

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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PASHA ANWAR, et al., )  
) )  
) )  
) )  
Plaintiffs, ) Master File No. 09-CV-118 (VM)  
) )  
v. )  
) )  
FAIRFIELD GREENWICH LIMITED, et al., )  
) )  
) )  
Defendants. )  
) )  
This Document Relates To: *Eduardo Child Escobar, et al.* )  
*v. Standard Chartered Bank International (Americas)* )  
*Ltd.*, No. 11-cv-23120. )  
) )  
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**Standard Chartered Bank International (Americas) Limited's  
Answer and Defenses to the Complaint**

Defendant Standard Chartered Bank International (Americas) Limited (“SCBI”), through its undersigned counsel, hereby responds as follows to the Complaint, based on present knowledge. SCBI reserves the right to supplement and amend this Answer and to add additional defenses of which it becomes aware.

**I. ANSWER**

**Nature of the Action**

1. SCBI denies the allegations of paragraph 1, except admits that plaintiff Eduardo Child Escobar (“Child”) invested in Fairfield Sentry (“Sentry”). SCBI avers that, pursuant to the Court’s September 12, 2012 Order, plaintiffs’ claims for fraudulent concealment and negligence

have been dismissed. (Dkt. No. 937.<sup>1</sup>) SCBI also avers that Standard Chartered PLC acquired American Express Bank Ltd. (“AEBL”) from the American Express Company in February 2008. SCBI avers that AEBL was renamed Standard Chartered International (USA) Ltd. and that American Express Bank International (“AEBI”) was renamed SCBI.

2. SCBI denies the allegations of paragraph 2, except admits that plaintiffs purport to describe events occurring in December 2008 regarding the fraud perpetrated by Bernard L. Madoff and BLMIS.

3. SCBI denies the allegations of paragraph 3.

4. SCBI denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4, and therefore denies them.

5. SCBI denies the allegations of paragraph 5.

6. SCBI denies the allegations of paragraph 6.

7. SCBI denies the allegations of paragraph 7, except admits that plaintiff Child was charged standard fees.

8. SCBI denies the allegations of paragraph 8.

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

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

10. SCBI denies the allegations of paragraph 10, except admits that it is a corporation is authorized to do business in Florida, with a place of business at 1111 Brickell Avenue, Miami, Florida 33131.

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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 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.

12. SCBI admits the allegations of paragraph 12.

13. SCBI denies the allegations of paragraph 13, 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.

14. SCBI denies the allegations of paragraph 14, except admits that it conducts business within the Southern District of Florida.

#### **Factual Allegations**

15. SCBI admits: (i) plaintiff Child was a client of Schroder & Co. Trust Bank (“Schroder”); and (ii) in or around 1999, Tirso Morales was an account manager at Schroder.

16. SCBI denies the allegations of paragraph 16.

17. SCBI admits: (i) the private banking division of Schroder was sold to AEBL; and (ii) Tirso Morales was a relationship manager at AEBL.

18. SCBI denies the allegations of paragraph 18, except admits: (i) Standard Chartered PLC acquired AEBL from the American Express Company in February 2008; and (ii) Tirso Morales was a relationship manager at SCBI.

19. SCBI denies the allegations of paragraph 19, except admits that plaintiff Child held accounts at Schroder, AEBL and SCBI.

20. SCBI denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20 and therefore denies them, except admits that Tirso Morales met with plaintiff Child.

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, except admits that Sentry was generally regarded as a safe investment.
25. SCBI denies the allegations of paragraph 25, except admits that AEBI conducted due diligence on Sentry.
26. SCBI denies the allegations of paragraph 26, except admits that Sentry was generally regarded as a safe investment.
27. SCBI denies the allegations of paragraph 27.
28. SCBI denies the allegations of paragraph 28, except admits that Sentry invested substantially all of its assets with BLMIS.
29. SCBI denies the allegations of paragraph 29.
30. SCBI denies the allegations of paragraph 30, except admits that in or around 2004, plaintiff Child purchased approximately 228.4 shares of Sentry for approximately \$250,000.
31. SCBI denies the allegations of paragraph 31.
32. SCBI denies the allegations of paragraph 32.
33. SCBI denies the allegations of paragraph 33.
34. SCBI denies the allegations of paragraph 34.
35. SCBI denies the allegations of paragraph 35.
36. SCBI denies the allegations of paragraph 36, except admits that plaintiff Child invested in Sentry.
37. SCBI denies the allegations of paragraph 37.

38. SCBI denies the allegations of paragraph 38, except admits that plaintiff Child was invested in Sentry as of December 2008.

39. SCBI denies the allegations of paragraph 39.

40. The allegations of paragraph 40 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 40.

41. The allegations of paragraph 41 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 41.

42. The allegations of paragraph 42 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 42.

43. SCBI denies the allegations of paragraph 43.

44. SCBI denies the allegations of paragraph 44, 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.

45. SCBI denies the allegations of paragraph 45, including paragraphs 45(a)-(e), 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 this website for a complete and accurate description of their contents.

46. SCBI denies the allegations of paragraph 46, 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 this website for a complete and accurate description of their contents.

47. SCBI denies the allegations of paragraph 47, 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 this website for a complete and accurate description of its contents.

48. SCBI denies the allegations of paragraph 48.

49. SCBI denies the allegations of paragraph 49.

50. SCBI denies the allegations of paragraph 50.

51. SCBI denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51, and therefore denies them, except admits that Sentry placed substantially all of its assets in BLMIS.

52. SCBI denies the allegations of paragraph 52.

53. SCBI denies the allegations of paragraph 53.

54. SCBI denies the allegations of paragraph 54.

55. The allegations of paragraph 55 contain an opinion 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 contain an opinion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 56.

57. The allegations of paragraph 57 contain an opinion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 57.

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 denies the allegations of paragraph 61.

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

SCBI repeats and realleges its responses to paragraphs 1 through 61 as if fully set forth herein.

62. SCBI denies the allegations of paragraph 62.

63. SCBI denies the allegations of paragraph 63.

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

65. SCBI denies the allegations of paragraph 65.

66. SCBI denies the allegations of paragraph 66.

67. SCBI denies the allegations of paragraph 67.

68. The allegations of paragraph 68, including paragraphs 68(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 68, including paragraphs 68(a)-(i).

69. The allegations of paragraph 69 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of

paragraph 69, including by denying that plaintiff Child suffered any damages as a result of conduct by SCBI.

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

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

70. The allegations of paragraph 70 contain a legal conclusion and relate to plaintiffs' claim for fraudulent concealment, 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 70.

71. The allegations of paragraph 71, including paragraphs 71(a)-(d), contain a legal conclusion and relate to plaintiffs' claim for fraudulent concealment, 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 71, including paragraphs 71(a)-(d).

72. The allegations of paragraph 72 contain a legal conclusion and relate to plaintiffs' claim for fraudulent concealment, 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 72.

73. The allegations of paragraph 73 contain a legal conclusion and relate to plaintiffs' claim for fraudulent concealment, 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 73.

74. The allegations of paragraph 74 contain a legal conclusion and relate to plaintiffs' claim for fraudulent concealment, 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 74, including by denying that plaintiff Child suffered damages as a result of conduct by SCBI.

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

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

75. The allegations of paragraph 75 contain a legal conclusion and relate to plaintiffs' negligence claim, 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 75.

76. The allegations of paragraph 76, including paragraphs 76(a)-(h), contain a legal conclusion and relate to plaintiffs' negligence claim, 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 76, including paragraphs 76(a)-(h).

77. The allegations of paragraph 77 contain a legal conclusion and relate to plaintiffs' negligence claim, 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, including by denying that plaintiff Child 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 14-16 of the Complaint.

### **Jury Trial Demand**

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

**Thirteenth Defense**

Plaintiffs' claims are barred, in whole or in part, by virtue of disclosures in the applicable subscription agreement(s) and private placement memoranda applicable to plaintiffs' 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 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 Child's investments in Sentry.

#### **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,

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