

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

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PASHA ANWAR, et al.,)		
)		
v.)	Plaintiffs,	Master File No. 09-CV-118 (VM)
)		
FAIRFIELD GREENWICH LIMITED, et al.,)		
)		
Defendants.)		
)		
This Document Relates To: <i>Tierra C.V., et al. v. Standard Chartered Bank International (Americas) Ltd., et al.</i> , No. 11-CV-5731.)
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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: (i) plaintiffs were customers of SCBI; (ii) substantially all of the assets of Fairfield Sentry (“Sentry”) were invested with Bernard L. Madoff Investment Securities (“BLMIS”); and (iii) plaintiffs purport to allege fraud and related common law causes of action. SCBI avers that, pursuant to stipulation of the parties and order of the Court: (i) Standard Chartered PLC has been dismissed as a defendant;

(ii) plaintiffs' claims for unjust enrichment and negligence have been dismissed; and
(iii) plaintiffs have struck any allegations of misrepresentations made in the context of their breach of fiduciary duty claim. (Dkt. No. 936.¹)

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) plaintiffs Tierra, Bego and Oro invested in Sentry through their accounts 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.

¹ 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 plaintiffs also purport 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) plaintiffs are corporations organized under the laws of a foreign state.

15. SCBI denies the allegations of paragraph 15, except admits: (i) plaintiffs purport 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 Tierra C.V. (“Tierra”) is organized and exists under the laws of the Netherlands; and (ii) plaintiff Tierra held an account at SCBI.

18. SCBI admits: (i) plaintiff Bego Inc. (“Bego”) is organized and exists under the laws of the British Virgin Islands; and (ii) plaintiff Bego held an account at SCBI.

19. SCBI admits: (i) plaintiff Oro C.V. (“Oro”) is organized and exists under the laws of the Netherlands; and (ii) plaintiff Oro held an account at SCBI.

20. SCBI admits: (i) plaintiff Ali Ltd. (“Ali”) is organized and exists under the laws of the Cayman Islands; and (ii) plaintiff Ali held an account at SCBI.

21. SCBI admits: (i) plaintiff Bellwood Ltd. (“Bellwood”) is organized and exists under the laws of the Cayman Islands; and (ii) plaintiff Bellwood held an account at SCBI.

22. SCBI admits: (i) plaintiff Accent Group, Ltd. (“Accent”) is organized and exists under the laws of the Cayman Islands; and (ii) plaintiff Accent held an account at SCBI.

23. SCBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 and therefore denies them.

24. 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.

25. 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.

26. SCBI denies the allegations of paragraph 26, 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) plaintiffs’ accounts were serviced through the Miami office of SCBI.

27. SCBI denies the allegations of paragraph 27, 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

28. SCBI denies the allegations of paragraph 28, except admits that plaintiff Bego opened an account with AEBI in or around March 1997.

29. SCBI denies the allegations of paragraph 29, except admits that plaintiff Tierra opened an account with AEBI in or around June 2000.

30. SCBI denies the allegations of paragraph 30, except admits that plaintiff Oro opened an account with AEBI in or around June 2000.

31. SCBI denies the allegations of paragraph 31, except admits that plaintiffs Ali, Bellwood, and Accent opened an account with AEBI in or around July 2004.

32. SCBI denies the allegations of paragraph 32.

33. SCBI denies the allegations of paragraph 33, except admits that Jennifer Sierra was a relationship manager at AEBI.

34. SCBI denies the allegations of paragraph 34, except admits that Jennifer Sierra was a relationship manager at AEBI.

35. SCBI denies the allegations of paragraph 35, except admits that Jennifer Sierra was a relationship manager at AEBI.

36. SCBI denies the allegations of paragraph 36, except admits that Jennifer Sierra was a relationship manager at AEBI.

37. SCBI denies the allegations of paragraph 37, except admits that Sentry had a history of stable and steady returns.

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, except admits that in or around November 2003, plaintiff Tierra authorized a \$224,000 investment in Sentry.

42. SCBI denies the allegations of paragraph 42, except admits that plaintiff Tierra purchased approximately 267.87 total shares of Sentry for approximately \$224,000.

43. SCBI denies the allegations of paragraph 43, except admits that in or around March 2004, plaintiff Bego authorized a \$300,000 investment in Sentry.

44. SCBI denies the allegations of paragraph 44, except admits that in or around March 2008, plaintiff Bego authorized an additional \$250,000 investment in Sentry.

45. SCBI denies the allegations of paragraph 45, except admits that plaintiff Bego purchased approximately 191.87 total shares of Sentry for approximately \$550,000.

46. SCBI denies the allegations of paragraph 46, except admits that in or around December 2003, plaintiff Oro authorized a \$295,400 investment in Sentry.

47. SCBI denies the allegations in paragraph 47, except admits that plaintiff Oro purchased shares of Sentry for approximately \$295,400.

48. SCBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48 and therefore denies them.

49. SCBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49 and therefore denies them. SCBI avers that account records reflect: (i) in or around September 2004, approximately \$100,000 in shares of Sentry was transferred to plaintiff Ali's account at SCBI; and (ii) in or around January 2008, approximately \$83,333.18 in shares of Sentry was transferred to plaintiff Ali's account at SCBI.

50. SCBI lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 50 and therefore denies them.

51. SCBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51 and therefore denies them. SCBI avers that account records reflect: (i) in or around September 2004, approximately \$100,000 in shares of Sentry was transferred to plaintiff Bellwood's account at SCBI; and (ii) in or around January 2008,

approximately \$83,333.18 in shares of Sentry was transferred to plaintiff Bellwood's account at SCBI.

52. SCBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52 and therefore denies them.

53. SCBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53 and therefore denies them. SCBI avers that account records reflect: (i) in or around September 2004, approximately \$100,000 in shares of Sentry was transferred to plaintiff Accent's account at SCBI; and (ii) in or around January 2008, approximately \$83,333.18 in shares of Sentry was transferred to plaintiff Accent's account at SCBI.

54. SCBI denies the allegations of paragraph 54, except admits that plaintiffs Tierra, Bego and Oro were charged standard fees.

55. SCBI denies the allegations of paragraph 55, except admits that plaintiffs Tierra, Bego and Oro were charged standard fees.

56. SCBI denies the allegations of paragraph 56, 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.

57. SCBI admits: (i) in or around February 2008, Standard Chartered PLC acquired AEBL from the American Express Company; (ii) AEBL was renamed Standard Chartered International (USA) Ltd.; and (iii) AEBI was renamed SCBI.

58. SCBI denies the allegations of paragraph 58, except admits that Standard Chartered PLC acquired AEBL, which was the direct corporate parent of AEBI, which in turn serviced plaintiffs' accounts.

59. SCBI denies the allegations of paragraph 59.

60. SCBI denies the allegations of paragraph 60, except admits that plaintiffs Tierra, Bego and Oro remained invested in Sentry after Standard Chartered PLC's February 2008 acquisition of AEBL.

61. SCBI denies the allegations of paragraph 61.

62. SCBI denies the allegations of paragraph 62.

63. SCBI denies the allegations of paragraph 63.

64. SCBI denies the allegations of paragraph 64, except admits: (i) SCBI conducted due diligence on Sentry; and (ii) Sentry had consistent returns.

65. SCBI denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 65, and therefore denies them.

66. 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, except admits that plaintiffs made and maintained investments in Sentry in their accounts at SCBI.

70. SCBI denies the allegations of paragraph 70.

71. SCBI denies the allegations of paragraph 71, except admits: (i) plaintiffs purport 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)

72. SCBI repeats and realleges its responses to paragraphs 1 through 71 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 plaintiffs have stipulated to strike those allegations (Dkt. No. 936).

73. SCBI denies the allegations of paragraph 73.

74. The allegations of paragraph 74 contain legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 74.

75. The allegations of paragraph 75 contain legal conclusions to which 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 legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 76, including paragraphs 58(a)-(h).

77. SCBI denies the allegations of paragraph 77.

78. SCBI denies the allegations of paragraph 78.

79. SCBI denies the allegations of paragraph 79, including by denying that plaintiffs suffered any damages as a result of conduct by SCBI.

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

80. SCBI repeats and realleges its responses to paragraphs 1 through 79 as if fully set forth herein.

81. The allegations of paragraph 81 contain a legal conclusion and relate to plaintiffs' 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 81.

82. The allegations of paragraph 82 contain a legal conclusion and relate to plaintiffs' 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 82.

83. The allegations of paragraph 83, including paragraphs 83(a)-(i), contain a legal conclusion and relate to plaintiffs' 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 83, including paragraphs 83(a)-(i).

84. The allegations of paragraph 84 relate to plaintiffs' 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 84, and therefore denies them. SCBI respectfully refers the Court to the unidentified article in PENSION & INVESTMENTS referenced by plaintiffs in paragraph 66 of the Complaint for a complete and accurate description of its contents.

85. The allegations of paragraph 85 relate to plaintiffs' 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 85, except admits that materials, including the May 2001 MAR/HEDGE and BARRON's articles referenced in paragraph 85 of the Complaint, were publicly available, and respectfully refers the Court to those documents for a complete and accurate description of their contents.

86. The allegations of paragraph 86 relate to plaintiffs' 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 86 and avers that certain of its affiliates offered Sentry and/or Fairfield Sigma, among other investments, to customers.

87. The allegations of paragraph 87 relate to plaintiffs' 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 87.

88. The allegations of paragraph 88 relate to plaintiffs' 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 88.

89. The allegations of paragraph 89 relate to plaintiffs' 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 89.

90. The allegations of paragraph 90 relate to plaintiffs' 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 90.

91. The allegations of paragraph 91 relate to plaintiffs' claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed

required, SCBI denies that plaintiffs suffered any damages as a result of conduct by SCBI and therefore denies the allegations of paragraph 91.

AS AND FOR A THIRD CLAIM
(Negligent Misrepresentation 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 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 93.

94. SCBI denies the allegations of paragraph 94.

95. SCBI denies the allegations of paragraph 95.

96. SCBI denies the allegations of paragraph 96.

97. SCBI denies the allegations of paragraph 97.

98. SCBI denies the allegations of paragraph 98.

99. SCBI denies the allegations of paragraph 99.

100. SCBI denies the allegations of paragraph 100, including by denying that plaintiffs suffered any damages as a result of conduct by SCBI.

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

101. SCBI repeats and realleges its responses to paragraphs 1 through 100 as if fully set forth herein.

102. SCBI denies the allegations of paragraph 102.

103. SCBI denies the allegations of paragraph 103.

104. SCBI denies the allegations of paragraph 104.

105. SCBI denies the allegations of paragraph 105, including by denying that plaintiffs suffered any damages as a result of conduct by SCBI.

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

106. SCBI repeats and realleges its responses to paragraphs 1 through 105 as if fully set forth herein.

107. The allegations of paragraph 107 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 107.

108. The allegations of paragraph 108 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 108.

109. SCBI denies the allegations of paragraph 109, including paragraphs 109(a)-(d).

110. SCBI denies the allegations of paragraph 110.

111. SCBI denies the allegations of paragraph 111, including by denying that plaintiffs suffered any damages as a result of conduct by SCBI.

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

112. SCBI repeats and realleges its responses to paragraphs 1 through 111 as if fully set forth herein.

113. The allegations of paragraph 113 relate to plaintiffs' 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 113.

114. The allegations of paragraph 114 relate to plaintiffs' 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 114.

115. The allegations of paragraph 115 relate to plaintiffs' 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 115.

Denial of Prayer for Relief

SCBI denies that plaintiffs are entitled to any of the relief prayed for on pages 24 and 25 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 agreement(s) and the private placement memoranda applicable to plaintiffs' purchases 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 their investments, if any, 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,

By: /s/ Sharon L. Nelles
Sharon L. Nelles
Bradley P. Smith
Patrick B. Berarducci
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3588
E-mail: nelless@sullcrom.com

Diane L. McGimsey
SULLIVAN & CROMWELL LLP
1888 Century Park East
Los Angeles, California 90067
Telephone: (310) 712-6600
Facsimile: (310) 712-8800

*Attorneys for Defendant
Standard Chartered Bank
International (Americas) Ltd.*

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