



Court's September 12, 2012 Order, plaintiffs' claims for fraud and negligence have been dismissed. (Dkt. No. 937.<sup>1</sup>)

2. SCBI denies the allegations of paragraph 2.

3. SCBI denies the allegations of paragraph 3, except admits that plaintiffs were charged standard fees.

4. SCBI denies the allegations of paragraph 4.

#### **Parties, Jurisdiction and Venue**

5. SCBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 and therefore denies them, except admits that plaintiff Gerico is organized and exists under the laws of the British Virgin Islands.

6. SCBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 and therefore denies them.

7. SCBI denies the allegations of paragraph 7, except admits that it is a corporation authorized to do business in Florida with a place of business at 1111 Brickell Avenue, Miami, Florida 33131.

8. 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.

9. SCBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 and therefore denies them.

10. SCBI admits the allegations of paragraph 10.

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

11. SCBI denies the allegations of paragraph 11, except admits: (i) plaintiffs purport to base venue for this action on 28 U.S.C. § 1391; and (ii) SCBI conducts business within the Southern District of Florida.

12. SCBI denies the allegations of paragraph 12, except admits that it conducts business within the Southern District of Florida.

### **Factual Allegations**

13. SCBI denies the allegations of paragraph 13, except admits: (i) plaintiffs were clients of Schroder & Co. Trust Bank (“Schroder”); and (ii) Tirso Morales was an account manager at Schroder and SCBI.

14. SCBI denies the allegations of paragraph 14, except admits: (i) the private banking division of Schroder was sold to American Express Bank Limited (“AEBL”); and (ii) Tirso Morales was a relationship manager at American Express Bank International (“AEBI”).

15. SCBI denies the allegations of paragraph 15, except admits: (i) Standard Chartered PLC acquired AEBL from the American Express Company in or around February 2008; and (ii) Tirso Morales was a relationship manager at SCBI.

16. SCBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 and therefore denies them, except admits that Tirso Morales met with plaintiffs and/or their representatives.

17. SCBI denies the allegations of paragraph 17, except admits that AEBI conducted due diligence on Sentry and Sigma.

18. SCBI denies the allegations of paragraph 18, except admits that Sentry and Sigma were generally regarded as safe investments.

19. SCBI denies the allegations of paragraph 19, except admits that Sentry and Sigma were generally regarded as safe investments.

20. SCBI denies the allegations of paragraph 20.
21. SCBI denies the allegations of paragraph 21.
22. SCBI denies the allegations of paragraph 22.
23. SCBI denies the allegations of paragraph 23.
24. SCBI denies the allegations of paragraph 24.
25. SCBI denies the allegations of paragraph 25.
26. SCBI denies the allegations of paragraph 26.
27. SCBI denies the allegations of paragraph 27.
28. SCBI denies the allegations of paragraph 28, except admits that plaintiffs invested in Sentry and Sigma.
29. SCBI admits the allegations of paragraph 29.
30. SCBI denies the allegations of paragraph 30.
31. SCBI denies the allegations of paragraph 31, except admits: (i) Tirso Morales was an account manager at Schroder; (ii) Schroder was acquired by AEBL; and (iii) Tirso Morales was an account manager at AEBI.
32. SCBI denies the allegations of paragraph 32, except admits: (i) American Express Bank was sold to Standard Chartered PLC; and (ii) Tirso Morales was an account manager at SCBI.
33. SCBI denies the allegations of paragraph 33, except admits that plaintiff Gerico held accounts at Schroder, AEBI and SCBI.
34. SCBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34 and therefore denies them, except admits that Tirso Morales from time to time conducted phone calls and meetings with plaintiff Gerico and/or its representatives.

35. SCBI denies the allegations of paragraph 35, except admits that Sentry and Sigma were generally regarded as safe investments.

36. SCBI denies the allegations of paragraph 36, except admits that plaintiff Gerico authorized investments in Sentry and Sigma through its account with SCBI, including:

(i) 767.47 shares of Sentry on or around March 27, 2008 for approximately \$1,000,000; (ii) 2646.37 shares of Sigma on or around April 22, 2008 for approximately €500,000; and (iii) 224.82 shares of Sentry on or around July 29, 2008 for approximately \$300,000.

37. SCBI denies the allegations of paragraph 37.

38. SCBI denies the allegations of paragraph 38, except admits that plaintiff Gerico held investments in Sentry and Sigma in or around December 2008.

39. SCBI denies the allegations of paragraph 39.

40. SCBI admits the allegations of paragraph 40.

41. SCBI denies the allegations of paragraph 41.

42. SCBI denies the allegations of paragraph 42, except admits: (i) Tirso Morales was an account manager at Schroder; (ii) Schroder was acquired by AEBL; and (iii) Tirso Morales was an account manager at AEBI.

43. SCBI denies the allegations of paragraph 43, except admits: (i) American Express Bank was sold to Standard Chartered PLC; and (ii) Tirso Morales was an account manager at SCBI.

44. SCBI denies the allegations of paragraph 44, except admits that plaintiff Rivera held accounts at Schroder, AEBI and SCBI.

45. SCBI denies information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 45 and therefore denies them, except admits that from time to time Tirso Morales conducted phone calls and visits with plaintiff Rivera.

46. SCBI denies the allegations of paragraph 46, except admits that Sentry and Sigma were generally regarded as safe investments.

47. SCBI denies the allegations of paragraph 47, except admits that plaintiff Rivera authorized investments in Sentry through her account with SCBI, including: (i) 537.2308 shares of Sentry on or around March 27, 2008 for approximately \$700,000; and (ii) 1,587.8241 shares of Sigma on or around April 22, 2008 for approximately €300,000.

48. SCBI denies the allegations of paragraph 48.

49. SCBI denies the allegations of paragraph 49, except admits that plaintiff Rivera held investments in Sentry and Sigma in or around December 2008.

50. SCBI denies the allegations of paragraph 50.

51. The allegations of paragraph 51 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 51.

52. The allegations of paragraph 52 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 52.

53. The allegations of paragraph 53 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 53.

54. SCBI denies the allegations of paragraph 54, except admits that plaintiff purports to describe certain information reflected on a website entitled “STEP Wealth Directory.” SCBI respectfully refers the Court to the unnamed portions of this website for a complete and accurate description of their contents.

55. SCBI denies the allegations of paragraph 55, including paragraphs 55(a)-(e), except admits that plaintiff purports to describe certain information reflected on Standard Chartered Bank’s website. SCBI respectfully refers the Court to its website for a complete and accurate description of their contents.

56. SCBI denies the allegations of paragraph 56, except admits that plaintiff purports to describe certain information reflected on Standard Chartered Bank’s website. SCBI respectfully refers the Court to the unnamed portions of its website for a complete and accurate description of their contents.

57. SCBI denies the allegations of paragraph 57, except admits that plaintiff purports to describe certain information reflected on Standard Chartered Bank’s website under a heading entitled “Responsible Selling and Marketing.” SCBI respectfully refers the Court to its website for a complete and accurate description of its contents.

58. SCBI denies the allegations of paragraph 58.

59. SCBI denies the allegations of paragraph 59.

60. SCBI denies the allegations of paragraph 60.

61. SCBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 61, and therefore denies them, except admits that Sentry and Sigma placed substantially all of their assets in Bernard L. Madoff Investment Securities, LLC (“BLMIS”).

62. SCBI denies the allegations of paragraph 62.

63. SCBI denies the allegations of paragraph 63.

64. The allegations of paragraph 64 contain an opinion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 64.

65. The allegations of paragraph 65 contain an opinion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 65.

66. The allegations of paragraph 66 contain an opinion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 66.

67. SCBI denies the allegations of paragraph 67.

68. SCBI denies the allegations of paragraph 68.

69. SCBI denies the allegations of paragraph 69.

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

SCBI repeats and realleges its responses to paragraphs 1 through 69 as if fully set forth herein.

70. SCBI denies the allegations of paragraph 70.

71. SCBI denies the allegations of paragraph 71.

72. The allegations of paragraph 72 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 72.



73. The allegations of paragraph 73, including paragraphs 73(a)-(i), contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 73, including paragraphs 73(a)-(i).

74. The allegations of paragraph 74 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 74, including by denying that plaintiffs suffered any damages as a result of conduct by SCBI.

**AS AND FOR A SECOND CLAIM**  
**(Fraud In The Inducement)**

SCBI repeats and realleges its responses to paragraphs 1 through 74 as if fully set forth herein.

75. The allegations of paragraph 75 relate to plaintiffs' claims for fraud, which the Court dismissed on September 12, 2012 (Dkt. No. 937); therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 75.

76. The allegations of paragraph 76 relate to plaintiffs' claims for fraud, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations in paragraph 76, including paragraphs 76(a)-(c), except admits: (i) SCBI conducted due diligence on Sentry and Sigma; (ii) Sentry and Sigma were generally regarded as safe; and (iii) Sentry and Sigma had a history of low volatility and consistent returns.

77. The allegations of paragraph 77 relate to plaintiffs' claims for fraud, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 77.

78. The allegations of paragraph 78 relate to plaintiffs' claims for fraud, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 78.

79. The allegations of paragraph 79 relate to plaintiffs' claims for fraud, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 79.

80. The allegations of paragraph 80 relate to plaintiffs' claims for fraud, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 80, including by denying that plaintiffs suffered damages as a result of conduct by SCBI.

**AS AND FOR A THIRD CLAIM**  
**(Fraudulent Concealment)**

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

81. The allegations of paragraph 81 contain a legal conclusion and relate to plaintiffs' claims for fraud, which the Court dismissed on September 12, 2012 (Dkt. No. 937); therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 81.

82. The allegations of paragraph 82, including paragraphs 82(a)-(c), contain a legal conclusion and relate to plaintiffs' claims for fraud, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 82, including paragraphs 82(a)-(c).

83. The allegations of paragraph 83 contain a legal conclusion and relate to plaintiffs' claims for fraud, which the Court dismissed on September 12, 2012; therefore, no response is

required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 83.

84. The allegations of paragraph 84 contain a legal conclusion and relate to plaintiffs' claims for fraud, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 84.

85. The allegations of paragraph 85 contain a legal conclusion and relate to plaintiffs' claims for fraud, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 85, including by denying that plaintiffs suffered damages as a result of conduct by SCBI.

**AS AND FOR A FOURTH CLAIM**  
**(Negligent Misrepresentation)**

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

86. The allegations of paragraph 86 contain a legal conclusion and relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012 (Dkt. No. 937); therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 86.

87. The allegations of paragraph 87 relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 87, including paragraphs 87(a)-(c), except admits: (i) SCBI conducted due diligence on Sentry and Sigma; (ii) Sentry and

Sigma were generally regarded as safe; and (iii) Sentry and Sigma had a history of low volatility and consistent returns.

88. The allegations of paragraph 88 relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 88.

89. The allegations of paragraph 89 relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 89.

90. The allegations of paragraph 90 relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 90, including by denying that plaintiffs suffered any damages as a result of conduct by SCBI.

**AS AND FOR A FIFTH CLAIM**  
**(Negligence)**

SCBI repeats and realleges its responses to paragraphs 1 through 90 as if fully set forth herein.

91. The allegations of paragraph 91 contain a legal conclusion and relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 91.

92. The allegations of paragraph 92, including paragraphs 92(a)-(i), contain a legal conclusion and relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 92, including paragraphs 92(a)-(i).

93. The allegations of paragraph 93 contain a legal conclusion and relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 93, including by denying that plaintiffs suffered any damages as a result of conduct by SCBI.

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

SCBI denies that plaintiffs are entitled to any of the relief prayed for on pages 14-20 of the Complaint.

#### **Jury Trial Demand**

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

## **II. DEFENSES**

#### **First Defense**

Plaintiffs fail to state a claim upon which relief can be granted.

#### **Second Defense**

Any damages allegedly suffered by plaintiffs 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**

Plaintiffs' claims are barred, in whole or in part, because SCBI's alleged conduct was not the cause of plaintiffs' 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 plaintiffs to an award of punitive damages.

#### **Sixth Defense**

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

#### **Seventh Defense**

Plaintiffs were contributorily and/or comparatively negligent.

#### **Eighth Defense**

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

#### **Ninth Defense**

Plaintiffs' 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**

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

#### **Eleventh Defense**

Plaintiffs' 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**

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

#### **Thirteenth Defense**

Plaintiffs' claims are barred, in whole or in part, by virtue of disclosures in the subscription agreements and private purchase memoranda applicable to plaintiffs' purchases of shares of Sentry and Sigma.

#### **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 plaintiffs' claims.

#### **Fifteenth Defense**

Any damages recoverable by plaintiffs 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 plaintiffs against SCBI is to be offset, in whole or in part, by any and all other recoveries (including, where applicable, redemptions) by plaintiffs with respect to their investments in Sentry and Sigma.

#### **Seventeenth Defense**

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

**Eighteenth Defense**

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



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

Respectfully submitted,

By: /s/ Sharon L. Nelles  
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