvergiya, Fairfield Greenwich Limited, Fairfield Greenwich (Bermuda) Ltd., Fairfield Greenwich Advisors LLC, Fairfield Risk Services Ltd., and Fairfield Heathcliff Capital LLC at 20-24, *Anwar*, No. 09-CV-00118 (Dec. 22, 2009). Further, Standard Chartered Defendants respectfully submit that plaintiffs will not be prejudiced if the Court allows the

² At the time the Standard Chartered Defendants' motions to dismiss were filed, *Pujals* was before the Judicial Panel on Multidistrict Litigation pending decision on the *Pujals* plaintiffs' objection to a conditional transfer order. On April 1, 2010, *Pujals* was transferred to this District by the Judicial Panel on Multidistrict Litigation, and on April 16, 2010, this Court consolidated *Pujals* with *Anwar v. Fairfield Greenwich Group*, No. 09-CV-00118, for all pretrial purposes.

supplemental memorandum to be filed. The SLUSA ground is discrete from those grounds already raised and there is no risk that Standard Chartered Defendants will improperly craft their supplemental memorandum based on plaintiffs' opposition papers because the supplemental memorandum was finalized and filed (albeit erroneously) before plaintiffs filed their own papers. Finally, an appropriate briefing schedule can be put in place that will not disrupt the schedule entered by the Court on April 15, 2010. For example, if plaintiffs were to respond by May 28, Standard Chartered Defendants could reply on June 4, when their reply papers on the already filed motions to dismiss are now due.

Dated: May 4, 2010
New York, New York

/s/ Sharon L. Nelles

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