



(ii) plaintiff's claims for unjust enrichment and negligence have been dismissed; and  
(iii) plaintiff has struck any allegations of misrepresentations made in the context of his breach of fiduciary duty claim. (Dkt. No. 936.<sup>1</sup>)

2. SCBI admits the allegations of paragraph 2.

3. SCBI admits that the Complaint purports to characterize the allegations in the complaint filed by the Securities and Exchange Commission captioned *SEC v. Madoff*, No. 08-CV-10791 (S.D.N.Y. Dec. 11, 2008), and respectfully refers the Court to the SEC complaint for a complete and accurate description of its contents.

4. SCBI denies the allegations of paragraph 4.

5. SCBI denies the allegations of paragraph 5, except admits that Sentry was generally regarded as a sought-after fund.

6. SCBI denies the allegations of paragraph 6.

7. SCBI denies the allegations of paragraph 7, except admits: (i) plaintiff invested approximately \$500,000 in Sentry through his account at SCBI; and (ii) Sentry invested substantially all of its assets in BLMIS.

8. The allegations of paragraph 8 assert legal conclusions to which no response is required. To the extent any response is deemed required, SCBI denies the allegations of paragraph 8.

9. SCBI denies the allegations of paragraph 9.

10. SCBI denies the allegations of paragraph 10.

11. SCBI denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11, and therefore denies them.

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<sup>1</sup> All citations to docket entries refer to the master docket, No. 09-118, unless otherwise noted.

### **Jurisdiction and Venue**

12. SCBI admits the allegations of paragraph 12.

13. SCBI admits that plaintiff also purports to base jurisdiction of this action on 28 U.S.C. §§ 1331, 1337, and 1367.

14. SCBI admits: (i) the amount in controversy in this action exceeds \$75,000; (ii) SCBI is a corporation organized under the laws of the United States; and (iii) plaintiff is a citizen of a foreign state.

15. SCBI denies the allegations of paragraph 15, except admits: (i) plaintiff purports to base venue for this action on 28 U.S.C. § 1391(a)(2); and (ii) SCBI conducts business within the Southern District of Florida.

16. SCBI denies the allegations of paragraph 16, except admits that it conducts business within the Southern District of Florida.

### **Parties**

17. SCBI admits: (i) plaintiff resides in Mexico; and (ii) plaintiff held an account at American Express Bank International (“AEBI”), later renamed SCBI.

18. SCBI admits: (i) Standard Chartered PLC is organized under the laws of the United Kingdom, with a place of business at 1 Aldermanbury Square, London, EC2V 7SB, United Kingdom; (ii) Standard Chartered PLC is the ultimate parent corporation of Standard Chartered Bank; and (iii) Standard Chartered Bank is the direct parent corporation of SCBI.

19. SCBI admits: (i) Standard Chartered PLC is the direct parent of Standard Chartered Holdings Limited; (ii) Standard Chartered Holdings Limited is the direct parent of Standard Chartered Bank; and (iii) Standard Chartered Bank is the direct parent of SCBI.

20. SCBI denies the allegations of paragraph 20, except admits: (i) SCBI is authorized to do business in Florida, with a place of business at 1111 Brickell Avenue, Miami,

Florida 33131; (ii) AEBI was renamed SCBI; and (iii) plaintiff's account was serviced through the Miami office of SCBI.

21. SCBI denies the allegations of paragraph 21, except admits: (i) AEBI was an Edge Act corporation that offered private banking services to individuals outside of the United States; and (ii) AEBI had its headquarters in Miami.

### **Factual Allegations**

22. SCBI denies the allegations of paragraph 22, except admits that plaintiff opened an account with AEBI. SCBI avers that plaintiff opened an account in or around March 2003.

23. SCBI denies the allegations of paragraph 23.

24. SCBI denies the allegations of paragraph 24, except admits that in 2004 Jennifer Sierra was a relationship manager at AEBI.

25. SCBI denies the allegations of paragraph 25, except admits that Sentry had a history of stable and steady returns.

26. SCBI denies the allegations of paragraph 26, except admits that Sentry had consistent returns.

27. SCBI denies the allegations of paragraph 27.

28. SCBI denies the allegations of paragraph 28.

29. SCBI denies the allegations of paragraph 29, except admits that plaintiff authorized a \$500,000 investment in Sentry.

30. SCBI denies the allegations of paragraph 30, except admits that in or around March 2004, plaintiff purchased approximately \$500,000.00 worth of shares of Sentry.

31. SCBI denies the allegations of paragraph 31, except admits: (i) on or about September 18, 2007, Standard Chartered PLC announced that it had reached an agreement to acquire American Express Bank Ltd. ("AEBL") from the American Express Company; and

(ii) Standard Chartered PLC acquired AEBL from the American Express Company in February 2008.

32. SCBI admits that, in or around February 2008, AEBL was acquired by Standard Chartered PLC. SCBI avers that AEBL was renamed Standard Chartered International (USA) Ltd. and that AEBI was renamed SCBI.

33. SCBI denies the allegations of paragraph 33, except admits that Standard Chartered PLC acquired AEBL, which was the direct corporate parent of AEBI, which in turn serviced plaintiff's account.

34. SCBI denies the allegations of paragraph 34.

35. SCBI denies the allegations of paragraph 35, except admits that plaintiff remained invested in Sentry after Standard Chartered PLC's February 2008 acquisition of AEBL.

36. SCBI admits that in or around June 2008, plaintiff authorized SCBI to sell approximately 113.21 shares of Sentry. SCBI avers plaintiff received approximately \$149,999.94 from the sale of these shares.

37. SCBI denies the allegations of paragraph 37, but admits that in or around July 2008, plaintiff held approximately 358.59 shares of Sentry in his account.

38. SCBI denies the allegations of paragraph 38.

39. SCBI denies the allegations of paragraph 39.

40. SCBI denies the allegations of paragraph 40.

41. SCBI denies the allegations of paragraph 41.

42. SCBI denies the allegations of paragraph 42, except admits that plaintiff was charged standard fees.

43. SCBI denies the allegations of paragraph 43, except admits that plaintiff was charged standard fees.

44. SCBI denies the allegations of paragraph 44.

45. SCBI denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45, and therefore denies them.

46. SCBI admits that it was aware, based on due diligence and disclosures in the Sentry Private Purchase Memorandum (“PPM”), that Sentry invested substantially all of its assets with BLMIS and that Sentry’s investment strategy was disclosed in its PPM, of which SCBI was aware.

47. SCBI denies the allegations of paragraph 47.

48. SCBI denies the allegations of paragraph 48.

49. SCBI denies the allegations of paragraph 49, except admits that plaintiff invested approximately \$500,000 with Sentry.

50. SCBI denies the allegations of paragraph 50.

51. SCBI denies the allegations of paragraph 51, except admits: (i) plaintiff purports to describe events occurring in December 2008; (ii) Madoff was arrested on criminal charges of securities fraud; and (iii) investments in Sentry substantially declined in value as a result of the fraud perpetrated by Madoff and BLMIS.

**AS AND FOR A FIRST CLAIM**  
**(Breach of Fiduciary Duty Against All Defendants)**

52. SCBI repeats and realleges its responses to paragraphs 1 through 51 as if fully set forth herein, except to the extent that the allegations in these paragraphs allege misrepresentations made in breach of an alleged fiduciary duty, to which no response is required because plaintiff has stipulated to strike those allegations (Dkt. No. 936).

53. SCBI denies the allegations of paragraph 53.

54. The allegations of paragraph 54 contain legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 54.

55. The allegations of paragraph 55 contain legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 55.

56. The allegations of paragraph 56, including paragraphs 56(a)-(h), contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 56.

57. SCBI denies the allegations of paragraph 57.

58. SCBI denies the allegations of paragraph 58.

59. SCBI denies the allegations of paragraph 59, including by denying that plaintiff suffered any damages as a result of conduct by SCBI.

**AS AND FOR A SECOND CLAIM**  
**(Negligence Against All Defendants)**

60. SCBI repeats and realleges its responses to paragraphs 1 through 59 as if fully set forth herein.

61. The allegations of paragraph 61 contain a legal conclusion and relate to plaintiff's claim for negligence, which has been dismissed (Dkt. No. 936); therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 61.

62. The allegations of paragraph 62 contain a legal conclusion and relate to plaintiff's claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 62.

63. The allegations of paragraph 63, including paragraphs 63(a)-(i), contain a legal conclusion and relate to plaintiff's claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 63.

64. The allegations of paragraph 64 relate to plaintiff's claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies that skepticism about BLMIS was widespread among those who looked closely at its operations, and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 64, and therefore denies them. SCBI respectfully refers the Court to the unidentified article in PENSION & INVESTMENTS referenced by plaintiff in paragraph 64 of the Complaint for a complete and accurate description of its contents.

65. The allegations of paragraph 65 relate to plaintiff's claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 65, except admits that materials, including the May 2001 MAR/HEDGE and BARRON's articles referenced in paragraph 65 of the Complaint, were publicly available, and respectfully refers the Court to those documents for a complete and accurate description of their contents.

66. The allegations of paragraph 66 relate to plaintiff's claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed

required, SCBI denies the allegations of paragraph 66 and avers that certain of its affiliates offered Sentry and/or Fairfield Sigma, among other investments, to customers.

67. The allegations of paragraph 67 relate to plaintiff's claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 67.

68. The allegations of paragraph 68 relate to plaintiff's claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 68.

69. The allegations of paragraph 69 relate to plaintiff's claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 69.

70. The allegations of paragraph 70 relate to plaintiff's claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 70.

71. The allegations of paragraph 71 relate to plaintiff's claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies that plaintiff suffered any damages as a result of conduct by SCBI and therefore denies the allegations of paragraph 71.

**AS AND FOR A THIRD CLAIM**  
**(Negligent Misrepresentation Against All Defendants)**

72. SCBI repeats and realleges its responses to paragraphs 1 through 71 as if fully set forth herein.

73. The allegations of paragraph 73 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 71.

74. SCBI denies the allegations of paragraph 74.

75. SCBI denies the allegations of paragraph 75.

76. SCBI denies the allegations of paragraph 76.

77. SCBI denies the allegations of paragraph 77.

78. SCBI denies the allegations of paragraph 78.

79. SCBI denies the allegations of paragraph 79.

80. SCBI denies the allegations of paragraph 80, including by denying that plaintiff suffered any damages as a result of conduct by SCBI.

**AS AND FOR A FOURTH CLAIM**  
**(Common Law Fraud Against All Defendants)**

81. SCBI repeats and realleges its responses to paragraphs 1 through 80 as if fully set forth herein.

82. SCBI denies the allegations of paragraph 82.

83. SCBI denies the allegations of paragraph 83.

84. SCBI denies the allegations of paragraph 84.

85. SCBI denies the allegations of paragraph 85, including by denying that plaintiff suffered any damages as a result of conduct by SCBI.

**AS AND FOR A FIFTH CLAIM**  
**(Gross Negligence Against the Standard Chartered Defendants)**

86. SCBI repeats and realleges its responses to paragraphs 1 through 85 as if fully set forth herein.

87. The allegations of paragraph 87 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 87.

88. The allegations of paragraph 88 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 88.

89. SCBI denies the allegations of paragraph 89, including paragraphs 89(a)-(d).

90. SCBI denies the allegations of paragraph 90.

91. SCBI denies the allegations of paragraph 91, including by denying that plaintiff suffered any damages as a result of conduct by SCBI.

**AS AND FOR A SIXTH CLAIM**  
**(Unjust Enrichment and Constructive Trust Against All Defendants)**

92. SCBI repeats and realleges its responses to paragraphs 1 through 91 as if fully set forth herein.

93. The allegations of paragraph 93 relate to plaintiff's claim for unjust enrichment and constructive trust, which has been dismissed (Dkt. No. 936); therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 93.

94. The allegations of paragraph 94 relate to plaintiff's claim for unjust enrichment and constructive trust, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 94.

95. The allegations of paragraph 95 relate to plaintiff's claim for unjust enrichment and constructive trust, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 95.

### **Denial of Prayer for Relief**

SCBI denies that plaintiff is entitled to any of the relief prayed for on pages 22 and 23 of the Complaint.

### **Jury Trial Demand**

Plaintiff's demand for a trial by jury is subject to his account agreement(s) with SCBI.

## **II. DEFENSES**

### **First Defense**

Plaintiff fails to state a claim upon which relief can be granted.

### **Second Defense**

Any damages allegedly suffered by plaintiff were caused by the intervening act(s) or omission(s) of persons or entities other than SCBI, and said act(s) or omission(s) superseded any act or omission by SCBI for which it might be considered liable.

### **Third Defense**

Plaintiff's claims are barred, in whole or in part, because SCBI's alleged conduct was not the cause of plaintiff's injuries.

### **Fourth Defense**

The claims asserted in the Complaint are barred by the equitable doctrines of laches, waiver, estoppel, unclean hands, and other equitable defenses that may appear upon further discovery and investigation.

### **Fifth Defense**

SCBI has not engaged in any conduct that would entitle plaintiff to an award of punitive damages.

**Sixth Defense**

Plaintiff's claims are barred, in whole or in part, because plaintiff knowingly and voluntarily assumed the risks inherent in the investments at issue.

**Seventh Defense**

Plaintiff was contributorily and/or comparatively negligent.

**Eighth Defense**

Plaintiff's claims are barred, in whole or in part, by the economic loss doctrine.

**Ninth Defense**

Plaintiff's claims are barred, in whole or in part, because they are preempted by the Securities Litigation Uniform Standards Act, 15 U.S.C. § 78bb(f)(1).

**Tenth Defense**

Plaintiff did not justifiably or reasonably rely on any alleged representations, acts or omissions by SCBI.

**Eleventh Defense**

Plaintiff's claims are barred, in whole or in part, because SCBI, or any person or entity acting or purporting to act on SCBI's behalf, acted in good faith and with due care and diligence.

**Twelfth Defense**

Plaintiff's claims are barred, in whole or in part, by virtue of his account agreement(s) with SCBI.

**Thirteenth Defense**

Plaintiff's claims are barred, in whole or in part, by virtue of disclosures in the applicable subscription agreement(s) and private placement memorandum applicable to plaintiff's purchase(s) of shares in Sentry.

#### **Fourteenth Defense**

SCBI was entitled to and did, reasonably and in good faith, rely on the acts and representations of other third parties with respect to the transactions and events that are the subject of plaintiff's claims.

#### **Fifteenth Defense**

Any damages recoverable by plaintiff from SCBI are limited to the percentage of fault attributable to SCBI, and thus would not include the percentage of fault attributable to at-fault third parties, including but not limited to the defendants named in the Second Consolidated Amended Complaint in *Anwar v. Fairfield Greenwich Limited*, No. 09-CV-0118.

#### **Sixteenth Defense**

Any recovery by plaintiff against SCBI is to be offset, in whole or in part, by any and all other recoveries (including, where applicable, redemptions) by plaintiff with respect to its investments in Sentry.

#### **Seventeenth Defense**

SCBI is entitled to recover indemnity and/or contribution from others for any liability they incur to plaintiff.

#### **Eighteenth Defense**

Any recovery by plaintiff against SCBI is to be offset by any and all debts, liabilities or obligations owed by plaintiff to SCBI.

WHEREFORE, SCBI respectfully demands judgment dismissing this action with prejudice together with its costs and disbursements.

Respectfully submitted,

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