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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PASHA S. ANWAR, et al.,
Plaintiffs,

- against -

FAIRFIELD GREENWICH LIMITED, et al.,
Defendants.

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09 Civ. 0118 (VM)

DECISION AND ORDER

VICTOR MARRERO, United States District Judge.

Defendants GlobeOp Financial Services, LLC, Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Global Custody N.V., Citco Bank Nederland N.V. Dublin Branch, Citco Fund Services (Bermuda) Limited, the Citco Group Limited, Fairfield Greenwich Ltd., Fairfield Greenwich (Bermuda) Ltd., Fairfield Greenwich Advisors, LLC, Fairfield Risks Services Ltd., Fairfield Heathcliff Capital LLC, Lourdes Barreneche, Vianney d'Hendecourt, Harold Greisman, Jacqueline Harary, Richard Landsberger, Daniel Lipton, Julia Luongo, Mark McKeefry, Santiago Reyes, Yanko Della Schiava, Andrew Smith, Maria Teresa Pulido Mendoza, Charles Murphy, Corina Piedrahita, Philip Toub, Walter Noel, Jeffrey Tucker, Andres Piedrahita, Amit Vijayvergiya, David Horn, Robert Blum, Cornelis Boele, PricewaterhouseCoopers Accountants N.V., and Pricewaterhouse Coopers LLP, (collectively, "Defendants") request the Court to certify as final under Fed. R. Civ. P. 54(b) ("Rule 54(b)") four distinct issues addressed in two of the Court's Decisions and Orders related to this massive

lawsuit.

I. BACKGROUND

This lawsuit is brought on behalf of a putative class of investors in four feeder funds ("Plaintiffs") operated by the Fairfield Greenwich Group. Those feeder funds were in turn invested in Bernard Madoff's now-infamous Ponzi scheme. Plaintiffs now sue a number of entities involved in the operation of the Funds.

By Decision and Order dated July 29, 2010, this Court held that New York State's Martin Act did not preempt any of Plaintiffs' common law claims against Defendants. See Anwar v. Fairfield Greenwich Ltd., No. 09 Civ. 0118, 2010 WL 3022848 (S.D.N.Y. July 29, 2010) ("Anwar I").

By Decision and Order dated August 18, 2010, this Court held, in part, (1) that the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"), 15 U.S.C. § 78bb(f); 15 U.S.C. 77p(b)(1), did not require dismissal of any fraud-based state common law claims, (2) that Plaintiffs had standing to sue Defendants directly, and (3) that Morrison v. National Australia Bank, 130 S. Ct. 2869 (2010), did not, at this stage of the proceeding, require dismissal of federal securities fraud claims related to investments in two feeder funds incorporated in the British Virgin Islands, and that discovery related to Morrison's application could therefore begin. See

Anwar v. Fairfield Greenwich Ltd., No. 09 Civ. 0118, 2010 WL 3341636, at *12-*19 (S.D.N.Y. Aug. 18, 2010) ("Anwar II").

By eight letters dated between August 25, 2010 and September 1, 2010, Defendants requested to file a motion for certification of these four issues from Anwar I and Anwar II as final under Rule 54(b). But curiously, and perhaps not coincidentally, these applications were filed serially, each by a different group of Defendants, each addressing a distinct single issue, and each in turn, displaying neither the grace nor the charm of a grade school play's choreography, piggybacking on the papers and arguments advanced by its predecessors. Given the tenuous grounds urged in support of Defendants' requests, all in all these tactical moves strike the Court as prompted by more than a compelling desire to expeditiously and economically reach the merits of the parties' disputes.

II. DISCUSSION

"Rule 54(b) provides an exception to the general principle that a final judgment is proper only after all claims have been adjudicated. It empowers the district court to enter a final judgment on fewer than all of the claims in an action, but only upon an express determination that there is no just reason for delay." Harriscom Svenska AB v. Harris Corp., 947 F.2d 627, 629 (2d Cir. 1991) (quotation marks

omitted); see also Rule 54(b) ("the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.") Rule 54(b) certification "is to be exercised sparingly in light of the historic federal policy against piecemeal appeals." Hogan v. Consolidated Rail Corp., 961 F.2d 1021, 1025 (2d Cir. 1992) (quotation marks omitted). The Court should certify a judgment as final only "if there are interests of sound judicial administration and efficiency to be served, or in the infrequent harsh case where there exists some danger of hardship or injustice through delay which would be alleviated by immediate appeal." Adrian v. Town of Yorktown, 210 Fed. App'x 131, 132 (2d Cir. 2006) (quotation marks omitted).

Defendants have failed to persuade the Court that certifying any of the four issues is warranted. Two of the issues -- the Martin Act and SLUSA -- are squarely before the Second Circuit in another case related to Bernard Madoff's Ponzi scheme, Barron v. Igolnikov, No. 10-1387-cv. Additionally, as the Court noted in Anwar I, whether the Martin Act preempts state law causes of action is also currently pending before the New York State Appellate Division, First Department in CMMF, LLC. v. J.P. Morgan Inv. Mgmt., Inc., No. 601924/09 (App. Div. 1st Dep't) and Assured

Guaranty (UK) Ltd. v. J.P. Morgan Inv. Mgmt., Inc., No. 603755/08 (App. Div. 1st Dep't). If rulings from either of these tribunals has a material effect on this Court's disposition of the issues in Anwar I and Anwar II, there is no doubt the parties will bring it to the Court's attention.

The remaining two issues present even weaker cases for certification. This Court's application of Morrison was made in the context of a Fed. R. Civ. P. 12(b)(6) ("12(b)(6)") motion, which requires treating all factual assertions made by Plaintiffs as true. See Chambers v. Time Warner, Inc., 282 F.3d 147, 152 (2d Cir. 2002). Plaintiffs represented facts that, if proven, would satisfy Morrison's test. Defendants now object to permitting discovery on this issue, a position that, if adopted by the Court, would lead to immediate interlocutory appeal of every factual issue decided on a 12(b)(6) motion. Similarly, Defendants' arguments about the Court's finding of Plaintiffs' standing to sue directly merely represent disagreement with the Court's application of settled law to the facts as alleged by Plaintiffs. Defendants' disagreement with the Court's application of Morrison's novel legal standard or the more settled law of standing is not grounds for interlocutory review.

III. <u>ORDER</u>

Accordingly, it is hereby

ORDERED that the request of defendants GlobeOp Financial Services, LLC, Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Global Custody N.V., Citco Bank Nederland N.V. Dublin Branch, Citco Fund Services (Bermuda) Limited, the Citco Group Limited, Fairfield Greenwich Ltd., Fairfield Greenwich (Bermuda) Ltd., Fairfield Greenwich Advisors, LLC, Fairfield Risks Services Ltd., Fairfield Heathcliff Capital LLC, Lourdes Barreneche, Vianney d'Hendecourt, Harold Greisman, Jacqueline Harary, Richard Landsberger, Daniel Lipton, Julia Luongo, Mark McKeefry, Santiago Reyes, Yanko Della Schiava, Andrew Smith, Maria Teresa Pulido Mendoza, Charles Murphy, Corina Piedrahita, Philip Toub, Walter Noel, Jeffrey Tucker, Andres Piedrahita, Amit Vijayvergiya, David Horn, Robert Blum, Cornelis Boele, PricewaterhouseCoopers Accountants N.V., and Pricewaterhouse Coopers LLP, to certify as a final judgment this Court's determination that (1) New York State's Martin Act does not preempt state law causes of

action; (2) the Securities Litigation Uniform Standards Act does not require dismissal of fraud-based state law causes of action; (3) Plaintiffs have standing to sue directly; and (4) discovery may proceed on matters related to Morrison v. National Australia Bank, 130 S. Ct. 2869 (2010), is DENIED.

SO ORDERED.

Dated: New York, New York
13 September 2010

Victor Marrero
U.S.D.J.