

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANWAR, *et al.* v. FAIRFIELD GREENWICH
LIMITED, *et al.*

Master File No. 09-cv-0118 (VM)
(Bhatia) & (Tradewaves)

This Document Relates to: *Bhatia, et al. v.*
Standard Chartered International (USA) Ltd., et al.,
No. 09-CV-2410; *Tradewaves Ltd., et al. v.*
Standard Chartered International (USA) Ltd., et al.,
No. 09-CV-9423

DECLARATION OF WILLIAM M. O'CONNOR, ESQ.

I, William M. O'Connor, make this declaration pursuant to 28 U.S.C. § 1746. I hereby state as follows:

1. I am a partner with the law firm of Crowell & Moring LLP, counsel for Bhatia and Tradewaves¹ in the above-captioned actions, and am admitted to practice before this Court. I am familiar with the matters stated herein based on personal knowledge or my review of materials in the possession of my firm.

2. I make this Declaration in response to the motion to dismiss [Dkt. Nos. 387, 400] filed on or about March 11, 2010 (the "Motion") by Standard Chartered International (USA) Ltd. ("SCI") and Standard Chartered PLC ("SC PLC," and together with SCI, and as successor-in-interest to American Express Bank Ltd., collectively, "Standard Chartered").

3. The Motion relates to the Amended Complaint was filed by Bhatia in this action on September 18, 2009, Case No. 09-cv-2410 ("Bhatia Complaint") and a Complaint filed was

¹ The "Bhatia" plaintiffs are Jitendra Bhatia, Gopal Bhatia, Kishanchand Bhatia, Jayshree Bhatia and Mandakini Gajaria. The "Tradewaves" plaintiffs are Tradewaves Ltd., Parasram Daryani, Neelam P. Daryani, Vikas P. Daryani, Nikesh P. Daryani, Ashokkumar Damodardas Raipancholia, Dilip Damodardas Raipancholia, Rajeshkumar Damodardas Raipancholia, Kishu Nathurmal Uttamchandani, Purna Vinod Uttamchandani, Rajendrakumar Patel, Vandna Patel, Arjan Mohandas Bhatia, Kishin Mohandas Bhatia, Suresh M. Bhatia, Bharat Mohandas, and Aarvee Ltd.

by Tradewaves on November 12, 2009, Case No. 09-cv-9423 (“Tradewaves Complaint” and together with the Bhatia Complaint, collectively, the “Complaints”).

4. Before Standard Chartered’s Motion was filed, the Complaints were consolidated for all pretrial and discovery purposes with *Anwar, et al. v. Fairfield Greenwich Limited, et al.*, 09-cv-118 (S.D.N.Y.) by Orders dated May 6, 2009 and December 10, 2009, respectively.

5. On July 21, 2009, in response to a motion by Fairfield Greenwich Advisors LLC to transfer a related action captioned *Headway Investment Corporation v. American Express Bank, Ltd., et al.*, 09-cv-21935 (S.D. Fla.) to the Southern District of New York, and to consolidate *Headway* with *Anwar*, Standard Chartered filed an Opposition to Request of Headway Investment Corporation to “Sever” Certain Claims (“SC’s Memo re Severing Claims”). A true and correct copy of SC’s Memo re Severing Claims is attached hereto as Exhibit A.

6. By Order dated October 27, 2009, discovery was stayed in *Anwar*. As a result, Bhatia and Tradewaves have not had the opportunity to conduct any discovery in response to the Motion or otherwise.

7. In support of its Motion, Standard Chartered presents numerous documents, which were not referenced in, relied on, or integral to the Complaints. If the Court is inclined to consider Standard Chartered’s extraneous materials, then the Motion must be converted to one for summary judgment under Rule 56. *See* Fed. R. Civ. P. 12(d). Bhatia and Tradewaves would require discovery in order to present evidence essential to their opposition to the Motion under a summary judgment standard.

8. For example, if Bhatia and Tradewaves had the opportunity, we would conduct, among other discovery, the depositions of Standard Chartered, Surendran Menon, Morteza

Farzaneh, Arjun Mittal, and W. Richard Holmes, as well as of Fairfield Sentry Ltd., the other Fairfield entities, and other fact and/or expert witnesses. The inquiry in these depositions would include at least the following subject matters:

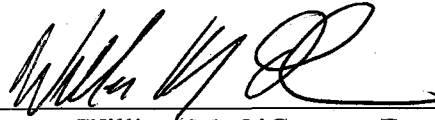
- (a) the nature and extent of due diligence conducted, if any, on Fairfield Sentry, Ltd. and Bernard L. Madoff Investment Securities, LLC;
- (b) Standard Chartered's knowledge of the structure of Fairfield Sentry, Ltd. and the roles of Bernard L. Madoff Investment Securities, LLC;
- (c) Standard Chartered's agreement to distribute Fairfield Sentry, Ltd.;
- (d) any payments to Standard Chartered in connection with their sales of Fairfield Sentry, Ltd. to Bhatia, Tradewaves, and other clients;
- (e) the investment advice given to Bhatia and Tradewaves, and the basis for such advice, relating to the purchase and retention of investments in Fairfield Sentry, Ltd. and Lloyds Bank TSB bonds;
- (f) documents and agreements prepared and/or distributed by Standard Chartered, Fairfield Sentry, Ltd., Bernard L. Madoff Investment Securities, LLC, and Lloyds Bank TSB bonds relating to Bhatia's and Tradewaves' accounts and investments;
- (g) the acts taken by Standard Chartered and Fairfield Sentry, Ltd. relating to Bhatia's redemption request; and
- (h) the acts, statements, and omissions taken, made, and/or failed to be taken or made by Standard Chartered relating to Bhatia's investment in Lloyds Bank TSB bonds.

9. In addition, we would seek the production of documents relating to these issues.

10. As explained in Bhatia and Tradewaves Plaintiffs' Memorandum of Law in Opposition to Standard Chartered's Motion to Dismiss, information from such discovery, among other information that would be obtained in discovery, is necessary for Bhatia and Tradewaves to oppose Standard Chartered's Motion under a Rule 56 standard.

11. I respectfully submit that the Court should not consider Standard Chartered's Motion until Bhatia and Tradewaves have been afforded sufficient discovery.

Executed on May 3, 2010, in New York, New York.



William M. O'Connor, Esq.