

No. 13-1174

IN THE
Supreme Court of the United States

ELLEN GELBOIM AND LINDA ZACHER,
INDIVIDUALLY FOR THEMSELVES AND ON BEHALF OF
ALL OTHERS SIMILARLY SITUATED,
Petitioners,

v.

BANK OF AMERICA CORPORATION ET AL.,
Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit

JOINT APPENDIX

| | |
|--------------------------------|---------------------------|
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*Petition for a Writ of Certiorari Filed March 26, 2014
Certiorari granted June 30, 2014*

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 13-3565(L); 13-3636 (Con)

*In Re: Libor Based Financial Instruments Antitrust
Litigation*

Relevant Docket Entries (Court of Appeals)

| Date | # | Docket Text |
|-------------|----------|--|
| 09/19/2013 | 1 | NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant Ellen Gelboim and Linda Zacher, FILED. [1051262] [13-3565] |
| 09/25/2013 | 8 | NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant Charles Schwab & Co., inc., Charles Schwab Bank, N.A., Charles Schwab Corporation, Schwab Advisor Cash Reserves, Schwab Cash Reserves, Schwab Investor Money Fund, Schwab Money Market Fund, Schwab Retirement Advantage Money Fund, Schwab Short-Term Bond Market Fund, Schwab Total Bond Market Fund, Schwab U.S. Dollar Liquid Assets Fund, Schwab Value Advantage Money Fund, Schwab Yieldplus Fund and Schwab Yieldplus Fund Liquidation Trust, FILED. [1054359] [13-3636] |

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| 09/30/2013 | 12 | NEW CASE 13-3636, on behalf of [Schwab entities listed in docket entry 11], FILED.[1054422] [13-3565] |
| 10/30/2013 | 120 | ORDER, dated 10/30/2013, for sua sponte dismissal of appeals, by JAC, BDP, FILED. [1079538] [13- 3565, 13-3636] |
| 10/30/2013 | 121 | APPEAL, pursuant to court order, dated 10/30/2013, DISMISSED. [1079541] [13-3565, 13-3636] |
| 11/13/2013 | 129 | MOTION, to reconsider, on behalf of Appellant [Schwab entities listed in docket entry 11] in 13-3636, 13-3565, FILED. Service date 11/13/2013 by CM/ECF. [1091587] [13-3636, 13-3565] |
| 11/13/2013 | 130 | MOTION, to reconsider, on behalf of Appellant Ellen Gelboim and Linda Zacher, FILED. Service date 11/13/2013 by CM/ECF. [1091597] [13-3565, 13-3636] |
| 11/15/2013 | 132 | DEFECTIVE DOCUMENT, motion to reconsider and to reinstate the appeal, [130], [129], on behalf of Appellant [Schwab entities listed in docket entry 11], Ellen Gelboim, . . . and Linda Zacher in 13-3565, FILED.[1093072] [13-3565, 13-3636] |
| 11/15/2013 | 133 | MOTION, to reconsider, to reinstate appeal, on behalf of Appellant [Schwab entities listed in docket |

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| | | entry 11] in 13-3636, 13-3565, FILED. Service date 11/15/2013 by CM/ECF. [1093433] [13-3636, 13-3565] |
| 11/15/2013 | 134 | MOTION, to reconsider, to reinstate appeal, on behalf of Appellant Ellen Gelboim and Linda Zacher, FILED. Service date 11/15/2013 by CM/ECF. [1093821] [13-3565, 13-3636] |
| 11/15/2013 | 135 | CURED DEFECTIVE MOTION, for reconsideration and to reinstate the appeal[134],[134], [133],[133], on behalf of Appellant [Schwab entities listed in docket entry 11], Ellen Gelboim . . . and Linda Zacher in 13-3565, FILED.[1093956] [13-3565, 13-3636] |
| 11/27/2013 | 141 | OPPOSITION TO MOTION to reconsider [134],to reinstate appeal [134], to reconsider [133],to reinstate appeal [133], on behalf of Appellee Barclays Bank Plc., FILED. Service date 11/27/2013 by CM/ECF. [1103091][141] [13-3565, 13-3636] |
| 12/09/2013 | 144 | REPLY TO OPPOSITION [141], on behalf of Appellant Ellen Gelboim and Linda Zacher, FILED. Service date 12/09/2013 by CM/ECF.[1110402][144] [13-3565, 13-3636] |
| 12/09/2013 | 145 | REPLY TO OPPOSITION [141], on behalf of Appellant [Schwab entities |

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| | | listed in docket entry 11] in 13-3636, 13-3565, FILED. Service date 12/09/2013 by CM/ECF. [1110421][145] [13-3636, 13-3565] |
| 12/16/2013 | 149 | MOTION ORDER, denying motion to reconsider [134] filed by Appellant Ellen Gelboim and Linda Zacher in 13-3565, denying motion to reconsider [133] filed by Appellant [Schwab entities listed in docket entry 11] in 13-3565; denying motion to reinstate appeal [134] filed by Appellant Ellen Gelboim and Linda Zacher in 13-3565, denying motion to reinstate appeal [133] filed by Appellant [Schwab entities listed in docket entry 11] in 13-3565, by JAC, BDP, FILED. [1115743][149] [13-3565, 13-3636] |

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CASE #: 1:12-cv-01025-NRB

Gelboim v. Credit Suisse Group AG et al

Relevant Docket Entries (Gelboim Case)

| Date | # | Docket Text |
|-------------|----------|---|
| 02/09/2012 | 1 | COMPLAINT against Bank of America Corporation, Bank of Tokyo-Mitsubishi UFJ, Barclays Bank PLC, Citibank NA, Credit Suisse Group AG, Deutsche Bank AG, HSBC Holdings plc., J.P. Morgan Chase & Co., Lloyds Banking Group plc, Rabobank Group, Royal Bank of Canada, Royal Bank of Scotland Group plc, Societe Generale, The Norinchukin Bank, UBS AG, WestLB AG. (Filing Fee \$ 350.00, Receipt Number 465401029250) Document filed by Ellen Gelboim. (rdz) (Entered: 02/14/2012) |
| 03/20/2012 | | CONSOLIDATED MDL CASE: Create association to 1:11-md-02262-NRB. (pgu) (Entered: 03/20/2012) |
| 03/20/2012 | 11 | NOTICE OF CASE ASSIGNMENT to Judge Naomi Reice Buchwald. Judge Unassigned is no longer assigned to the case. (pgu) (Entered: 03/20/2012) |

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| 04/30/2012 | 12 | FIRST AMENDED COMPLAINT amending 1 Complaint, against [Defendants named in docket entry 1] by Ellen Gelboim, Linda Zacher. Related document: 1 Complaint, filed by Ellen Gelboim.***Original document is filed in case number 11-md-2262, document #131. (mro) (ama). (Entered: 05/01/2012) |
| 06/29/2012 | 25 | MOTION to Dismiss <i>the Amended Complaints</i> . Document filed by [Defendants named in docket entry 1] In Associated Cases: 1:11-md-02262-NRB et al. (Wise, Robert) (Entered: 06/29/2012) |
| 06/29/2012 | 26 | MEMORANDUM OF LAW in Support re: (112 in 1:11-cv-06411-NRB, 25 in 1:12-cv-01025-NRB, 165 in 1:11-md-02262-NRB, 108 in 1:11-cv-06409-NRB, 89 in 1:11-cv-02613-NRB, 118 in 1:11-cv-06412-NRB, 51 in 1:11-cv-05450-NRB) MOTION to Dismiss <i>the Amended Complaints</i> .. Document filed by [Defendants named in docket entry 1] Filed In Associated Cases: 1:11-md-02262-NRB et al. (Wise, Robert) (Entered: 06/29/2012) |
| 06/29/2012 | 27 | DECLARATION of Robert F. Wise, Jr. in Support re: (165 in 1:11-md-02262-NRB, 89 in 1:11-cv-02613-NRB, 118 in 1:11-cv-06412-NRB, 51 in 1:11-cv-05450-NRB, 112 in 1:11-cv- |

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| | | 06411-NRB, 25 in 1:12-cv-01025-NRB, 108 in 1:11-cv-06409-NRB) MOTION to Dismiss <i>the Amended Complaints</i> .. Document filed by [Defendants named in docket entry 1]. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)Filed In Associated Cases: 1:11-md-02262-NRB et al. (Wise, Robert) (Entered: 06/29/2012) |
| 06/29/2012 | 29 | SUPPLEMENTAL MEMORANDUM OF LAW in Support re: (112 in 1:11-cv- 06411-NRB, 25 in 1:12-cv-01025-NRB, 165 in 1:11-md-02262-NRB, 108 in 1:11-cv-06409-NRB, 89 in 1:11-cv-02613-NRB, 118 in 1:11-cv-06412-NRB, 51 in 1:11-cv-05450-NRB) MOTION to Dismiss <i>the Amended Complaints</i> .. Document filed by Bank of Tokyo-Mitsubishi UFJ Ltd. Filed In Associated Cases: 1:11-md-02262-NRB et al. (Libow, Daryl) (Entered: 06/29/2012) |
| 06/29/2012 | 30 | DECLARATION of Christopher M. Viapiano in Support re: (112 in 1:11-cv-06411- NRB, 25 in 1:12-cv-01025-NRB, 165 in 1:11-md-02262-NRB, 108 in 1:11-cv- 06409-NRB, 89 in 1:11-cv-02613-NRB, 118 in 1:11-cv-06412-NRB, 51 in 1:11-cv-05450-NRB) MOTION to Dismiss <i>the Amended Complaints</i> . Document filed by Bank of Tokyo-Mitsubishi UFJ Ltd. |

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| | | (Attachments: # 1 Exhibit No. 1, # 2 Exhibit No. 2) Filed In Associated Cases: 1:11-md-02262-NRB et al. (Libow, Daryl) (Entered: 06/29/2012) |
| 06/29/2012 | 31 | SUPPLEMENTAL MEMORANDUM OF LAW in Support re: 25 MOTION to Dismiss <i>the Amended Complaints</i> .. Document filed by Credit Suisse Group AG. (Washer, Herbert) (Entered: 06/29/2012) |
| 06/30/2012 | 32 | MOTION to Dismiss. Document filed by UBS AG, UBS AG. Filed In Associated Cases: 1:11-md-02262-NRB et al. (Sullivan, Peter) (Entered: 06/30/2012) |
| 06/30/2012 | 33 | MEMORANDUM OF LAW in Support re: (58 in 1:11-cv-05450-NRB, 127 in 1:11- cv-06412-NRB, 117 in 1:11-cv-06409-NRB, 32 in 1:12-cv-01025-NRB, 18 in 1:11- cv-07676-NRB, 178 in 1:11-md-02262-NRB, 121 in 1:11-cv-06411-NRB) MOTION to Dismiss.. Document filed by UBS AG, UBS AG. Filed In Associated Cases: 1:11- md-02262-NRB et al. (Sullivan, Peter) (Entered: 06/30/2012) |
| 06/30/2012 | 34 | DECLARATION of Lawrence J. Zweifach in Support re: (32 in 1:12-cv-01025-NRB, 18 in 1:11-cv-07676-NRB, 178 in 1:11-md-02262-NRB, 121 in 1:11-cv-06411-NRB, 58 in 1:11-cv-05450-NRB, 127 in 1:11-cv-06412-NRB, 117 in 1:11-cv-06409-NRB) |

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| | | MOTION to Dismiss.. Document filed by UBS AG, UBS AG. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5) Filed In Associated Cases: 1:11-md-02262-NRB et al. (Zweifach, Lawrence) (Entered: 06/30/2012) |
| 07/18/2012 | 37 | MEMORANDUM AND ORDER: Accordingly, we reverse our previous consolidation order pursuant to Rule 42(a) and instead consolidate the class action complaints pending in the MDL for pretrial purposes only. (Signed by Judge Naomi Reice Buchwald on 7/18/2012) Filed In Associated Cases: 1:11-md-02262-NRB et al. (lmb) (Entered: 07/18/2012) |
| 08/14/2012 | 38 | PRETRIAL ORDER NO. 2: Consolidation and Coordination of Bondholder Plaintiff Actions I. Ellen Gelboim and Linda Zacher v. Credit Suisse Group AG, et al, Case No. 12 CV 1025 (NRB), is designated as the lead action for all class actions brought on behalf of holders of LIBOR-based debt securities not issued by any Defendant ("Bondholder Plaintiff Action") that may hereafter be filed in or transferred to the Court as related to In re LIBOR-Based Financial Instruments Antitrust Litigation, |

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| | | MDL No. 2262. (Signed by Judge Naomi Reice Buchwald on 8/14/2012) (djc) (Entered: 08/14/2012) |
| 09/27/2012 | 39 | REPLY MEMORANDUM OF LAW in Support re: 25 MOTION to Dismiss <i>the Amended Complaints. of Plaintiffs' Antitrust Claims.</i> Document filed by [Defendants named in docket entry 1]. (Wise, Robert) (Entered: 09/27/2012) |
| 09/27/2012 | 40 | SUPPLEMENTAL REPLY MEMORANDUM OF LAW in Support re: 25 MOTION to Dismiss <i>the Amended Complaints..</i> Document filed by Bank of Tokyo-Mitsubishi UFJ, Credit Suisse Group AG. (Washer, Herbert) (Entered: 09/27/2012) |
| 09/27/2012 | 41 | DECLARATION of Robert F. Wise, Jr. in Support re: 25 MOTION to Dismiss <i>the Amended Complaints..</i> Document filed by [Defendants named in docket entry 1]. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Wise, Robert) (Entered: 09/27/2012) |
| 09/27/2012 | 42 | REPLY MEMORANDUM OF LAW in Support re: 32 MOTION to Dismiss.. Document filed by UBS AG. (Zweifach, Lawrence) (Entered: 09/27/2012) |

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| 03/29/2013 | 43 | <p>MEMORANDUM AND ORDER granting in part and denying in part 25 Motion to Dismiss; terminating pursuant to instructions from Chambers; 32 Motion to Dismiss. For the reasons stated above, defendants motions to dismiss are granted in part and denied in part. First, defendants motion to dismiss plaintiffs federal antitrust claim is granted. Regardless of whether defendants conduct constituted a violation of the antitrust law "antitrust injury." An antitrust injury is an injury that results from an anticompetitive aspect of defendants conduct. Here, although plaintiffs have alleged that defendants conspired to suppress LIBOR over a nearly three-year-long period and that they were injured as a result, they have not alleged that their injury resulted from any harm to competition. The process by which banks submit LIBOR quotes to the BBA is not itself competitive, and plaintiffs have not alleged that defendants conduct had an anticompetitive effect in any market in which defendants compete. Because plaintiffs have not alleged an antitrust injury, their federal antitrust claim is dismissed. Second, defendants' motion to dismiss plaintiffs' commodities manipulation</p> |
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| | <p>claims is granted in part and denied in part. Contrary to defendants' arguments, plaintiffs' claims do not involve an impermissible extraterritorial application of the CEA, and plaintiffs have adequately pleaded their claims. However, certain of plaintiffs' claims are time-barred because numerous articles published in April and May 2008 in prominent national publications placed plaintiffs on notice of their injury. Therefore, plaintiffs commodities manipulation claims based on contracts entered into between August 2007 and May 29, 2008, are time-barred. However, plaintiffs claims based on contracts entered into between April 15, 2009, and May 2010 are not time-barred, and plaintiffs' claims based on contracts entered into between May 30, 2008, and April 14, 2009, may or may not be barred, though we will not dismiss them at this stage. Additionally, because the Barclays settlements brought to light information that plaintiffs might not previously have been able to learn, we grant plaintiffs leave to move to amend their complaint to include allegations based on such information, provided that any such motion addresses the concerns raised</p> |
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| | <p>herein and is accompanied by a proposed second amended complaint. Third, defendants' motion to dismiss plaintiffs' RICO claim is granted. For one, the PSLRA bars plaintiffs from bringing a RICO claim based on predicate acts that could have been the subject of a securities fraud action.</p> <p>Here, the predicate acts of mail and wire fraud underlying plaintiffs' RICO claim could have been the subject of a claim for securities fraud. Additionally, RICO applies only domestically, meaning that the alleged enterprise must be a domestic enterprise. However, the enterprise alleged by plaintiffs is based in England. For these reasons, plaintiffs' RICO claim is dismissed. Finally, plaintiffs' state-law claims are all dismissed, some with prejudice and some without. Plaintiffs' Cartwright Act claim is dismissed with prejudice for lack of antitrust injury. The exchange-based plaintiffs' New York common law unjust enrichment claim is also dismissed with prejudice, as plaintiffs have not alleged any relationship between them and defendants. With regard to the remaining state-law claims, we decline to exercise supplemental jurisdiction and [w]e recognize that it</p> |
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| | <p>might be unexpected that we are dismissing a substantial portion of plaintiffs claims, given that several of the defendants here have already paid penalties to government regulatory agencies reaching into the billions of dollars. However, these results are not as incongruous as they might seem. Under the statutes invoked here, there are many requirements that private plaintiffs must satisfy, but which government agencies need not. The reason for these differing requirements is that the focuses of public enforcement and private enforcement, even of the same statutes, are not identical. The broad public interests behind the statutes invoked here, such as integrity of the markets and competition, are being addressed by ongoing governmental enforcement. While public enforcement is often supplemented by suits brought by private parties acting as “private attorneys general,” those private actions which seek damages and attorneys fees must be examined closely to ensure that the plaintiffs who are suing are the ones properly entitled to recover and that the suit is, in fact, serving the public purposes of the laws being invoked. Therefore, although we are fully cognizant of the settlements that</p> |
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| | | several of the defendants here have entered into with government regulators, we find that only some of the claims that plaintiffs have asserted may properly proceed. (Signed by Judge Naomi Reice Buchwald on 3/29/2013) (tro) Modified on 4/2/2013 (tro). (Entered: 03/29/2013) |
| 03/29/2013 | 47 | MEMORANDUM AND ORDER: For the reasons stated above, defendants' motions to dismiss are granted in part and denied in part. First, defendants motion to dismiss plaintiffs' federal antitrust claim is granted. Regardless of whether defendants' conduct constituted a violation of the antitrust law "antitrust injury." An antitrust injury is an injury that results from an anticompetitive aspect of defendants conduct. Here, although plaintiffs have alleged that defendants' conspired to suppress LIBOR over a nearly three-year-long period and that they were injured as a result, they have not alleged that their injury resulted from any harm to competition. The process by which banks submit LIBOR quotes to the BBA is not itself competitive, and plaintiffs have not alleged that defendants' conduct had an anticompetitive effect in any market in which defendants compete. |

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| | <p>Because plaintiffs have not alleged an antitrust injury, their federal antitrust claim is dismissed. Second, defendants' motion to dismiss plaintiffs' commodities manipulation claims is granted in part and denied in part. Contrary to defendants' arguments, plaintiffs' claims do not involve an impermissible extraterritorial application of the CEA, and plaintiffs have adequately pleaded their claims. However, certain of plaintiffs' claims are time-barred because numerous articles published in April and May 2008 in prominent national publications placed plaintiffs on notice of their injury. Therefore, plaintiffs commodities manipulation claims based on contracts entered into between August 2007 and May 29, 2008, are time-barred. However, plaintiffs' claims based on contracts entered into between April 15, 2009, and May 2010 are not time-barred, and plaintiffs' claims based on contracts entered into between May 30, 2008, and April 14, 2009, may or may not be barred, though we will not dismiss them at this stage. Additionally, because the Barclays settlements brought to light information that plaintiffs might not previously have been able to learn,</p> |
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| | <p>we grant plaintiffs leave to move to amend their complaint to include allegations based on such information, provided that any such motion addresses the concerns raised herein and is accompanied by a proposed second amended complaint. Third, defendants' motion to dismiss plaintiffs' RICO claim is granted. For one, the PSLRA bars plaintiffs from bringing a RICO claim based on predicate acts that could have been the subject of a securities fraud action. Here, the predicate acts of mail and wire fraud underlying plaintiffs' RICO claim could have been the subject of a claim for securities fraud. Additionally, RICO applies only domestically, meaning that the alleged enterprise must be a domestic enterprise. However, the enterprise alleged by plaintiffs is based in England. For these reasons, plaintiffs RICO claim is dismissed. Finally, plaintiffs' state-law claims are all dismissed, some with prejudice and some without. Plaintiffs' Cartwright Act claim is dismissed with prejudice for lack of antitrust injury. The exchange-based plaintiffs' New York common law unjust enrichment claim is also dismissed with prejudice, as plaintiffs have not alleged any relationship between</p> |
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| | <p>them and defendants. With regard to the remaining state-law claims, we decline to exercise supplemental jurisdiction and We recognize that it might be unexpected that we are dismissing a substantial portion of plaintiffs claims, given that several of the defendants here have already paid penalties to government regulatory agencies reaching into the billions of dollars. However, these results are not as incongruous as they might seem. Under the statutes invoked here, there are many requirements that private plaintiffs must satisfy, but which government agencies need not. The reason for these differing requirements is that the focuses of public enforcement and private enforcement, even of the same statutes, are not identical. The broad public interests behind the statutes invoked here, such as integrity of the markets and competition, are being addressed by ongoing governmental enforcement. While public enforcement is often supplemented by suits brought by private parties acting as “private attorneys general,” those private actions which seek damages and attorneys fees must be examined closely to ensure that the plaintiffs who are suing are the ones properly entitled to recover and that</p> |
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| | | the suit is, in fact, serving the public purposes of the laws being invoked. Therefore, although we are fully cognizant of the settlements that several of the defendants here have entered into with government regulators, we find that only some of the claims that plaintiffs have asserted may properly proceed. (Signed by Judge Naomi Reice Buchwald on 3/29/2013) (tro) Modified on 4/3/2013 (tro). (Entered: 04/02/2013) |
| 09/17/2013 | 49 | FILING ERROR - DEFICIENT DOCKET ENTRY - NOTICE OF APPEAL from 43 Order on Motion to Dismiss, 47 Order. Document filed by Ellen Gelboim, Linda Zacher. Filing fee \$ 455.00, receipt number 0208-8877902. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Weinstein, David) Modified on 9/17/2013 (nd). (Entered: 09/17/2013) |
| 09/17/2013 | | Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 49 Notice of Appeal. (tp) (Entered: 09/17/2013) |
| 09/17/2013 | | Appeal Record Sent to USCA (Electronic File). [LIST OF RECORD DOCUMENTS OMITTED] |

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| 09/17/2013 | 50 | NOTICE OF APPEAL from (389 in 1:11-md-02262-NRB, 389 in 1:11-md-02262- NRB, [docket and case number repeated multiple times] Order on Motion for Reconsideration, Order on Motion for Leave to File Document,, Order on Motion to Amend/Correct, (43 in 1:12-cv-01025-NRB, 43 in 1:12-cv-01025-NRB) Order on Motion to Dismiss, (286 in 1:11-md-02262-NRB, 286 in 1:11-md-02262-NRB, [docket and case umber repeated multiple times] Order on Motion to Dismiss, (199 in 1:11-md-02262- NRB) Endorsed Letter, (47 in 1:12-cv-01025-NRB) Order. Document filed by Ellen Gelboim, Linda Zacher. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. Filed In Associated Cases: 1:11-md-02262-NRB, 1:12-cv-01025-NRB(Weinstein, David) (Entered: 09/17/2013) |
| 09/17/2013 | | Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: (409 in 1:11-md-02262-NRB, 50 in 1:12-cv-01025-NRB) Notice of Appeal. Filed In Associated Cases: 1:11-md-02262-NRB, 1:12-cv-01025-NRB(nd) (Entered: 09/17/2013) |
| 09/18/2013 | 51 | LETTER MOTION for Conference addressed to Judge Naomi Reice |

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| | | Buchwald from William Christopher Carmody dated September 18, 2013. Document filed by Mayor and City Council of Baltimore. Filed In Associated Cases: 1:11-md-02262-NRB et al. (Ard, Seth) (Entered: 09/18/2013) |
| 09/30/2013 | 52 | LETTER addressed to Judge Naomi Reice Buchwald from William Christopher Carmody dated September 30, 2013 re: repleading antitrust claim. Document filed by Mayor and City Council of Baltimore. (Attachments: # 1 Exhibit A) Filed In Associated Cases: 1:11-md-02262-NRB et al. (Ard, Seth) (Entered: 09/30/2013) |
| 10/10/2013 | 57 | LETTER addressed to Judge Naomi Reice Buchwald from William Christopher Carmody dated October 10, 2013 re: Partial Stay and Motion to Dismiss. Document filed by Mayor and City Council of Baltimore. (Attachments: # 1 Exhibit A) Filed In Associated Cases: 1:11-md-02262-NRB et al. (Carmody, William) (Entered: 10/10/2013) |
| 10/18/2013 | 67 | MEMORANDUM AND ORDER: Pursuant to Fed. R. Civ. P. 54(b), final judgment is entered dismissing the first count of the over-the counter plaintiffs' consolidated amended complaint (Dkt. No. 130) for violation |

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| | <p>of section 1 of the Sherman Act, and denying leave to replead that claim in a proposed amended complaint (dkt. No. 334-1), for the reasons given in the March 29, 2013 and August 23, 2013 orders of this Court, and it is further ORDERED, pursuant to Fed. R. Civ. P. 54(b), final judgment is entered dismissing the fourth count of the exchange based plaintiffs' amended consolidated class action complaint (Dkt. No. 134) for violation of section 1 of the Sherman Act, and denying leave to replead that claim in a proposed amended complaint (Dkt. No. 332-1), for the reasons given in the March 29, 2013 and August 23, 2013 orders of this Court. (Signed by Judge Naomi Reice Buchwald on 10/17/2013) Filed In Associated Cases: 1:11-md-02262-NRB et al. (ft) (Entered: 10/30/2013)</p> |
| 10/18/2013 | <p>Transmission to Judgments and Orders Clerk. Transmitted re: (69 in 1:13-cv-07005- NRB, 43 in 1:12-cv-07461-NRB, 54 in 1:12-cv-05723-NRB, 97 in 1:13-cv-02297- NRB, 7 in 1:13-cv-07394-NRB, 44 in 1:13-cv-03952-NRB, 45 in 1:13-cv-00597-NRB, 34 in 1:13-cv-01016-NRB, 54 in 1:13-cv-00407-NRB, 35 in 1:13-cv-01456- NRB, 62 in 1:12-cv-05822-NRB, 490 in 1:11-md-02262-NRB, 55 in 1:12-cv-06056- NRB, 44 in 1:13-cv-</p> |

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| | <p>00625-NRB, 56 in 1:13-cv-01198-NRB, 49 in 1:13-cv-02343- NRB, 45 in 1:13-cv-03010-NRB, 55 in 1:13-cv-00598-NRB, 26 in 1:13-cv-06020-NRB, 44 in 1:13-cv-00667-NRB, 59 in 1:13-cv-01135-NRB, 24 in 1:13-cv-05616- NRB, 26 in 1:13-cv-06014-NRB, 34 in 1:13-cv-05511-NRB, 43 in 1:13-cv-00627- NRB, 26 in 1:13-cv-05569-NRB, 26 in 1:13-cv-05221-NRB, 52 in 1:13-cv-00346- NRB, 67 in 1:12-cv-01025-NRB, 63 in 1:13-cv-00398-NRB, 26 in 1:13-cv-06013-NRB, 33 in 1:13-cv-05187-NRB, 42 in 1:12-cv-06693-NRB, 43 in 1:13-cv-00626-NRB, 31 in 1:13-cv-05186-NRB) Order to the Judgments and Orders Clerk. Filed In Associated Cases: 1:11-md-02262-NRB et al. (ft) (Entered: 10/30/2013)</p> |
| 10/31/2013 | <p>68 Withdrawn pursuant to Order filed 10/31/13, Doc. #492, 11 MD 2262 – RULE 54(b) CLERK’S JUDGMENT That for the reasons stated in the Court’s Memorandum and Order dated October 17, 2013, there is no just reason for delay, pursuant to Fed. R. Civ. P. 54(b), final judgment is entered dismissing the first count of the over-the-counter plaintiffs’ consolidated amended complaint for violation of section 1 of the Sherman Act, and denying leave to replead that claim in a proposed amended</p> |

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| | | <p>complaint for the reasons given in the March 29, 2013 and August 23, 2013 orders of this Court, and there is no just reason for delay, pursuant to Fed. R. Civ. P. 54(b), final judgment is entered dismissing the fourth count of the exchange based plaintiffs' amended consolidated class action complaint for violation of section 1 of the Sherman Act, and denying leave to replead that claim in a proposed amended complaint for the reasons given in the March 29, 2013 and August 23, 2013 orders of this Court. (Signed by Clerk of Court Ruby Krajick on 10/31/13) (Attachments: # 1 Notice of Right to Appeal) Filed In Associated Cases: 1:11-md-02262-NRB et al. (ml) Modified on 10/31/2013 (ml). Modified on 11/4/2013 (ml). (Entered: 10/31/2013)</p> |
| 10/31/2013 | 69 | <p>ORDER: WHEREAS, on October 30, 2013 the Court of Appeals, acting sua sponte determined that it lacked jurisdiction over the bondholder and Schwab appeals and dismissed them, it is hereby ORDERED that the October 17, 2013 is withdrawn. (Signed by Judge Naomi Reice Buchwald on 10/31/2013) Filed In Associated Cases: 1:11-md- 02262-NRB et al. (ama) (Entered: 10/31/2013)</p> |

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| 01/13/2014 | 73 | <p>MANDATE of USCA (Certified Copy) as to (429 in 1:11-md-02262-NRB) Notice of Appeal filed by [Schwab entities identified in Court of Appeals docket entry 1] (409 in 1:11-md-02262-NRB, 50 in 1:12-cv-01025-NRB) Notice of Appeal filed by Linda Zacher, Elen Gelboim USCA Case Number 13-3565(L); 13-3636(con). This Court has determined sua sponte that it lacks jurisdiction over these appeals because a final order has not been issued by the district court as contemplated by 28 U.S.C. § 1291, and the orders appealed from did not dispose of al claims in the consolidated action. <i>See Coopers & Lybrand v. Livesay</i>, 437 U.S. 463, 467 (1978); <i>Houbigant, Inc. v. IMG Fragrance Brands, LLC</i>, 627 F.3d 497, 498 (2d Cir. 2010) (per curiam). Upon due consideration, it is hereby ORDERED that the appeals are DISMISSED. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 01/13/2014. Filed In Associated Cases: 1:11-md-02262-NRB, 1:12-cv-01025-NRB(nd) (Entered: 01/13/2014)</p> |
| 06/23/2014 | 77 | <p>MEMORANDUM AND ORDER terminating (396) Motion for Reconsideration; denying (418) Motion for Reconsideration; terminating (428) Motion to Strike;</p> |

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| | <p>denying (453) Motion to Dismiss; granting in part and denying in part (507) Motion to Dismiss; granting (516) Motion to Dismiss in case 1:11-md-02262-NRB. For the reasons stated above, exchange-based plaintiffs' motion for reconsideration of our ruling on trader-based claims is denied, but their motion for leave to amend their complaint is granted; defendants' motion to dismiss CEA claims on scienter grounds is denied; defendants' motion to dismiss CEA claims arising out of contracts purchased between May 30, 2008 and April 14, 2009 is granted; defendants' motion to dismiss OTC plaintiffs' contract and unjust enrichment claims is granted in part and denied in part; and defendant Societe Generale's motion to dismiss the exchange-based plaintiffs' complaint is granted. It has been nearly two years since defendants first moved to dismiss plaintiffs' consolidated amended complaints. Since then, this Court has issued three major opinions and the parties have submitted hundreds, if not thousands, of pages of briefing materials, all in an attempt to resolve the threshold question of any litigation: what claims, if any, have plaintiffs adequately pled? Now, at long last,</p> |
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| | <p>there is clarity. OTC plaintiffs may state claims for breach of the implied covenant of good faith and fair dealing, and claims for unjust enrichment, but only against those defendant banks with which OTC plaintiffs transacted directly. Exchange-based plaintiffs may state claims under the CEA based on contracts purchased between April 15, 2009 and the end of the Class Period, based on a theory that defendants' alleged persistent suppression of LIBOR caused them damages; however, no such claim may lie against Societe Generale, as those claims are time barred. Exchange-based plaintiffs may also state claims against Barclays and Rabobank based on the alleged day-to-day, trader-based manipulation that occurred between January 1, 2005 and August 2007. This Memorandum and Order resolves docket entry nos. 396, 418, 428, 453, 507, and 516. (Signed by Judge Naomi Reice Buchwald on 6/23/2014) Filed In Associated Cases: 1:11-md-02262-NRB et al. ***Docketed in all member and related cases pursuant to instructions from Chambers. (mro) Modified on 6/24/2014 (mro). (Entered: 06/23/2014)</p> |
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| 07/02/2014 | 78 | NOTICE: Within the next ten days, the Court will issue a communication addressing issues related to the next steps in this litigation and inviting submissions from the parties. Before receiving our communication, counsel are directed not to make any submissions to the Court. (Signed by Judge Naomi Reice Buchwald on 7/2/2014) Filed In Associated Cases: 1:11-md-02262-NRB et al. ***Docketed in all member and related cases pursuant to instructions from Chambers. (mro) (Entered: 07/03/2014) |
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CASE #: 1:11-md-02262-NRB

*In Re: Libor-Based Financial Instruments
Antitrust Litigation*

Relevant Docket Entries (MDL Docket)

| Date | # | Docket Text |
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| 08/12/2011 | 1 | <p>CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL . . . transferring this action from the United States District Court - that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the Districts of New York, Illinois, and the same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Naomi Reice Buchwald, for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed by MDL Panel on 8/12/11) (rjm) (Entered:</p> |

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| | | 08/15/2011) |
| 08/12/2011 | | CASES ORIGINATING FROM THE SOUTHERN DISTRICT OF NEW YORK: 1:11-cv-2613 (NRB), 1:11-cv-2883 (NRB), 1:11-cv-3128 (NRB), 1:11-cv-3249 (NRB). (rjm) (Entered: 08/15/2011) |
| 11/29/2011 | 66 | ORDER: For the foregoing reasons, we hereby order: (1) that the LIBOR-related class action complaints currently pending before this Court be consolidated for all purposes under Federal Rule of Civil Procedure 42(a), under the following caption: In Re: Libor- Based Financial Instruments Antitrust Litigation, Master File No. 1:11-md-02262-NRB; (2) that the law firms of Hausfeld LLP and Susman and Godfrey LLP are appointed to serve as interim class counsel for the putative class of over-the-counter plaintiffs; (3) that the law firms of Kirby McInerney LLP and Lovell Stewart Halebian Jacobson LLP are appointed to serve as interim class counsel for the putative class of exchange-based plaintiffs; and (4) within 20 days, interim class counsel shall submit to this Court a proposed order to facilitate their |

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| | | <p>representation of the putative classes and to advance the conduct and progress of the litigation. (Signed by Judge Naomi Reice Buchwald on 11/29/2011) Filed In Associated Cases: 1:11-md-02262-NRB et al. Copies Mailed By Chambers. (ae) (Entered: 11/30/2011)</p> |
| 12/22/2011 | 90 | <p>PRE-TRIAL ORDER NO. 1: Mayor and City Council of Baltimore v. Bank of America, et al., Case No. 11.Civ. 5450, is designated as the lead action for the Over- the-Counter Plaintiff class actions(“Over-the-Counter Plaintiff Action”), as further listed in this Pretrial Order. All filings related to the Over-the-Counter Plaintiff Action must be filed in that docket and in the docket for In re LIBOR-based Financial Instruments Antitrust Litigation, MDL No. 2262. Upon their transfer to the docket for Mayor and City Council of Baltimore v. Bank of America, et al., the Clerk will close the docket for those additional cases. Pursuant to Fed. R. Civ. P. 23(g)(3), the Court designates as Interim Co-Lead Counsel for the Over-the-Counter Plaintiff class,</p> |

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| | <p>Hausfeld LLP, and Susman Godfrey L.L.P. FTC Capital GmbH, et al. v. Credit Suisse Group AG, et al., Case No. 11 Civ. 2613 is designated as the lead action for the Exchange- Based Plaintiff actions (“Exchange-Based Plaintiff Action”), as further listed in this Pretrial Order. All filings related to the Exchange-Based Plaintiff Action must be filed in that docket and in the docket for In re LIBOR-based Financial Instruments Antitrust Litigation, MDL No. 2262. Upon their transfer to the docket for FTC Capital GmbH, et al. v. Credit Suisse Group AG, et al., the Clerk will close the docket for those additional cases. Pursuant to Fed. R. Civ. P. 23(g)(3), the Court designates as Interim Co-Lead Counsel for the Exchange-Based Plaintiff class, Kirby Mcinerney LLP, and Lovell Stewart Halebian Jacobson LLP. (Signed by Judge Naomi Reice Buchwald on 12/22/2011) (tro) (Entered: 12/23/2011)</p> |
| 03/01/2012 | <p>Minute Entry for proceedings held before Judge Naomi Reice Buchwald: Status Conference</p> |

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| | | held on 3/1/2012. (lmb) (Entered: 03/06/2012) |
| 03/12/2012 | 117 | <p>TRANSCRIPT of Proceedings re: Conference held on 3/1/2012 before Judge Naomi Reice Buchwald. Court Reporter/Transcriber: Toni Stanley, (212) 805-0300.</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/5/2012.</p> <p>Redacted Transcript Deadline set for 4/16/2012. Release of Transcript Restriction set for 6/14/2012. Filed In Associated Cases: 1:11-md-02262-NRB et al. (McGuirk, Kelly) (Entered: 03/12/2012)</p> |
| 04/30/2012 | 130 | <p>CONSOLIDATED AMENDED COMPLAINT against Bank of Tokyo-Mitsubishi UFJ Ltd, Barclays Bank Plc., Citibank NA, Credit Suisse Group AG, Deutsche Bank AG, HBOS PLC, HSBC Holdings plc., J.P. Morgan Chase & Co., Lloyds Banking Group plc, Royal Bank of Canada, Royal Bank of Scotland Group</p> |

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| | | plc, The Norinchukin Bank, WestLB AG, Bank of America, N.A., National Association, HSBC Bank PLC, WestDeutsche Immobilienbank AG, Citigroup Inc, Cooperative Centrale Raiffeisen-Boerenleenbank B.A. with JURY DEMAND. Document filed by Mayor and City Council of Baltimore, City of New Britain Firefighters' and Police Benefit Fund. (cd) (ama). (Entered: 05/01/2012) |
| 04/30/2012 | 131 | FIRST AMENDED COMPLAINT against [defendants identified in Gelboim docket entry 1] with JURY DEMAND.Document filed by Ellen Gelboim, Linda Zacher.***Also docketed in case number 12-cv-1025. (mro) (ama). (ama). (Entered: 05/01/2012) |
| 04/30/2012 | 134 | CONSOLIDATED AMENDED COMPLAINT against Bank of America Corporation, Bank of America, N.A., Bank of Tokyo-Mitsubishi UFJ Ltd, Barclays Bank Plc,, Citibank NA, Citigroup Inc, Cooperative Centrale Raiffeisen-Boerenleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HBOS PLC, HSBC Bank PLC, HSBC Holdings plc., J.P. |

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| | | <p>Morgan Chase & Co., JPMorgan Chase Bank, National Association, Lloyds Banking Group plc, Royal Bank of Canada, Royal Bank of Scotland Group plc, The Norinchukin Bank, WestDeutsche Immobilienbank AG, WestLB AG with JURY DEMAND. Document filed by Metzler Investment GmbH, FTC Futures Fund SICAV, FTC Futures Fund PCC Ltd, Atlantic Trading USA, LLC, 303030 Trading LLC, Gary Francis, Nathaniel Haynes. (mro) (Additional attachment(s) added on 5/16/2012: # 1 Amended Cons. Comp. Part 2, # 2 Amended Cons. Comp. Part 3) (ama). Modified on 8/28/2012 (mro). (Entered: 05/03/2012)</p> |
| 04/30/2012 | 146 | <p>AMENDED COMPLAINT against [defendants identified in Gelboim docket entry 1] with JURY DEMAND. Document filed by Schwab Total Bond Market Fund, Schwab Short-Term Bond Market Fund, Schwab U.S. Dollar Liquid Assets Fund. (also docketed in 11 cv 6409)(cd) (Entered: 05/18/2012)</p> |

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| 04/30/2012 | 147 | AMENDED COMPLAINT against [defendants identified in Gelboim docket entry 1] with JURY DEMAND. Document filed by Schwab Advisor Cash Reserves, Schwab Investor Money Fund, Schwab Cash Reserves, Schwab Value Advantage Money Fund, Schwab Yieldplus Fund Liquidation Trust, Schwab Retirement Advantage Money Fund, Schwab Money Market Fund, Schwab Yieldplus Fund. (Also docketed in 11 cv 6412)(ft) (ft). (Entered: 05/18/2012) |
| 04/30/2012 | 148 | AMENDED COMPLAINT against [defendants identified in Gelboim docket entry 1] with JURY DEMAND. Document filed by The Charles Schwab Corporation, Charles Schwab Bank, N.A., Charles Schwab & Co., Inc. (Received in the night deposit box on 4/30/2012 at 11:40 pm) ***Also docketed in case number 11-cv-6411. (mro) Modified on 5/18/2012 (mro). (mro). (Entered: 05/18/2012) |
| 06/14/2012 | 151 | ORDER: WHEREAS on June 14, 2012 1 the Court issued an order requiring any plaintiff wishing to be joined with the multi-district litigation (“MDL”) as a |

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| | | representative of a new class of plaintiffs to make an application detailing why the existing classes of plaintiffs do not protect it and why inclusion in the MDL would be appropriate; and WHEREAS it is the intent of the Court that the order of June 14, 2012 apply to plaintiff in 12 cv 4205, ORDERED that plaintiff in that action submit it's application within ten (10) days of this Order. (Signed by Judge Naomi Reice Buchwald on 6/14/2012) Copies Mailed By Chambers. (ama) Modified on 6/14/2012 (ama). (Entered: 06/14/2012) |
| 06/14/2012 | 152 | MEMORANDUM AND ORDER: Therefore, any plaintiff seeking to be joined as a representative of a separate class must file with its pleadings an application detailing why the existing classes of plaintiffs do not protect it and why inclusion in the MDL would be appropriate. SO ORDERED. (Signed by Judge Naomi Reice Buchwald on 6/14/2012) (ama) (Entered: 06/14/2012) |
| 06/29/2012 | 165 | MOTION to Dismiss the Amended Complaints. Document filed by Bank of America Corporation, Bank of Tokyo- |

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| | <p>Mitsubishi UFJ Ltd, Citibank NA, Credit Suisse Group AG, Deutsche Bank AG, HSBC Holdings plc., J.P. Morgan Chase & Co., Lloyds Banking Group plc, Royal Bank of Canada, Royal Bank of Scotland Group plc, The Norinchukin Bank, WestLB AG, Bank of America Corporation, Bank of Tokyo- Mitsubishi UFJ, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., HSBC Bank PLC, J.P. Morgan Chase & Co., JPMorgan Chase Bank, National Association, Bank of America Corporation, Deutsche Bank AG, HBOS PLC, HSBC Holdings plc, J.P. Morgan Chase & Co., Royal Bank of Scotland Group plc, Bank of America Corporation, Bank of America, N.A., Citigroup Inc, Bank of America Corporation, Bank of America, N.A., Citibank, N.A., Citigroup, Inc., J.P. Morgan Chase & Co., JPMorgan Chase Bank National Association, Royal Bank of Scotland Group plc, CitiGroup Inc., Citibank, N.A., Cooperatieve Centrale Raiffeisen-Boerenleen Bank B.A., JP Morgan Chase & Co., JPMorgan Chase Bank, N.A., Royal Bank of Canada. Filed In Associated</p> |
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| | | Cases: 1:11-md-02262-NRB et al. (Wise, Robert) (Entered: 06/29/2012) |
| 06/29/2012 | 166 | MEMORANDUM OF LAW in Support re: (112 in 1:11-cv-06411-NRB, 25 in 1:12-cv-01025-NRB, 165 in 1:11-md-02262-NRB, 108 in 1:11-cv-06409-NRB, 89 in 1:11-cv-02613-NRB, 118 in 1:11-cv-06412-NRB, 51 in 1:11-cv-05450-NRB) MOTION to Dismiss the Amended Complaints. Document filed by [defendants identified in docket entry 165]. Filed In Associated Cases: 1:11-md-02262-NRB et al. (Wise, Robert) (Entered: 06/29/2012) |
| 06/29/2012 | 167 | DECLARATION of Robert F. Wise, Jr. in Support re: (165 in 1:11-md-02262-NRB, 89 in 1:11-cv-02613-NRB, 118 in 1:11-cv-06412-NRB, 51 in 1:11-cv-05450-NRB, 112 in 1:11-cv-06411-NRB, 25 in 1:12-cv-01025-NRB, 108 in 1:11-cv-06409-NRB) MOTION to Dismiss the Amended Complaints.. Document filed by [defendants identified in docket entry 165]. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)Filed In Associated Cases: 1:11-md-02262-NRB et al. (Wise, Robert) |

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| | | (Entered: 06/29/2012) |
| 6/29/2012 | 168 | <p>MEMORANDUM OF LAW in Support re: (165 in 1:11-md-02262-NRB, 89 in 1:11-cv-02613-NRB) MOTION to Dismiss <i>the Amended Complaints. of the Exchange- Based Plaintiffs' Claims with Attached Exhibit 1.</i> Document filed by Bank of America Corporation, Bank of Tokyo-Mitsubishi UFJ Ltd, Citibank NA, Credit Suisse Group AG, Deutsche Bank AG, HSBC Holdings plc., J.P. Morgan Chase & Co., Lloyds Banking Group plc, Royal Bank of Canada, Royal Bank of Scotland Group plc, The Norinchukin Bank, WestLB AG, Bank of America Corporation, Bank of America, N.A., Citigroup Inc, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Deutsche Bank AG, HBOS PLC, HSBC Bank PLC, J.P. Morgan Chase & Co., JPMorgan Chase Bank, National Association, Royal Bank of Scotland Group plc. (Attachments: # 1 Exhibit 1) Filed In Associated Cases: 1:11-md-02262-NRB, 1:11-cv-02613-NRB (Wise, Robert) (Entered: 06/29/2012)</p> |

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| 06/29/2012 | 169 | MEMORANDUM OF LAW in Support re: (112 in 1:11-cv-06411-NRB, 165 in 1:11-md-02262-NRB, 108 in 1:11-cv-06409-NRB, 118 in 1:11-cv-06412-NRB) MOTION to Dismiss <i>the Amended Complaints of the Schwab Plaintiffs' Amended Complaints</i> . Document filed by [defendants identified in docket entry 165]. Filed In Associated Cases: 1:11-md-02262-NRB, 1:11-cv-06409-NRB, 1:11-cv-06411-NRB, 1:11-cv-06412-NRB (Wise, Robert) (Entered: 06/29/2012) |
| 06/29/2012 | 171 | SUPPLEMENTAL MEMORANDUM OF LAW in Support re: 165 MOTION to Dismiss <i>the Amended Complaints</i> .. Document filed by The Norinchukin Bank. (Stern, Andrew) (Entered: 06/29/2012) |
| 06/29/2012 | 173 | SUPPLEMENTAL MEMORANDUM OF LAW in Support re: (112 in 1:11-cv-06411-NRB, 25 in 1:12-cv-01025-NRB, 165 in 1:11-md-02262-NRB, 108 in 1:11-cv-06409-NRB, 89 in 1:11-cv-02613-NRB, 118 in 1:11-cv-06412-NRB, 51 in 1:11-cv-05450-NRB) MOTION to Dismiss <i>the Amended Complaints</i> .. Document filed by Bank of Tokyo- |

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| | | Mitsubishi UFJ Ltd. Filed In Associated Cases: 1:11-md-02262-NRB et al. (Libow, Daryl) (Entered: 06/29/2012) |
| 06/29/2012 | 174 | DECLARATION of Christopher M. Viapiano in Support re: (112 in 1:11-cv-06411- NRB, 25 in 1:12-cv-01025-NRB, 165 in 1:11-md-02262-NRB, 108 in 1:11-cv-06409-NRB, 89 in 1:11-cv-02613-NRB, 118 in 1:11-cv-06412-NRB, 51 in 1:11-cv-05450-NRB) MOTION to Dismiss <i>the Amended Complaints..</i> Document filed by Bank of Tokyo-Mitsubishi UFJ Ltd. (Attachments: # 1 Exhibit No. 1, # 2 Exhibit No. 2)Filed In Associated Cases: 1:11-md-02262-NRB et al. (Libow, Daryl) (Entered: 06/29/2012) |
| 06/29/2012 | 175 | SUPPLEMENTAL MEMORANDUM OF LAW in Support re: 165 MOTION to Dismiss <i>the Amended Complaints..</i> Document filed by Credit Suisse Group AG. (Washer, Herbert) (Entered: 06/29/2012) |
| 06/29/2012 | 176 | MOTION to Dismiss. Document filed by Barclays Bank Plc. (Scott, Jeffrey) (Entered: 06/29/2012) |

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| 06/29/2012 | 177 | MEMORANDUM OF LAW in Support re: 176 MOTION to Dismiss.. Document filed by Barclays Bank Plc. (Scott, Jeffrey) (Entered: 06/29/2012) |
| 06/30/2012 | 178 | MOTION to Dismiss. Document filed by UBS AG, UBS AG. Filed In Associated Cases: 1:11-md-02262-NRB et al. (Sullivan, Peter) (Entered: 06/30/2012) |
| 06/30/2012 | 179 | MEMORANDUM OF LAW in Support re: (58 in 1:11-cv-05450-NRB, 127 in 1:11- cv-06412-NRB, 117 in 1:11-cv-06409-NRB, 32 in 1:12-cv-01025-NRB, 18 in 1:11-cv-07676-NRB, 178 in 1:11-md-02262-NRB, 121 in 1:11-cv-06411-NRB) MOTION to Dismiss.. Document filed by UBS AG, UBS AG. Filed In Associated Cases: 1:11-md-02262-NRB et al. (Sullivan, Peter) (Entered: 06/30/2012) |
| 06/30/2012 | 180 | DECLARATION of Lawrence J. Zweifach in Support re: (32 in 1:12-cv-01025-NRB, 18 in 1:11-cv-07676-NRB, 178 in 1:11-md-02262-NRB, 121 in 1:11-cv-06411-NRB, 58 in 1:11-cv-05450-NRB, 127 in 1:11-cv-06412-NRB, 117 in 1:11-cv-06409-NRB) MOTION to Dismiss.. Document filed by UBS AG, UBS AG. (Attachments: # 1 |

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| | | Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5) Filed In Associated Cases: 1:11-md-02262-NRB et al. (Zweifach, Lawrence) (Entered: 06/30/2012) |
| 07/18/2012 | 187 | MEMORANDUM AND ORDER: Accordingly, we reverse our previous consolidation order pursuant to Rule 42(a) and instead consolidate the class action complaints pending in the MDL for pretrial purposes only. (Signed by Judge Naomi Reice Buchwald on 7/18/2012) Filed In Associated Cases: 1:11-md-02262-NRB et al. (lmb) (Entered: 07/18/2012) |
| 08/10/2012 | 197 | FILING ERROR - DEFICIENT DOCKET ENTRY - MOTION to Appoint Counsel - <i>Motion for Entry of Pre-Trial Order No. 2.</i> Document filed by Ellen Gelboim, Linda Zacher. (Attachments: # 1 Text of Proposed Order Exhibit A, # 2 Exhibit B - Declaration of Karen L. Morris, # 3 Exhibit C - Declaration of David H. Weinstein) (Spiegel, Jeremy) Modified on 8/13/2012 (ldi). (Entered: 08/10/2012) |
| 08/10/2012 | 199 | ENDORSED LETTER addressed to Judge Naomi Reice Buchwald |

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| | <p>from Michael D. Hausfeld, William C. Carmody, David H. Weinstein, Karen L. Morris, David Kovel, Christopher Lovell, Steven E. Fineman dated 8/1/2012 re: Request that the Court hold a pre-motion conference to address Plaintiffs' intention to move for leave to amend their complaints in light of material new facts regarding Defendants' alleged manipulation of the London Inter Bank Offered Rate ("LIBOR")-principally relating to U.S.-Dollar LIBOR-that have surfaced throughout the past month and continue to emerge. In connection with their anticipated motion(s) for leave to amend, Plaintiffs will also request that the Court vacate the existing briefing schedule to Defendants' motions to dismiss filed on June 29, 2012, to which Plaintiffs currently must respond by August 28, 2012. As detailed below, granting Plaintiffs' requests would promote the mutual interest of the Court and all parties to efficiently manage this litigation. ENDORSEMENT: Application denied for the reasons stated on the record on August 8, 2012. See transcript. So</p> |
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| | | ordered. (Signed by Judge Naomi Reice Buchwald on 8/9/2012) (rjm) Modified on 8/14/2012 (tro). (Entered: 08/10/2012) |
| 08/13/2012 | 201 | MOTION to Appoint Counsel - <i>Motion for Entry of Pre-Trial Order No. 2</i> . Document filed by Ellen Gelboim, Linda Zacher. (Attachments: # 1 Text of Proposed Order Exhibit A) (Spiegel, Jeremy) (Entered: 08/13/2012) |
| 08/13/2012 | 202 | DECLARATION of Karen L. Morris in Support re: 201 MOTION to Appoint Counsel - <i>Motion for Entry of Pre-Trial Order No. 2</i> . Document filed by Ellen Gelboim, Linda Zacher. (Attachments: # 1 Exhibit 1 - Morris and Morris LLC Firm Summary) (Spiegel, Jeremy) (Entered: 08/13/2012) |
| 08/13/2012 | 203 | DECLARATION of David H. Weinstein in Support re: 201 MOTION to Appoint Counsel - <i>Motion for Entry of Pre-Trial Order No. 2</i> . Document filed by Ellen Gelboim, Linda Zacher. (Attachments: # 1 Exhibit 1 - Weinstein Kitchenoff & Asher LLC Firm Summary) (Spiegel, Jeremy) (Entered: 08/13/2012) |

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| 08/14/2012 | 205 | <p>MEMORANDUM AND ORDER: For the reasons stated at our August 8, 2012 conference, a stay is hereby imposed on any actions not subject to defendants' pending motion to dismiss, filed on June 29, 2012. The stay applies to the four actions already filed that are not subject to the motion, as well as any new actions filed hereafter that fall within the scope of the multi-district litigation. The stay will remain in place until the pending motion to dismiss is resolved. (Signed by Judge Naomi Reice Buchwald on 8/14/2012) Filed In Associated Cases: 1:11-md-02262-NRB, 1:12-cv-05723-NRB, 1:12-cv-05822-NRB, 1:12-cv-06056-NRB (djc) (Entered: 08/14/2012)</p> |
| 08/14/2012 | 206 | <p>PRETRIAL ORDER NO. 2: Consolidation and Coordination of Bondholder Plaintiff Actions I. Ellen Gelboim and Linda Zacher v. Credit Suisse Group AG, et al, Case No. 12 CV 1025 (NRB), is designated as the lead action for all class actions brought on behalf of holders of LIB OR-based debt securities not issued by any Defendant ("Bondholder Plaintiff Action") that may hereafter be filed in or transferred to the</p> |

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| | | Court as related to In re LiBOR-Based Financial Instruments Antitrust Litigation, MDL No. 2262. (Signed by Judge Naomi Reice Buchwald on 8/14/2012) (djc) (Entered: 08/14/2012) |
| 08/28/2012 | 207 | FILING ERROR - DEFICIENT DOCKET ENTRY - MEMORANDUM OF LAW in Opposition re: (165 in 1:11-md-02262-NRB) MOTION to Dismiss <i>the Amended Complaints.</i> , (176 in 1:11-md-02262-NRB) MOTION to Dismiss, (178 in 1:11-md-02262-NRB) MOTION to Dismiss. <i>Plaintiffs' Joint Memorandum of Law in Opposition to Defendants' Motion to Dismiss Plaintiffs' Antitrust Claims.</i> Document filed by Charles Schwab & Co., Inc., Charles Schwab Bank, N.A., City of New Britain Firefighters' and Police Benefit Fund, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Ellen Gelboim, Mayor and City Council of Baltimore, Metzler Investment GmbH, Schwab Advisor Cash Reserves, Schwab Cash Reserves, Schwab Investor Money Fund, Schwab Money Market Fund, Schwab Retirement Advantage Money Fund, Schwab Short-Term Bond |

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| | | Market Fund, Schwab Total Bond Market Fund, Schwab U.S. Dollar Liquid Assets Fund, Schwab Value Advantage Money Fund, Schwab Yieldplus Fund, Schwab Yieldplus Fund Liquidation Trust, The Charles Schwab Corporation. (Attachments: # 1 Affidavit Declaration of Hilary K. Scherrer, # 2 Exhibit Exhibits 1-4, # 3 Exhibit Exhibit 5, # 4 Exhibit Exhibits 6-7) Filed In Associated Cases: 1:11-md-02262-NRB, 1:12-cv-05723-NRB, 1:12-cv- 05822-NRB, 1:12-cv-06056-NRB(Ratway, Hilary) Modified on 8/29/2012 (ldi). (Entered: 08/28/2012) |
| 08/28/2012 | 208 | MEMORANDUM OF LAW in Opposition re: 165 MOTION to Dismiss <i>the Amended Complaints.</i> , 176 MOTION to Dismiss., 178 MOTION to Dismiss. <i>Opposition of Exchange-Based Plaintiffs.</i> Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 08/28/2012) |
| 08/28/2012 | 209 | DECLARATION of David E. |

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| | | Kovel in Opposition re: 165 MOTION to Dismiss <i>the Amended Complaints.</i> , 176 MOTION to Dismiss., 178 MOTION to Dismiss.. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit) (Kovel, David) (Entered: 08/28/2012) |
| 08/28/2012 | 210 | MEMORANDUM OF LAW in Opposition re: 165 MOTION to Dismiss <i>the Amended Complaints.</i> , 176 MOTION to Dismiss., 178 MOTION to Dismiss.. Document filed by [Schwab entities]. (Fineman, Steven) (Entered: 08/28/2012) |
| 08/29/2012 | 211 | MEMORANDUM OF LAW in Opposition re: (165 in 1:11-md-02262-NRB) MOTION to Dismiss <i>the Amended Complaints.</i> , (176 in 1:11-md-02262-NRB) MOTION to Dismiss., (178 in 1:11-md-02262-NRB) MOTION to Dismiss. <i>Plaintiffs' Joint Memorandum of</i> |

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| | | <p><i>Law in Opposition to Defendants' Motion to Dismiss Plaintiffs' Antitrust Claims.</i> Document filed by Charles Schwab & Co., Inc., Charles Schwab Bank, N.A., City of New Britain Firefighters' and Police Benefit Fund, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Ellen Gelboim, Mayor and City Council of Baltimore, Metzler Investment GmbH, Schwab Advisor Cash Reserves, Schwab Cash Reserves, Schwab Investor Money Fund, Schwab Money Market Fund, Schwab Retirement Advantage Money Fund, Schwab Short-Term Bond Market Fund, Schwab Total Bond Market Fund, Schwab U.S. Dollar Liquid Assets Fund, Schwab Value Advantage Money Fund, Schwab Yieldplus Fund, Schwab Yieldplus Fund Liquidation Trust, The Charles Schwab Corporation, Linda Zacher. Filed In Associated Cases: 1:11-md-02262-NRB, 1:12-cv-05723- NRB, 1:12-cv-05822-NRB, 1:12-cv-06056-NRB (Ratway, Hilary) (Entered: 08/29/2012)</p> |
| 08/29/2012 | 212 | DECLARATION of Hilary K. Scherrer in Opposition re: (165 in 1:11-md-02262- NRB) MOTION |

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| | <p>to Dismiss <i>the Amended Complaints.</i>, (176 in 1:11-md-02262- NRB) MOTION to Dismiss., (178 in 1:11-md-02262-NRB) MOTION to Dismiss.. Document filed by Charles Schwab & Co., Inc., Charles Schwab Bank, N.A., City of New Britain Firefighters' and Police Benefit Fund, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Ellen Gelboim, Mayor and City Council of Baltimore, Metzler Investment GmbH, Schwab Advisor Cash Reserves, Schwab Cash Reserves, Schwab Investor Money Fund, Schwab Money Market Fund, Schwab Retirement Advantage Money Fund, Schwab Short-Term Bond Market Fund, Schwab Total Bond Market Fund, Schwab U.S. Dollar Liquid Assets Fund, Schwab Value Advantage Money Fund, Schwab Yieldplus Fund, Schwab Yieldplus Fund Liquidation Trust, The Charles Schwab Corporation, Linda Zacher. (Attachments: # 1 Exhibit 1-4, # 2 Exhibit 5, # 3 Exhibit 6-7)Filed In Associated Cases: 1:11-md-02262-NRB, 1:12- cv-05723-NRB, 1:12-cv-05822-NRB, 1:12-cv-06056-</p> |
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| | | NRB (Ratway, Hilary) (Entered: 08/29/2012) |
| 08/29/2012 | 214 | TRANSCRIPT of Proceedings re: CONFERENCE held on 8/8/2012 before Judge Naomi Reice Buchwald. Court Reporter/Transcriber: Vincent Bologna, (212) 805- 0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 9/24/2012. Redacted Transcript Deadline set for 10/4/2012. Release of Transcript Restriction set for 11/30/2012. Filed In Associated Cases: 1:11-md-02262-NRB, 1:12-cv-05723- NRB, 1:12-cv-05822-NRB, 1:12-cv-06056-NRB (McGuirk, Kelly) (Entered: 08/29/2012) |
| 08/29/2012 | 215 | NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a CONFERENCE proceeding held on 8/8/12 has been filed by the court reporter/transcriber in the above-captioned matter. The parties |

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| | | <p>have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...Filed In Associated Cases: 1:11-md-02262-NRB, 1:12-cv-05723-NRB, 1:12-cv-05822-NRB, 1:12-cv-06056-NRB(McGuirk, Kelly) (Entered: 08/29/2012)</p> |
| 09/27/2012 | 226 | <p>REPLY MEMORANDUM OF LAW in Support re: 165 MOTION to Dismiss <i>the Amended Complaints of the Schwab Plaintiffs</i>. Document filed by [defendants identified in Gelboim docket entry 1]. (Wise, Robert) (Entered: 09/27/2012)</p> |
| 09/27/2012 | 227 | <p>REPLY MEMORANDUM OF LAW in Support re: 165 MOTION to Dismiss <i>the Amended Complaints of the Exchange-Based Plaintiffs' Claims</i>. Document filed by [defendants identified in Gelboim docket entry 1]. (Wise, Robert) (Entered: 09/27/2012)</p> |
| 09/27/2012 | 228 | <p>REPLY MEMORANDUM OF LAW in Support re: 165 MOTION</p> |

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| | | to Dismiss <i>the Amended Complaints. of Plaintiffs' Antitrust Claims.</i> Document filed by [defendants identified in Gelboim docket entry 1]. (Wise, Robert) (Entered: 09/27/2012) |
| 09/27/2012 | 229 | SUPPLEMENTAL REPLY MEMORANDUM OF LAW in Support re: 165 MOTION to Dismiss <i>the Amended Complaints.</i> Document filed by Bank of Tokyo- Mitsubishi UFJ Ltd, Credit Suisse Group AG. (Washer, Herbert) (Entered: 09/27/2012) |
| 09/27/2012 | 230 | DECLARATION of Robert F. Wise, Jr. in Support re: 165 MOTION to Dismiss <i>the Amended Complaints..</i> Document filed by [defendants identified in Gelboim docket entry 1]. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Wise, Robert) (Entered: 09/27/2012) |
| 09/27/2012 | 231 | REPLY MEMORANDUM OF LAW in Support re: 176 MOTION to Dismiss.. Document filed by Barclays Bank Plc,. (Scott, Jeffrey) (Entered: 09/27/2012) |
| 09/27/2012 | 232 | REPLY MEMORANDUM OF LAW in Support re: 178 MOTION to Dismiss.. Document filed by UBS AG. (Zweifach, Lawrence) |

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| | | (Entered: 09/27/2012) |
| 01/15/2013 | 248 | <p>CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL (CTO-4) transferring this action from the United States District Court - that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of California, and the same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Naomi Reice Buchwald, for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed by MDL Panel on 1/15/2013) (sjj) (Entered: 01/15/2013)</p> |
| 01/25/2013 | 253 | <p>CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL (CTO- 5)transferring this action from the United States District Court - that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of California, and the same hereby are, transferred to</p> |

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| | | the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Naomi Reice Buchwald, for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed by MDL Panel on 1/25/2013) (sjj) (Entered: 01/25/2013) |
| 02/15/2013 | 261 | CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL(CTO-6) transferring this action from the United States District Court - that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of California, and the same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Naomi Reice Buchwald, for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed by MDL Panel on 2/15/2012) (sjj) (Entered: 02/15/2013) |
| 02/20/2013 | 263 | CERTIFIED TRUE COPY OF CONDITIONAL MDL |

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| | | TRANSFER IN ORDER FROM THE MDL PANEL (CTO-7) transferring this action from the United States District Court - that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of Illinois, and the same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Naomi Reice Buchwald, for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed by MDL Panel on 2/20/2013) (sjo) (Entered: 02/21/2013) |
| 03/05/2013 | | Minute Entry for proceedings held before Judge Naomi Reice Buchwald: Oral Argument held on 3/5/2013 re: 176 MOTION to Dismiss. filed by Barclays Bank Plc., 178 MOTION to Dismiss. filed by UBS AG. (djc) (Entered: 03/06/2013) |
| 03/25/2013 | 282 | TRANSCRIPT of Proceedings re: CONFERENCE held on 3/1/2012 before Judge Naomi Reice Buchwald. Court Reporter/Transcriber: Toni Stanley, (212) 805-0300. |

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| | | <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/18/2013.</p> <p>Redacted Transcript Deadline set for 4/29/2013. Release of Transcript Restriction set for 6/27/2013. Filed In Associated Cases: 1:11-md-02262-NRB et al. (Rodriguez, Somari) (Entered: 03/25/2013)</p> |
| 03/25/2013 | 283 | <p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a CONFERENCE proceeding held on 3/1/12 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...Filed In Associated Cases: 1:11-md-02262-NRB et al.</p> |

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| | | (Rodriguez, Somari) (Entered: 03/25/2013) |
| 03/29/2013 | 286 | MEMORANDUM AND ORDER granting in part and denying in part (165) Motion to Dismiss in case 1:11-md-02262-NRB; granting in part and denying in part Motion to Dismiss in case 1:13-cv-00598-NRB; granting in part and denying in part Motion to Dismiss in case 1:13-cv-00597-NRB; granting in part and denying in part Motion to Dismiss in case 1:12-cv-05723-NRB; granting in part and denying in part Motion to Dismiss in case 1:12-cv-05822-NRB; granting in part and denying in part Motion to Dismiss in case 1:12-cv-06056-NRB; granting in part and denying in part Motion to Dismiss in case 1:12-cv-06693-NRB; granting in part and denying in part Motion to Dismiss in case 1:12-cv-07461-NRB; granting in part and denying in part Motion to Dismiss in case 1:13-cv-00398-NRB; granting in part and denying in part Motion to Dismiss in case 1:13-cv-00626-NRB; granting in part and denying in part Motion to Dismiss in case 1:13-cv-00625-NRB; granting in part and denying in part Motion |

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| | <p>to Dismiss in case 1:13-cv-00627-NRB; granting in part and denying in part Motion to Dismiss in case 1:13-cv-00667-NRB; granting in part and denying in part Motion to Dismiss in case 1:13-cv-00346-NRB; granting in part and denying in part Motion to Dismiss in case 1:13-cv-00407-NRB; granting in part and denying in part Motion to Dismiss in case 1:13-cv-01135-NRB; granting in part and denying in part Motion to Dismiss in case 1:13-cv-01198-NRB; granting in part and denying in part Motion to Dismiss in case 1:13-cv-01456-NRB; granting in part and denying in part Motion to Dismiss in case 1:13-cv-01016-NRB.</p> <p>For the reasons stated above, defendants motions to dismiss are granted in part and denied in part. First, defendants motion to dismiss plaintiffs federal antitrust claim is granted. Regardless of whether defendants conduct constituted a violation of the antitrust law “antitrust injury.” An antitrust injury is an injury that results from an anticompetitive aspect of defendants conduct. Here, although plaintiffs have alleged</p> |
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| | <p>that defendants conspired to suppress LIBOR over a nearly three-year-long period and that they were injured as a result, they have not alleged that their injury resulted from any harm to competition. The process by which banks submit LIBOR quotes to the BBA is not itself competitive, and plaintiffs have not alleged that defendants conduct had an anticompetitive effect in any market in which defendants compete. Because plaintiffs have not alleged an antitrust injury, their federal antitrust claim is dismissed. Second, defendants' motion to dismiss plaintiffs' commodities manipulation claims is granted in part and denied in part. Contrary to defendants' arguments, plaintiffs' claims do not involve an impermissible extraterritorial application of the CEA, and plaintiffs have adequately pleaded their claims. However, certain of plaintiffs' claims are time-barred because numerous articles published in April and May 2008 in prominent national publications placed plaintiffs on notice of their injury. Therefore, plaintiffs commodities</p> |
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| | <p>manipulation claims based on contracts entered into between August 2007 and May 29, 2008, are time-barred. However, plaintiffs claims based on contracts entered into between April 15, 2009, and May 2010 are not time-barred, and plaintiffs' claims based on contracts entered into between May 30, 2008, and April 14, 2009, may or may not be barred, though we will not dismiss them at this stage. Additionally, because the Barclays settlements brought to light information that plaintiffs might not previously have been able to learn, we grant plaintiffs leave to move to amend their complaint to include allegations based on such information, provided that any such motion addresses the concerns raised herein and is accompanied by a proposed second amended complaint. Third, defendants' motion to dismiss plaintiffs' RICO claim is granted. For one, the PSLRA bars plaintiffs from bringing a RICO claim based on predicate acts that could have been the subject of a securities fraud action. Here, the predicate acts of mail and wire fraud underlying plaintiffs' RICO</p> |
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| | <p>claim could have been the subject of a claim for securities fraud. Additionally, RICO applies only domestically, meaning that the alleged enterprise must be a domestic enterprise. However, the enterprise alleged by plaintiffs is based in England. For these reasons, plaintiffs RICO claim is dismissed. Finally, plaintiffs' state-law claims are all dismissed, some with prejudice and some without. Plaintiffs' Cartwright Act claim is dismissed with prejudice for lack of antitrust injury. The exchange-based plaintiffs' New York common law unjust enrichment claim is also dismissed with prejudice, as plaintiffs have not alleged any relationship between them and defendants. With regard to the remaining state-law claims, we decline to exercise supplemental jurisdiction and We recognize that it might be unexpected that we are dismissing a substantial portion of plaintiffs claims, given that several of the defendants here have already paid penalties to government regulatory agencies reaching into the billions of dollars. However, these results</p> |
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| | <p>are not as incongruous as they might seem. Under the statutes invoked here, there are many requirements that private plaintiffs must satisfy, but which government agencies need not. The reason for these differing requirements is that the focuses of public enforcement and private enforcement, even of the same statutes, are not identical. The broad public interests behind the statutes invoked here, such as integrity of the markets and competition, are being addressed by ongoing governmental enforcement. While public enforcement is often supplemented by suits brought by private parties acting as “private attorneys general,” those private actions which seek damages and attorneys fees must be examined closely to ensure that the plaintiffs who are suing are the ones properly entitled to recover and that the suit is, in fact, serving the public purposes of the laws being invoked. Therefore, although we are fully cognizant of the settlements that several of the defendants here have entered into with government regulators, we find that only some of the</p> |
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| | | claims that plaintiffs have asserted may properly proceed. (Signed by Judge Naomi Reice Buchwald on 3/29/2013) Filed In Associated Cases: 1:11-md-02262-NRB et al. (tro) (Entered: 03/29/2013) |
| 04/04/2013 | 291 | CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL... transferring this action from the United States District Court - that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of Massachusetts, and the same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Naomi Reice Buchwald, for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed by MDL Panel on 4/4/2013) (sjo) (Entered: 04/04/2013) |
| 04/12/2013 | 296 | MOTION for Reconsideration re; 286 Order on Motion to Dismiss. Document filed by Credit Suisse Group AG, The Bank of Tokyo-Mitsubishi UFJ, Ltd., The |

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| | | Norinchukin Bank. (Libow, Daryl) (Entered: 04/12/2013) |
| 04/12/2013 | 297 | MEMORANDUM OF LAW in Support re: 296 MOTION for Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss. Document filed by Credit Suisse Group AG, The Bank of Tokyo-Mitsubishi UFJ, Ltd., The Norinchukin Bank. (Libow, Daryl) (Entered: 04/12/2013) |
| 04/29/2013 | 306 | MEMORANDUM OF LAW in Opposition re: 296 MOTION for Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss <i>Exchange-Based Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for Reconsideration or Reargument</i> . Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. |

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| | | (Kovel, David) (Entered: 04/29/2013) |
| 05/03/2013 | 308 | CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL(CTO-10)transferring this action from the United States District Court - that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of Wisconsin, and the same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Naomi Reice Buchwald, for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed by MDL Panel on 5/3/2013) (sjo) (Entered: 05/03/2013) |
| 05/03/2013 | 309 | MEMORANDUM: We have received a number of letters since issuing our Memorandum and Order of March 29, 2013 (the "Memorandum and Order"). These letters generally address four topics: (1) plaintiffs' request for leave to amend their amended complaints with regard to antitrust injury; (2) the motion |

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| | <p>for reconsideration filed by defendants The Bank of Tokyo-Mitsubishi UFJ, Ltd. (“BTMU”), Credit Suisse Group AG, and The Norinchukin Bank; (3) requests to lift the stay imposed by our Memorandum and Order of August 14, 2012 by plaintiffs whose cases are subject to the stay; and (4) the exchange-based plaintiffs’ request for leave to move for interlocutory appeal of a part of our Memorandum and Order. We will address these topics in turn. Based on the submissions to date, this Court could not enter such a certification. Nonetheless, to give exchange-based plaintiffs a full opportunity to support their position, we will accept a reply submission within two (2) weeks. Furthermore, we will treat the application as a letter motion for section 1292(b) certification and will file all the submissions on the docket when we issue our decision. (Signed by Judge Naomi Reice Buchwald on 5/3/2013) Filed In Associated Cases: 1:11-md-02262-NRB et al. (rsh) Modified on 5/13/2013 (rsh). (Entered: 05/03/2013)</p> |
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| 05/07/2013 | 310 | <p>Letter addressed to Judge Naomi Reice Buchwald from William Christopher Carmody and Karen L. Morris dated 4/12/2013 re: We write jointly on behalf of plaintiffs Mayor and City Council of Baltimore and City of New Britain Firefighters' and Police Benefit Fund; and Ellen Gelboim and Linda Zacher. Pursuant to Your Honor's Individual Practices, we respectfully request a pre-motion conference to address the filing of motions for leave to amend the complaints in our respective actions. (sac) Modified on 5/7/2013 (sac). (Entered: 05/07/2013)</p> |
| 05/07/2013 | 311 | <p>Letter addressed to Judge Naomi Reice Buchwald from Christopher Lovell and David E. Kovel dated 4/18/2013 re: After Your Honor's Order, dated March 29, 2013 (Dkt. No. 286), on the motions to dismiss, the Exchange-Based Plaintiffs are in a somewhat different procedural position from the other Plaintiffs. Nonetheless, after consideration, the Exchange-Based Plaintiffs respectfully join in the request made by the other class Plaintiffs for permission to move for leave to amend their complaints with</p> |

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| | | respect to the antitrust claims. (sac) Modified on 5/7/2013 (sac). (Entered: 05/07/2013) |
| 05/07/2013 | 313 | Letter addressed to Judge Naomi Reice Buchwald from Robert F. Wise dated 4/24/2013 re: Defendants respectfully request that the Court deny the OTC and Bondholder Plaintiffs' request as well as deny the Exchange Based Plaintiffs' motion for leave to move to amend in any manner not expressly granted in the Court's Order. (sac) Modified on 5/7/2013 (sac). (Entered: 05/07/2013) |
| 05/07/2013 | 315 | Letter addressed to Judge Naomi Reice Buchwald from Karen L. Morris and David H. Weinstein dated 4/30/2013 re: This letter is respectfully submitted on behalf on behalf of the Bondholder Plaintiffs in response to Mr. Wise's letter of April 24, 2013. In his letter, Mr. Wise argues on behalf of the Defendants that the Court should deny the request of the OTC and Bondholder Plaintiffs for leave to file motions for leave to amend their complaints, contending that such motions would be improper and that such amended pleadings |

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| | | would be futile. The Bondholder Plaintiffs respectfully submit that their proposed motion is not improper, and that the appropriate context for Defendants' arguments regarding futility of the proposed amended pleadings would be in briefing in opposition to the proposed motions. (sac) Modified on 5/7/2013 (sac). (Entered: 05/07/2013) |
| 05/07/2013 | 316 | Letter addressed to Judge Naomi Reice Buchwald from David E. Kovel, Esq. dated 4/22/2013 re: In accordance with Rule 2.A of Your Honor's Individual Practices, the Exchange-Based Plaintiffs respectfully request leave to file a motion for certification of this Court's March 29, 2013 Order [Dkt. No. 286] for interlocutory appeal pursuant 28 U.S.C. § 1292(b). Such interlocutory appeal would seek review of this controlling legal question: Whether LIB OR is the "commodity underlying" the Eurodollar futures contract within the meaning of Section 22(a)(1)(D) of the Commodity Exchange Act ("CEA"). (rdz) (Entered: 05/07/2013) |

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| 05/07/2013 | 317 | Letter addressed to Judge Naomi Reice Buchwald from William Christopher Carmody dated 4/30/2013 re: We write on behalf of the OTC plaintiffs in response to defendants' letter dated April 24, 2013. Defendants' opposition to our request for a pre-motion conference is meritless for three reasons stated in this letter. Plaintiffs respectfully submit that their proposed amended complaint willnot be futile and that granting leave to amend is consistent with the "permissive standard" for amendment under Fed. R. Civ. P. 15(a)(2). (sac) Modified on 5/7/2013 (sac). (Entered: 05/07/2013) |
| 05/07/2013 | 319 | Letter addressed to Judge Naomi Reice Buchwald from Robert F. Wise dated 5/1/2013 re: As liaison counsel for Defendants, we write in response to the Exchange-Based Plaintiffs' letter to the Court dated April 22, 2013, seeking a pre-motion conference to consider their request to file a motion for certification of this Court's March 29, 2013 Order, for interlocutory appeal pursuant to 28 U.S.C. 1292(b). For all of these reasons, the Exchange-Based Plaintiffs' request for leave to file |

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| | | a motion for certification should be denied. (sac) Modified on 5/7/2013 (rdz). (Entered: 05/07/2013) |
| 05/09/2013 | 320 | REPLY MEMORANDUM OF LAW in Support re: 296 MOTION for Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss. Document filed by Credit Suisse Group AG, The Bank of Tokyo-Mitsubishi UFJ, Ltd., The Norinchukin Bank. (Libow, Daryl) (Entered: 05/09/2013) |
| 05/16/2013 | 325 | TRANSCRIPT of Proceedings re: ORAL ARGUMENT held on 3/5/2013 before Judge Naomi Reice Buchwald. Court Reporter/Transcriber: Khristine Sellin, (212) 805- 0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/10/2013. Redacted Transcript Deadline set for |

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| | | 6/20/2013. Release of Transcript Restriction set for 8/19/2013. Filed In Associated Cases: 1:11-md-02262-NRB et al. (Rodriguez, Somari) (Entered: 05/16/2013) |
| 05/16/2013 | 326 | NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a ORAL ARGUMENT proceeding held on 3/5/13 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...Filed In Associated Cases: 1:11-md-02262-NRB et al. (Rodriguez, Somari) (Entered: 05/16/2013) |
| 05/17/2013 | 327 | MOTION for Leave to File Second Amended Complaint. Document filed by Ellen Gelboim, Linda Zacher. (Attachments: # 1 Exhibit A - Bondholder Plaintiffs' Proposed Second Amended Complaint, # 2 Exhibit B-1 - Bondholder Plaintiffs' Proposed |

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| | | Second Amended Complaint - Redline (1 of 2), # 3 Exhibit B-2 - Bondholder Plaintiffs' Proposed Second Amended Complaint - Redline (2 of 2))(Weinstein, David) (Entered: 05/17/2013) |
| 05/17/2013 | 328 | MEMORANDUM OF LAW in Support re: 327 MOTION for Leave to File Second Amended Complaint.. Document filed by Ellen Gelboim, Linda Zacher. (Weinstein, David) (Entered: 05/17/2013) |
| 05/17/2013 | 330 | MOTION for Leave to File Second Amended Complaint <i>Notice of Exchange-Based Plaintiffs' Motion for Leave to Amend as to Antitrust Claims and File the Second Amended Consolidated Class Action Complaint.</i> Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 05/17/2013) |
| 05/17/2013 | 331 | MEMORANDUM OF LAW in Support re: 330 MOTION for Leave to File Second Amended Complaint <i>Notice of Exchange-</i> |

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| | | <p><i>Based Plaintiffs' Motion for Leave to Amend as to Antitrust Claims and File the Second Amended Consolidated Class Action Complaint..</i> Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 05/17/2013)</p> |
| 05/17/2013 | 332 | <p>DECLARATION of David E. Kovel in Support re: 330 MOTION for Leave to File Second Amended Complaint <i>Notice of Exchange-Based Plaintiffs' Motion for Leave to Amend as to Antitrust Claims and File the Second Amended Consolidated Class Action Complaint..</i> Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Attachments: # 1 Exhibit A-1, # 2 Exhibit A-2, # 3 Exhibit A-3, # 4 Exhibit B-1, # 5 Exhibit B-2, # 6 Exhibit B-3)(Kovel, David)</p> |

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| | | (Entered: 05/17/2013) |
| 05/17/2013 | 333 | MOTION to Amend/Correct <i>Consolidated Second Amended Complaint</i> . Document filed by City of New Britain Firefighters' and Police Benefit Fund, Mayor and City Council of Baltimore. (Carmody, William) (Entered: 05/17/2013) |
| 05/17/2013 | 334 | MEMORANDUM OF LAW in Support re: 333 MOTION to Amend/Correct <i>Consolidated Second Amended Complaint..</i> Document filed by City of New Britain Firefighters' and Police Benefit Fund, Mayor and City Council of Baltimore. (Attachments: # 1 Exhibit A - Proposed Consolidated Second Amended Complaint, # 2 Exhibit B - Redline Version of Proposed Consolidated Second Amended Complaint) (Carmody, William) (Entered: 05/17/2013) |
| 05/20/2013 | 335 | REPLY MEMORANDUM OF LAW in Support re: 316 Letter,, <i>Motion to Certify the March 29, 2013 Order for Interlocutory Appeal</i> . Document filed by FTC Capital GMBH. (Lovell, Christopher) (Entered: 05/20/2013) |

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| 05/20/2013 | 338 | <p>DECLARATION of David E. Kovel in Support re: 330 MOTION for Leave to File Second Amended Complaint <i>Notice of Exchange-Based Plaintiffs' Motion for Leave to Amend as to Antitrust Claims and File the Second Amended Consolidated Class Action Complaint..</i> Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Attachments: # 1 Exhibit A-1, # 2 Exhibit A-2, # 3 Exhibit B-1, # 4 Exhibit B-2, # 5 Exhibit B-3)(Kovel, David) (Entered: 05/20/2013)</p> |
| 05/23/2013 | 341 | <p>MOTION for Leave to File Second Amended Complaint <i>Notice of Exchange-Based Plaintiffs' Motion for Leave to Amend as to Commodity Exchange Act Claims and File the Second Amended Consolidated Class Action Complaint.</i> Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes,</p> |

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| | | Metzler Investment GmbH. (Kovel, David) (Entered: 05/23/2013) |
| 05/23/2013 | 342 | DECLARATION of David E. Kovel in Support re: 341 MOTION for Leave to File Second Amended Complaint <i>Notice of Exchange-Based Plaintiffs' Motion for Leave to Amend as to Commodity Exchange Act Claims and File the Second Amended Consolidated Class Action Complaint..</i> Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Attachments: # 1 Exhibit A, # 2 Exhibit B-1, # 3 Exhibit B-2)(Kovel, David) (Entered: 05/23/2013) |
| 05/23/2013 | 343 | MEMORANDUM OF LAW in Support re: 341 MOTION for Leave to File Second Amended Complaint <i>Notice of Exchange-Based Plaintiffs' Motion for Leave to Amend as to Commodity Exchange Act Claims and File the Second Amended Consolidated Class Action Complaint..</i> Document filed by FTC Capital |

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| | | GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 05/23/2013) |
| 05/24/2013 | 347 | DECLARATION of David E. Kovel in Support re: 341 MOTION for Leave to File Second Amended Complaint <i>Notice of Exchange-Based Plaintiffs' Motion for Leave to Amend as to Commodity Exchange Act Claims and File the Second Amended Consolidated Class Action Complaint..</i> Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Attachments: # 1 Exhibit C-1, # 2 Exhibit C-2)(Kovel, David) (Entered: 05/24/2013) |
| 07/01/2013 | 362 | MEMORANDUM OF LAW in Opposition re: 341 MOTION for Leave to File Second Amended Complaint <i>Notice of Exchange-Based Plaintiffs' Motion for Leave to Amend as to Commodity Exchange Act Claims and File the Second Amended Consolidated</i> |

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| | | <i>Class Action Complaint. On behalf of all joining Defendants.</i> Document filed by Barclays PLC. (Scott, Jeffrey) (Entered: 07/01/2013) |
| 07/01/2013 | 363 | DECLARATION of Matthew J. Porpora in Opposition re: 341 MOTION for Leave to File Second Amended Complaint <i>Notice of Exchange-Based Plaintiffs' Motion for Leave to Amend as to Commodity Exchange Act Claims and File the Second Amended Consolidated Class Action Complaint..</i> Document filed by Barclays PLC. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P, # 17 Exhibit Q, # 18 Exhibit R, # 19 Exhibit S, # 20 Exhibit T, # 21 Exhibit U, # 22 Exhibit V, # 23 Exhibit W, # 24 Exhibit X) (Scott, Jeffrey) (Entered: 07/01/2013) |
| 07/12/2013 | 364 | ENDORSED LETTER addressed to Judge Naomi Reice Buchwald from Christopher Lovell, Esq. and David E. Kovel, Esq. dated |

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| | | 7/10/2013 re: Counsel requests permission to file a reply brief of no more than 17 pages in length in response to Defendants' Opposition to Plaintiffs' Motion For Leave To Amend ("Opposition Brief") [Dkt. No. 362]. ENDORSEMENT: Application granted, but plaintiffs are encouraged (strongly) to keep their papers as short as possible. (Signed by Judge Naomi Reice Buchwald on 7/11/2013) (ft) (Entered: 07/12/2013) |
| 07/22/2013 | 366 | REPLY MEMORANDUM OF LAW in Support re: 341 MOTION for Leave to File Second Amended Complaint <i>Notice of Exchange-Based Plaintiffs' Motion for Leave to Amend as to Commodity Exchange Act Claims and File the Second Amended Consolidated Class Action Complaint..</i> Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 07/22/2013) |
| 07/22/2013 | 367 | REPLY AFFIDAVIT of David E. |

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| | | <p>Kovel in Support re: 341 MOTION for Leave to File Second Amended Complaint <i>Notice of Exchange-Based Plaintiffs' Motion for Leave to Amend as to Commodity Exchange Act Claims and File the Second Amended Consolidated Class Action Complaint..</i> Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O)(Kovel, David) (Entered: 07/22/2013)</p> |
| 07/24/2013 | 368 | <p>CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL(CTO-13) transferring this action from the United States District Court - that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of California, and the</p> |

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| | | same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Naomi Reice Buchwald, for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed by MDL Panel on 7/24/2013) (sjo) (Entered: 07/24/2013) |
| 08/02/2013 | 374 | MEMORANDUM OF LAW in Opposition re: 333 MOTION to Amend/Correct <i>Consolidated Second Amended Complaint..</i> Document filed by Bank of America Corporation, Bank of America N.A., Bank of Tokyo-Mitsubishi UFJ Ltd., Barclays PLC, Citibank, N.A., Citigroup, Inc., Cooperatieve Centrale Raiffeisen- Boerenleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HSBC Bank plc, HSBC Holdings plc, J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, N.A., Portigon AG, Royal Bank of Canada, Royal Bank of Scotland Group plc, The Norinchukin Bank, UBS AG. (Wise, Robert) (Entered: 08/02/2013) |
| 08/06/2013 | 375 | FILING ERROR - DEFICIENT |

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| | | DOCKET ENTRY - (SEE DOCUMENT #376) REPLY MEMORANDUM OF LAW in Support re: 333 MOTION to Amend/Correct <i>Consolidated Second Amended Complaint..</i> Document filed by City of New Britain Firefighters' and Police Benefit Fund. (Subramanian, Arun) Modified on 8/8/2013 (lb). (Entered: 08/06/2013) |
| 08/06/2013 | 376 | REPLY MEMORANDUM OF LAW in Support re: 333 MOTION to Amend/Correct <i>Consolidated Second Amended Complaint..</i> Document filed by City of New Britain Firefighters' and Police Benefit Fund. (Subramanian, Arun) (Entered: 08/06/2013) |
| 08/08/2013 | | Minute Entry for proceedings held before Judge Naomi Reice Buchwald: Oral Argument held on 8/8/2013 re: 341 MOTION for Leave to File Second Amended Complaint <i>Notice of Exchange-Based Plaintiffs' Motion for Leave to Amend as to Commodity Exchange Act Claims and File the Second Amended Consolidated Class Action Complaint.</i> filed by 303030 Trading LLC, FTC Futures Fund PCC Ltd, Atlantic Trading USA, LLC, Metzler |

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| | <p>Investment GmbH, Gary Francis, Nathaniel Haynes, FTC Capital GMBH, FTC Futures Fund SICAV, 327 MOTION for Leave to File Second Amended Complaint. filed by Linda Zacher, Ellen Gelboim, 296 MOTION for Reconsideration MOTION for Reconsideration re 286 Order on Motion to Dismiss MOTION for Reconsideration re; 286 Order on Motion to Dismiss filed by The Bank of Tokyo-Mitsubishi UFJ, Ltd., The Norinchukin Bank, Credit Suisse Group AG, 330 MOTION for Leave to File Second Amended Complaint <i>Notice of Exchange-Based Plaintiffs' Motion for Leave to Amend as to Antitrust Claims and File the Second Amended Consolidated Class Action Complaint.</i> filed by 303030 Trading LLC, FTC Futures Fund PCC Ltd, Atlantic Trading USA, LLC, Gary Francis, Metzler Investment GmbH, FTC Capital GMBH, Nathaniel Haynes, FTC Futures Fund SICAV, 333 MOTION to Amend/Correct <i>Consolidated Second Amended Complaint</i> filed by City of New Britain Firefighters' and Police Benefit Fund, Mayor and City Council of</p> |
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| | | Baltimore. (cd) (Entered: 08/14/2013) |
| 08/07/2013 | 378 | CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL... transferring this action from the United States District Court - that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of Ohio, and the same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Naomi Reice Buchwald, for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed by MDL Panel on 8/6/2013) (sjo) (Entered: 08/07/2013) |
| 08/09/2013 | 380 | CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL (CTO-14)transferring this action from the United States District Court - that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of California and Texas, |

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| | | and the same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Naomi Reice Buchwald, for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed by MDL Panel on 8/9/2013) (sjo) (Entered: 08/09/2013) |
| 08/22/2013 | 387 | TRANSCRIPT of Proceedings re: ARGUMENT held on 8/8/2013 before Judge Naomi Reice Buchwald. Court Reporter/Transcriber: Steven Griffing, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 9/16/2013. Redacted Transcript Deadline set for 9/26/2013. Release of Transcript Restriction set for 11/25/2013. (Rodriguez, Somari) (Entered: 08/22/2013) |
| 08/22/2013 | 388 | NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice |

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| | | <p>is hereby given that an official transcript of a ARGUMENT proceeding held on 8/8/13 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days... (Rodriguez, Somari) (Entered: 08/22/2013)</p> |
| 08/23/2013 | 389 | <p>MEMORANDUM AND ORDER denying (296) Motion for Reconsideration; denying (327) Motion for Leave to File Document; denying (330) Motion for Leave to File Document; granting in part and denying in part (333) Motion to Amend/Correct ; denying (341) Motion for Leave to File Document in case 1:11-md-02262-NRB. For the reasons stated above, the exchange-based plaintiffs' motion for interlocutory appeal is denied; the OTC, bondholder, and exchange-based plaintiffs' motions to add allegations with respect to</p> |

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| | <p>antitrust are denied; the exchange-based plaintiffs' motion to add allegations with respect to trader-based manipulation is denied; BT-MU, Credit Suisse, and Norinchukin's motion for reconsideration is denied without prejudice to a similar motion being filed by defendants that addresses the issues raised herein; and, the OTC plaintiffs motion for leave to reassert their unjust enrichment claim and to add a claim for breach of implied covenant of good faith and fair dealing is granted. By September 10, 2013, the OTC plaintiffs and the exchange-based plaintiffs shall each file a second amended complaint that conforms with the rulings herein. If defendants believe that the new complaints are inconsistent with our rulings, they shall inform us by September 20, 2013. Further, if defendants wish to file a motion for reconsideration on grounds similar to those asserted in BT-MUs, Credit Suisse's, and Norinchukin's motion and which addresses the issues we have raised, they must file such a motion by September 20, 2013. Finally, if defendants intend to</p> |
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| | | <p>move for reconsideration of the March 29 Order on statute of limitations grounds or to make a renewed motion to dismiss with regard to “Period 2” claims, they must seek leave to file such a motion by September 20, 2013. This Memorandum and Order resolves docket entry nos. 296, 316, 327, 330, 333, and 341. (Signed by Judge Naomi Reice Buchwald on 8/23/2013) Filed In Associated Cases: 1:11-md-02262-NRB et al. (ft) (Entered: 08/23/2013)</p> |
| 08/26/2013 | 390 | <p>CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL (CTO-15) transferring this action from the United States District Court - that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of Iowa and Pennsylvania, and the same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Naomi Reice Buchwald, for coordinated or consolidated pretrial proceedings with the actions pending in that district</p> |

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| | | and listed on Schedule A. (Signed by MDL Panel on 8/26/2013) (sjo) (Entered: 08/26/2013) |
| 09/06/2013 | 396 | MOTION for Reconsideration re; 389 Order on Motion for Reconsideration, Order on Motion for Leave to File Document,, Order on Motion to Amend/Correct Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 09/06/2013) |
| 09/06/2013 | 397 | MEMORANDUM OF LAW in Support re: 396 MOTION for Reconsideration re; 389 Order on Motion for Reconsideration, Order on Motion for Leave to File Document,, Order on Motion to Amend/Correct, [docket number and text repeats]. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 09/06/2013) |

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| 09/06/2013 | 398 | DECLARATION of David Kovel in Support re: 396 MOTION for Reconsideration [docket number and entry name repeats] Order on Motion for Leave to File Document, Order on Motion to Amend/Correct. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Kovel, David) (Entered: 09/06/2013) |
| 09/06/2013 | 399 | CERTIFICATE OF SERVICE. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 09/06/2013) |
| 09/10/2013 | 402 | LETTER addressed to Judge Naomi Reice Buchwald from Christopher Lovell and David Kovel dated September 10, 2013 re: Request for pre-motion conference. Document filed by 303030 Trading LLC, Atlantic |

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| | | Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Lovell, Christopher) (Entered: 09/10/2013) |
| 09/10/2013 | 406 | SECOND CONSOLIDATED AMENDED COMPLAINT amending 130 Amended Complaint,, against Bank of America Corporation, Bank of America N.A., Barclays Bank plc, Citibank N.A., Citigroup Inc, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Credit Suisse Group AG, Credit Suisse International, Deutsche Bank AG, HBOS PLC, HSBC Bank plc, HSBC Holdings PLC, JPMorgan Chase Bank National Association, Lloyds Banking Group plc, Royal Bank of Canada, Societe Generale SA, The Bank of Tokyo Mitsubishi UFJ Ltd., The Norinchukin Bank, The Royal Bank of Scotland Group PLC, UBS AG, WestDeutsche Immobilienbank AG, WestLB AG with JURY DEMAND. Document filed by City of New Britain Firefighters' and Police Benefit Fund, Mayor and City Council of Baltimore, Texas Competitive |

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| | | Electric Holdings Company LLC. Related document: 130 Amended Complaint, filed by City of New Britain Firefighters' and Police Benefit Fund, Mayor and City Council of Baltimore. (mro) Modified on 9/12/2013 (mro). (Entered: 09/12/2013) |
| 09/10/2013 | 407 | SECOND CONSOLIDATED AMENDED COMPLAINT amending 134 Amended Complaint against Bank of America Corporation, Bank of America N.A., Barclays Bank PLC, Citibank N.A., Citigroup, Inc., Cooperatieve Centrale Raiffeisen- Boerenleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HBOS PLC, HSBC Bank plc, HSBC Holdings plc, JPMorgan Chase & Co, JPMorgan Chase Bank N.A., Lloyds Banking Group PLC, Royal Bank of Canada, Royal Bank of Scotland Group plc, Societe Generale, The Bank of Tokyo Mitsubishi UFJ Ltd., The Norinchukin Bank, UBS AG, WestDeutsche Immobilienbank AG, WestLB AG with JURY DEMAND. Document filed by FTC Futures Fund SICAV, 303030 Trading LLC, Gary Francis, FTC Futures Fund PCC |

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| | | <p>Ltd, Atlantic Trading USA, LLC, Nathaniel Haynes, Metzler Investment GmbH, Lloyds TBS Bank PLC, John Does 1-5. Related document: 134 Amended Complaint. (Received in the night deposit box on 9/10/13 at 8:07 pm) ***Also docketed in 11cv2613. (mro) (sdi). (Main Document 407 replaced on 9/12/2013) (sdi). (Additional attachment(s) added on 9/12/2013: # 1 Second Amended Complaint part 2) (sdi). (Entered: 09/12/2013)</p> |
| 09/11/2013 | 404 | <p>LETTER addressed to Judge Naomi Reice Buchwald from David E. Kovel and Christopher Lovell dated 09/11/2013 re: explanation of amendments included in Exchange-Based Plaintiffs' Second Amended Consolidated Class Action Complaint. Document filed by 303030 Trading LLC, AVP Properties, LLC, Atlantic Trading USA, LLC, Roberto E. Calle Gracey, Carpenters Pension Fund of West Virginia, Charles Schwab & Co., Inc., Charles Schwab Bank, N.A., City of Dania Beach Police & Firefighters' Retirement System, City of New Britain Firefighters' and Police Benefit Fund, FTC Capital GMBH, FTC</p> |

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| | | <p>Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Ellen Gelboim, Nathaniel Haynes, Richard Hershey, Jeffrey Laydon, Mayor and City Council of Baltimore, Metzler Investment GmbH, Ravan Investments, LLC, Schwab Advisor Cash Reserves, Schwab Cash Reserves, Schwab Investor Money Fund, Schwab Money Market Fund, Schwab Retirement Advantage Money Fund, Schwab Short-Term Bond Market Fund, Schwab Total Bond Market Fund, Schwab U.S. Dollar Liquid Assets Fund, Schwab Value Advantage Money Fund, Schwab Yieldplus Fund, Schwab Yieldplus Fund Liquidation Trust, The Charles Schwab Corporation, Linda Zacher. (Kovel, David) (Entered: 09/11/2013)</p> |
| 09/17/2013 | 408 | <p>LETTER addressed to Judge Naomi Reice Buchwald from David E. Kovel and Christopher Love dated 09/16/2013 re: Exchange-Based Plaintiffs Corrected Second Amended Consolidated Class Action Complaint. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital</p> |

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| | | GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 09/17/2013) |
| 9/17/2013 | 409 | NOTICE OF APPEAL from (389 in 1:11-md-02262-NRB, [docket and case number repeat multiple times] Order on Motion for Reconsideration, Order on Motion for Leave to File Document,, Order on Motion to Amend/Correct (43 in 1:12-cv-01025-NRB, 43 in 1:12-cv-01025-NRB) Order on Motion to Dismiss (286 in 1:11-md-02262-NRB, [docket and case number repeat multiple times] Order on Motion to Dismiss (199 in 1:11-md-02262-NRB) Endorsed Letter (47 in 1:12-cv-01025-NRB) Order. Document filed by Ellen Gelboim, Linda Zacher. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. Filed In Associated Cases: 1:11-md-02262- NRB, 1:12-cv-01025-NRB (Weinstein, David) (Entered: 09/17/2013) |
| 09/17/2013 | | Appeal Fee Paid electronically via Pay.gov: for (409 in 1:11-md-02262-NRB, 50 in 1:12-cv-01025- |

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| | | NRB) Notice of Appeal,. Filing fee \$ 455.00. Pay.gov receipt number 0208-8877902, paid on 9/17/2013. Filed In Associated Cases: 1:11-md-02262-NRB, 1:12-cv-01025-NRB(nd) (Entered: 09/17/2013) |
| 09/17/2013 | | Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: (409 in 1:11-md-02262-NRB, 50 in 1:12-cv-01025-NRB) Notice of Appeal. Filed In Associated Cases: 1:11-md-02262-NRB, 1:12-cv-01025-NRB(nd) (Entered: 09/17/2013) |
| 09/17/2013 | | Appeal Record Sent to USCA (Electronic File). [LIST OF RECORD DOCUMENTS OMITTED] |
| 09/18/2013 | 414 | LETTER MOTION for Conference addressed to Judge Naomi Reice Buchwald from William Christopher Carmody dated September 18, 2013. Document filed by Mayor and City Council of Baltimore.Filed In Associated Cases: 1:11-md-02262-NRB et al. (Ard, Seth) (Entered: 09/18/2013) |
| 09/18/2013 | 415 | LETTER addressed to Judge Naomi Reice Buchwald from Christopher Lovell dated |

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| | | September 18, 2013 re: Request for pre-motion conference. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Lovell, Christopher) (Entered: 09/18/2013) |
| 09/18/2013 | 416 | LETTER addressed to Judge Naomi Reice Buchwald from Christopher Lovell dated September 18, 2013 re: Pre-motion conference. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Lovell, Christopher) (Entered: 09/18/2013) |
| 09/20/2013 | 417 | LETTER addressed to Judge Naomi Reice Buchwald from Jeffrey T. Scott dated September 20, 2013 re: Leave to File Renewed Motion to Dismiss Exchange-Based Plaintiffs' Period 2 CEA Claims. Document filed by Barclays Bank PLC. |

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| | | (Attachments: # 1 Appendix Notice of Defendants' Renewed Motion to Dismiss, # 2 Appendix Memorandum in Support of Motion, # 3 Appendix Declaration of Matthew J. Porpora in Support of Motion, # 4 Exhibit Exhibits to Declaration of Matthew J. Porpora)(Scott, Jeffrey) (Entered: 09/20/2013) |
| 09/20/2013 | 418 | MOTION for Reconsideration re; 286 Order on Motion to Dismiss NOTICE OF MOTION FOR RECONSIDERATION OF MARCH 29, 2013 ORDER ON MOTION TO DISMISS. Document filed by UBS AG. (Sullivan, Peter) (Entered: 09/20/2013) |
| 09/20/2013 | 419 | MEMORANDUM OF LAW in Support re: 418 MOTION for Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss. Document filed by UBS AG. (Sullivan, Peter) (Entered: 09/20/2013) |
| 09/20/2013 | 420 | SUPPLEMENTAL MEMORANDUM OF LAW in Support re: 418 MOTION for |

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| | | Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss. Document filed by Credit Suisse Group AG, The Bank of Tokyo-Mitsubishi UFJ, Ltd., The Norinchukin Bank. (Libow, Daryl) (Entered: 09/20/2013) |
| 09/20/2013 | 421 | LETTER addressed to Judge Naomi Reice Buchwald from Robert F. Wise, Jr. dated September 20, 2013 re: Rule 2D. Document filed by Bank Of America Corporation, Bank of America, N.A., Citibank, N.A., Citigroup, Inc., Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HBOS plc, HSBC Bank plc, HSBC Holdings plc, JP Morgan Chase & Co., JPMorgan Chase Bank N.A., Lloyds Banking Group plc, Portigon AG, Royal Bank of Canada, Royal Bank of Scotland Group plc, The Bank of Tokyo-Mitsubishi UFJ, Ltd., The Norinchukin Bank. (Wise, Robert) (Entered: 09/20/2013) |

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| 09/20/2013 | 422 | LETTER addressed to Judge Naomi Reice Buchwald from Robert F. Wise, Jr. dated September 20, 2013 re: Second Amended Consolidated Class Action Complaint. Document filed by Bank of America Corporation, Bank of America, N.A., Bank of Tokyo-Mitsubishi UFJ, Barclays PLC, Citibank, N.A., Citigroup Inc, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HBOS plc, HSBC Bank plc, HSBC Holdings plc, J.P. Morgan Chase Bank, N.A., JP Morgan Chase & Co., Lloyds Banking Group plc, Portigon AG, Royal Bank of Canada, Royal Bank of Scotland Group plc, The Norinchukin Bank, UBS AG. (Wise, Robert) (Entered: 09/20/2013) |
| 09/23/2013 | 423 | TRANSCRIPT of Proceedings re: MOTION held on 8/8/2013 before Judge Naomi Reice Buchwald. Court Reporter/Transcriber: Steven Griffing, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may |

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| | | be obtained through PACER. Redaction Request due 10/18/2013. Redacted Transcript Deadline set for 10/28/2013. Release of Transcript Restriction set for 12/26/2013. (McGuirk, Kelly) (Entered: 09/23/2013) |
| 09/23/2013 | 424 | NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a MOTION proceeding held on 8/8/13 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days... (McGuirk, Kelly) (Entered: 09/23/2013) |
| 09/23/2013 | 426 | LETTER addressed to Judge Naomi Reice Buchwald from Jeffrey T. Scott dated Sept. 23, 2013 re: Rule 2E Letter re: (1) Defendants' Opposition to Exchange-Based Plaintiffs' Reconsideration Motion, and (2) Defendants' Motion to Strike. |

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| | | Document filed by Barclays Bank PLC. (Scott, Jeffrey) (Entered: 09/23/2013) |
| 09/23/2013 | 427 | MEMORANDUM OF LAW in Opposition re: 396 MOTION for Reconsideration re; 389 Order on Motion for Reconsideration, Order on Motion for Leave to File Document,, Order on Motion to Amend/Correct, [docket number end entry repeat multiple times]. Document filed by Barclays Bank PLC. (Scott, Jeffrey) (Entered: 09/23/2013) |
| 09/23/2013 | 428 | MOTION to Strike Document No. 398 Declaration of David E. Kovel. Document filed by Barclays Bank PLC. (Scott, Jeffrey) (Entered: 09/23/2013) |
| 09/24/2013 | 429 | JOINT NOTICE OF APPEAL from 286 Order on Motion to Dismiss. Document filed by [Schwab entities]. Filing fee \$ 455.00, receipt number 0208-8902473. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Fineman, Steven) (Entered: 09/24/2013) |
| 09/24/2013 | 430 | LETTER addressed to Judge Naomi Reice Buchwald from Robert F. Wise, Jr. dated September 24, 2013 re: Response |

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| | | to the Exchange-Based Plaintiffs' Letter, dated September 10, 2013. Document filed by Bank Of America Corporation, Bank of America N.A., Bank of Tokyo-Mitsubishi UFJ, Barclays PLC, Citibank, N.A., Citigroup, Inc., Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HBOS plc, HSBC Bank plc, HSBC Holdings plc, J.P. Morgan Chase Bank, N.A., JP Morgan Chase & Co., Lloyds Banking Group plc, Portigon AG, Royal Bank of Canada, Royal Bank of Scotland Group plc, The Norinchukin Bank, UBS AG. (Wise, Robert) (Entered: 09/24/2013) |
| 09/25/2013 | | Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 429 Notice of Appeal. (tp) (Entered: 09/25/2013) |
| 09/25/2013 | | Appeal Record Sent to USCA (Electronic File). [LIST OF RECORD DOCUMENTS OMITTED] |
| 09/27/2013 | 431 | LETTER addressed to Judge Naomi Reice Buchwald from Robert F. Wise, Jr. dated September 27, 2013 re: Pre- |

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| | | Motion Conference. Document filed by Bank of America Corporation, Bank of America, N.A., Bank of Tokyo-Mitsubishi UFJ Ltd., Barclays PLC, Citibank, N.A., Citigroup, Inc., Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HBOS plc, HSBC Bank plc, HSBC Holdings plc, JPMorgan Chase & Co., JPMorgan Chase Bank N.A., Lloyds Banking Group plc, Portigon AG, Royal Bank of Canada, Royal Bank of Scotland Group plc, The Norinchukin Bank, UBS AG. (Wise, Robert) (Entered: 09/27/2013) |
| 09/30/2013 | 434 | LETTER addressed to Judge Naomi Reice Buchwald from William Christopher Carmody dated September 30, 2013 re: repleading antitrust claim. Document filed by Mayor and City Council of Baltimore. (Attachments: # 1 Exhibit A)Filed In Associated Cases: 1:11-md-02262-NRB et al. (Ard, Seth) (Entered: 09/30/2013) |
| 09/30/2013 | 435 | LETTER addressed to Judge Naomi Reice Buchwald from David E. Kovel and Christopher |

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| | | Lovell dated September 30, 2013 re: Defendants' Letter dated September 20, 2013. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 09/30/2013) |
| 10/02/2013 | 437 | CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL... transferring this action from the United States District Court - that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of California, and the same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Naomi Reice Buchwald, for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed by MDL Panel on 10/2/2013) (sjo) (Entered: 10/02/2013) |
| 09/30/2013 | 438 | CORRECTED SECOND |

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| | <p>AMENDED COMPLAINT amending 407 Amended</p> <p>Complaint,,,, against Bank of America Corporation, Bank of America N.A., Barklays Bank Plc, Citibank, N.A., Citigroup Inc, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HBOS PLC, HSBC Bank PLC, HSBC Holdings PLC, J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, N.A., John Does 1-5, Lloyds Banking Group PLC, Lloyds TSB Bank PLC, Royal Bank of Canada, Societe Generale, The Bank of Tokyo Mitsubishi UFJ Ltd., The Norinchukin Bank, UBS AG, Royal Bank of Scotland Group PLC, WestDeutsche Immobilienbank AG, WestLB AG with JURY DEMAND. Document filed by FTC Futures Fund SICAV, 303030 Trading LLC, Gary Francis, FTC Futures Fund PCC Ltd, Atlantic Trading USA, LLC, Nathaniel Haynes, Metzler Investment GmbH. Related document: 407 Amended Complaint,,,, filed by 303030 Trading LLC, FTC Futures Fund PCC Ltd, Atlantic Trading USA, LLC, Gary Francis, Metzler</p> |
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| | | Investment GmbH, Nathaniel Haynes, FTC Futures Fund SICAV. (Attachments: # 1 Part 2)(mro) (Entered: 10/03/2013) |
| 10/03/2013 | 439 | REPLY MEMORANDUM OF LAW in Support re: 396 MOTION for Reconsideration re; 389 Order on Motion for Reconsideration, Order on Motion for Leave to File Document,, Order on Motion to Amend/Correct, [docket number and entries repeat]. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 10/03/2013) |
| 10/04/2013 | 441 | LETTER addressed to Judge Naomi Reice Buchwald from David E. Kovel and Christopher Lovell dated October 4, 2013 re: courtesy copies of Plaintiffs Reply Memorandum of Law In Further Support of Their Motion for Reconsideration of the Courts August 23, 2013 Memorandum and Order. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC |

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| | | Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 10/04/2013) |
| 10/04/2013 | 442 | LETTER addressed to Judge Naomi Reice Buchwald from Jeffrey T. Scott dated October 4, 2013 re: Response to Exchange-Based Plaintiffs' Letter dated September 18, 2013. Document filed by Barclays Bank PLC. (Scott, Jeffrey) (Entered: 10/04/2013) |
| 10/04/2013 | 443 | LETTER addressed to Judge Naomi Reice Buchwald from Robert F. Wise, Jr. dated 10/4/13 re: On Behalf of All Defendants in Response to Letters Dated 9/18/13 to your Honor from Counsel for the OTC and Exchange Based Plaintiffs. Document filed by BBA Enterprises, Ltd., BBA Libor, Ltd, BNP Paribas S.A., Bank Of America Corporation, Bank Of America Securities LLC, Bank of America Corp., Bank of America Corporation, Bank of America N.A., Bank of America, N.A., Bank of Nova Scotia, Bank of Tokyo-Mitsubishi UFJ, Bank of Tokyo-Mitsubishi UFJ Ltd, Bank |

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| | <p>of Tokyo-Mitsubishi UFJ Ltd., Barclays Bank PLC, Barclays Bank Plc., Barclays Bank Plc., Barclays Bank plc, Barclays Capital Inc., Barclays PLC, Barclays U.S. Funding LLC, Barclays Bank Plc, British Bankers' Association, Centrale Raiffeisen-Boerenleenbank B.A., Chase Bank USA, N.A., Chase Bank USA, NA, Citibank N.A., Citibank NA, Citibank, N.A., Citigroup Inc, Citigroup, Inc., CitigroupGlobal Markets Inc., Citizens Bank of Massachusetts, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Cooperative Centrale Raiffeisen-Boerenleenbank B.A., Cooperative Centrale Raiffeisenboerenleenbank B.A., Coperatieve Centrale Raiffeisen-Boerenleenbank B.A., Credit Agricole, S.A., Credit Suisse Group AG, Credit Suisse Group, AG, Credit Suisse Group, NA, Credit Suisse International, Credit Suisse Securities (USA) LLC, Deutsche Bank AG, Deutsche Bank Financial LLC, Deutsche Bank Securities Inc., Does 1-10, Inclusive, HBOS PLC, HBOS Plc., HSBC Bank PLC, HSBC Bank Plc., HSBC Bank</p> |
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| | <p>USA, N.A., HSBC Holding plc, HSBC Holdings PLC, HSBC Holdings plc., HSBC Securities (USA) Inc., J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, N.A., J.P. Morgan Clearing Corp., JP Morgan Chase & Co., JPMorgan & Co., JPMorgan Chase & Co, JPMorgan Chase & Co., JPMorgan Chase Bank, JPMorgan Chase Bank N.A., JPMorgan Chase Bank National Association, JPMorgan Chase Bank, National Association, John Does 1-5, Lloyds Banking Group PLC, Lloyds Banking Group PLS, Lloyds Banking Group plc., Lloyds TSB Bank PLC, Mr. JPMorgan Chase Bank, N.A., Stephanie Nagel, National Association, National Collegiate Trust, Norinchukin Bank, Portigon AG, RBS Citizens, N.A., RBS Citizens, N.A. (f/k/a Citizens Bank of Massachusetts), Rabobank Group, Royal Bank of Canada, Royal Bank of Scotland, Royal Bank of Scotland Group plc, Societe General, Royal Bank of Canada, Societe Generale, Sumitomo Mitsui Banking Corp., The Bank of Tokyo Mitsubishi UFJ Ltd., The Bank of Tokyo-Mitsubishi UFJ Ltd., The Bank of</p> |
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| | | Tokyo-Mitsubishi UFJ, Ltd., The Norinchukin Bank, The Royal Bank of Canada, The Royal Bank of Scotland Group PLC, The Royal Bank of Scotland Group Plc., The Royal Bank of Scotland Group plc, The Royal Bank of Scotland, Plc, UBS AG, UBS AG, Royal Bank of Scotland Group PLC, UBS Securities LLC, WestDeutsche Immobilienbank AG, WestLB AG. (Wise, Robert) (Entered: 10/04/2013) |
| 10/04/2013 | 444 | LETTER addressed to Judge Naomi Reice Buchwald from Steven Wolowitz dated October 4, 2013 re: Response to Exchange-Based Plaintiffs' Letter dated September 18, 2013. Document filed by Societe Generale. (Wolowitz, Steven) (Entered: 10/04/2013) |
| 10/04/2013 | 445 | LETTER addressed to Judge Naomi Reice Buchwald from Christopher Lovell dated October 4, 2013 re: Reply to Defendants' September 24, 2013 letter from Robert F. Wise to the Court. Document filed by FTC Capital GMBH. Filed In Associated Cases: 1:11-md-02262-NRB et al. (Lovell, Christopher) (Entered: 10/04/2013) |

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| 10/07/2013 | 446 | RESPONSE in Opposition to Motion re: 418 MOTION for Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss, <i>Exchange-Based Plaintiffs' Response in Opposition to the Bank of Tokyo-Mitsubishi UFJ, Ltd., the Norinchukin Bank, and Credit Suisse Group AG's Supplemental Memorandum of Law in Support of Defendants' Motion for Reconsideration.</i> Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 10/07/2013) |
| 10/07/2013 | 447 | LETTER addressed to Judge Naomi Reice Buchwald from David E. Kovel and Christopher Lovell dated October 7, 2013 re: Letter Response to Dkt. No. 417 - Defendants' Letter Request dated September 20, 2013 to file the Renewed Motion to Dismiss the Exchange-Based Plaintiffs' Period 2 CEA Claims. Document filed by |

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| | | 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 10/07/2013) |
| 10/07/2013 | 448 | MEMORANDUM OF LAW in Opposition re: 418 MOTION for Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss, <i>Exchange-Based Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for Reconsideration of the March 29, 2013 Order on the Motion to Dismiss</i> . Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 10/07/2013) |
| 10/08/2013 | 451 | LETTER addressed to Judge Naomi Reice Buchwald from David E. Kovel and Christopher Lovell dated October 8, 2013 re: Exchange-Based Plaintiffs' |

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| | | Opposition to Defendants' Motion for Reconsideration of Mar. 29, 2013 Order. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 10/08/2013) |
| 10/09/2013 | 452 | MEMORANDUM AND ORDER: This Memorandum and Order is addressed to applications pending before the Court. First, defendants' request for leave to file their Renewed Motion to Dismiss the Exchange-Based Plaintiffs' Period 2 CEA Claims is granted. Second, a decision on the permissible content of the Second Consolidated Amended Complaints is stayed until the resolution of the current motions addressed to the complaints. The operative complaints will then be denominated the Third Consolidated Amended Complaints. (Signed by Judge Naomi Reice Buchwald on 10/8/2013) Filed In Associated Cases: 1:11-md-02262-NRB et al. (ft) (Entered: 10/09/2013) |
| 10/10/2013 | 453 | MOTION to Dismiss <i>Exchange-</i> |

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| | | <i>Based Plaintiffs' Period 2 CEA Claims.</i> Document filed by Barclays Bank PLC. (Scott, Jeffrey) (Entered: 10/10/2013) |
| 10/10/2013 | 454 | MEMORANDUM OF LAW in Support re: 453 MOTION to Dismiss <i>Exchange-Based Plaintiffs' Period 2 CEA Claims..</i> Document filed by Barclays Bank PLC. (Scott, Jeffrey) (Entered: 10/10/2013) |
| 10/10/2013 | 455 | DECLARATION of Matthew J. Porpora in Support re: 453 MOTION to Dismiss <i>Exchange-Based Plaintiffs' Period 2 CEA Claims..</i> Document filed by Barclays Bank PLC. (Attachments: # 1 Exhibit)(Scott, Jeffrey) (Entered: 10/10/2013) |
| 10/10/2013 | 456 | LETTER addressed to Judge Naomi Reice Buchwald from Jeffrey T. Scott dated October 10, 2013 re: Rule 2.E.1. Letter for Defendants' Renewed Motion to Dismiss the Exchange-Based Plaintiffs' Period 2 CEA Claims. Document filed by Barclays Bank PLC. (Scott, Jeffrey) (Entered: 10/10/2013) |
| 10/10/2013 | 457 | LETTER addressed to Judge Naomi Reice Buchwald from William Christopher Carmody dated October 10, 2013 re: Partial |

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| | | Stay and Motion to Dismiss. Document filed by Mayor and City Council of Baltimore. (Attachments: # 1 Exhibit A)Filed In Associated Cases: 1:11-md-02262-NRB et al. (Carmody, William) (Entered: 10/10/2013) |
| 10/15/2013 | 463 | TRANSCRIPT of Proceedings re: MOTION held on 8/8/2013 before Judge Naomi Reice Buchwald. Court Reporter/Transcriber: Steven Griffing, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/8/2013. Redacted Transcript Deadline set for 11/18/2013. Release of Transcript Restriction set for 1/16/2014. (McGuirk, Kelly) (Entered: 10/15/2013) |
| 10/15/2013 | 464 | NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a MOTION proceeding held on 8/8/13 has been filed by the court reporter/transcriber in the above-captioned matter. The parties |

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| | | have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days... (McGuirk, Kelly) (Entered: 10/15/2013) |
| 10/15/2013 | 465 | MEMO ENDORSEMENT on re: (458 in 1:11-md-02262-NRB) Letter filed by Societe Generale, (165 in 1:11-cv-02613-NRB) Letter filed by Societe Generale S.A. ENDORSEMENT: The defendant (Societe Generale) is granted leave to move to dismiss without a pre-motion conference. (Signed by Judge Naomi Reice Buchwald on 10/11/2013) (tro) (Entered: 10/15/2013) |
| 10/15/2013 | 467 | LETTER addressed to Judge Naomi Reice Buchwald from Christopher Lovell dated 10/15/13 re: Charts of U.S. dollar Libor submissions for the dates listed in Docket Number 439 at p. 4 in response to the Court's direction on October 8, 2013. Document filed by FTC Capital GMBH. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit |

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| | | C)(Lovell, Christopher) (Entered: 10/15/2013) |
| 10/16/2013 | 469 | LETTER addressed to Judge Naomi Reice Buchwald from Christopher Lovell dated 10/16/13 re: Corrected copy of charts of U.S. dollar Libor submissions for the dates listed in Docket Number 439 at p. 4 in response to the Court's direction on October 8, 2013. Document filed by FTC Capital GMBH. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)Filed In Associated Cases: 1:11-md-02262-NRB et al. (Lovell, Christopher) (Entered: 10/16/2013) |
| 10/17/2013 | 473 | REPLY MEMORANDUM OF LAW in Support re: 418 MOTION for Reconsideration re; 286 Order on Motion to Dismiss MOTION for Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss, <i>REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION FOR RECONSIDERATION OF MARCH 29, 2013 ORDER ON MOTION TO DISMISS.</i> Document filed by UBS AG. (Sullivan, Peter) (Entered: 10/17/2013) |

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| | | 10/17/2013) |
| 10/17/2013 | 474 | SUPPLEMENTAL REPLY MEMORANDUM OF LAW in Support re: 418 MOTION for Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss, MOTION for Reconsideration re; 286 Order on Motion to Dismiss. Document filed by Bank of Tokyo-Mitsubishi UFJ Ltd., Credit Suisse Group AG, Norinchukin Bank. (Libow, Daryl) (Entered: 10/17/2013) |
| 10/18/2013 | 475 | CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL (CTO- 16)transferring this action from the United States District Court - that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of Kansas, and the same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Naomi Reice Buchwald, for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed |

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| | | by MDL Panel on 10/18/2013) (sjo) (Entered: 10/18/2013) |
| 10/18/2013 | 477 | MEMO ENDORSED on re: 472 Letter filed by Barclays Bank PLC. ENDORSEMENT: Application granted. (Signed by Judge Naomi Reice Buchwald on 10/18/2013) (js) (Entered: 10/21/2013) |
| 10/18/2013 | 478 | MEMORANDUM AND ORDER re: (431 in 1:11-md-02262-NRB) Letter filed by The Norinchukin Bank, Bank of America Corporation, Citibank, N.A., Royal Bank of Canada, UBS AG, HSBC Bank PLC, HBOS PLC, HSBC Holdings PLC, Portigon AG, Deutsche Bank AG, Bank of Tokyo-Mitsubishi UFJ Ltd., HBOS plc, JPMorgan Chase Bank N.A., HSBC Bank plc, Royal Bank of Scotland Group plc, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Barclays PLC, Lloyds Banking Group plc, HSBC Holdings plc, JPMorgan Chase & Co., Bank of America, N.A., HBOS Plc, Citigroup, Inc., Credit Suisse Group AG, Lloyds Banking Group PLC. This Memorandum and Order addresses the defendants' letter |

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| | <p>of September 27, 2013, which requests leave to move to dismiss the over-the-counter (OTC) plaintiffs' contract and unjust enrichment claims, and the OTC plaintiffs' response to that letter dated October 4, 2013. Defendants' request for leave to move to dismiss those claims is granted. After reviewing the letters from both sides, the Court requests that the parties address the following issues. First, please discuss the "conspiracy or concerted scheme[]" exception to the traditional requirement that, in order to have standing to sue a particular defendant under Fed. R. Civ. P. 23, the named plaintiff must have been injured by that defendant. <i>Mahon v. Ticor Title Ins. Co.</i>, 683 F.3d 59,63 (2d Cir. 2012) (quoting <i>La Mar v. H & B Novelty & Loan Co.</i>, 489 F.2d 461, 466 (9th Cir. 1973)). Second, assuming that the plaintiffs adequately pled the existence of a "concerted scheme" in setting LIBOR, is such a pleading sufficient for the plaintiffs to name all of the scheme's participants as defendants, even those who cannot be held liable under either an unjust</p> |
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| | | enrichment or a breach of contract theory? The posing of these questions should not be interpreted as an indication that the Court regards the resolution of either as necessarily material, let alone dispositive. (Signed by Judge Naomi Reice Buchwald on 10/18/2013) Filed In Associated Cases: 1:11-md-02262-NRB et al. (ft) (Entered: 10/21/2013) |
| 10/28/2013 | 487 | MEMO ENDORSEMENT on (63 in 1:13-cv-07005-NRB) Letter filed by Schwab Advisor Cash Reserves, Schwab Short-Term Bond Market Fund, Schwab Value Advantage Money Fund, Schwab Retirement Advantage Money Fund, Schwab Total Bond Market Fund, Charles Schwab Corporation, Schwab Yieldplus Fund, Schwab Investor Money Fund, Schwab Cash Reserves, Charles Schwab & Co., Inc., Schwab U.S. Dolar Liquid Assets Fund, Schwab Yieldplus Fund Liquidation Trust, Charles Schwab Bank, N.A., Schwab Money Market Fund. ENDORSEMENT: Application granted. (Signed by Judge Naomi Reice Buchwald on 10/28/2013) Filed In Associated Cases: 1:11-md-02262-NRB, 1:13-cv-07005- |

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| | | NRB(ft) (Entered: 10/29/2013) |
| 10/18/2013 | 490 | <p>MEMORANDUM AND ORDER: Pursuant to Fed. R. Civ. P. 54(b), final judgment is entered dismissing the first count of the over-the counter plaintiffs' consolidated amended complaint (Dkt. No. 130) for violation of section 1 of the Sherman Act, and denying leave to replead that claim in a proposed amended complaint (dkt. No. 334-1), for the reasons given in the March 29, 2013 and August 23, 2013 orders of this Court, and it is further ORDERED, pursuant to Fed. R. Civ. P. 54(b), final judgment is entered dismissing the fourth count of the exchange based plaintiffs' amended consolidated class action complaint (Dkt. No. 134) for violation of section 1 of the Sherman Act, and denying leave to replead that claim in a proposed amended complaint (Dkt. No. 332-1), for the reasons given in the March 29, 2013 and August 23, 2013 orders of this Court. (Signed by Judge Naomi Reice Buchwald on 10/17/2013) Filed In Associated Cases: 1:11-md-02262-NRB et al. (ft) (Entered: 10/30/2013)</p> |

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| 10/18/2013 | <p>Transmission to Judgments and Orders Clerk. Transmitted re: (69 in 1:13-cv-07005- NRB, 43 in 1:12-cv-07461-NRB, 54 in 1:12-cv-05723-NRB, 97 in 1:13-cv-02297-NRB, 7 in 1:13-cv-07394-NRB, 44 in 1:13-cv-03952-NRB, 45 in 1:13-cv-00597- NRB, 34 in 1:13-cv-01016-NRB, 54 in 1:13-cv-00407-NRB, 35 in 1:13-cv-01456- NRB, 62 in 1:12-cv-05822-NRB, 490 in 1:11-md-02262-NRB, 55 in 1:12-cv- 06056-NRB, 44 in 1:13-cv-00625-NRB, 56 in 1:13-cv-01198-NRB, 49 in 1:13-cv-02343-NRB, 45 in 1:13-cv-03010-NRB, 55 in 1:13-cv-00598-NRB, 26 in 1:13-cv-06020-NRB, 44 in 1:13-cv-00667-NRB, 59 in 1:13-cv-01135-NRB, 24 in 1:13-cv-05616-NRB, 26 in 1:13-cv-06014-NRB, 34 in 1:13-cv-05511-NRB, 43 in 1:13-cv-00627-NRB, 26 in 1:13-cv-05569-NRB, 26 in 1:13-cv-05221-NRB, 52 in 1:13-cv-00346-NRB, 67 in 1:12-cv-01025-NRB, 63 in 1:13-cv-00398-NRB, 26 in 1:13-cv-06013-NRB, 33 in 1:13-cv-05187-NRB, 42 in 1:12-cv-06693-NRB, 43 in 1:13-cv-00626-NRB, 31 in 1:13-cv-05186-NRB) Order to the Judgments and Orders Clerk. Filed In Associated Cases: 1:11-md-02262-NRB et al. (ft) (Entered:</p> |
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| | | 10/30/2013) |
| 10/22/2013 | 479 | REPLY MEMORANDUM OF LAW in Opposition re: 396 MOTION for Reconsideration re; 389 Order on Motion for Reconsideration, Order on Motion for Leave to File Document,, Order on Motion to Amend/Correct, MOTION for Reconsideration re; 389 Order on Motion for Reconsideration, Order on Motion for Leave to File Document,, Order on Motion to Amend/Correct, MOTION for Reconsideration re; 389 Order on Motion for Reconsideration, Order on Motion for Leave to File Document,, Order on Motion to Amend/Correct, MOTION for Reconsideration re; 389 Order on Motion for Reconsideration, Order on Motion for Leave to File Document,, Order on Motion to Amend/Correct, MOTION for Reconsideration re; 389 Order on Motion for Reconsideration, Order on Motion for Leave to File Document,, Order on Motion to Amend/Correct, MOTION for |

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| | | Reconsideration re; 389 Order on Motion for Reconsideration, Order on Motion for Leave to File Document,, Order on Motion to Amend/Correct. Document filed by Barclays Bank PLC. (Scott, Jeffrey) (Entered: 10/22/2013) |
| 10/28/2013 | 483 | MEMORANDUM OF LAW in Opposition re: 453 MOTION to Dismiss <i>Exchange-Based Plaintiffs' Period 2 CEA Claims..</i> Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 10/28/2013) |
| 10/28/2013 | 484 | DECLARATION of David E. Kovel in Opposition re: 453 MOTION to Dismiss <i>Exchange-Based Plaintiffs' Period 2 CEA Claims..</i> Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 |

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| | | Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P, # 17 Exhibit Q, # 18 Exhibit R, # 19 Exhibit S, # 20 Exhibit T)(Kovel, David) (Entered: 10/28/2013) |
| 10/29/2013 | 488 | LETTER addressed to Judge Naomi Reice Buchwald from David E. Kovel and Christopher Lovell dated October 29, 2013 re: Rule 2.E.1. letter for Exchange-Based Plaintiffs' Opposition to Defendants' Renewed Motion to Dismiss the Exchange-Based Plaintiffs' Period 2 CEA Claims. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 10/29/2013) |
| 10/31/2013 | 491 | Withdrawn pursuant to Order filed 10/31/13, Doc. #492, 11 MD 2262 - RULE 54(b) CLERK'S JUDGMENT That for the reasons stated in the Court's Memorandum and Order dated October 17, 2013, there is no just reason for delay, pursuant to Fed. |

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| | | <p>R. Civ. P. 54(b), final judgment is entered dismissing the first count of the over-the-counter plaintiffs' consolidated amended complaint for violation of section 1 of the Sherman Act, and denying leave to replead that claim in a proposed amended complaint for the reasons given in the March 29, 2013 and August 23, 2013 orders of this Court, and there is no just reason for delay, pursuant to Fed. R. Civ. P. 54(b), final judgment is entered dismissing the fourth count of the exchange based plaintiffs' amended consolidated class action complaint for violation of section 1 of the Sherman Act, and denying leave to replead that claim in a proposed amended complaint for the reasons given in the March 29, 2013 and August 23, 2013 orders of this Court. (Signed by Clerk of Court Ruby Krajick on 10/31/13) (Attachments: # 1 Notice of Right to Appeal) Filed In Associated Cases: 1:11-md-02262-NRB et al. (ml) Modified on 10/31/2013 (ml). Modified on 11/4/2013 (ml). (Entered: 10/31/2013)</p> |
| 10/31/2013 | 492 | ORDER: WHEREAS, on October 30, 2013 the Court of Appeals, |

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| | | acting sua sponte determined that it lacked jurisdiction over the bondholder and Schwab appeals and dismissed them, it is hereby ORDERED that the October 17, 2013 is withdrawn. (Signed by Judge Naomi Reice Buchwald on 10/31/2013) Filed In Associated Cases: 1:11-md-02262-NRB et al. (ama) (Entered: 10/31/2013) |
| 11/05/2013 | 493 | LETTER addressed to Judge Naomi Reice Buchwald from Christopher Lovell and David E. Kovel dated 11/05/2013 re: supplemental information relevant to the Exchange-Based Plaintiffs' motion to amend their operative pleading. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Kovel, David) (Entered: 11/05/2013) |
| 11/07/2013 | 494 | REPLY MEMORANDUM OF LAW in Support re: 453 MOTION to Dismiss <i>Exchange-Based Plaintiffs' Period 2 CEA Claims..</i> Document filed by Barclays Bank |

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| | | PLC. (Scott, Jeffrey) (Entered: 11/07/2013) |
| 11/11/2013 | 495 | LETTER addressed to Judge Naomi Reice Buchwald from Robert F. Wise, Jr. dated November 11, 2013 re: in response to the Schwab Plaintiffs' supplemental letter brief concerning their motion to remand. Document filed by Bank of America Corporation, Bank of America N.A., Bank of Tokyo-Mitsubishi UFJ Ltd., Citibank N.A., Citigroup, Inc., Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HBOS plc, HSBC Holdings plc, J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, N.A., Lloyds Banking Group plc, Royal Bank of Canada, Royal Bank of Scotland Group plc, The Norinchukin Bank, Westlb AG. (Wise, Robert) (Entered: 11/11/2013) |
| 11/12/2013 | 496 | LETTER addressed to Judge Naomi Reice Buchwald from Robert F. Wise, Jr. dated November 12, 2013 re: the timing of Defendants motion to dismiss the unjust enrichment and breach of implied covenant claims |

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| | | asserted in the Second Amended Complaint filed by the OTC Plaintiffs. Document filed by Bank Of America Corporation, Bank of America, N.A., Bank of Tokyo-Mitsubishi UFJ Ltd., Citibank, N.A., Citigroup, Inc., Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Credit Suisse Group, AG, Deutsche Bank AG, HBOS plc, HSBC Holdings plc, J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, N.A., Lloyds Banking Group plc, Royal Bank of Canada, Royal Bank of Scotland Group plc, The Norinchukin Bank, Westlb AG. (Wise, Robert) (Entered: 11/12/2013) |
| 11/13/2013 | 497 | LETTER addressed to Judge Naomi Reice Buchwald from David R. Gelfand dated November 13, 2013 re: Response to Exchange-Based Plaintiffs Letter, dated November 5, 2013. Document filed by Bank Of America Corporation, Bank of America, N.A., Barclays Bank PLC, Citibank NA, Citigroup, Inc., Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HBOS PLC, HSBC Bank PLC, HSBC |

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| | | Holdings PLC, J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, N.A., Lloyds Banking Group PLC, Lloyds TSB Bank PLC, Royal Bank of Canada, Royal Bank of Scotland Group plc, Societe Generale, The Bank of Tokyo-Mitsubishi UFJ, Ltd., The Norinchukin Bank, UBS AG, WestDeutsche Immobilienbank AG, WestLB AG. (Gelfand, David) (Entered: 11/13/2013) |
| 11/26/2013 | 507 | MOTION to Dismiss <i>OTC Plaintiffs' Second Consolidated Amended Complaint</i> . Document filed by Bank of America Corporation, Bank of America, N.A., Barclays PLC, Citibank, N.A., Citigroup, Inc., Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HBOS plc, HSBC Bank plc, HSBC Holdings plc, JP Morgan Chase & Co., JPMorgan Chase Bank N.A., Lloyds Banking Group plc, Portigon AG, Royal Bank of Canada, Royal Bank of Scotland Group plc, Societe Generale, The Bank of Tokyo-Mitsubishi UFJ, Ltd., The Norinchukin Bank, UBS AG. (Wise, Robert) (Entered: 11/26/2013) |

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| | | 11/26/2013) |
| 11/26/2013 | 508 | MEMORANDUM OF LAW in Support re: 507 MOTION to Dismiss <i>OTC Plaintiffs' Second Consolidated Amended Complaint</i> .. Document filed by Bank Of America Corporation, Bank of America, N.A., Barclays PLC, Citibank, N.A., Citigroup, Inc., Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HBOS plc, HSBC Bank plc, HSBC Holdings plc, Lloyds Banking Group plc, Portigon AG, Royal Bank of Canada, Royal Bank of Scotland Group plc, Societe Generale, The Bank of Tokyo-Mitsubishi UFJ, Ltd., The Norinchukin Bank, UBS AG. (Wise, Robert) (Entered: 11/26/2013) |
| 11/26/2013 | 509 | LETTER addressed to Judge Naomi Reice Buchwald from Robert F. Wise, Jr. dated November 26, 2013 re: Individual Practice Rule 2.E.1. Document filed by Bank of America Corporation, Bank of America, N.A., Barclays PLC, Citibank, N.A., Citigroup, Inc., Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Credit |

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| | | <p>Suisse Group AG, Deutsche Bank AG, HBOS plc, HSBC Bank plc, HSBC Holdings plc., JPMorgan Chase & Co., JPMorgan Chase Bank N.A., Lloyds Banking Group plc, Portigon AG, Royal Bank of Canada, Royal Bank of Scotland Group plc, Societe Generale, The Bank of Tokyo-Mitsubishi UFJ, Ltd., The Norinchukin Bank, UBS AG. (Wise, Robert) (Entered: 11/26/2013)</p> |
| 11/27/2013 | 511 | <p>MEMORANDUM AND ORDER: This Order addresses the Exchange-Based Plaintiffs' letter of November 5, 2013, which requested that they be allowed to amend their operative pleading to include information from the Rabobank settlement documents, and the defendants' response of November 13, 2013 opposing the plaintiffs' request. As with the Barclays settlement, we will permit the plaintiffs to rely on facts from the Rabobank settlement in their submissions rather than grant them leave to amend their complaint. Thus, the Court will consider these letters as supplemental briefing on the plaintiffs' September 6, 2013 Motion for Reconsideration of our</p> |

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| | | <p>August 23, 2013 Memorandum and Order, which denied the plaintiffs' motion to include trader-based claims in the Second Amended Class Action Complaint. If either side wants to submit further supplemental briefing, it may submit a memorandum not exceeding seven (7) pages in length. (Signed by Judge Naomi Reice Buchwald on 11/27/2013) Filed In Associated Cases: 1:11-md-02262-NRB et al. (ama) (Entered: 11/27/2013)</p> |
| 12/13/2013 | 512 | <p>CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL(CTO-17) transferring this action from the United States District Court - that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of California, and the same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Naomi Reice Buchwald, for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed</p> |

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| | | by MDL Panel on 12-3-2013) (sjo) (Entered: 12/03/2013) |
| 12/13/2013 | 516 | MOTION to Dismiss <i>NOTICE OF DEFENDANT SOCIETE GENERALE'S MOTION TO DISMISS EXCHANGE-BASED PLAINTIFFS' [CORRECTED] SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT.</i> Document filed by Societe Generale. (Wolowitz, Steven) (Entered: 12/13/2013) |
| 12/13/2013 | 517 | MEMORANDUM OF LAW in Support re: 516 MOTION to Dismiss <i>NOTICE OF DEFENDANT SOCIETE GENERALE'S MOTION TO DISMISS EXCHANGE- BASED PLAINTIFFS' [CORRECTED] SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT..</i> Document filed by Societe Generale. (Wolowitz, Steven) (Entered: 12/13/2013) |
| 12/13/2013 | 518 | DECLARATION of Andrew J. Calica in Support re: 517 Memorandum of Law in Support of Motion,. Document filed by Societe Generale. (Attachments: # 1 Exhibit A- G)(Wolowitz, Steven) |

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| | | (Entered: 12/13/2013) |
| 12/16/2013 | 519 | LETTER addressed to Judge Naomi Reice Buchwald from Steven Wolowitz dated December 16, 2013 re: Societe Generale's Motion to Dismiss the Exchange-Based Plaintiffs' [Corrected] Second Amended Consolidated Class Action Complaint. Document filed by Societe Generale. (Wolowitz, Steven) (Entered: 12/16/2013) |
| 12/30/2013 | 520 | MEMORANDUM AND ORDER: For the foregoing reasons, the plaintiffs' motions to remand are denied. (Signed by Judge Naomi Reice Buchwald on 12/27/2013) Filed In Associated Cases: 1:11-md-02262-NRB, 1:13-cv-02297-NRB. **Docketed in 11- md-2262 as per Chambers. (mro) (Entered: 12/30/2013) |
| 01/10/2014 | 522 | LETTER MOTION for Conference <i>re 54(b) judgments on antitrust claims</i> addressed to Judge Naomi Reice Buchwald from William Christopher Carmody dated 01/10/2014. Document filed by Mayor and City Council of Baltimore. (Carmody, William) (Entered: 01/10/2014) |

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| 01/10/2014 | 523 | <p>SUPPLEMENTAL MEMORANDUM OF LAW in Support re: 396 MOTION for Reconsideration re; 389 Order on Motion for Reconsideration, Order on Motion for Leave to File Document,, Order on Motion to Amend/Correct, [docket number and entry repeat]. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Attachments: # 1 Exhibit A)(Kovel, David) (Entered: 01/10/2014)</p> |
| 01/10/2014 | 524 | <p>MEMORANDUM OF LAW in Opposition re: 516 MOTION to Dismiss <i>NOTICE OF DEFENDANT SOCIETE GENERALE'S MOTION TO DISMISS EXCHANGE- BASED PLAINTIFFS' [CORRECTED] SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT..</i> Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment</p> |

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| | | GmbH. (Kovel, David) (Entered: 01/10/2014) |
| 01/10/2014 | 525 | DECLARATION of David E. Kovel in Opposition re: 516 MOTION to Dismiss <i>NOTICE OF DEFENDANT SOCIETE GENERALE'S MOTION TO DISMISS EXCHANGE-BASED PLAINTIFFS' [CORRECTED] SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT..</i> Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P, # 17 Exhibit Q, # 18 Exhibit R, # 19 Exhibit S, # 20 Exhibit T, # 21 Exhibit U)(Kovel, David) (Entered: 01/10/2014) |
| 01/10/2014 | 526 | MEMORANDUM OF LAW in Opposition re: 507 MOTION to Dismiss <i>OTC Plaintiffs' Second</i> |

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| | | <i>Consolidated Amended Complaint..</i> Document filed by Mayor and City Council of Baltimore. (Carmody, William) (Entered: 01/10/2014) |
| 01/13/2014 | 527 | MANDATE of USCA (Certified Copy) as to (429 in 1:11-md-02262-NRB) Notice of Appeal,,, filed by Schwab Advisor Cash Reserves, Schwab Short-Term Bond Market Fund, Schwab Value Advantage Money Fund, The Charles Schwab Corporation, Schwab Retirement Advantage Money Fund, Schwab Total Bond Market Fund, Schwab Yieldplus Fund, Schwab Investor Money Fund, Schwab Cash Reserves, Charles Schwab & Co., Inc., Schwab U.S. Dollar Liquid Assets Fund, Schwab Yieldplus Fund Liquidation Trust, Charles Schwab Bank, N.A., Schwab Money Market Fund, (409 in 1:11-md-02262-NRB, 50 in 1:12-cv-01025-NRB) Notice of Appeal filed by Linda Zacher, Ellen Gelboim USCA Case Number 13-3565(L); 13- 3636(con). This Court has determined sua sponte that it lacks jurisdiction over these appeals because a final order has not been issued by the district court as contemplated by |

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| | | <p>28 U.S.C. § 1291, and the orders appealed from did not dispose of all claims in the consolidated action. <i>See Coopers & Lybrand v. Livesay</i>, 437 U.S. 463, 467 (1978); <i>Houbigant, Inc. v. IMG Fragrance Brands, LLC</i>, 627 F.3d 497, 498 (2d Cir. 2010) (per curiam). Upon due consideration, it is hereby ORDERED that the appeals are DISMISSED. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 01/13/2014. Filed In Associated Cases: 1:11-md-02262-NRB, 1:12-cv- 01025-NRB(nd) (Entered: 01/13/2014)</p> |
| 01/13/2014 | 528 | <p>LETTER addressed to Judge Naomi Reice Buchwald from David E. Kovel and Christopher Lovell dated January 13, 2014 re: Rule 2.E.1. Letter for Exchange-Based Plaintiffs' Supplemental Memorandum of Law Regarding Rabobank and in Further Support of Their Motion for Reconsideration of the Courts August 23, 2013 Memorandum and Order. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler</p> |

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| | | Investment GmbH. (Kovel, David) (Entered: 01/13/2014) |
| 01/13/2014 | 529 | LETTER addressed to Judge Naomi Reice Buchwald from David E. Kovel and Christopher Lovell dated January 13, 2014 re: Rule 2.E.1. Letter for Exchange-Based Plaintiffs' Opposition to Defendant Societe Generale's Motion to Dismiss the Exchange-Based Plaintiffs' Corrected Second Amended Consolidated Class Action Complaint. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 01/13/2014) |
| 01/21/2014 | 533 | LETTER RESPONSE in Opposition to Motion addressed to Judge Naomi Reice Buchwald from Jeffrey T. Scott dated January 21, 2014 re: 522 LETTER MOTION for Conference <i>re 54(b) judgments on antitrust claims</i> addressed to Judge Naomi Reice Buchwald from William Christopher Carmody dated 01/10/2014.. Document filed by Barclays Bank |

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| | | PLC. (Scott, Jeffrey) (Entered: 01/21/2014) |
| 01/21/2014 | 534 | SUPPLEMENTAL MEMORANDUM OF LAW in Opposition re: 396 MOTION for Reconsideration re; 389 Order on Motion for Reconsideration, Order on Motion for Leave to File Document, Order on Motion to Amend/Correct, [docket number and entry repeats] filed by Bank of America Corporation, Bank of America, N.A., Barclays Bank PLC, Citibank NA, Citigroup, Inc., Cooperative Centrale Raiffeisen-Boerenleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HBOS PLC, HSBC Bank PLC, HSBC Holdings PLC, J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, N.A., Lloyds Banking Group PLC, Lloyds TSB Bank PLC, Royal Bank of Canada, Royal Bank of Scotland Group plc, Societe Generale, The Bank of Tokyo-Mitsubishi UFJ, Ltd., The Norinchukin Bank, UBS AG, WestDeutsche Immobilienbank AG, WestLB AG. (Gelfand, David) (Entered: 01/21/2014) |
| 01/28/2014 | 535 | REPLY MEMORANDUM OF LAW in Support re: 516 MOTION |

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| | | to Dismiss <i>NOTICE OF DEFENDANT SOCIETE GENERALE'S MOTION TO DISMISS EXCHANGE-BASED PLAINTIFFS' [CORRECTED] SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT..</i> Document filed by Societe Generale. (Wolowitz, Steven) (Entered: 01/28/2014) |
| 01/28/2014 | 536 | REPLY MEMORANDUM OF LAW in Support re: 507 MOTION to Dismiss <i>OTC Plaintiffs' Second Consolidated Amended Complaint..</i> Document filed by Bank Of America Corporation, Bank of America, N.A., Barclays PLC, Citibank, N.A., Citigroup, Inc., Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HBOS plc, HSBC Bank plc, HSBC Holdings plc., Lloyds Banking Group plc, Portigon AG, Royal Bank of Canada, Royal Bank of Scotland Group plc, Societe Generale, The Bank of Tokyo-Mitsubishi UFJ, Ltd., The Norinchukin Bank, UBS AG. (Wise, Robert) (Entered: 01/28/2014) |
| 02/07/2014 | 540 | LETTER addressed to Judge |

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| | | Naomi Reice Buchwald from David E. Kovel and Christopher Lovell dated February 7, 2014 re: questions raised during oral argument on February 4, 2014. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 02/07/2014) |
| 02/11/2014 | 541 | LETTER addressed to Judge Naomi Reice Buchwald from David Gelfand dated 02/11/2014 re: Response to Exchange-Based Plaintiffs' Letter dated February 7, 2014. Document filed by Bank Of America Corporation, Bank of America, N.A., Barclays Bank PLC, Citibank NA, Citigroup, Inc., Cooperative Centrale Raiffeisen- Boernleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HBOS PLC, HSBC Bank PLC, HSBC Holdings PLC, J.P. Morgan Chase Bank, N.A., Lloyds Banking Group PLC, Lloyds TSB Bank PLC, Royal Bank of Canada, Royal Bank of Scotland Group plc, Societe Generale, The Bank of Tokyo-Mitsubishi UFJ, |

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| | | Ltd., The Norinchukin Bank, UBS AG, WestDeutsche Immobilienbank AG, WestLB AG. (Gelfand, David) (Entered: 02/11/2014) |
| 02/25/2014 | 548 | LETTER addressed to Judge Naomi Reice Buchwald from David R. Gelfand dated 02/25/2014 re: Response to Exchange-Based Plaintiffs' Letter dated February 7, 2014. Document filed by Bank of America Corporation, Bank of America, N.A., Barclays Bank PLC, Citibank NA, Citigroup, Inc., Cooperative Centrale Raiffeisen- Boernleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HBOS PLC, HSBC Bank PLC, HSBC Holdings PLC, J.P. Morgan Chase Bank, N.A., Lloyds Banking Group PLC, Lloyds TSB Bank PLC, Royal Bank of Canada, Royal Bank of Scotland Group plc, Societe Generale, The Bank of Tokyo-Mitsubishi UFJ, Ltd., The Norinchukin Bank, UBS AG, WestDeutsche Immobilienbank AG, WestLB AG. (Gelfand, David) (Entered: 02/25/2014) |
| 02/25/2014 | 549 | TRANSCRIPT of Proceedings re: |

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| | | <p>ARGUMENT held on 2/4/2014 before Judge Naomi Reice Buchwald. Court Reporter/Transcriber: Karen Gorlaski, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/21/2014. Redacted Transcript Deadline set for 3/31/2014. Release of Transcript Restriction set for 5/30/2014. (Rodriguez, Somari) (Entered: 02/25/2014)</p> |
| 02/25/2014 | 550 | <p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a ARGUMENT proceeding held on 2/4/14 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...</p> |

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| | | (Rodriguez, Somari) (Entered: 02/25/2014) |
| 02/25/2014 | 551 | TRANSCRIPT of Proceedings re: ARGUMENT CORRECTED held on 2/4/2014 before Judge Naomi Reice Buchwald. Court Reporter/Transcriber: Karen Gorlaski, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/21/2014. Redacted Transcript Deadline set for 3/31/2014. Release of Transcript Restriction set for 5/30/2014. (Rodriguez, Somari) (Entered: 02/25/2014) |
| 02/25/2014 | 552 | NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a ARGUMENT CORRECTED proceeding held on 2/4/14 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice |

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| | | is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days... (Rodriguez, Somari) (Entered: 02/25/2014) |
| 03/09/2014 | 554 | LETTER addressed to Judge Naomi Reice Buchwald from David E. Kovel and Christopher Lovell dated March 9, 2014 re: Defendants' letter dated February 25, 2014. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Kovel, David) (Entered: 03/09/2014) |
| 03/28/2014 | 557 | LETTER addressed to Judge Naomi Reice Buchwald from Daryl A. Libow dated March 28, 2014 Document filed by The Bank of Tokyo-Mitsubishi UFJ, Ltd.. (Attachments: # 1 Exhibit)(Libow, Daryl) (Entered: 03/28/2014) |
| 04/07/2014 | 558 | LETTER addressed to Judge Naomi Reice Buchwald from Christopher Lovell dated 4/7/2014 re: Supplemental Authority. Document filed by 303030 Trading LLC, Atlantic Trading USA, LLC, FTC Capital GMBH, |

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| | | FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Attachments: # 1 Exhibit)(Lovell, Christopher) (Entered: 04/07/2014) |
| 04/24/2014 | 560 | LETTER addressed to Judge Naomi Reice Buchwald from Thomas C. Rice dated April 24, 2014 re: Response to the Over-the-Counter Plaintiffs' Letter dated April 17, 2014. Document filed by J.P. Morgan Chase & Co., J.P. Morgan Chase Bank, N.A.. (Rice, Thomas) (Entered: 04/24/2014) |
| 05/01/2014 | 561 | CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL (CTO-19) transferring this action from the United States District Court - that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of California, and the same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Naomi Reice Buchwald, for coordinated or consolidated |

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| | | pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed by MDL Panel on 5/1/2014) (sjo) (Entered: 05/01/2014) |
| 06/09/2014 | 566 | CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL (CTO-20) transferring this action from the United States District Court - that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of New Jersey, and the same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Naomi Reice Buchwald, for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed by MDL Panel on 6/6/2014) (sjo) (Entered: 06/09/2014) |
| 06/23/2014 | 568 | MEMORANDUM AND ORDER terminating (396) Motion for Reconsideration; denying (418) Motion for Reconsideration; terminating (428) Motion to Strike; denying (453) Motion to Dismiss; granting in part and |

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| | <p>denying in part (507) Motion to Dismiss; granting (516) Motion to Dismiss in case 1:11-md-02262-NRB. For the reasons stated above, exchange-based plaintiffs' motion for reconsideration of our ruling on trader-based claims is denied, but their motion for leave to amend their complaint is granted; defendants' motion to dismiss CEA claims on scienter grounds is denied; defendants' motion to dismiss CEA claims arising out of contracts purchased between May 30, 2008 and April 14, 2009 is granted; defendants' motion to dismiss OTC plaintiffs' contract and unjust enrichment claims is granted in part and denied in part; and defendant Societe Generale's motion to dismiss the exchange-based plaintiffs' complaint is granted. It has been nearly two years since defendants first moved to dismiss plaintiffs' consolidated amended complaints. Since then, this Court has issued three major opinions and the parties have submitted hundreds, if not thousands, of pages of briefing materials, all in an attempt to resolve the threshold question of any litigation: what claims, if any,</p> |
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| | <p>have plaintiffs adequately pled? Now, at long last, there is clarity. OTC plaintiffs may state claims for breach of the implied covenant of good faith and fair dealing, and claims for unjust enrichment, but only against those defendant banks with which OTC plaintiffs transacted directly. Exchange-based plaintiffs may state claims under the CEA based on contracts purchased between April 15, 2009 and the end of the Class Period, based on a theory that defendants' alleged persistent suppression of LIBOR caused them damages; however, no such claim may lie against Societe Generale, as those claims are time barred. Exchange-based plaintiffs may also state claims against Barclays and Rabobank based on the alleged day-to-day, trader-based manipulation that occurred between January 1, 2005 and August 2007. This Memorandum and Order resolves docket entry nos. 396, 418, 428, 453, 507, and 516. (Signed by Judge Naomi Reice Buchwald on 6/23/2014) Filed In Associated Cases: 1:11-md-02262-NRB et al.</p> |
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| | | ***Docketed in all member and related cases pursuant to instructions from Chambers. (mro) Modified on 6/24/2014 (mro). (Entered: 06/23/2014) |
| 07/02/2014 | 571 | NOTICE: Within the next ten days, the Court will issue a communication addressing issues related to the next steps in this litigation and inviting submissions from the parties. Before receiving our communication, counsel are directed not to make any submissions to the Court. (Signed by Judge Naomi Reice Buchwald on 7/2/2014) Filed In Associated Cases: 1:11-md-02262-NRB et al. ***Docketed in all member and related cases pursuant to instructions from Chambers. (mro) (Entered: 07/03/2014) |
| 07/18/2014 | 572 | LETTER addressed to Counsel from Judge Naomi Reice Buchwald dated 7/17/2014 re: The issuance of our June 23, 2014 Memorandum and Order, which defines the contours of the complaints that we have considered to date, requires that we now address the next steps necessary to move this litigation forward. (tn) (Entered: 07/18/2014) |

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| | | 07/18/2014) |
| 08/05/2014 | 574 | LETTER addressed to Judge Naomi Reice Buchwald from William C. Carmody dated 08-05-2014 re: Liaison Counsel. Document filed by City of New Britain Firefighters' and Police Benefit Fund, Mayor and City Council of Baltimore. (Attachments: # 1 Exhibit Claims Spreadsheet)(Carmody, William) (Entered: 08/05/2014) |
| 08/13/2014 | 581 | LETTER addressed to Judge Naomi Reice Buchwald from Harry S. Davis dated August 13, 2014 re: request for a pre-motion conference. Document filed by Tullett Prebon PLC. Filed In Associated Cases: 1:11-md-02262-NRB, 1:13-cv-06013-NRB, 1:13-cv-06014-NRB(Davis, Harry) (Entered: 08/13/2014) |
| 08/13/2014 | 590 | LETTER addressed to Judge Naomi Reice Buchwald from Joel Kurtzberg dated August 13, 2014 re: request leave to file a motion. Document filed by Credit Suisse Group AG. (Kurtzberg, Joel) (Entered: 08/13/2014) |
| 08/13/2014 | 591 | LETTER addressed to Judge Naomi Reice Buchwald from Fraser L. Hunter, Jr. dated August 13, 2014 re: Leave to |

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| | | move to dismiss. Document filed by RBS Citizens, N.A. (f/k/a Citizens Bank of Massachusetts), The Royal Bank of Scotland, Plc. Filed In Associated Cases: 1:11-md-02262-NRB, 1:13-cv-02343-NRB(Hunter, Fraser) (Entered: 08/13/2014) |
| 08/13/2014 | 592 | LETTER MOTION for Conference addressed to Judge Naomi Reice Buchwald from David E. Kovel, Christopher Lovell dated August 13, 2014. Document filed by 303030 Trading, LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH, 303030 Trading LLC, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C) Filed In Associated Cases: 1:11-md-02262-NRB, 1:11-cv-02613-NRB(Kovel, David) (Entered: 08/13/2014) |
| 08/13/2014 | 593 | LETTER addressed to Judge Naomi Reice Buchwald from Robert F. Wise, Jr. dated August 13, 2014 re: Pre-Motion Letters with respect to Claims in the |

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| | | Stayed Actions. Document filed by All Defendants. (Attachments: # 1 Appendix (Claim by Claim Master List of Actions))(Wise, Robert) (Entered: 08/13/2014) |
| 08/13/2014 | 594 | LETTER addressed to Judge Naomi Reice Buchwald from Robert F. Wise, Jr. dated August 13, 2014 re: Defendants' Proposed Motion to Dismiss. Document filed by All Defendants. (Wise, Robert) (Entered: 08/13/2014) |
| 08/13/2014 | 595 | JOINT LETTER addressed to Judge Naomi Reice Buchwald from Counsel for Defendants dated August 13, 2014 re: Plaintiffs' Fraud and Related Claims. Document filed by All Defendants. (Wise, Robert) (Entered: 08/13/2014) |
| 08/13/2014 | 596 | LETTER MOTION for Conference (Pre-Motion) to move to Dismiss Plaintiffs' Claims for Tortious Interference addressed to Judge Naomi Reice Buchwald from Marc J. Gottridge dated August 13, 2014. Document filed by All Defendants. (Wise, Robert) (Entered: 08/13/2014) |
| 08/13/2014 | 597 | LETTER addressed to Judge Naomi Reice Buchwald from Jonathan D. Schiller dated August 13, 2014 re: Dismissal of |

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| | | Plaintiffs' Consumer Protection Claims. Document filed by All Defendants. (Wise, Robert) (Entered: 08/13/2014) |
| 08/13/2014 | 598 | LETTER addressed to Judge Naomi Reice Buchwald from Fraser L. Hunter, Jr. dated August 13, 2014 re: Dismissal of Requests for Injunctive Relief. Document filed by All Defendants. (Wise, Robert) (Entered: 08/13/2014) |
| 08/13/2014 | 599 | LETTER addressed to Judge Naomi Reice Buchwald from Robert F. Wise, Jr. dated August 13, 2014 re: Federal and State Securities Law Claims in Schwab. Document filed by Bank of America Corporation, Bank of America, N.A., Bank of Tokyo-Mitsubishi UFJ Ltd., Barclays Bank PLC, Citibank, N.A., Citigroup, Inc., Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Credit Suisse Group AG, Deutsche Bank AG, HBOS PLC, HSBC Holdings PLC, JP Morgan Chase & Co., JPMorgan Chase Bank, National Association, Lloyds Banking Group PLC, Portigon AG, Royal Bank of Canada, The Norinchukin Bank, The Royal |

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| | | Bank of Scotland Group PLC, UBS AG, WestDeutsche Immobilienbank AG. (Wise, Robert) (Entered: 08/13/2014) |
| 08/13/2014 | 600 | LETTER addressed to Judge Naomi Reice Buchwald from Joel Kurtzberg dated August 13, 2014 re: Defendants' Anticipated Motion to Dismiss for Lack of Jurisdiction. Document filed by Credit Suisse (USA) Inc., Credit Suisse AG, Credit Suisse Group AG, Credit Suisse International, Credit Suisse Securities (USA) LLC. (Wise, Robert) (Entered: 08/13/2014) |
| 08/14/2014 | 601 | LETTER addressed to Judge Naomi Reice Buchwald from Joel Kurtzberg dated August 13, 2014 re: Defendants' Anticipated Motion to Dismiss for Lack of Jurisdiction. Document filed by BBA Enterprises, Ltd., BBA Libor, Ltd, Bank of America Corp., Bank of America, N.A., Barclays Bank PLC, Barclays Capital Inc., Barclays PLC, British Bankers' Association, Chase Bank USA, N.A., Citibank NA, Citigroup Financial Products, Inc., Citigroup Inc., Citiigroup Global Markets Inc., Cooperatieve Centrale Raiffeisen- |

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| | | <p>Boerenleenbank B.A., Credit Agricole, S.A., Credit Suisse (USA) Inc., Credit Suisse AG, Credit Suisse Group AG, Credit Suisse International, Credit Suisse Securities (USA) LLC, Deutsche Bank AG, HBOS PLC, HSBC Bank PLC, HSBC Holding plc, ICAP plc, J.P. Morgan Bank Dublin PLC, JP Morgan Chase & Co., JPMorgan Chase Bank N.A., Lloyds Banking Group PLC, Royal Bank of Canada, Societe Generale, The Bank of Tokyo-Mitsubishi UFJ, Ltd., The Norinchukin Bank, The Royal Bank of Scotland Group plc, The Royal Bank of Scotland plc, UBS AG, UBS Limited, WestDeutsche Immobilienbank AG, The Hongkong and Shanghai Banking Corporation, Ltd., J.P. Morgan Markets Ltd., Lloyds Bank PLC (formerly known as Lloyds TSB Bank PLC), RBC Capital Markets, LLC, Portigon/WestLB AG. (Wise, Robert) (Entered: 08/14/2014)</p> |
| 08/14/2014 | 602 | <p>LETTER MOTION for Conference addressed to Judge Naomi Reice Buchwald from Joel Kurtzberg dated August 13, 2014. Document filed by Credit Suisse International. (Kurtzberg, Joel)</p> |

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| | | (Entered: 08/14/2014) |
| 08/20/2014 | 608 | LETTER addressed to Judge Naomi Reice Buchwald from Kenneth E. Warner dated 08/20/2014 re: Amended Complaint and Defendants' pre-motion letters. Document filed by Federal National Mortgage Association. (Cruse, Samuel) (Entered: 08/20/2014) |
| 08/20/2014 | 609 | LETTER addressed to Judge Naomi Reice Buchwald from David R. Gelfand dated 8/20/2014 re: Response to the Exchange-Based Plaintiffs' ("Plaintiffs") letter dated August 13, 2014 ("August 13 Letter"). Document filed by Coperatieve Centrale Raiffeisen-Boerenleenbank B.A.. (Gelfand, David) (Entered: 08/20/2014) |
| 08/20/2014 | 610 | LETTER addressed to Judge Naomi Reice Buchwald from Richard J. Leverage dated 8/20/14 re: Previously Stayed Non-Class Action Cases. Document filed by The Federal Home Loan Mortgage Corporation, FDIC, as receiver. (Leveridge, Richard) (Entered: 08/20/2014) |
| 08/20/2014 | 611 | RESPONSE re: 592 LETTER MOTION for Conference addressed to Judge |

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| | | Naomi Reice Buchwald from David E. Kovel, Christopher Lovell dated August 13, 2014. . Document filed by HBOS PLC, Lloyds Banking Group PLC, Lloyds TSB Bank PLC. (Gottridge, Marc) (Entered: 08/20/2014) |
| 08/20/2014 | 612 | RESPONSE re: (593 in 1:11-md-02262-NRB) Letter, . Document filed by National Credit Union Administration Board. Filed In Associated Cases: 1:11-md-02262-NRB, 1:13-cv-07394-NRB(Shen, Andrew) (Entered: 08/20/2014) |
| 08/20/2014 | 613 | LETTER addressed to Judge Naomi Reice Buchwald from Stacey Slaughter dated August 20, 2014 re: Principal Plaintiffs' response to Defendants' August 13, 2014 pre motion letters. Document filed by PFI Bond & Mortgage Securities Fund, PFI Bond Market Index Fund, PFI Core Plus Bond I Fund, PFI Diversified Real Asset Fund, PFI Equity Income Fund, PFI Global Diversified Income Fund, PFI Government & High Quality Bond Fund, PFI High Yield Fund, PFI High Yield Fund I, PFI Income Fund, PFI Inflation Protection Fund, PFI Money |

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| | | <p>Market Fund, PFI Preferred Securities Fund, PFI Short-Term Income Fund, PVC Asset Allocation Account, PVC Balanced Account, PVC Bond & Mortgage Securities Account, PVC Equity Income Account, PVC Government & High Quality Bond Account, PVC Income Account, PVC Money Market Account, PVC Short-Term Income Account, Principal Capital Interest Only I, LLC, Principal Commercial Funding II, LLC, Principal Commercial Funding, LLC, Principal Financial Group, Inc., Principal Financial Services, Inc., Principal Funds, Inc., Principal Life Insurance Company, Principal Real Estate Investors, LLC, Principal Variable Contracts Funds, Inc.. (Slaughter, Stacey) (Entered: 08/20/2014)</p> |
| 08/20/2014 | 614 | <p>LETTER addressed to Judge Naomi Reice Buchwald from David Preminger dated August 20, 2014 re: Defendants' Motions to Dismiss. Document filed by Triaxx Prime CDO 2006-1 ltd., Triaxx Prime CDO 2006-2 Ltd., Triaxx Prime CDO 2007-1 Ltd.. (Preminger, David) (Entered: 08/20/2014)</p> |

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| 08/20/2014 | 615 | LETTER addressed to Judge Naomi Reice Buchwald from Richard J. Leveridge dated 8/20/2014 re: responses to Defendants' pre-motion letters [Dkt. Nos. 581, 589, 594, 595, 596, 600, 601, 602].. Document filed by The Federal Home Loan Mortgage Corporation, The Federal Deposit Insurance Corporation as Receiver, Direct Action Plaintiff. (Leveridge, Richard) (Entered: 08/20/2014) |
| 08/20/2014 | 616 | LETTER addressed to Judge Naomi Reice Buchwald from Richard J. Leveridge dated 8/20/2014 re: Response to Defendants' pre-motion letter regarding antitrust issues [Dkt. No. 594]. Document filed by The Federal Deposit Insurance Corporation as Receiver, The Federal Home Loan Mortgage Corporation. (Leveridge, Richard) (Entered: 08/20/2014) |
| 08/20/2014 | 617 | LETTER addressed to Judge Naomi Reice Buchwald from Richard J. Leveridge dated 8/20/2014 re: Response to Defendants' pre-motion letter regarding state law issues [Dkt. Nos. 589, 594, 595, 596, 602]. |

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| | | Document filed by The Federal Deposit Insurance Corporation as Receiver, The Federal Home Loan Mortgage Corporation. (Leveridge, Richard) (Entered: 08/20/2014) |
| 08/20/2014 | 618 | LETTER addressed to Judge Naomi Reice Buchwald from Richard J. Leveridge dated 8/20/2014 re: Response to Defendants' pre-motion letters regarding personal jurisdiction [Dkt. Nos. 581, 600, 601]. Document filed by Direct Action Plaintiffs. (Leveridge, Richard) (Entered: 08/20/2014) |
| 08/20/2014 | 619 | LETTER addressed to Judge Naomi Reice Buchwald from Steven Fineman dated August 20, 2014 re: Response to Defendants' August 13, 2014 Letters Regarding Their Anticipated Motions to Dismiss. Document filed by Bay Area Toll Authority, Charles Schwab & Co., Inc., Charles Schwab Bank, N.A., Charles Schwab Corporation, Schwab Advisor Cash Reserves, Schwab Cash Reserves, Schwab Investor Money Fund, Schwab Money Market Fund, Schwab Retirement Advantage Money Fund, Schwab Short-Term Bond |

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| | | Market Fund, Schwab Total Bond Market Fund, Schwab U.S. Dollar Liquid Assets Fund, Schwab Value Advantage Money Fund, Schwab Yieldplus Fund, Schwab Yieldplus Fund Liquidation Trust. Filed In Associated Cases: 1:11-md-02262-NRB, 1:13-cv-07005-NRB, 1:14-cv-03094-NRB(Fineman, Steven) (Entered: 08/20/2014) |
| 08/20/2014 | 620 | LETTER addressed to Judge Naomi Reice Buchwald from David E. Kovel dated August 20, 2014 re: Response to Defendants' Pre-Motion Letters Regarding Personal Jurisdiction [Dkt. Nos. 600, 601]. Document filed by 303030 Trading, LLC, Atlantic Trading USA, LLC, FTC Futures Fund PCC Ltd, FTC Futures Fund SICAV, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH, 303030 Trading LLC, Gary Francis, Nathaniel Haynes, Metzler Investment GmbH. Filed In Associated Cases: 1:11-md-02262-NRB, 1:11-cv-02613-NRB(Kovel, David) (Entered: 08/20/2014) |
| 08/20/2014 | 621 | LETTER addressed to Judge Naomi Reice Buchwald from Daniel L. Brockett dated August |

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| | | 20, 2014 re: Defendants' Pre-Motion Letters with respect to Claims in the Stayed Actions.. Document filed by The City of Philadelphia, The Pennsylvania Intergovernmental Cooperation Authority. (Brockett, Daniel) (Entered: 08/20/2014) |
| 08/20/2014 | 622 | LETTER addressed to Judge Naomi Reice Buchwald from Alexander Barnett dated 8/20/2014 re: Filed pursuant to the Court's letter of July 17, 2014 (Docket No. 572) and in response to the letters of Defendants filed on August 13, 2014. (Docket Nos. 593-598). Document filed by City of Richmond, City of Riverside, County of Sacramento, County of San Diego, County of San Mateo, County of Sonoma, East Bay Municipal Utility District, San Diego Association of Governments, San Mateo County Joint Powers Financing Authority, Successor Agency to the Richmond Community Redevelopment Agency, David E. Sundstrom, The Regents of the University of California, The Richmond Joint Powers Financing Authority, The Riverside Public Financing Authority, County of Mendocino, |

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| | | City of Houston. (Barnett, Alexander) (Entered: 08/20/2014) |
| 08/20/2014 | 623 | LETTER addressed to Judge Naomi Reice Buchwald from Daniel L. Brockett dated August 20, 2014 re: Defendants' Pre-Motion Letters with respect to Claims in the Stayed Actions. Document filed by Darby Financial Products. (Brockett, Daniel) (Entered: 08/20/2014) |
| 08/20/2014 | 624 | LETTER addressed to Judge Naomi Reice Buchwald from Daniel L. Brockett dated August 20, 2014 re: Defendants' Pre-Motion Letters with respect to Claims in the Stayed Actions. Document filed by PRUDENTIAL CORE TAXABLE MONEY MARKET FUND, PRUDENTIAL INVESTMENT PORTFOLIOS 2. (Brockett, Daniel) (Entered: 08/20/2014) |
| 08/20/2014 | 625 | LETTER addressed to Judge Naomi Reice Buchwald from Daniel L. Brockett dated August 20, 2014 re: Defendants' Pre-Motion Letters with respect to Claims in the Stayed Actions. Document filed by Salix Capital US Inc.. (Brockett, Daniel) (Entered: 08/20/2014) |

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| 08/20/2014 | 626 | LETTER addressed to Judge Naomi Reice Buchwald from William Carmody dated 8/20/2014 re: Defendants August 13, 2014 Pre-Motion Letters Regarding the Previously Stayed Class Cases. Document filed by City of New Britain Firefighters' and Police Benefit Fund, Mayor and City Council of Baltimore. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Carmody, William) (Entered: 08/20/2014) |
| 08/20/2014 | 627 | LETTER addressed to Judge Naomi Reice Buchwald from William Carmody dated 8/20/2014 re: Defendants August 13, 2014 Pre-Motion Letters Regarding the OTC Case and Request to Amend to Add Parties. Document filed by City of New Britain Firefighters' and Police Benefit Fund, Mayor and City Council of Baltimore. (Attachments: # 1 Proposed LIBOR Third Consolidated Amended Complaint Part 1, # 2 Proposed LIBOR Third Consolidated Amended Complaint Part 2, # 3 Proposed LIBOR Third Consolidated Amended Complaint Part 3)(Carmody, William) (Entered: 08/20/2014) |

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**[Notice of Appeal. CA2 Docket No. 1;
Sept. 17, 2013]**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE LIBOR-BASED FINANCIAL
INSTRUMENTS ANTITRUST
LITIGATION

THIS DOCUMENT RELATES TO:
Case No. 12 CV 1025 (NRB)

ELLEN GELBOIM and LINDA
ZACHER, individually for themselves
and on behalf of all others similarly
situated,

Plaintiffs

-against-

CREDIT SUISSE GROUP AG, BANK
OF AMERICA CORPORATION,
BANK OF AMERICA, N.A., JP
MORGAN CHASE & CO.,
JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION, HSBC
HOLDINGS PLC, HSBC BANK PLC,
BARCLAYS BANK PLC, LLOYDS
BANKING GROUP PLC, WESTLB
AG, WESTDEUTSCHE
IMMOBILIENBANK AG, UBS AG,

MDL No. 2262

Master Case
11-md-2262
(NRB)

ECF Case

**NOTICE OF
APPEAL**

THE ROYAL BANK OF SCOTLAND
GROUP PLC, DEUTSCHE BANK
AG, CITIBANK NA, CITIGROUP
INC., COÖPERATIEVE CENTRALE
RAIFFEISEN-BOERENLEENBANK
B.A., THE NORINCHUKIN BANK,
THE BANK OF TOKYO-
MITSUBISHI UFJ, LTD., and
ROYAL BANK OF CANADA,

Defendants

Notice is hereby given that Ellen Gelboim and Linda Zacher, plaintiffs in the above named action (“Bondholder Plaintiffs”), individually and on behalf of all others similarly situated, hereby appeal to the United States Court of Appeals for the Second Circuit from: (1) the March 29, 2013 Memorandum and Order dismissing all claims for relief asserted by Bondholder Plaintiffs, (2) each and every part of the final judgment¹ associated with the dismissal of all claims for relief asserted by Bondholder Plaintiffs, (3) all orders subsumed within said final judgment, and, (4) without limitation, (a) the August 23, 2013 Memorandum and Order denying Bondholder

¹ Bondholder Plaintiffs believe that such final judgment was entered on or about August 26, 2013 by operation of Federal Rule of Civil Procedure 58(c)(2)(B). Bondholder Plaintiffs hereby state their intention that this Notice of Appeal includes, without limitation, each and every part of the final judgment associated with the Court’s dismissal of all claims for relief asserted by Bondholder Plaintiffs in the above-captioned proceedings, regardless of the manner and date of entry of judgment.

Plaintiffs' motion for leave to amend their complaint, and (b) the August 10, 2012 Order foreclosing Bondholder Plaintiffs' earlier proposed motion for leave to amend.

Dated: September 17, 2013

**[First Amended Class Action Complaint.
MDL Docket No. 144; Apr. 30, 2012]**
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE LIBOR-BASED FINANCIAL
INSTRUMENTS ANTITRUST
LITIGATION

MDL No. 2262

THIS DOCUMENT RELATES TO:
Case No. 12 CV 1025 (NRB)

ELLEN GELBOIM and LINDA
ZACHER, individually for themselves
and on behalf of all others similarly
situated,

Plaintiffs

-against-

CREDIT SUISSE GROUP AG, BANK
OF AMERICA CORPORATION,
BANK OF AMERICA, N.A., JP
MORGAN CHASE & CO.,
JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION, HSBC
HOLDINGS PLC, HSBC BANK PLC,
BARCLAYS BANK PLC, LLOYDS
BANKING GROUP PLC, WESTLB
AG, WESTDEUTSCHE
IMMOBILIENBANK AG, UBS AG,

**FIRST
AMENDED
CLASS
ACTION
COMPLAINT**

**JURY TRIAL
DEMANDED**

ECF Case

THE ROYAL BANK OF SCOTLAND
GROUP PLC, DEUTSCHE BANK
AG, CITIBANK NA, CITIGROUP
INC., COÖPERATIEVE CENTRALE
RAIFFEISEN-BOERENLEENBANK
B.A., THE NORINCHUKIN BANK,
THE BANK OF TOKYO-
MITSUBISHI UFJ, LTD., and
ROYAL BANK OF CANADA,

Defendants

1. Plaintiffs Ellen Gelboim and Linda Zacher (“Plaintiffs”), by their undersigned attorneys, bring this action against Defendants based on the Defendants’ conspiracy to manipulate the London Interbank Offered Rate (“Libor”) in violation of the Sherman Act, 15 U.S.C. § 1. Plaintiffs bring this action for themselves and on behalf of all others who owned (including beneficially in “street name”) any U.S. dollar-denominated debt security (a) that was assigned a unique identification number by the CUSIP¹ system; (b) on which interest was payable at any time between August 2007 and May 2010 (the “Class Period”); and (c) where that interest was payable at a rate expressly linked to the U.S. Dollar Libor rate (“US\$ LIBOR” or simply “LIBOR”²). These debt securities are collectively referred to herein as the

¹ “CUSIP” stands for Committee on Uniform Securities Identification Procedures.

² As used herein, “US\$ LIBOR” or “LIBOR” refers to the U.S. Dollar Libor rate, whereas “Libor” refers to all Libor rates, generally.

“Relevant LIBOR-Based Debt Securities.” Excluded from “Relevant LIBOR-Based Debt Securities” and the Class are debt securities issued by any Defendant as obligor.

2. Plaintiffs’ claims are made on information and belief (except as to allegations specifically pertaining to themselves and their own actions, which are made on personal knowledge) based on the investigation conducted by and under the supervision of Plaintiffs’ counsel. That investigation included reviewing and analyzing information concerning Defendants and LIBOR, which Plaintiffs (through their counsel) obtained from, among other sources: (i) analyses by consulting experts engaged by plaintiffs in these coordinated proceedings; (ii) publicly available press releases, news articles, and other media reports (whether disseminated in print or by electronic media); (iii) filings Defendants made to the United States Securities and Exchange Commission (“SEC”); (iv) court documents submitted in Libor-related proceedings in Canada, Singapore, and Japan; and (v) scholarly literature concerning the potential manipulation of LIBOR during the Class Period. Those sources collectively support Plaintiffs’ allegations that Defendants collusively and systematically suppressed LIBOR during the Class Period, so that the interest rates on Relevant LIBOR-Based Debt Securities purchased during the Class Period were lower than they otherwise would have been absent Defendants’ misconduct.

3. Except as alleged in this Complaint, neither Plaintiffs, other Class members, nor other members of the public have access to the underlying facts relating to Defendants’ improper activities.

Rather, that information lies exclusively within the possession and control of Defendants and other insiders, which prevents Plaintiffs from further detailing Defendants' misconduct. Moreover, numerous pending government investigations—both domestically and abroad, including by the United States Department of Justice (“DOJ”), the Commodity Futures Trading Commission (“CFTC”), and the SEC—concerning potential LIBOR manipulation could yield information from Defendants' internal records or personnel that bears significantly on the Plaintiffs' claims. Indeed, as one news report observed in detailing U.S. regulators' ongoing investigation, “[i]nternal bank emails may prove to be key evidence . . . because of the difficulty in proving that banks reported borrowing costs for Libor at one rate and obtained funding at another.”³ Plaintiffs thus believe further evidentiary support for their allegations will come to light after a reasonable opportunity for discovery.

SUMMARY OF THE CLAIM

4. This case arises from the manipulation of LIBOR for the U.S. dollar⁴—the reference point for determining interest rates for trillions of dollars in financial instruments—by a cadre of prominent

³ David Enrich, Carrick Mollenkamp & Jean Eaglesham, “U.S. Libor Probe Includes BofA, Citi, UBS,” *MarketWatch*, March 17, 2011.

⁴ While the term “LIBOR” generally encompasses rates with respect to numerous currencies (which are separately referred to as, for example, US\$ LIBOR or Yen-LIBOR), for convenience Plaintiffs use the term “LIBOR” to refer to US\$ LIBOR.

financial institutions. Defendants perpetrated a scheme to depress LIBOR for two primary reasons. First, well aware that the interest rate a bank pays (or expects to pay) on its debt is widely, if not universally, viewed as embodying the market's assessment of the risk associated with the bank, Defendants understated their borrowing costs to the BBA (thereby suppressing LIBOR) to portray themselves as economically healthier than they actually were—of particular importance given investors' trepidation in light of the widespread market turmoil of the past few years. Indeed, in an April 10, 2008 report, analysts at Citigroup Global Markets Inc. (a subsidiary of Defendant Citigroup) posited the "liquidity crisis" had "created a situation where LIBOR at times no longer represents the level at which banks extend loans to others"; specifically, the analysts concluded LIBOR "may understate actual interbank lending costs by 20-30bp [basis points]."⁵ Second, artificially suppressing LIBOR allowed Defendants to pay lower interest rates on LIBOR-based financial instruments that Defendants sold to investors during the Class Period.

5. Each business day, Thomson Reuters calculates LIBOR—a set of reference or benchmark interest rates priced to different ranges of maturity, from overnight to one year—on behalf of the British Bankers' Association ("BBA"), which first began setting LIBOR on January 1, 1986. As the BBA itself has acknowledged, it is not a regulatory body and has

⁵ Scott Peng, Chintan (Monty) Gandhi, & Alexander Tyo, "Special Topic: Is LIBOR Broken?", April 10, 2008 (published by Citigroup Global Markets Inc.)

no regulatory function.⁶ Its activities are not overseen by any U.K. or foreign regulatory agency. It is governed by a board of member banks that meets four times each year. The board is composed of senior executives from twelve banks, including Barclays Bank plc, Citibank NA, Credit Suisse, Deutsche Bank AG, HSBC Bank plc, J.P. Morgan Europe Ltd., and the Royal Bank of Scotland plc.⁷

6. Each of the ten currencies for which daily Libor are reported is overseen by a separate LIBOR panel created by the BBA. During the Class Period, designated contributing panels ranged in size from eight banks for Australian dollar, Swedish krona, Danish krone, and New Zealand dollar panels to sixteen banks for U.S. dollar, pound sterling, Euro, and Japanese yen panels. There is substantial overlap in membership among the panels. For example, during the Class Period, nine of the sixteen banks that served on the U.S. dollar panel also served on the Japanese yen, Swiss franc and Euro LIBOR panels.⁸ Similarly, thirteen banks participated on both the dollar and yen LIBOR panels⁹ and eleven banks participated on both

⁶ <http://www.bba.org.uk/blog/article/bba-repeats-commitment-to-bba-libor>, last accessed on April 30, 2012

⁷ <http://www.bba.org.uk/about-us>, last accessed on April 30, 2012.

⁸ Those banks are Bank of Tokyo, Barclays, Citibank, Deutsche Bank, HSBC, JP Morgan, Lloyds, Rabobank, RBS, and UBS.

⁹ Those banks are Bank of America, Bank of Tokyo, Barclays, Citibank, Deutsche Bank, HSBC, JP Morgan, Lloyds, Rabobank, RBS, Société Générale (beginning in 2009), UBS, and West.

the U.S. dollar and Swiss franc LIBOR panels.¹⁰

7. During most of the Class Period, the BBA calculated LIBOR based on the rates the 16 banks who sat on the US\$ LIBOR panel (“Panel Banks”) reported as their costs of borrowing.¹¹ Every day, the banks responded to the BBA’s question: “At what rate could you borrow funds, were you to do so by asking for and then accepting inter-bank offers in a reasonable market size just prior to 11 am?”¹² On its website, the

¹⁰ Those banks are Bank of Tokyo, Barclays, Citibank, Credit Suisse, Deutsche, Bank HSBC, JP Morgan, Lloyds, Rabobank, RBS, and UBS.

¹¹ On February 9, 2009, Société Générale replaced Defendant HBOS on the BBA’s US\$ LIBOR panel. In February 2011, in response to concerns about possible LIBOR manipulation, the BBA added four more banks to the panel. On August 1, 2011, Defendant West, at its request, was removed from the panel. As of December 2011, the US\$ LIBOR panel consisted of 18 banks.

¹² The composition of the LIBOR panel is intended to reflect the constituency of the London interbank money market for U.S. Dollars. The LIBOR definition is amplified as follows:

- a. The rate at which each bank submits must be formed from that bank’s perception of its cost of unsecured funds in the London interbank market. This will be based on the cost of funds not covered by any governmental guarantee scheme.
- b. Contributions must represent rates at which a bank would be offered funds in the London interbank market.
- c. Contributions must be for the specific currency concerned and not the cost of producing the currency by borrowing in a different currency and obtaining the required currency via the foreign exchange markets.
- d. The rates must be submitted by members of staff at a bank with primary responsibility for management of a bank’s cash, rather than a bank’s derivative book.

BBA explains “a bank will know what its credit and liquidity risk profile is from rates at which it has dealt and can construct a curve to predict accurately the correct rate for currencies or maturities in which it has not been active.” The banks informed the BBA of their costs of borrowing funds at different maturity dates (e.g., one month, three months, six months). The BBA discarded the upper four and lower four quotes and set LIBOR by calculating the mean value of the remaining middle eight quotes, known as an “inter-quartile” methodology. Thomson Reuters then published LIBOR, also reporting the quotes on which the BBA based its LIBOR calculation.

8. LIBOR is “the primary benchmark for short term interest rates globally,”¹³ and has occupied (and continues to occupy) a crucial role in the operation of financial markets. For example, market participants commonly set the interest rate on floating-rate notes as a spread against LIBOR (e.g., “LIBOR + [X] bps”)¹⁴ and use LIBOR as a basis to determine the correct rate of return on short-term fixed-rate notes (by comparing the offered rate to LIBOR). Additionally, the pricing and settlement of Eurodollar futures and options—the most actively traded interest-rate futures contracts on the Chicago

e. The definition of “funds” is: unsecured interbank cash or cash raised through primary issuance of interbank Certificates of Deposit.

¹³ <http://www.bbalibor.com/bbalibor-explained/the-basics>, last accessed on April 19, 2012.

¹⁴ The term “bps” stands for basis points. 100 basis points equal 1%.

Mercantile Exchange—are based on the three-month LIBOR. LIBOR thus affects the pricing of trillions of dollars' worth of financial transactions, rendering it, in the BBA's own words, "the world's most important number."¹⁵

9. Accordingly, it is well-established among market participants that, as *The Wall Street Journal* has observed, confidence in LIBOR "matters, because the rate system plays a vital role in the economy."¹⁶ Moreover, given the vast universe of financial instruments LIBOR impacts, "even a small manipulation" of the rate "could potentially distort capital allocations all over the world."¹⁷

10. Throughout the Class Period, Defendants betrayed investors' confidence in LIBOR, as these financial institutions conspired to, and did, manipulate LIBOR by underreporting to the BBA the actual interest rates at which the Defendants expected they could borrow funds—i.e., their true costs of borrowing—on a daily basis. The BBA then relied on

¹⁵ BBA press release, "BBA LIBOR: the world's most important number now tweets daily," May 21, 2009, available at <http://www.bbalibor.com/news-releases/bba-libor-the-worlds-most-important-number-now-tweets-daily>, last accessed on April 28, 2012.

¹⁶ Carrick Mollenkamp and Mark Whitehouse, "Study Casts Doubt on Key Rate --- WSJ Analysis Suggests Banks May Have Reported Flawed Interest Data for Libor," *The Wall Street Journal*, May 29, 2008.

¹⁷ Rosa M. Abrantes-Metz and Albert D. Metz, "How Far Can Screens Go in Distinguishing Explicit from Tacit Collusion? New Evidence from the Libor Setting," *CPI Antitrust Chronicle*, March 2012.

the false information Defendants provided to set LIBOR. By acting together and in concert to knowingly understate their true borrowing costs, Defendants caused LIBOR to be set artificially low.

11. Defendants' manipulation of LIBOR allowed them to pay unduly low interest rates to lenders on LIBOR-based financial instruments outstanding during the Class Period. Investors—who until recently had no reason to suspect Defendants' knowing suppression of LIBOR—justifiably believed the financial instruments they were purchasing derived from a rate that was based on US\$ LIBOR panel members' honest and reasonable assessments of their borrowing costs. To the contrary, Defendants—in the debt-instrument context, the borrowers—surreptitiously bilked investors—the lenders—of their rightful rates of return on their investments, reaping hundreds of millions, if not billions, of dollars in ill-gotten gains. Moreover, by understating their true borrowing costs, Defendants provided a false or misleading impression of their financial strength to investors and the rest of the market.

12. During the Class Period, Plaintiffs and Class members owned in excess of \$500 billion of LIBOR-based instruments, which paid artificially low returns due to Defendants' suppression of LIBOR.

13. Plaintiffs now seek relief for the damages they and Class members have suffered as a result of Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

14. Plaintiffs and the members of the Class suffered damages by, *inter alia*, receiving manipulated and artificially depressed amounts of interest on

Relevant LIBOR-Based Debt Securities they owned during the Class Period.

PARTIES

A. PLAINTIFFS

15. Plaintiff Ellen Gelboim (“Gelboim”), a resident of New York, New York, is the sole beneficiary of her Individual Retirement Account that during the Class Period owned a CUSIP number-bearing Relevant LIBOR-Based Debt Security issued by General Electric Capital Corporation and received artificially depressed amounts of interest on the security as the result of Defendants’ unlawful conduct.

16. Plaintiff Linda Zacher, a resident of Bryn Mawr, Pennsylvania, is the sole beneficiary of her late husband’s Individual Retirement Account that during the Class Period owned a CUSIP number-bearing Relevant LIBOR-Based Debt Security issued by the State of Israel and received artificially depressed amounts of interest on the security as the result of Defendants’ unlawful conduct.

B. DEFENDANTS

17. Defendant Bank of America Corporation is a Delaware corporation headquartered in Charlotte, North Carolina. Defendant Bank of America, N.A. is a federally chartered national banking association headquartered in Charlotte, North Carolina and an indirect, wholly owned subsidiary of Defendant Bank of America Corporation. Defendant Bank of America Corporation and Bank of America, N.A. are hereinafter referred to collectively as “Bank of America.” At all relevant times, Bank of America was a Panel Bank.

18. Defendant Barclays Bank plc (“Barclays”) is a United Kingdom public limited company headquartered in London, England. At all relevant times, Barclays was a Panel Bank.

19. Defendant Citigroup Inc. is a Delaware corporation headquartered in New York, New York. Defendant Citibank NA is a federally chartered national banking association headquartered in New York, New York and a wholly owned subsidiary of Defendant Citigroup Inc. Defendant Citigroup Inc. and Defendant Citibank NA are hereinafter referred to collectively as “Citibank.” At all relevant times, Citibank was a Panel Bank.

20. Defendant Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (“Rabobank”) is a financial services provider with its headquarters in Utrecht, the Netherlands. At all relevant times, Rabobank was a Panel Bank.

21. Defendant Credit Suisse Group AG (“Credit Suisse”) is a Swiss company headquartered in offices in Zurich, Switzerland. At all relevant times, Credit Suisse was a Panel Bank.

22. Defendant Deutsche Bank AG (“Deutsche Bank”) is a German financial services company headquartered in Frankfurt, Germany. At all relevant times, Deutsche Bank was a Panel Bank.

23. Defendant HSBC Holdings plc is a United Kingdom public limited company headquartered in London, England. Defendant HSBC Bank plc is a United Kingdom public limited company headquartered in London, England and a wholly owned subsidiary of Defendant HSBC Holdings plc. Defendant HSBC Holdings plc and Defendant HSBC

Bank plc are hereinafter referred to collectively as “HSBC.” At all relevant times, HSBC was a Panel Bank.

24. Defendant JPMorgan Chase & Co. is a Delaware corporation headquartered in New York, New York. Defendant JPMorgan Chase Bank, National Association, is a federally chartered national banking association headquartered in New York, New York and a wholly owned subsidiary of Defendant J.P. Morgan Chase & Co. Defendant JPMorgan Chase & Co. and Defendant JPMorgan Chase Bank, National Association are hereinafter referred to collectively as “JPMorgan.” At all relevant times, JPMorgan was a Panel Bank.

25. Defendant Lloyds Banking Group plc (“Lloyds”) is a United Kingdom public limited company headquartered in London, England. Lloyds was formed in 2009 through the acquisition of HBOS plc (“HBOS”) by Lloyds TSB Bank plc (“Lloyds TSB”). At all relevant times, HBOS, Lloyds TSB, or Lloyds was a Panel Bank.

26. Defendant Royal Bank of Canada (“RBC”) is the largest financial institution in Canada, and is headquartered in Toronto, Canada. At all relevant times, RBC was a Panel Bank.

27. Defendant The Bank of Tokyo-Mitsubishi UFJ, Ltd. (“Bank of Tokyo”) is a Japanese subsidiary of Mitsubishi UFJ Financial Group, Inc., and is headquartered in Tokyo, Japan. At all relevant times, Bank of Tokyo was a Panel Bank.

28. Defendant The Norinchukin Bank (“Norinchukin”) is a Japanese cooperative bank headquartered in Tokyo, Japan. At all relevant times,

Norinchukin was a Panel Bank.

29. Defendant The Royal Bank of Scotland Group plc (“RBS”) is a United Kingdom public limited company headquartered in Edinburgh, Scotland. At all relevant times, RBS was a Panel Bank.

30. Defendant UBS, AG (“UBS”) is a Swiss company based in Basel and Zurich, Switzerland. At all relevant times, UBS was a Panel Bank.

31. Defendant WestLB AG is a German joint stock company headquartered in Dusseldorf, Germany. Defendant Westdeutsche ImmobilienBank AG is a German company headquartered in Mainz and wholly owned subsidiary of WestLB AG. Defendant WestLB AG and Defendant Westdeutsche ImmobilienBank AG are hereinafter referred to collectively as “West.” At all relevant times, West was a Panel Bank.

32. Various other entities and individuals not named as defendants in this Complaint participated as co-conspirators in the acts complained of, and performed acts and made statements which were in furtherance of the unlawful conduct alleged herein.

JURISDICTION AND VENUE

33. This action arises under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and Section 4 of the Clayton Act, 15 U.S.C. § 15.

34. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337 and Section 4 of the Clayton Act.

35. Venue is proper in the Southern District of New York pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b), (c), and (d). One or more of the Defendants reside, transact

business, are found, or have agents in the District, a substantial part of the events giving rise to Plaintiff's claims arose in the District, and a substantial portion of affected interstate trade and commerce described herein has been carried out in this District.

SUBSTANTIVE ALLEGATIONS

A. EURODOLLAR ANALYSIS SUPPORTS COLLUSION DURING THE CLASS PERIOD.

36. As demonstrated by the work of an independent consulting expert retained by counsel in these actions, analysis of the Eurodollar market strongly supports that the Defendants suppressed their LIBOR quotes and colluded to suppress reported LIBOR rates. Moreover, this analysis further supports that Defendants colluded to control the amount of suppression over the Class Period.

37. The U.S. Federal Reserve prepares and publishes Eurodollar deposit rates for banks (the "Federal Reserve Eurodollar Deposit Rate"). These Eurodollar deposit rates are analogous to LIBOR in that they reflect the rates at which banks in the London Eurodollar money market lend U.S. dollars to one another, just as LIBOR is intended to reflect rates at which panel banks in the London interbank market lend U.S. dollars to one another. The Federal Reserve obtains its data from Bloomberg and the ICAP brokerage company.¹⁸ Bloomberg Eurodollar deposit rate is similar to BBA's LIBOR except that the

¹⁸ See <http://federalreserve.gov/releases/h15/data.htm>, footnote 8. Last visited on April 23, 2012.

sampling is not limited to the 16 banks chosen by BBA. ICAP is a large broker-dealer in London in Eurodollar deposits.¹⁹ ICAP surveys its client banks and updates its Eurodollar deposit rates about 9:30 AM each morning.

38. While the Defendants could have access to the ICAP Eurodollar deposit rates prior to submitting their individual LIBOR quotes at 11:00 each day, they would not — absent collusion — have access to other bank LIBOR quotes, which are confidential until submitted. Thus, even within the context of a suppressed LIBOR, absent collusion, individual panel banks would not know what quote other panel banks intended to submit relative to the Federal Reserve Eurodollar Deposit Rate.

39. The consulting expert determined that because of the nature of the relationship between the Federal Reserve Eurodollar Deposit Rate and LIBOR (detailed below), it would be unusual even for one bank to submit a LIBOR bid below the Federal Reserve Eurodollar Deposit Rate. For all Defendants to submit bids below the Federal Reserve Eurodollar Deposit Rate would be extremely unusual, and strongly

¹⁹ 'ICAP is the world's leading voice and electronic interdealer broker and the source of global market information and commentary for professionals in the international financial markets. The Group is active in the wholesale markets in interest rates, credit, commodities, foreign exchange and equity derivatives. ICAP has an average daily transaction volume in excess of \$1.5 trillion, more than 60% of which is electronic. ICAP plc was added to the FTSE 100 Index on 30 June 2006. For more information go to www.icap.com.'

supports evidence of collusion among the banks.

40. Economic and statistical analysis strongly supports the use of the Federal Reserve Eurodollar Deposit rate as a benchmark for measuring the validity of LIBOR as reported by the panel banks. To measure how well the Federal Reserve Eurodollar Deposit Rate and LIBOR move together, for the purposes of this analysis, the difference between the two rates, the “Spread,” is calculated as follows: $\text{Spread} = \text{BBA LIBOR} - \text{Federal Reserve Eurodollar Deposit Rate}$.

41. Since both LIBOR and the Federal Reserve Eurodollar Deposit Rate measure the lending cost to banks of Eurodollar deposits, important market and financial fundamentals, such as day-to-day changes in monetary policy, market risk and interest rates, as well as risk factors facing the banks generally (collectively “Market Fundamentals”), should be reflected similarly on both variables, and therefore should not affect the Spread. The BBA’s LIBOR panel is intended to reflect the Eurodollar deposit market in London. By focusing on the Spread, the model therefore should be able to factor out normal and expected co-movements in banks’ LIBOR quotes that arise from changes in Market Fundamentals.

42. To analyze how well the Federal Reserve Eurodollar Deposit Rate captures changes in Market Fundamentals and absorbs variations in LIBOR that are driven by such fundamentals, consulting experts used regression analysis to measure the day-to-day changes in the Spread against changes in the T-Bill rate and the commercial paper rate. The evidence from these regressions strongly supports that day-to-

day changes in the Federal Reserve Eurodollar Deposit Rate effectively capture day-to-day movements in LIBOR caused by Market Fundamentals. Thus, once the Federal Reserve Eurodollar Deposit Rate is subtracted to arrive at the Spread, remaining movements in LIBOR reflected in the Spread would be unrelated to movements in Market Fundamentals.

43. Because Market Fundamentals are fully captured by the Spread, absent manipulation, the Spread should always be zero or close to zero. Thus, as more fully discussed below, negative Spreads provide a strong basis to conclude that the Defendants suppressed and colluded to artificially suppress LIBOR.²⁰

44. Figures 1 and 2 show the relationship between LIBOR, the Federal Reserve Eurodollar Deposit Rate, and the Spread beginning in 2000 and ending in mid 2012. As can be seen, between January 5, 2000 and around August 7, 2007, Federal Reserve's Eurodollar Deposit Rate tracked LIBOR very closely and the Spread remained positive and very close to zero. This finding indicates that the Spread effectively captures shared risks of the banks sampled by BBA and by Bloomberg and ICAP. The validity of this finding is bolstered by the fact that the Spread

²⁰ It is important to note that to the extent panel banks submitting LIBOR quotes submit suppressed rates to the BBA, and these suppressed rates are also considered by Bloomberg or ICAP, then the resultant Federal Reserve Eurodollar Deposit rate would also be understated by the same suppression. Consequently, the Spread computed above could even understate the true magnitude of the suppression.

remained very close to zero in the face of multiple major financial dislocations, including the bursting of the dot-com bubble in 2000, the terrorist attacks of September 2001, and the 2001 U.S. economic recession. Likewise, the unusual downward movements in the Spread starting in August 2007 strongly evidences that LIBOR was being manipulated and suppressed during this period.²¹

[FIGURE 1 OMITTED]

[FIGURE 2 OMITTED]

45. Figure 3 shows the Spread between 3-month maturity BBA LIBOR and the Federal Reserve Eurodollar Deposit rate (3-month maturity BBA LIBOR – Federal Reserve Eurodollar Deposit rate), from January 2006 through early April 2012.

[FIGURE 3 OMITTED]

46. The shorter period between January 3, 2006 and August 7, 2007 demonstrated above contains 393 trading days. In this sub-period, there were only 3 days when the Spread was negative. Furthermore, the magnitude of these negative Spreads were also very

²¹ The Spread only became consistently positive around the end of October 2011, just after the European Commission raided banks in connection with LIBOR.

small, equaling -0.9 basis point on June 14, 2006, -0.5 basis point on July 27, 2006 and -0.2 basis point on November 2, 2006.²² This finding again strongly supports that the Federal Reserve Eurodollar Deposit Rate serves as a good benchmark to control for Market Fundamentals that determine LIBOR. The average magnitude of the Spread during this period equaled less than one basis point. This finding also strongly supports that the risks of the banks sampled by BBA and Bloomberg and ICAP were similar.

47. By August 2007, however, the Spread began to move into negative territory. During the early part of August 2007, the Federal Reserve Eurodollar Deposit Rate stayed around 5.36%. On August 8, the Federal Reserve Eurodollar Deposit Rate increased by 5 basis points to 5.41%, while BBA LIBOR did not keep pace. The Spread turned negative 3 basis points on August 8, 2007. The Spread remained mostly negative after August 7 so that by August 15, 2007, the trailing 10-day moving-average of the Spread also turned negative. By August 31, 2007, the Federal Reserve Eurodollar Deposit rate kept increasing to 5.78%, while LIBOR was lagging. The negative Spread on August 31 grew to -16 basis points.

48. The Spread remained negative over the next year. Between August 31, 2007 and September 15, 2008, the Spread remained negative on 234 of the 255 days, or 91.7% of the days. The magnitude of the negative Spread averaged about -12 basis points. During this approximately one year period, the

²² One basis point is one-hundredth of a percentage point.

negative Spread exceeded -25 basis points on 18 days.

49. A big shock to LIBOR (and the Spread) came just after Lehman Brothers filed for bankruptcy on September 15, 2008, leading to significantly increased concerns about the health of all banks. The increased concerns about the health of the banks were reflected in substantial increases in the Federal Reserve Eurodollar Deposit Rate. On September 15, 2008, the Federal Reserve Eurodollar Deposit Rate equaled 3.0%, increasing to 3.2%, 3.75%, and 5% on September 16, 17 and 18, respectively. By September 30, the Federal Reserve Eurodollar Deposit Rate doubled to 6%.

50. In spite of increased risks and worries about the banks after the Lehman bankruptcy filing, LIBOR did not keep pace with the Federal Reserve Eurodollar Deposit Rate during this period of heightened concerns, causing the Spread to become more negative. On September 16, 2008, the negative Spread nearly doubled to -32 basis points. The next day, on September 17, the negative Spread doubled again reaching -69 basis points. On September 18, the negative Spread more than doubled once again reaching -180 basis points. Finally, on September 30, 2008, the negative Spread reached -195 basis points.

51. Thus, between September 15, 2008 and September 30, 2008, the Federal Reserve Eurodollar Deposit Rate increased by 300 basis points to reflect increasing concerns about the banks, while LIBOR increased by less than one-half, or by 123 basis points during the same period. This diversion in the behavior of the two rates strongly supports the finding that the Defendants intensified their collusive suppression of

LIBOR, and did so to understate their borrowing costs in the face of increasing concerns about the health of the banks.

52. The Spread remained negative for more than one and a half years following the Lehman filing, until May 17, 2010. As concerns about banks' financial health eased, so did the magnitude of the suppression of LIBOR. As stated earlier, the Federal Reserve Eurodollar Deposit Rate reached 6% on September 30, 2008. With the easing of the financial crisis, the Federal Reserve Eurodollar Deposit Rate fell to 0.45% on May 17, 2010. The average suppression of the LIBOR rate between October 1, 2008 and May 17, 2010 equaled negative 38 basis points. The Spread finally turned positive for the first time during the post-Lehman period on May 17, 2010. Following this date, the Spread again became negative, with the magnitude of the Spread averaging around -10 basis points. The dramatic period of negative Spread during the Class Period, following years of uniform behavior between each individual Defendant Bank's LIBOR quote and the Federal Reserve Eurodollar Deposit Rate, is also graphically demonstrated by Figures 4 to 19 below on a bank by bank basis. Every Spread during the period August 8, 2007 to May 17, 2010 is statistically significant at the extremely high 99% confidence level.

[FIGURES 4 – 19 OMITTED]

53. As the following chart demonstrates, the average Spread for each of the individual Defendants was uniformly negative throughout the entire Class

Period, strongly supporting that each of these banks was suppressing its LIBOR quotes, and colluding to suppress reported LIBOR rates.

| <u>BANK NAME</u> | <u>Average Spread between August 8, 2007 through May 17, 2010</u> |
|-------------------------------|--|
| 1. Bank of Tokyo | -25 basis points |
| 2. Bank of America | -30 basis points |
| 3. Barclays | -25 basis points |
| 4. Citi | -32 basis points |
| 5. Credit Suisse | -27 basis points |
| 6. Deutsche Bank | -31 basis points |
| 7. HBOS | -29 basis points |
| 8. HSBC | -32 basis points |
| 9. JP Morgan | -35 basis points |
| 10. Lloyds | -30 basis points |
| 11. Norinchukin | -25 basis points |
| 12. RaboBank | -32 basis points |
| 13. Royal Bank of Canada | -28 basis points |
| 14. Royal Bank of Scotland | -26 basis points |
| 15. UBS | -29 basis points |
| 16. West | -35 basis points |

54. Moreover, as set forth in the following chart, during the critical two week period following the

bankruptcy of Lehman Brothers, each of the Defendants dramatically increased its collusive suppression of LIBOR.

| <u>BANK NAME</u> | <u>Average Spread between September 16, 2008 and September 30, 2008</u> |
|----------------------------|--|
| 1. Bank of Tokyo | -120 basis points |
| 2. Bank of America | -144 basis points |
| 3. Barclays | -87 basis points |
| 4. Citi | -142 basis points |
| 5. Credit Suisse | -122 basis points |
| 6. Deutsche Bank | -129 basis points |
| 7. HBOS | -110 basis points |
| 8. HSBC | -141 basis points |
| 9. JP Morgan | -153 basis points |
| 10. Lloyds | -146 basis points |
| 11. Norinchukin | -126 basis points |
| 12. RaboBank | -143 basis points |
| 13. Royal Bank of Canada | -140 basis points |
| 14. Royal Bank of Scotland | -140 basis points |
| 15. UBS | -141 basis points |
| 16. West | -138 basis points |

55. Every Spread during the period from September 16, 2008 to September 30, 2008 is statistically significant at the extremely high 99% confidence level.

56. Plaintiffs' consulting expert finds the results reflected in these two tables to be powerful and statistically significant evidence of the Defendants' collusive suppression of LIBOR during the Class Period.

57. As detailed above, analysis based on well accepted statistical methodologies strongly supports that suppression of LIBOR occurred during the Class Period, accomplished through the collusive conduct of the Defendants. The sustained period during which the Federal Reserve Eurodollar Deposit – LIBOR Spread fell and remained starkly negative, as seen in Figure 2 above, accounting as it does for Market Fundamentals, is not plausibly achievable absent collusion among Defendants. The intensified suppression from September 16, 2008 to September 30, 2008 (following the Lehman bankruptcy), in defiance of economic expectations, provides further powerful support for the suppression of LIBOR achieved through collusion by the Defendants. Because no Defendant Bank – absent collusive conduct – could know what LIBOR quote another panel bank actually intended to submit prior to those numbers being made public after 11:00 in the morning, the fact that all Defendants submitted LIBOR quotes below the Federal Reserve Eurodollar Deposit Rate over the Class Period further strongly supports the participation of each Defendant Bank in the suppressive and collusive scheme.

B. PROBABILITY OF DEFAULT ANALYSIS SUPPORTS COLLUSION DURING THE CLASS PERIOD.

58. Assessing the likelihood that LIBOR was

suppressed during the Class Period, the Schwab Plaintiffs' expert consultants compared US\$ LIBOR panel members' quotes from 2007 through 2008 to the daily default probability estimates for each of those banks—as determined, and updated daily for each maturity (term), by Kamakura Risk Information Services (“KRIS”).²³ The study focused on identifying any periods of severe discrepancy between each bank's probabilities of default (“PDs”) and the LIBOR quotes the bank submitted to the BBA.

59. The KRIS reduced-form model estimates each bank's default risk on a daily basis by analyzing each bank's equity and bond prices, accounting information, and general economic conditions, such as the level of interest rates, unemployment rates, inflation rates, etc. On its website, KRIS states it “provides a full term structure of default for both corporate and sovereign credit names based upon a multiple models approach” and its default probabilities “are updated daily and cover more than 29,000 companies in 36 countries.”²⁴

60. PD provides a measure of a bank's credit (default) risk exposure, essentially the likelihood that the bank will default within a specified time period. PD can be estimated using statistical models, whereas LIBOR is a rate of return required by investors lending short-term funds to the bank. A finding of a

²³ KRIS did not have PDs for Defendants West, Rabobank, or Norinchukin, because those companies were not publicly traded. This PD analysis therefore does not include those banks.

²⁴ See <http://www.kris-online.com/>, last accessed on April 23, 2012.

statistically significant negative correlation coefficient between daily LIBOR quotes and PDs for a given bank over a given term period violates the fundamental relationship between risk and return that is the cornerstone of finance. That is, investors require a higher required rate of return as a premium for taking on additional risk exposure. This results in a positive relationship (correlation) between risk and return. An increase in the bank's PD indicates that the risk of default has increased, thereby causing investors to require a higher rate of return for loans to the bank—which should correspond with a higher LIBOR quote.

61. Accordingly, a finding of a statistically significant negative coefficient (of any size) between a bank's daily LIBOR quotes and its PDs shows that increases in PDs correspond with decreases in LIBOR quotes—which violates fundamental finance theory. This would indicate that banks are suppressing their LIBOR quotes to avoid revealing the higher rates that reflect their true (higher) probabilities of default. In other words, any finding of negative, statistically significant correlation coefficients between a bank's PDs and its LIBOR quotes suggests LIBOR suppression by the bank over the analysis period.

62. The magnitude of the correlation coefficient is impacted by the volatility of both PD and LIBOR for each bank during the time period. Thus, for example, if a bank has high volatility in its PDs, the absolute value of the correlation coefficient will tend to be lower (i.e., less negative) as compared to an identical bank with low PD volatility. However, both may be equally engaged in LIBOR suppression if their correlation coefficients are statistically significant and negative.

63. The Schwab Plaintiffs' consulting experts used the KRIS database to test whether, for the period under study, each bank's daily sealed LIBOR quote correlates with the bank's estimated PD that day for the same maturity term (provided by KRIS). For example, the consultants examined the correlation between Bank of America's sealed quote for three-month LIBOR on each date with the three-month PD for Bank of America, as provided by the KRIS database on that same day. As explained above, standard finance theory implies that a positive correlation between a bank's PD and its LIBOR quote should exist—i.e., as the bank's default risk (PD) increases, its borrowing rate (LIBOR quote) should increase, and *vice versa*. That is, using the above example, standard finance theory predicts a positive correlation between Bank of America's three-month PD and its three-month LIBOR quote. A finding of either a zero or negative correlation between a bank's PD and its LIBOR quote indicates the latter does not reflect the bank's default-risk probability, which evidences LIBOR suppression. A negative correlation means the two values have an inverse relationship; as one goes up, the other tends to go down. A statistically significant negative correlation between a bank's LIBOR quote and its PD is consistent with the bank's reducing its LIBOR quote in order to mask its higher risk exposure during a period of financial crisis, such as during the 2007-2008 period. By submitting an artificially low LIBOR quote, the bank sends a false signal that it is less risky than it truly is.

64. The Schwab Plaintiffs' consulting experts found suppression over the 2007-2008 period for one-month, three-month, six-month, and 12-month LIBOR.

65. The LIBOR quotes for all the reporting banks (except HSBC) during 2007 were *negatively correlated* with their daily updated PDs (for the same maturity term) to a statistically significant degree. For example, the correlation between Bank of America's daily LIBOR quotes and its daily PDs, for example, was negative and statistically significant at a very high level for the one-month, three-month, six-month and 12-month terms, i.e., between -0.5857 and -0.6093.²⁵ In other words, the data indicate that, contrary to fundamental finance theory, the higher a Panel Bank's PD was, the *lower* its LIBOR quote was.

66. Performing the same analysis with respect to the LIBOR panel banks' daily LIBOR quotes and PDs during 2008, the expert consultants found that for all of the banks, the submitted LIBOR quotes were negatively correlated with their PDs at the one-month and three-month maturities. Indeed, all of the banks were submitting unduly low LIBOR quotes at all maturities during the time period from August 9, 2007 until September 12, 2008, and, with only one exception, from September 15 through December 31, 2008, the period following the Lehman bankruptcy.

67. The following graphs illustrate the findings of this expert analysis—which demonstrates a striking negative correlation between US\$ LIBOR panel banks' LIBOR quotes and PDs during 2007 and 2008, indicating they severely depressed LIBOR

²⁵ Correlation coefficients range from a value of -1 to 1. A correlation coefficient of -0.50, for example, would imply that a 1% increase in PD would result in a 50-basis point decline in the bank's LIBOR quote.

during that time.

Graph 1

**Correlation Coefficients
Between Each Bank's Daily LIBOR Bid and
Probability of Default (PD)
One-Month Term**

[GRAPH 1 OMITTED]

(Note: PDs are estimated daily using the reduced form model of Kamakura Risk Information Services.)

Graph 2

**Correlation Coefficients
Between Each Bank's Daily LIBOR Bid and
Probability of Default (PD)
Three-Month Term**

[GRAPH 2 OMITTED]

(Note: PDs are estimated daily using the reduced form model of Kamakura Risk Information Services.)

Graph 3

**Correlation Coefficients
Between Each Bank's Daily LIBOR Bid and
Probability of Default (PD)
Six-Month Term**

[GRAPH 3 OMITTED]

(Note: PDs are estimated daily using the reduced form model of Kamakura Risk Information Services.)

Graph 4
Correlation Coefficients
Between Each Bank's Daily LIBOR Bid and
Probability of Default (PD)
Twelve-Month Term

[GRAPH 4 OMITTED]

(Note: PDs are estimated daily using the reduced form model of Kamakura Risk Information Services.)

Graph 5
Correlation Coefficients
Between Each Bank's Daily LIBOR Bid and
Probability of Default (PD)
9 August 2007 – 12 September 2008 Period

[GRAPH 5 OMITTED]

(Note: PDs are estimated daily using the reduced form model of Kamakura Risk Information Services.)

Graph 6
Correlation Coefficients
Between Each Bank's Daily LIBOR Bid and
Probability of Default (PD)
15 September 2008 – 31 December 2008
Period

[GRAPH 6 OMITTED]

C. DEFENDANTS POSSESSED
STRONG FINANCIAL MOTIVES TO
SUPPRESS LIBOR.

68. Defendants each had substantial financial incentives to suppress LIBOR. First, Defendants were motivated, particularly given investors' serious concerns over the stability of the market in the wake of the financial crisis that emerged in 2007, to understate their borrowing costs—and thus the level of risk associated with the banks. Moreover, because no one bank would want to stand out as bearing a higher degree of risk than its fellow banks, each Defendant shared a powerful incentive to collude with the other Defendants to ensure it was not the “odd man out.” Indeed, analysts at Citigroup Global Markets—a subsidiary of Defendant Citigroup—acknowledged in an April 10, 2008 report:

[T]he most obvious explanation for LIBOR being set so low is the prevailing fear of being perceived as a weak hand in this fragile market environment. If a bank is not held to transact at its posted LIBOR level, there is little incentive for it to post a rate that is more

reflective of real lending levels, let alone one higher than its competitors. Because all LIBOR postings are publicly disclosed, any bank posting a high LIBOR level runs the risk of being perceived as needing funding. With markets in such a fragile state, this kind of perception could have dangerous consequences.²⁶

Strategists at entities affiliated with other Defendants likewise confirmed that banks suppressed LIBOR. Echoing the sentiment of the above analysts, William Porter, credit strategist at Defendant Credit Suisse, said in April 2008 that he believed the three-month LIBOR was 0.4 percentage points—or 40 basis points—below where it should be.²⁷ And the next month, Tim Bond, head of asset-allocation research of Barclays Capital—a subsidiary of Defendant Barclays—observed that banks routinely misstated borrowing costs to the BBA to avoid the perception that they faced difficulty raising funds as credit markets seized up.²⁸ Bond explained that when the Barclays treasurer resolved to “quote the right rates,” Barclays faced “a series of media articles saying that we were having difficulty financing.”

²⁶ Scott Peng, Chintan (Monty) Gandhi, & Alexander Tyo, “Special Topic: Is LIBOR Broken?,” April 10, 2008.

²⁷ Carrick Mollenkamp, “Libor Surges After Scrutiny Does, Too,” *The Wall Street Journal*, April 18, 2008.

²⁸ Gavin Finch and Elliott Gotkine, “Libor Banks Misstated Rates, Bond at Barclays Says,” *Bloomberg*, May 29, 2008.

69. Second, by artificially suppressing LIBOR, Defendants paid lower interest rates on LIBOR-based financial instruments they sold to investors during the Class Period. Illustrating Defendants' motive to artificially depress LIBOR, in 2009 Citibank reported it would make \$936 million in net interest revenue if rates would fall by 25 bps per quarter over the next year and \$1.935 billion if they fell 1% instantaneously. JPMorgan Chase likewise reported significant exposure to interest rates in 2009: The bank stated that if interest rates increased by 1%, it would lose over \$500 million. HSBC and Lloyds also estimated they would earn hundreds of millions of additional dollars in 2008-2009 in response to lower interest rates and would lose comparable amounts in response to higher rates. These banks collectively earned billions in net interest revenues during the Class Period.

70. Defendants thus possessed reputational and financial incentives to manipulate LIBOR—which, as detailed below, they did.

D. EMPIRICAL ANALYSES BY ACADEMICS AND OTHER COMMENTATORS FURTHER INDICATE LIBOR SUPPRESSION OCCURRED.

71. In addition to the independent expert work detailed above, publicly available analyses by academics and other commentators likewise support Plaintiffs' allegations. While those studies used various comparative benchmarks and did not employ uniform methodologies, they collectively indicate LIBOR was artificially suppressed during the Class

Period.

1. **The discrepancy between Defendants' reported LIBOR quotes and their CDS spreads indicates the banks misrepresented their borrowing costs to the BBA.**

72. One economic indicator that Defendants suppressed LIBOR during the Class Period is the variance between their LIBOR quotes and their contemporaneous cost of buying default insurance—i.e., a credit-default swap (“CDS”)—on debt they issued during that period. A CDS—“the most common form of credit derivative, *i.e.*, [a] contract which transfers credit risk from a protection buyer to a credit protection seller”²⁹—constitutes an agreement by which one party, the protection buyer, seeks financial protection in the event of a default on an underlying credit instrument (typically a bond or loan). Typically, a CDS buyer makes a series of payments (often referred to as the CDS “fee” or “spread”) to the CDS seller in exchange for a payment if the underlying credit instrument experiences an adverse credit event.

73. The spread serves as a measure of the perceived risk of default by the entity issuing the underlying bond or receiving the loan—the greater the risk of default the underlying bond or loan bears, the greater the CDS spread. In the case of a CDS for which the underlying instrument consists of an

²⁹ *Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of N.Y.*, 375 F.3d 168, 171-72 (2d Cir. 2004) (alteration in original) (citation and internal quotation marks omitted).

interbank loan where a LIBOR panel bank is the borrower, the greater the perceived risk the panel bank will default on the loan, the higher the applicable CDS spread, as this higher spread represents the cost of insuring against the increased risk of a default on the underlying loan.

74. As one commentator has observed, “The cost of bank default insurance has generally been positively correlated with LIBOR. That is, in times when banks were thought to be healthy, both the cost of bank insurance and LIBOR decreased or remained low, but when banks were thought to be in poor condition, both increased.”³⁰ During the Class Period, however, those historically-correlated indicia of banks’ borrowing costs diverged significantly.

75. That discrepancy was detailed in a May 29, 2008 *Wall Street Journal* article reporting the results of a study it had commissioned. The *Journal*’s analysis indicated numerous banks had caused LIBOR, “which is supposed to reflect the average rate at which banks lend to each other,” to “act as if the banking system was doing better than it was at critical junctures in the financial crisis.”³¹ The *Journal* found that beginning in January 2008, “the two measures began to diverge, with reported LIBOR rates failing to reflect rising default-insurance costs.”

³⁰ Justin Wong, “LIBOR Left in Limbo; A Call for More Reform,” 13 *North Carolina Banking Institute* 365, 371 (2009) (footnotes omitted).

³¹ See Carrick Mollenkamp and Mark Whitehouse, “Study Casts Doubt on Key Rate --- WSJ Analysis Suggests Banks May Have Reported Flawed Interest Data for Libor.”

76. The *Journal* observed that the widest gaps existed with respect to the LIBOR quotes of Defendants Citibank, West, JPMorgan, and UBS, as well as HBOS. According to the *Journal's* analysis, Citibank's LIBOR rates differed the most from what the CDS market suggested the bank's borrowing cost was. On average, the rates at which Citibank reported it could borrow dollars for three months (i.e., its three-month LIBOR rates) were about 87 basis points *lower* than the rates calculated using CDS data. West, HBOS, JPMorgan, and UBS likewise exhibited significant LIBOR-CDS discrepancies—of 70, 57, 43, and 42 basis points, respectively—while Defendants Credit Suisse, Deutsche Bank, Barclays, HSBC, Lloyds, and RBS each exhibited discrepancies of about 30 basis points. The study's authors concluded “one possible explanation for this gap is that banks understated their borrowing rates.”

77. Citing another example of suspicious conduct, the *Journal* observed that on the afternoon of March 10, 2008, investors in the CDS market were betting that West—hit especially hard by the credit crisis—was nearly twice as likely to renege on its debts as Credit Suisse, which was perceived to be in better shape, yet the next morning the two banks submitted identical LIBOR quotes.

78. Additionally, having compared the banks' LIBOR quotes to their actual costs of borrowing in the commercial-paper market, the *Journal* reported, for example, that in mid-April 2008, UBS paid 2.85% to borrow dollars for three months, but on April 16, 2008, the bank quoted a borrowing cost of 2.73% to the BBA.

79. The *Journal* further noted an uncanny

equivalence between the LIBOR panel banks' quotes: the three-month borrowing rates the banks reported remained within a range of only 0.06 of a percentage point, even though at the time their CDS insurance costs (premiums) varied far more widely, reflecting the market's differing views as to the banks' creditworthiness. According to Stanford University professor Darrell Duffie, with whom the authors of the *Journal* article consulted, the unity of the banks' LIBOR quotes was "far too similar to be believed."

80. David Juran, a statistics professor at Columbia University who reviewed the *Journal's* methodology, similarly concluded that the *Journal's* calculations demonstrate "very convincingly" that reported LIBOR rates are lower, to a statistically significant degree, than what the market thinks they should be.

81. Calculating an alternate borrowing rate incorporating CDS spreads, the *Journal* estimated that underreporting of LIBOR had a \$45 billion effect on the market, representing the amount borrowers (the banks) did not pay to lenders (investors in debt instruments issued by the banks) that they would otherwise have had to pay.

82. According to the *Journal*, three independent academics, including Professor Duffie, reviewed its methodology and findings, at the paper's request. All three deemed the *Journal's* approach "reasonable."

83. Further economic analysis supports the correlation seen in the *Journal's* report. A study by Connan Snider and Thomas Youle—of the economics departments at UCLA and the University of

Minnesota, respectively—released in April 2010 concluded LIBOR did not accurately reflect average bank borrowing costs, its “ostensible target.”³² Noting that “[i]n a competitive interbank lending market, banks’ borrowing costs should be significantly related to their perceived credit risk,” Snider and Youle posited that if LIBOR quotes “express true, competitively determined borrowing costs,” they should “be related to measures of credit risks, such as the cost of default insurance.” According to Snider and Youle’s analysis, however, quotes provided by US\$ LIBOR panel banks in fact deviated from their costs of borrowing as reflected in CDS spreads.

84. Comparing, for example, the 12-month US\$ LIBOR quotes from Citigroup and Bank of Tokyo together with each bank’s corresponding one-year senior CDS spreads, Snider and Youle observed (as illustrated in the graph below) “that while Citigroup has a substantially higher CDS spread than [Bank of Tokyo], it submits a slightly lower Libor quote.” Accordingly, the authors explain, while the CDS spreads “suggest that the market perceives Citigroup as riskier than [Bank of Tokyo], as it is more expensive to insure against the event of Citigroup’s default,” the banks’ LIBOR quotes “tell the opposite story.”

[GRAPHIC OMITTED]

85. Snider and Youle further noted the level

³² Connan Snider and Thomas Youle, “Does the LIBOR reflect banks’ borrowing costs?”, April 2, 2010.

of Citigroup's CDS spreads relative to its LIBOR quotes was "puzzling." The authors explained, "Given that purchasing credit protection for a loan makes the loan risk free, one would expect [the] difference between the loan rate and the CDS spread to roughly equal the risk free rate. This corresponds to the idea that a loan's interest rate contains a credit premium, here measured by the CDS spread." But the authors observed that Citigroup's quote was often "significantly below its CDS spread," implying "there were interbank lenders willing to lend to Citigroup at rates which, after purchasing credit protection, would earn them *a guaranteed 5 percent loss.*" (Emphasis added). That discrepancy contravenes basic rules of economics and finance, thus indicating Citibank underreported its borrowing costs to the BBA.

2. Cross-currency discrepancies in Defendants' LIBOR quotes indicate they suppressed LIBOR.

86. Defendants' LIBOR quotes also displayed inexplicable "cross-currency rank reversals." That is, as detailed in Snider and Youle's paper referenced above, at least some Defendants reported lower rates on LIBOR than did other panel members but, for other currencies, provided higher rates than did those same fellow banks. Both Bank of America and Bank of Tokyo, for instance, quoted rates for LIBOR and Yen-LIBOR during the period under study, yet Bank of America quoted a lower rate than Bank of Tokyo for LIBOR and a *higher* rate than Bank of Tokyo for Yen-LIBOR. Other Defendants included in Snider and Youle's analysis—Barclays, Citigroup, and JPMorgan—displayed similar anomalies across currencies, as the graphs below illustrate. Citigroup,

for example, often reported rates at the top of the Yen-LIBOR scale while simultaneously quoting rates at the bottom of the LIBOR scale.

[GRAPHIC OMITTED]

87. Snider and Youle explain that because “the same bank is participating in each currency,” the credit risk “is the same for loans in either currency”; thus these “rank reversals” demonstrate that differences in the banks’ LIBOR quotes “are not primarily due to differences in credit risk, something we would expect of their true borrowing costs.” Cross-currency rank reversals are inconsistent with the notion that LIBOR quotes reflect each panel bank’s singular “credit and liquidity risk profile.”

3. **The frequency with which at least certain Defendants’ LIBOR quotes “bunched” around the fourth-lowest quote of the day suggests manipulation.**

88. During the Class Period, the rates reported by certain Defendants—in particular, Citibank, Bank of America, and JPMorgan—also demonstrated suspicious “bunching” around the fourth lowest quote submitted by the 16 banks to the BBA. Indeed, Citibank’s and Bank of America’s quotes often tended to be identical to the fourth-lowest quote for the day. Because the LIBOR calculation involved excluding the lowest (and highest) four reported rates every day, bunching around the fourth-lowest rate suggests Defendants collectively depressed LIBOR by

reporting the lowest possible rates that would not be excluded from the calculation of LIBOR on a given day.

89. Bunching among Defendants' respective LIBOR quotes indicates the banks intended to report the same or similar rates, notwithstanding the banks' differing financial conditions, which, as detailed above, reasonably should have resulted in differing LIBOR quotes. Those discrepancies suggest Defendants colluded to suppress LIBOR.

90. The following charts show the frequency with which the LIBOR quotes submitted by Defendants Citigroup, Bank of America, and JPMorgan fell within a given percentage rate from the fourth-lowest quote. A negative difference means the reporting bank was below the fourth-lowest quote, and therefore its rate was not included in the daily LIBOR calculation, while zero difference means that the bank reported the fourth-lowest quote on a given day (either by itself or tied with other reporting banks).³³

[GRAPHIC OMITTED]

91. According to Snider and Youle, the fact that observed bunching occurred around the pivotal fourth-lowest reported rate reflected the reporting banks' intention to ensure the lowest borrowing rates were included in the calculation of LIBOR (which

³³ In the event of a tie between two or more banks, one of the banks' quotes, selected at random, was discarded.

includes only the fifth-lowest through the twelfth-lowest quotes).

92. In other words, banks that bunched their quotes around the fourth-lowest submission helped ensure the maximum downward manipulation of the resulting rate. Furthermore, that a panel bank reported one of the four lowest quotes (i.e., quotes excluded from the ultimate LIBOR calculation) does not mean the bank did not also participate in the collusion.

93. Further demonstrating the aberrant nature of the observed bunching around the fourth-lowest quote, Snider and Youle noted “the intraday distribution of *other* measures of bank borrowing costs do not exhibit this bunching pattern.” (Emphasis added).

94. Additionally, Snider and Youle detailed a discrepancy between LIBOR panel banks’ LIBOR quotes and their CDS spreads. The authors found that “with the intra-day variation of both Libor quotes and CDS spreads increasing from their historical levels,” the CDS spreads’ intra-day variation “grew considerably larger than that of Libor quotes.”³⁴

95. Snider and Youle further observed that—as the graphs below, embodying a composite of all the banks, illustrate—during the Class Period Defendants’ quotes tended to “bunch” around the fourth-lowest quote much more commonly than those banks’ CDS spreads “bunched” around the fourth-lowest spread.

³⁴ Snider and Youle, “Does the LIBOR reflect banks’ borrowing costs?”

The authors concluded, “If banks were truthfully quoting their costs, . . . we would expect these distributions to be similar.”

[GRAPHIC OMITTED]

96. Given the method by which the BBA calculates LIBOR—discarding the highest and lowest reported rates and averaging the remainder—that strong concentration around the fourth-lowest rate is exactly what would occur if a number of banks sought in concert to depress LIBOR.

97. The Bank for International Settlements (“BIS”), a Swiss-based international organization that “serve[s] central banks in their pursuit of monetary and financial stability,” similarly reported in a study of interbank lending rates that LIBOR quotes were artificially uniform during the second half of 2007. The BIS study cited LIBOR “market participants” who argued that “the rates quoted and paid by banks on their interbank borrowing tended to vary more than usual (and by more than what appears in the Libor panel) during the turbulence.”

4. **That LIBOR diverged from its historical relationship with the Federal Reserve auction rate indicates suppression occurred.**

98. A comparison between LIBOR and the Federal Reserve auction rate further suggests Defendants artificially suppressed LIBOR during the Class Period. An April 16, 2008 *Wall Street Journal* article, for example, noted the Federal Reserve had

recently auctioned off \$50 billion in one-month loans to banks for an average annualized interest rate of 2.82%—10 basis points higher than the comparable LIBOR rate. That differential would make no economic sense if the reported LIBOR rate was accurate, the *Journal* observed: “Because banks put up securities as collateral for the Fed loans, they should get them for a lower rate than Libor, which is riskier because it involves no collateral.”

99. A subsequent *Journal* article raised further concerns about LIBOR’s accuracy based on the comparison of one-month LIBOR with the rate for the 28-day Federal Reserve auction.³⁵ According to the *Journal*, because the Federal Reserve requires collateral:

banks should be able to pay a lower interest rate [to the Fed] than they do when they borrow from each other [e.g., as ostensibly measured by LIBOR] because those loans are unsecured. It is the same reason why rates for a mortgage, which is secured by a house, are lower than those for credit cards, where the borrower doesn’t put up any collateral. In other words, the rate for the Fed auction should be lower than Libor.

To the contrary, though, two days before the *Journal* article (September 22, 2008), the rate for the 28-day Fed facility was 3.75%—much higher than one-month LIBOR, which was

³⁵ Carrick Mollenkamp, “Libor’s Accuracy Becomes Issue Again,” *The Wall Street Journal*, September 24, 2008.

3.18% that day³⁶ and 3.21% the next day.

5. **LIBOR's divergence from its historical correlation to overnight index swaps also suggests it was artificially suppressed during the Class Period.**

100. Yet another example of LIBOR's aberrant behavior with respect to other measures of banks' borrowing costs during the Class Period is its observed deviation from the overnight-index swap ("OIS") rate. In his academic article analyzing LIBOR data for the second half of 2007 and 2008, Justin Wong observed that between 2001 and July 2007, when the global credit crisis began, the spread between LIBOR and the OIS rate "averaged eleven basis points."³⁷ By July 2008, that gap "approached 100 basis points, a figure significantly higher than the spread from a year prior," and by October 2008, "it peaked at 366 basis points." While the spread "receded somewhat in November 2008 to 209 basis points," that was still "far above the pre-crisis level." Wong's analysis provides further support for Plaintiffs' allegations that Defendants suppressed LIBOR.

6. **Additional data suggest LIBOR may have been manipulated as early as August 2006.**

101. As the empirical evidence in support of

³⁶ The *Journal* initially reported the one-month USD-LIBOR rate for that day as 3.19% but later noted the correct figure.

³⁷ Justin Wong, "LIBOR Left in Limbo; A Call for More Reform."

LIBOR manipulation continues to develop, at least some of the data point to possible manipulation as early as August 2006. In a recent paper, Rosa Abrantes-Metz (of NYU Stern School of Business's Global Economics Group) and Albert Metz (of Moody's Investors Service) compared one-month LIBOR against the Fed Funds effective rate and the one-month Treasury Bill ("T-Bill") rate.³⁸ Studying the period of early August 2006 through early August 2007, the authors observed the level of one-month LIBOR was "virtually constant," while the Fed Funds effective rate and the one-month T-Bill rate did "not present such striking stability." Spurred by that "highly anomalous" discrepancy, Abrantes-Metz and Metz examined the LIBOR panel members' individual quotes, which showed that during the studied period, the middle eight quotes used to set LIBOR each day were "essentially identical day in and day out"—another "highly anomalous" finding.

102. The authors concluded that "explicit collusion" presented "the most likely explanation" for this anomalous behavior. They explained that because LIBOR quotes are submitted sealed, "the likelihood of banks moving simultaneously to the same value from one day to the next without explicit coordination is extremely low, particularly given that their idiosyncrasies would not imply completely identical quotes under a non-cooperative outcome." They further opined "it is difficult to attribute it to tacit

³⁸ Rosa M. Abrantes-Metz and Albert D. Metz, "How Far Can Screens Go in Distinguishing Explicit from Tacit Collusion? New Evidence from the Libor Setting."

collusion or strategic learning, since the change is abrupt, the quotes are submitted sealed, and the quotes themselves sometimes change from one day to the next in an identical fashion.”

103. Abrantes-Metz and Sofia B. Villas-Boas (of UC-Berkeley’s Department of Agricultural & Resource Economics) used another methodology—Benford second-digit reference distribution—to track the daily one-month LIBOR rate over the period 2005-2008.³⁹ Based on this analysis, the authors found that for sustained periods in 2006 and 2007, the empirical standard-deviation distribution differed significantly from the Benford reference distribution for nearly all banks submitting quotes. The authors also observed large deviations from Benford for a sustained period in 2008.

104. Those studies indicate at least a possibility that Defendants’ suppression of LIBOR goes back even farther than August 2007.

7. Expert Analysis Performed In Connection With These Proceedings Indicates LIBOR’s Increase Following Expressions of Concern Over LIBOR’s Viability Resulted from Defendants’ Reaction to Events Unrelated to Market Factors.

105. On April 17, 2008, the day after *The Wall Street Journal* initially reported on LIBOR’s anomalous behavior and the BBA stated it would

³⁹ Rosa M. Abrantes-Metz and Sofia B. Villas-Boas, “Tracking the Libor Rate,” July 2010.

conduct an inquiry concerning LIBOR, there was a sudden jump in USD-LIBOR—the three-month borrowing rate hit 2.8175% that day, about eight basis points more than the previous day’s rate of 2.735%.

106. Suspiciously, reported LIBOR rates for other currencies fell or remained relatively flat at the time USD-LIBOR rose, a sign that the latter was susceptible to manipulation.

107. A consulting expert engaged by other plaintiffs in these coordinated proceedings has conducted an analysis of the change in LIBOR on the single date of April 17, 2008. The analysis tested the hypothesis that if banks did not manipulate LIBOR, there would be no systematic changes in LIBOR expected on April 17, 2008 relative to typical changes on other days between January 5, 2000 to May 13, 2011, whereas if banks did manipulate LIBOR—and were responding to *The Wall Street Journal* article and BBA announcement—the reporting banks would be likely to reduce or abandon the manipulation immediately in response to these events. An immediate reduction in LIBOR manipulation would result in an increase in LIBOR quotes by the member banks on April 17, 2008.

108. To conduct the analysis, the consulting expert ran a regression using the daily changes in LIBOR. Table 1 below shows the studies’ results. As discussed above, LIBOR increased on April 17, 2008 at a statistically significant level. Moreover, the increase in composite LIBOR as well as of the 11 of the 16 bank quotes were statistically significant. These findings were consistent with the hypothesis that the banks manipulated and suppressed LIBOR.

Table 1
Changes in LIBOR on April 17, 2008 in
Percentage Points*

| | Dependent variable | Average change during non-suppression days | Change in the dependent variable on April 17, 2008 relative to non-suppression days' average | Statistical Significance at the 1-5% level of the April 17, 2008 move |
|----------|---------------------------|---|---|--|
| 1 | BBA LIBOR | -0.000371 | 0.0909* | 5% |
| 2 | HSBC LIBOR | 0.000154 | 0.1273** | 1% |
| 3 | JPMC LIBOR | -0.000333 | 0.0872* | 5% |
| 4 | BARCLAYS | -0.000333 | 0.1072* | 5% |

| | | | | |
|-----------|--------------|-----------|---------|----|
| | LIBOR | | | |
| | WEST LB | | | |
| 5 | LIBOR | -0.000314 | 0.0971* | 5% |
| | RBS | | | |
| 6 | LIBOR | -0.000352 | 0.0921* | 5% |
| | RABOBA NK | | | |
| 7 | LIBOR | -0.000364 | 0.0872* | 5% |
| | CITI | | | |
| 8 | LIBOR | -0.000344 | 0.1022* | 5% |
| | RBC | | | |
| 9 | LIBOR | 0.002067 | 0.1021* | 5% |
| | UBS | | | |
| 10 | LIBOR | -0.000777 | 0.1021* | 5% |
| | NORIN | | | |
| 11 | LIBOR | -0.00038 | 0.0971* | 5% |
| | HBOS | | | |
| 12 | LIBOR | 0.002467 | 0.1111* | 5% |

Statistical significance is assessed using a AR(3) model for the residuals

* While not shown here, an additional dummy variable is used to control for changes during the Relevant Period of August 8, 2007 to May 17, 2010.

109. An alternative hypothesis is that, in addition to reacting to the Journal, other confounding effects that are related to the risk of the banking sector or overall Market Fundamentals could have emerged on April 16, 2008 and April 17, 2008. This alternative hypothesis also predicts an increase in LIBOR. To test this alternative hypothesis, instead of looking at daily changes in LIBOR quotes, it is possible to examine daily changes in the difference between banks' LIBOR quotes and the Federal Reserve Eurodollar Deposit Rate (the "Spread"). If risk-related factors or Market Fundamentals played a role, they would affect both the banks' LIBOR quotes as well as the Federal Reserve's Eurodollar Deposit Rate. Thus, if this hypothesis is correct, one should not see any changes to the Spread on April 17, 2008, since these two effects should cancel out. However, if there were no risk-related news and only a reaction to The Wall Street Journal article and the BBA announcement played a major role, then only LIBOR would be affected, leaving Federal Reserve's Eurodollar Deposit Rate mostly unaffected. In this case, the Spread would again be expected to increase.

110. The test of this alternative hypothesis showed that the Spreads of all 16 panel banks increased on April 17, 2008 and, as shown in Table 2 below, 11 of the 16 changes were statistically significant at levels ranging from 1% to 5%. Once again, these findings were consistent with the manipulation hypothesis and inconsistent with the hypothesis that other risk factors explained the April

17, 2008 shock to the LIBOR rate.

Table 2
Changes in Spread (BBA LIBOR – Federal Reserve’s Eurodollar Deposit Rate) on April 17, 2008 in Percentage Points*

| | Dependent variable | Average change in Spread during non-suppression days | Change in the dependent variable on April 17, 2008 relative to non-suppression days’ average | Statistical Significance at the 1-5% level of the April 17, 2008 move |
|----------|---------------------------|---|---|--|
| 1 | BBA LIBOR Spread | -0.000078 | 0.0838 | 5% |
| 2 | HSBC LIBOR Spread | 0.000508 | 0.1205 | 1% |
| 3 | JPMC LIBOR Spread | -0.000103 | 0.0803* | 5% |

| | | | | |
|-----------|-----------------------|-----------|----------|----|
| 4 | BARCLAYS LIBOR Spread | -0.000067 | 0.1002** | 1% |
| 5 | RBS LIBOR Spread | -0.0001 | 0.0851* | 5% |
| 6 | TOKYO LIBOR Spread | -0.000092 | 0.0797* | 5% |
| 7 | CITI LIBOR Spread | -0.00012 | 0.0953* | 5% |
| 8 | CS LIBOR Spread | -0.000224 | 0.07* | 5% |
| 9 | RBC LIBOR Spread | -0.000135 | 0.0951* | 5% |
| 10 | UBS LIBOR Spread | -0.000172 | 0.095* | 5% |
| 11 | NORIN LIBOR Spread | -0.000179 | 0.0903** | 1% |
| | | | | |

| | | | | |
|-----------|-------------------------|---|---------|----|
| | HBOS LIBOR Spread | 0 | 0.1007* | 5% |
| 12 | | | | |

Statistical significance is assessed using a AR(3) model for the residuals

* While not shown here, an additional dummy variable is used to control for changes during the Relevant Period of August 8, 2007 to May 17, 2010.

111. The conclusions of this study are consistent with the contemporaneous views expressed by high-level employees of various Defendant panel banks recounted above.

E. THAT AT LEAST SOME DEFENDANTS FACED DIRE FINANCIAL CIRCUMSTANCES DURING THE CLASS PERIOD FURTHER RENDERS THEIR UNDULY LOW LIBOR QUOTES STRIKING.

112. The independent economic analyses performed in connection with these proceedings, whose findings are corroborated by the publicly available scholarly work detailed above, strongly indicate Defendants' LIBOR quotes during the Class Period did not appropriately reflect those banks' actual borrowing costs at that time—and, indeed, that Defendants *collectively* suppressed LIBOR. Further illustrating the striking discrepancy between Defendants' submissions to the BBA and their actual borrowing costs, during 2008 and 2009 at least some of those banks' LIBOR quotes were too low in light of the dire

financial circumstances the banks faced, which were described in numerous news articles from the Class Period.

1. **Citigroup**

113. On November 21, 2008, *The Wall Street Journal* reported that Citigroup executives “began weighing the possibility of auctioning off pieces of the financial giant or even selling the company outright” after the company faced a plunging stock price. The article noted Citigroup executives and directors “rushing to bolster the confidence of investors, clients and employees” in response to uncertainty about Citigroup’s exposure to risk concerning mortgage-related holdings.⁴⁰ Similarly, on November 24, 2008, *CNNMoney* observed:

If you combine opaque structured-finance products with current fair-value accounting rules, almost none of the big banks are solvent because that system equates solvency with asset liquidity. So at this moment Citi isn’t solvent. Some argue that liquidity, not solvency, is the problem. But in the end it doesn’t matter. Fear will drive illiquidity to such a point that Citi could be rendered insolvent under the current fair-value accounting system.⁴¹

114. On January 20, 2009, *Bloomberg* reported

⁴⁰ See <http://online.wsj.com/article/SB122722907151946371.html?mod=testMod>

⁴¹ See http://money.cnn.com/2008/11/21/news/companies/benner_citi.fortune/

that Citigroup “posted an \$8.29 billion fourth-quarter loss, completing its worst year, and plans to split in two under Chief Executive Officer Vikram Pandit’s plan to rebuild a capital base eroded by the credit crisis. The article further stated, “*The problems of Citi, Bank of America and others suggest the system is bankrupt.*” (Emphasis added).⁴²

2. **RBS, Lloyds, and HBOS**

115. An April 23, 2008 analyst report from Société Générale reported, with respect to RBS’s financial condition in the midst of its attempt to raise capital:

Given the magnitude and change in direction in a mere eight weeks, we believe that management credibility has been tarnished. We also remain unconvinced that the capital being raised is in support of growth rather than merely to rebase and recapitalize a bank that overstretched itself at the wrong point in the cycle in its pursuit of an overpriced asset.

* * *

[I]n our eyes, RBS has not presented a rock solid business case that warrants investor support and the bank has left itself almost no capital headroom to support further material deterioration in either its assets or its major operating environments. We believe £16bn (7% core tier I ratio) would have provided a solid

⁴² See <http://www.bloomberg.com/apps/news?pid=21070001&sid=aS0yBnMR3USk>

capital buffer.

The analysts also opined, “[W]e are not of the belief that all of RBS’ problems are convincingly behind it.” They further explained, “When faced with the facts and the events leading up to yesterday’s request for a £12bn capital injection, we believe shareholders are being asked to invest further in order to address an expensive mishap in H2 07 rather than capitalise on growth opportunities.”

116. On October 14, 2008, *Herald Scotland* reported a £37 billion injection of state capital into three leading banks, including RBS and HBOS. The article observed, “Without such near-nationalisations, . . . Royal Bank of Scotland and HBOS, would almost certainly have suffered a run on their remaining reserves and been plunged into insolvency. Their share prices could scarcely have taken much more of their recent hammering.”⁴³

117. On December 12, 2008, *Bloomberg* reported that shareholders approved HBOS’s takeover by Lloyds TSB Group plc following bad-loan charges in 2008 rising to £5 billion and an increase in corporate delinquencies. The article also quoted analysts characterizing HBOS’s loan portfolio as “generally of a lower quality than its peers.” *Bloomberg* further observed that HBOS suffered substantial losses on its bond investments, which totaled £2.2 billion, and losses on investments increased from £100 million to

⁴³ See <http://www.heraldscotland.com/reckless-banks-brought-this-financial-firestorm-down-upon-their-own-heads-1.891981>.

£800 million for the year.⁴⁴

116. A January 20, 2009 analyst report from Société Générale stated: “We would note that given the 67% drop in the share price following [RBS]’s announcements yesterday [relating to capital restructuring due to greater-than-expected credit-market related write downs and bad debt impairments in Q4], the loss of confidence in the bank’s ability to continue to operate as a private sector player and concern over the potential ineffectiveness of the Asset Protection Scheme may prompt the UK government to fully nationalise the bank. In this instance, the shares could have very limited value, if at all.”⁴⁵

117. On March 9, 2009, *Bloomberg* reported that Lloyds “will cede control to the British Government in return for state guarantees covering £260 billion (\$A572 billion of risky assets).” The article further observed that in September 2008, Lloyds agreed to buy HBOS for roughly £7.5 billion as the British Government sought to prevent HBOS from collapsing after credit markets froze. The HBOS loan book was described as “more toxic than anyone ever dreamed.”⁴⁶

118. On November 24, 2009, *Bloomberg* reported the Bank of England provided £62 billion (\$102 billion) of “taxpayer-backed emergency

⁴⁴ See <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a4BTqdgwhPTc&refer=uk>.

⁴⁵ See January 20, 2009 Société Générale analyst report on Royal Bank of Scotland titled “Little value left for shareholders.”

⁴⁶ See <http://www.businessday.com.au/business/lloyds-the-latest-uk-bank-to-be-rescued-20090308-8sfd.html>.

financing” to RBS and HBOS at the height of the financial crisis in October 2008 and that “[t]he [financing] operations were kept secret until now to prevent unnerving markets.” The Bank’s Deputy Governor Paul Tucker was quoted as stating in evidence to the Treasury Committee in London that “[h]ad we not done it, the cycle would have been a lot worse...[and that] [t]his was tough stuff, a classic lender of last resort operation.”⁴⁷

3. **West**

119. A September 9, 2008 article in *Spiegel Online* reported West was “heavily hit as a result of the US sub-prime crisis and the resulting credit crunch. Ill-advised speculation resulted in a 2007 loss of €1.6 billion — leading the bank to the very brink of insolvency.” The article reported that in early 2008, a special investment vehicle was set by West’s primary shareholders to “guarantee €5 billion worth of risky investments.” The European Commissioner approved the public guarantee but demanded that the bank be “completely restructured to avoid failing afoul of competition regulations.” The European Commissioner for Competition later warned that if West did not significantly improve its restructuring package, Brussels would not approve the public assistance that European Union had already provided to the bank. Further, if that occurred, West would

⁴⁷ See <http://www.bloomberg.com/apps/news?pid=21070001&sid=a9MjQj6MNTeA>

have to pay back €12 billion to the EU.⁴⁸

120. On November 24, 2009, *Bloomberg* reported that BNP Paribas SA said “[i]nvestors should buy the euro [] on speculation that capital will need to be repatriated to support German bank WestLB AG.” Furthermore, two German regional savings bank groups that hold a majority stake in West were “prepared to let the Dusseldorf-based lender become insolvent” and that “the prospect of insolvency may force state-owned banks and savings banks outside North Rhine-Westphalia, West’s home state, to contribute to capital injections.” Moreover, West needed “as much as 5 billion euros (\$7.5 billion) in capital and may be shut by Nov. 30 unless a solution for its capital needs can be found.”⁴⁹

**F. DEFENDANTS’ IMPROPER
ACTIVITIES HAVE INCITED
NUMEROUS GOVERNMENTAL
INVESTIGATIONS LEGAL
PROCEEDINGS AND
DISCIPLINARY ACTION
WORLDWIDE.**

121. As described in more detail below, investigations regarding LIBOR are ongoing in the

⁴⁸ See Anne Seith, Germany’s WestLB under Attack from Brussels, SPIEGEL ONLINE, Sept. 9, 2008, <http://www.spiegel.de/international/business/0,1518,druck-577142,00.html>.

⁴⁹ See Matthew Brown, BNP Says Buy Euro on Speculation WestLB to Be Rescued (Update 1), BLOOMBERG, Nov. 24, 2009, <http://www.bloomberg.com/apps/news?pid=21070001&sid=aI9ZPZShrjWI>.

United States, Switzerland, Japan, United Kingdom, Canada, the European Union, and Singapore by nine different governmental agencies, including the DOJ, the SEC, and the CFTC.

122. Indeed, on February 27, 2012, the DOJ represented to the Court overseeing these multidistrict proceedings that the Justice Department “is conducting a criminal investigation into alleged manipulation of certain benchmark interest rates, including LIBORs of several currencies.” The investigation represents an unprecedented joint investigation by both the criminal and antitrust divisions of the DOJ.

123. Authorities are attempting to determine, among other things, “whether banks whose funding costs were rising as the financial crisis intensified tried to mask that trend by submitting artificially low readings of their daily borrowing costs.”⁵⁰ Though the proceedings are ongoing, several Defendants have admitted that regulators—including the DOJ, SEC, and CFTC—have targeted them in seeking information about potential misconduct.

124. Moreover, documents submitted in connection with legal proceedings in Canada and Singapore reveal that at least certain Defendants underreported their borrowing costs to artificially suppress Yen-LIBOR.

⁵⁰ David Enrich, Carrick Mollenkamp, & Jean Eaglesham, “U.S. Libor Probe Includes BofA, Citi, UBS.” *The Wall Street Journal*, March 18, 2011

1. **News reports and Defendants' regulatory filings indicate U.S. government and foreign regulatory bodies are engaged in expansive investigations of possible LIBOR manipulation.**

125. The first public revelation regarding government investigations into possible LIBOR manipulation occurred on March 15, 2011, when UBS disclosed in a Form 20-F (annual report) filed with the SEC that the bank had “received subpoenas” from the SEC, the CFTC, and the DOJ “in connection with investigations regarding submissions to the [BBA].” UBS stated it understood “that the investigations focus on whether there were improper attempts by UBS, either acting on its own or together with others, to manipulate LIBOR rates at certain times.” The bank further disclosed that it had “received an order to provide information to the Japan Financial Supervisory Agency concerning similar matters.” UBS stated it was “conducting an internal review” and was “cooperating with the investigations.”

126. On March 16, 2011, the *Financial Times* reported that UBS, Bank of America, Citigroup, and Barclays received subpoenas from U.S. regulators “probing the setting of” LIBOR “between 2006 and 2008.” The *Times* further noted investigators had “demanded information from” West, and that the previous fall, “all 16 members of the committee that helped the [BBA] set the dollar Libor rate during 2006-

08 received informal requests for information.”⁵¹

127. The same day, *MarketWatch* similarly reported “[m]ultiple U.S. and European banks, which provide borrowing costs to calculate Libor every day, have been contacted by investigators,” including the DOJ, the SEC, and the CFTC.⁵²

128. The next day, *Bloomberg* reported that Barclays and Citigroup had received subpoenas from U.S. regulators and that Defendants West, Lloyds, and Bank of America had been contacted by regulators. The article specified Bank of America had received subpoenas from the SEC and the DOJ.⁵³

129. On March 23, 2011, *Bloomberg* revealed that Citigroup Inc., Deutsche Bank, Bank of America, and JPMorgan Chase were asked by U.S. regulators “to make employees available to testify as witnesses” in connection with the regulators’ ongoing investigation.⁵⁴

130. The next day, the *Financial Times* reported that Defendant Barclays was “emerging as a

⁵¹ Brooke Masters, Patrick Jenkins & Justin Baer, “Banks served subpoenas in Libor case,” FT.com, available at <http://www.ft.com/cms/s/0/52958d66-501f-11e0-9ad1-00144feab49a.html#axzz1sJNEDIiI>, last accessed on April 17, 2012.

⁵² Carrick Mollenkamp and David Enrich, “Banks Probed in Libor Manipulation Case,” *MarketWatch*, March 16, 2011.

⁵³ Gavin Finch and Jon Menon, “Barclays, Citigroup Said to Be Subpoenaed in Libor Probe,” *Bloomberg*, March 17, 2011.

⁵⁴ Joshua Gallu and Donal Griffin, “Libor Probe Spurs Witness Call-up at Citigroup, Deutsche Bank,” *Bloomberg*, March 23, 2011.

key focus of the US and UK regulatory probe into alleged rigging of [LIBOR].” According to the *Times*, investigators were “probing whether communications between the bank’s traders and its treasury arm,” which helps set LIBOR, “violated ‘Chinese wall’ rules that prevent information-sharing between different parts of the bank.” The *Times* further stated investigators were “said to be looking at whether there was any improper influence on Barclays’ submissions” during 2006-2008 for the BBA’s daily survey used to set LIBOR.⁵⁵

131. Additional information regarding the regulatory probes emerged during the next few months, including revelations about other banks’ possible—or actual—misconduct.

132. In an “Interim Management Statement” filed on April 27, 2011, for example, Barclays stated it was “cooperating with” the investigations by the UK Financial Services Authority, the CFTC, the SEC, and the DOJ “relating to certain past submissions made by Barclays to the [BBA], which sets LIBOR rates.”

133. RBS similarly disclosed, in a Form 6-K filed with the SEC on May 6, 2011, the bank was “cooperating with” the investigations being conducted by the CFTC, the SEC, and the European Commission “into the submission of various LIBOR rates by relevant panel banks.”

⁵⁵ Brooke Masters and Megan Murphy, “Barclays at centre of Libor inquiry,” FT.com, March 24, 2011, available at <http://www.ft.com/intl/cms/s/0/1c3228f6-5646-11e0-82aa-00144feab49a.html#axzz1sJNEDIiI>, last accessed on April 17, 2012.

134. Soon after, on May 16, 2011, Lloyds disclosed that it too “had received requests for information as part of the Libor investigation and that it was co-operating with regulators, including the [CFTC] and the European Commission.”⁵⁶ Britain’s *Daily Telegraph* further reported that HBOS, which merged with Lloyds TSB in January 2009 to form Lloyds Banking Group, “was the main target given its near collapse in late 2008 as it lost access to wholesale funding markets.”

135. On May 23, 2011, the *Telegraph* reported that the Federal Bureau of Investigation (“FBI”) was working with regulators in connection with the LIBOR investigations, and the FBI’s British counterpart, the Serious Fraud Office, “revealed it is also taking an active interest.”

136. In a Form 6-K filed with the SEC on July 26, 2011, UBS disclosed that it had “been granted conditional leniency or conditional immunity from authorities in certain jurisdictions, including the Antitrust Division of the DOJ, in connection with potential antitrust or competition law violations related to submissions for Yen LIBOR and Euroyen TIBOR (Tokyo Interbank Offered Rate).” Accordingly, the company continued, it would “not be subject to prosecutions, fines or other sanctions for antitrust or competition law violations in connection with the matters [UBS] reported to those authorities, subject to [UBS’s] continuing cooperation.” The conditional

⁵⁶ Harry Wilson, “Lloyds Banking Group in Libor investigation,” *The Daily Telegraph*, May 17, 2011.

leniency UBS received derives from the Antitrust Criminal Penalties Enhancement and Reform Act and the DOJ's Corporate Leniency Policy, under which the DOJ only grants leniency to corporations reporting *actual illegal activity*. UBS later disclosed (on February 7, 2012) that the Swiss Competition Commission had granted the bank conditional immunity regarding submissions for Yen LIBOR, TIBOR, and Swiss franc LIBOR.

137. Similar to the other Defendants discussed above, HSBC, in an interim report filed on August 1, 2011, disclosed that it and/or its subsidiaries had "received requests" from various regulators to provide information and were "cooperating with their enquiries."

138. On or about the same day, Barclays—which several months earlier had referenced its "cooperation" with governmental entities investigating potential misconduct relating to LIBOR—specified the investigations involved "submissions made by Barclays" and other LIBOR panel members. Barclays further stated it was engaged in discussions with those authorities about potential resolution of these matters before proceedings are brought against the bank.

139. On September 7, 2011, the *Financial Times* reported that as part of their LIBOR investigation, the DOJ and the CFTC—in assessing whether banks violated the Commodity Exchange Act, which can result in criminal liability—were examining "whether traders placed bets on future yen and dollar rates and colluded with bank treasury departments, who help set the Libor index, to move the rates in their direction," as well as "whether some banks lowballed

their Libor submissions to make themselves appear stronger.”⁵⁷

140. On October 19, 2011, *The Wall Street Journal* reported that the European Commission “seized documents from several major banks” the previous day, “marking the escalation of a worldwide law-enforcement probe” regarding the Euro Interbank Offered Rate, or Euribor—a benchmark, set by more than 40 banks, used to determine interest rates on trillions of euros’ worth of euro-denominated loans and debt instruments. The Euribor inquiry, the *Journal* explained, constitutes “an offshoot” of the broader LIBOR investigation that had been ongoing for more than a year. According to the *Journal*, while the list of financial firms raided by the European Commission was not available, people familiar with the situation had counted “a large French bank and a large German bank” among the targets, and the coordinated raids “occurred in London and other European cities.”

141. On October 31, 2011, the *Financial News* observed that “[a]n investigation into price fixing, first ordered by the [SEC] in 2008, focused on whether banks, including UBS, Citigroup, and Bank of America, had been quoting deliberately low rates.”⁵⁸

142. On December 9, 2011, *Law360* reported

⁵⁷ Brooke Masters and Kara Scannell, “Libor inquiry looks at criminal angle,” FT.com, September 7, 2011, available at <http://www.ft.com/cms/s/0/c8ed4248-d962-11e0-b52f-00144feabdc0.html#axzz1sRxAdyPS>, last accessed on April 18, 2012.

⁵⁸ Tom Osborn, “Is Libor in its death throes?,” *Financial News*, October 31, 2011.

that the Japanese Securities and Exchange Surveillance Commission (“SESC”) alleged that Citigroup Global Markets Japan Inc. and UBS Securities Japan Ltd. “employed staffers who attempted to influence” TIBOR “to gain advantage on derivative trades.” The SESC recommended that the Japanese prime minister and the head of Japan’s Financial Services Agency (“JFSA”) take action against the companies. The Commission specified that Citigroup’s head of G-10 rates and a Citigroup trader, as well as a UBS trader, were involved in the misconduct, further stating, “[t]he actions of Director A and Trader B are acknowledged to be seriously unjust and malicious, and could undermine the fairness of the markets.” Moreover, the Commission added, “[i]n spite of recognizing these actions, the president and CEO . . . who was also responsible for the G-10 rates, overlooked these actions and the company did not take appropriate measures, therefore, the company’s internal control system is acknowledged to have a serious problem.”⁵⁹ *Law360* reported that the SESC released “a similar statement” about UBS’s alleged conduct.

143. Citigroup and UBS did not deny the SESC’s findings. A Citigroup spokesperson stated, “Citigroup Global Markets Japan takes the matter very seriously and sincerely apologizes to clients and all parties concerned for the issues that led to the recommendation. The company has started working diligently to address the issues raised.” A UBS

⁵⁹ Juan Carlos Rodriguez, “Japan Accuses Citi, UBS Of Market Trickery,” *Law360*, December 9, 2011.

spokesperson similarly stated the bank was taking the findings “very seriously” and had been “working closely with” the SESC and the JFSA “to ensure all issues are fully addressed and resolved.” She added, “We have taken appropriate personnel action against the employee involved in the conduct at issue.”

144. Citigroup later disclosed that on December 16, 2011, the JFSA took administrative action against Citigroup Global Markets Japan, Inc. (“CGMJ”) for, among other things, certain communications made by two CGMJ traders about the Euroyen Tokyo InterBank Offered Rate (“TIBOR”). The JFSA issued a business improvement order and suspended CGMJ’s trading in derivatives related to Yen-LIBOR, as well as Euroyen and Yen-TIBOR from January 10 to January 23, 2012. On the same day, the JFSA also took administrative action against Citibank Japan Ltd. for conduct arising out of Citibank Japan’s retail business and also noted that the communications made by the CGMJ traders to employees of Citibank Japan about Euroyen TIBOR had not been properly reported to Citibank Japan’s management team.

145. UBS likewise recently revealed further details regarding the Japanese regulators’ findings and the resulting disciplinary action. Specifically, the bank announced that on December 16, 2011, the JFSA commenced an administrative action against UBS Securities Japan Ltd. (“UBS Securities Japan”) based on findings by the SESC that:

- (i) a trader of UBS Securities Japan engaged in inappropriate conduct relating to Euroyen TIBOR and Yen LIBOR, including approaching

UBS AG, Tokyo Branch, and other banks to ask them to submit TIBOR rates taking into account requests from the trader for the purpose of benefiting trading positions; and (ii) serious problems in the internal controls of UBS Securities Japan resulted in its failure to detect this conduct.

Based on those findings, the JFSA “issued a Business Suspension Order requiring UBS Securities Japan to suspend trading in derivatives transactions related to Yen LIBOR and Euroyen TIBOR” from January 10 to January 16, 2012 (excluding transactions required to perform existing contracts). The JFSA also issued a “Business Improvement Order” requiring UBS Securities Japan to enhance “compliance with its legal and regulatory obligations” and to establish a “control framework” designed to prevent similar improper conduct.

146. Other news accounts in recent months have confirmed—based at least in part on information from people familiar with the ongoing investigations—that investigators are examining potential improper collusion by traders and bankers to manipulate LIBOR or other rates. On February 3, 2012, for instance, Credit Suisse disclosed that the Swiss Competition Commission commenced an investigation involving twelve banks and certain other financial intermediaries, including Credit Suisse, concerning alleged collusive behavior among traders to affect the bid-ask spread for derivatives tied to the LIBOR and TIBOR reference rates fixed with respect to certain currencies, and collusive agreements to influence these rates.

147. Additionally, on February 14, 2012, *Bloomberg* reported that two people with knowledge of the ongoing LIBOR probe said global regulators “have exposed flaws in banks’ internal controls that may have allowed traders to manipulate interest rates around the world.” The same people, who were not identified by name (as they were not authorized to speak publicly about those matters), stated investigators also had “received e-mail evidence of potential collusion” between firms setting LIBOR. Those sources further noted Britain’s Financial Services Authority was “probing whether banks’ proprietary-trading desks exploited information they had about the direction of Libor to trade interest-rate derivatives, potentially defrauding their firms’ counterparties.”⁶⁰

148. *Bloomberg* further reported that RBS had “dismissed at least four employees in connection with the probes,” and Citigroup and Deutsche Bank “also have dismissed, put on leave or suspended traders as part of the investigations.”

149. *Bloomberg* also reported that European Union antitrust regulators are also investigating whether banks effectively formed a global cartel and coordinated how to report borrowing costs between 2006 and 2008.

150. In March 2012, the Monetary Authority of Singapore disclosed that it has been approached by

⁶⁰ Lindsay Fortado and Joshua Gallu, “Libor Probe Said to Expose Collusion, Lack of Internal Controls,” *Bloomberg*, February 14, 2012.

regulators in other countries to help in investigations over the possible manipulation of interbank interest rates.⁶¹

151. According to the *Daily Mail*, investigations by the SEC, Britain's Financial Services Authority, the Swiss Competition Commission, and regulators in Japan focus on three concerns: First, whether banks artificially suppressed LIBOR during the financial crisis, making banks appear more secure than they actually were; second, whether bankers setting LIBOR leaked their data to traders before officially submitting the banks' LIBOR quotes to the BBA; third, whether traders at the banks, and at other organizations (such as hedge funds), may have tried to influence LIBOR by making suggestions or demands on the bankers providing LIBOR quotes.

2. **Evidence that Defendants manipulated Yen-LIBOR further demonstrates the plausibility of Plaintiffs' allegations that Defendants suppressed LIBOR.**

a. **Canadian Action**

152. Brian Elliott, a Competition Law Officer in the Criminal Matters Branch of the Canadian Competition Bureau, submitted an affidavit in May 2011 (the "May 2011 Elliott Affidavit") in support of "an Ex Parte Application for Orders to Produce Records Pursuant to Section 11 of the Competition Act and for Sealing Orders" in the Court of Ontario, Superior Court of Justice, East Region. Specifically,

⁶¹ *Business Times*, March 9, 2012.

the May 2011 Elliott Affidavit sought orders requiring HSBC Bank Canada, Royal Bank of Scotland N.V., Canada Branch, Deutsche Bank, J.P. Morgan Bank Canada, and Citibank Canada (referenced collectively in the Affidavit as the “Participant Banks”) to produce documents in connection with an inquiry concerning whether those banks conspired to “enhance unreasonably the price of interest rate derivatives from 2007 to March 11, 2010; to prevent or lessen, unduly, competition in the purchase, sale or supply of interest derivatives from 2007 to March 11, 2010; to restrain or injure competition unduly from 2007 to March 11, 2010; and to fix, maintain, increase or control the price for the supply of interest rate derivatives from March 12, 2010 to June 25, 2010.”

153. The May 2011 Elliott Affidavit further states the Competition Bureau “became aware of this matter” after one of the banks (referenced in the affidavit as the “Cooperating Party”) “approached the Bureau pursuant to the Immunity Program” and, in connection with that bank’s application for immunity, its counsel “orally proffered information on the Alleged Offences” to officers of the Competition Bureau on numerous occasions in April and May 2011. Furthermore, according to the Affidavit, counsel for the Cooperating Party “stated that they have conducted an internal investigation of the Cooperating Party that included interviews of employees of the Cooperating Party who had knowledge of or participated in the conduct in question, as well as a review of relevant internal documents.” The Affidavit also notes that on May 17, 2011, counsel for the Cooperating Party provided the Competition Bureau with “electronic records,” which Elliot “believe[s] to be

records of some of the communications involving the Cooperating Party that were read out as part of the orally proffered information by counsel for the Cooperating Party.”

154. The Affidavit recounted that, according to the Cooperating Party’s counsel, the Participant Banks—at pertinent times “facilitated” by “Cash Brokers”—“entered into agreements to submit artificially high or artificially low London Inter-Bank Offered Rate (‘LIBOR’) submissions in order to impact the Yen LIBOR interest rates published by the [BBA].” Those entities engaged in that misconduct to “adjust[] the prices of financial instruments that use Yen LIBOR rates as a basis.” The Affidavit further states the Cooperating Party’s counsel “indicated the Participant Banks submitted rates consistent with the agreements and were able to move Yen LIBOR rates to the overall net benefit of the Participants.”

155. More specifically, counsel proffered that the Participant Banks “communicated with each other and through the Cash Brokers to form agreements to fix the setting of Yen LIBOR,” which “was done for the purpose of benefiting trading positions, held by the Participant Banks, on IRDs [interest rate derivatives].” By manipulating Yen LIBOR, the Affidavit continues, “the Participant Banks affected all IRDs that use Yen LIBOR as a basis for their price.” The misconduct was carried out “through e-mails and Bloomberg instant messages between IRD traders at the Participant Banks and employees of Cash Brokers (who had influence in the setting of Yen LIBOR rates).” The Affidavit details:

IRD traders at the Participant Banks

communicated with each other their desire to see a higher or lower Yen LIBOR to aid their trading position(s). These requests for changes in Yen LIBOR were often initiated by one trader and subsequently acknowledged by the trader to whom the communication was sent. The information provided by counsel for the Cooperating Party showed that the traders at Participant Banks would indicate their intention to, or that they had already done so, communicate internally to their colleagues who were involved in submitting rates for Yen LIBOR. The traders would then communicate to each other confirming that the agreed up rates were submitted. However, not all attempts to affect LIBOR submissions were successful.

The Cash Brokers were asked by IRD traders at the Participant Banks to use their influence with Yen LIBOR submitters to affect what rates were submitted by other Yen LIBOR panel banks, including the Participant Banks.

156. The Affidavit indicates the Cooperating Party's counsel further proffered that at least one of the Cooperating Party's IRD traders ("Trader A" or "Trader B") communicated with an IRD trader at HSBC, Deutsche Bank, RBS, JPMorgan (two traders), and Citibank. In that regard, the Affidavit specifies:

Trader A communicated his trading positions, his desire for a certain movement in Yen LIBOR and instructions for the HSBC trader to get HSBC to make Yen LIBOR submissions consistent with his wishes. Attempts through

the HSBC trader to influence Yen LIBOR were not always successful. Trader A also communicated his desire for a certain movement in the Yen LIBOR rate with the Cash Brokers. He instructed them to influence the Yen LIBOR submitters of HSBC. The Cash Brokers acknowledged making these attempts.

* * *

Trader A communicated his trading positions, his desire for certain movement in Yen LIBOR and asked for the Deutsche IRD trader's assistance to get Deutsche to make Yen LIBOR submissions consistent with his wishes. The Deutsche IRD trader also shared his trading positions with Trader A. The Deutsche IRD trader acknowledged these requests. Trader A also aligned his trading positions with the Deutsche IRD trader to align their interests in respect of Yen LIBOR. The Deutsche IRD trader communicated with Trader A considerably during the period of time, mentioned previously, when Trader A told a Cash Broker of a plan involving the Cooperating Party, HSBC and Deutsche to change Yen LIBOR in a staggered and coordinated fashion by the Cooperating Party, HSBC and Deutsche. Not all attempts to change the LIBOR rate were successful.

* * *

Trader A explained to RBS IRD trader who his collusive contacts were and how he had and was going to manipulate Yen LIBOR. Trader

A also communicated his trading positions, his desire for certain movement in Yen LIBOR and gave instructions for the RBS IRD trader to get RBS to make Yen LIBOR submissions consistent with Trader A's wishes. The RBS IRD trader acknowledged these communications and confirmed that he would follow through. Trader A and the RBS IRD trader also entered into transactions that aligned their trading interest in regards to Yen LIBOR. Trader A also communicated to another RBS IRD trader his trading positions, his desire for a certain movement in Yen LIBOR and instructions to get RBS to make Yen LIBOR submissions consistent with his wishes. The second RBS IRD trader agreed to do this.

* * *

Trader A communicated his trading positions, his desire for a certain movement in Yen LIBOR and gave instructions for them [two JPM IRD traders] to get JPMorgan to make Yen LIBOR submissions consistent with his wishes. Trader A also asked if the IRD traders at JPMorgan required certain Yen LIBOR submissions to aid their trading positions. The JPMorgan IRD traders acknowledged these requests and said that they would act on them. On another occasion, one of the JPMorgan IRD traders asked Trader A for a certain Yen LIBOR submission, which Trader A agreed to help with. Trader A admitted to an IRD trader at RBS that he colluded with IRD traders at JPMorgan.

Trader B of the Cooperating Party communicated with an IRD trader at Citi. They discussed their trading positions, advanced knowledge of Yen LIBOR submissions by their banks and others, and aligned their trading positions. They also acknowledged efforts to get their banks to submit the rates they wanted.

157. On May 18, 2011, the Ontario Superior Court signed the orders directing the production of the records sought by the May 2011 Elliott Affidavit. But to Plaintiffs' knowledge, the Affidavit was not publicly available until February 2012.

158. Elliott submitted another affidavit in June 2011 (the "June 2011 Elliott Affidavit"), which sought an order requiring ICAP Capital Markets (Canada) Inc., believed to be one of the "Cash Brokers" referenced in the May 2011 Elliott Affidavit, to "produce records in the possession of its affiliates, ICAP PLC and ICAP New Zealand Ltd." The June 2011 Elliott Affidavit primarily detailed communications between "Trader A" (an IRD trader) of the previously-referenced "Cooperating Party" and an ICAP broker (referenced in the June 2011 Elliott Affidavit as "Broker X") during the Class Period.

159. The Affidavit specifies that Trader A "discussed his current trading positions with Broker X and where he would like to see various maturities of Yen LIBOR move." Trader A "asked Broker X for Yen LIBOR submissions that were advantageous to Trader A's trading positions," and Broker X, in turn, "acknowledged these requests and advised Trader A

about his efforts to make them happen.” The Affidavit further states:

Counsel for the Cooperating Party has proffered that the expectation was for Broker X, directly or through other brokers at ICAP, to influence the Yen LIBOR submissions of Panel Banks. Broker X communicated to Trader A his efforts to get brokers at ICAP in London to influence Yen LIBOR Panel Banks in line with Trader A’s requests. The efforts of Broker X included contacting a broker at ICAP in London who issued daily LIBOR expectations to the market. Trader A also communicated to Broker X his dealings with traders at other Participant Banks and a broker at another Cash Broker. Not all efforts to influence Yen LIBOR panel banks were successful. Broker X had additional discussions around the setting of Yen LIBOR with another trader of the Cooperating Party (“Trader B”).

160. On June 14, 2011, the Ontario Superior Court issued an order allowing the document requests concerning ICAP.

161. The press has reported that UBS was the “Cooperating Party” referred to in the Elliott Affidavits.

b. Singapore Proceedings

162. In a pending legal action in Singapore’s High Court, Tan Chi Min, former head of delta trading for RBS’s global banking and markets division in Singapore (who worked for RBS from August 12, 2006 to November 9, 2011), alleges in his Writ of Summons

and Statement of Claim that the bank condoned collusion between its traders and LIBOR rate-setters to set LIBOR at levels to maximize profits. In the same filing, Tan stated RBS commenced an internal probe following inquiries by European and U.S. authorities about potential LIBOR manipulation.

163. Tan—whom RBS terminated, asserting he engaged in “gross misconduct”—alleges that RBS’s internal investigations “were intended to create the impression that such conduct was the conduct not of the defendant itself but the conduct of specific employees who the defendant has sought to make scapegoats through summary dismissals.” Tan further alleges that it was “part of his responsibilities to provide input and submit requests to the rate setter and there is no regulation, policy, guideline or law that he has infringed in doing this,” and that “it was common practice among [RBS]’s senior employees to make requests to [RBS]’s rate setters as to the appropriate LIBOR rate.” Those requests, Tan specified, “were made by, among others, Neil Danziger, Jezri Mohideen (a senior manager), Robert Brennan (a senior manager), Kevin Liddy (a senior manager) and Jeremy Martin,” and the practice “was known to other members of [RBS]’s senior management including Scott Nygaard, Todd Morakis and Lee Knight.” Tan added that RBS employees “also took requests from clients (such as Brevan Howard) in relation to the fixing of LIBOR.”

164. Indeed, in responding to Tan’s allegations, RBS admitted he had tried to improperly influence RBS rate-setters from 2007 to 2011 to submit LIBOR rates at levels that would benefit him.

165. In his complaint, however, Tan alleged that he could not have influenced the rate on his own. He also stated it was “common practice” among RBS’s senior employees to make requests as to the appropriate LIBOR rate.

**DEFENDANTS’ UNDERWRITING OF
RELEVANT LIBOR-BASED DEBT SECURITIES
DURING THE CLASS PERIOD**

166. One or more of Defendants, exclusively or with others, directly or through affiliated corporate entities, acted as underwriters of Relevant LIBOR-Based Debt Securities. In their role as underwriters, such Defendants were responsible for, *inter alia*, initially purchasing the debt securities from their respective issuers, and then re-selling the securities in private or public transactions.

167. As underwriters of Relevant LIBOR-Based Debt Securities, Defendants were intimately familiar with all major terms and conditions of the Relevant LIBOR-Based Debt Securities, including the fact that the interest rates to be paid on the securities were directly tied to the LIBOR rate.

**INTERSTATE COMMERCE AND ANTITRUST
INJURY TO PLAINTIFF AND THE CLASS**

168. An essential component in the pricing of debt transactions is the interest rate to be paid.

169. At all relevant times, LIBOR was a key benchmark for determining the applicable interest rate, and hence the pricing, of many debt transactions in the United States.

170. Many hundreds of billions of dollars or more of debt transactions are entered into each year in

interstate commerce in the United States.

171. During the Class Period, there were outstanding more than 5,200 Relevant LIBOR-Based Debt Securities issued in the United States by corporate, state and municipal, and foreign sovereign issuers with an outstanding face value as January 1, 2008 of in excess of \$500 Billion.

172. Hundreds of millions of dollars of interest, determined by reference to LIBOR as the benchmark, are paid each year in interstate commerce in the United States.

173. By suppressing LIBOR rates, Defendants effectively reduced the amount of interest paid each year on debt obligations in interstate commerce in the United States.

174. Thus, Defendants' unlawful conduct had a direct, substantial, and foreseeable impact on interstate commerce in the United States.

175. At all relevant times, Defendants knew that LIBOR was and is a key benchmark for determining the applicable interest rate of debt securities and other obligations in the United States and that, by suppressing LIBOR rates, Defendants would effectively reduce the amount of interest paid on such debt securities and obligations in the United States.

176. Indeed, both before and during the Class Period, some of Defendants directly or indirectly through affiliated entities underwrote millions of dollars' worth of Relevant LIBOR-Based Debt Securities, knowing that such securities had been or would be sold in interstate commerce in the United

States and that the interest payments thereunder would be made in interstate commerce.

177. By conspiring to suppress the LIBOR rates, Defendants intentionally targeted their unlawful conduct to affect commerce, including interstate commerce, within the United States.

178. Defendants' unlawful conduct had a direct and adverse impact on competition in the United States in that, absent Defendants' collusion, LIBOR rates would have been higher, more money would have been paid as interest in U.S. interstate commerce, and Plaintiffs and the members of the Class would have earned more interest.

179. As a direct result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered injury to their business or property.

**PLAINTIFFS DID NOT KNOW, NOR COULD
THEY REASONABLY HAVE KNOWN, ABOUT
DEFENDANTS' UNLAWFUL CONDUCT UNTIL
AT LEAST MARCH 2011**

180. Before UBS's March 15, 2011 announcement that it had been subpoenaed in connection with the U.S. government's investigation into possible LIBOR manipulation, Plaintiffs had not discovered, and could not with reasonable diligence have discovered, facts indicating Defendants were engaging in misconduct that caused LIBOR to be artificially depressed during the Class Period.

181. Moreover, though some market participants voiced concerns in late 2007-early 2008 that LIBOR did not reflect banks' true borrowing costs, those concerns were quickly—though, it now

turns out, wrongly—dismissed.

**A. DEFENDANTS' UNLAWFUL
ACTIVITIES WERE INHERENTLY
SELF-CONCEALING.**

182. Defendants conspired to share information regarding their LIBOR quotes and to misrepresent their borrowing costs to the BBA. In so doing, Defendants aimed to—and did—depress LIBOR to artificially low levels, which allowed them to pay unduly low interest rates on LIBOR-based financial instruments they or others issued or sold to investors.

183. Defendants' misconduct was, by its very nature, self-concealing. Defendants could not expect to suppress LIBOR if the BBA, or the general public, knew that they were colluding to report artificial, depressed borrowing rates. Defendants' conspiracy could only succeed by preventing the public from knowing what they were doing.

184. In addition, the facts surrounding the Defendants' operations were internal to them. First, those banks' actual or reasonably expected costs of borrowing were not publicly disclosed, rendering it impossible for Plaintiffs and others outside the banks to discern (without sophisticated expert analysis) any discrepancies between Defendants' publicly disclosed LIBOR quotes and other measures of those banks' actual or reasonably expected borrowing costs. Second, communications within and among the Defendants likewise were not publicly available, which further precluded Plaintiffs from discovering Defendants' misconduct, even with reasonable diligence.

185. As a result of the self-concealing nature

of Defendants' collusive scheme, no person of ordinary intelligence would have discovered, or with reasonable diligence could have discovered before March 15, 2011, facts indicating Defendants were unlawfully suppressing LIBOR during the Class Period.

**B. THE BBA AND DEFENDANTS
DEFLECTED CONCERNS RAISED
BY SOME MARKET OBSERVERS
AND PARTICIPANTS IN LATE 2007
AND EARLY 2008 ABOUT LIBOR'S
ACCURACY.**

186. Beginning in or about November 2007 and continuing sporadically into early 2008, concerns arose that the members of the LIBOR panel might be understating their true costs of borrowing, thus causing LIBOR to be set artificially low.

187. In response to those concerns, the BBA conducted an inquiry regarding LIBOR.

188. Notably, shortly after the BBA announced its investigation in April 2008, the LIBOR panel banks raised their reported rates, causing LIBOR to log its biggest increase since August 2007. The banks, including the LIBOR Panel Defendants, thus falsely and misleadingly signaled that any improper reporting of false rates that may have previously occurred had ended.

189. Subsequently, the BBA reported (wrongly) that LIBOR had not been manipulated, thus providing further (incorrect) assurance to Plaintiffs and the public that the concerns expressed by some market participants were unfounded.

190. Moreover, Defendants engaged in a

media strategy that diffused the speculation that had arisen concerning LIBOR—and further concealed their conduct. On April 21, 2008, for instance, Dominic Konstam of Credit Suisse affirmatively stated the low LIBOR rates were attributable to the fact that U.S. banks, such as Citibank and JPMorgan, had access to large customer deposits and borrowing from the Federal Reserve and did not need more expensive loans from other banks: “Banks are hoarding cash because funding from the asset-backed commercial paper market has fallen sharply while money market funds are lending on a short term basis and are restricting their supply.”⁶²

191. In an April 28, 2008 interview with the *Financial Times*, Konstam continued to defend LIBOR’s reliability:

Libor has been a barometer of the need for banks to raise capital. The main problem with Libor is the capital strains facing banks ... Initially there was some confusion that Libor itself was the problem, with talk of the rate being manipulated and not representative of the true cost of borrowing.⁶³

⁶² Gillian Tett & Michael Mackenzie, “Doubts Over Libor Widen,” FT.com, available at <http://www.ft.com/cms/s/0/d1d9a792-0fbd-11dd-8871-0000779fd2ac.html#axzz1szdS58jE>, last accessed on April 24, 2012.

⁶³ Michael Mackenzie, “Talk of quick fix recedes as Libor gap fails to close,” FT.com, available at <http://www.ft.com/intl/cms/s/0/3da27a46-5d05-11dd-8d38->

192. On May 16, 2008, in response to a media inquiry, JPMorgan commented, “[t]he Libor interbank rate-setting process is not broken, and recent rate volatility can be blamed largely on reluctance among banks to lend to each other amid the current credit crunch.”⁶⁴

193. The same day, Colin Withers of Citigroup assured the public that LIBOR remained reliable, emphasizing “the measures we are using are historic -- up to 30 to 40 years old.”⁶⁵

194. And in May 2008, *The Wall Street Journal* asked numerous Defendants to comment on the media speculation concerning aberrations in LIBOR. Rather than declining or refusing to comment, those Defendants made affirmative representations designed to further conceal their wrongdoing. On May 29, 2008, for instance, Citibank affirmatively claimed innocence and stated it continued to “submit [its] Libor rates at levels that accurately reflect [its] perception of the market.” HBOS similarly asserted its LIBOR quotes constituted a “genuine and realistic” indication of the bank’s

000077b07658.html#axzz1szdS58jE, last accessed on April 24, 2012.

⁶⁴ Kirsten Donovan, Jamie McGeever, Jennifer Ablan, Richard Leong & John Parry, “European, U.S. bankers work on Libor problems,” reuters.com, available at <http://in.reuters.com/article/2008/05/16/markets-rates-bba-idINL162110020080516>, last accessed on April 24, 2012.

⁶⁵ Id.

borrowing costs.⁶⁶

C. **PLAINTIFFS CERTAINLY COULD NOT HAVE KNOWN OR REASONABLY DISCOVERED—UNTIL AT LEAST MARCH 2011—FACTS SUGGESTING DEFENDANTS KNOWINGLY COLLUDED TO SUPPRESS LIBOR.**

195. Notwithstanding the smattering of statements in late 2007-early 2008 questioning LIBOR's viability, Plaintiffs had no reason to suspect—at least until the existence of government investigations was revealed in March 2011—that Defendants were *knowingly colluding* to suppress LIBOR. Indeed, as a result of Defendants' secret conspiracy—and their fraudulent concealment of relevant information—no facts arose before March 2011 to put Plaintiffs on inquiry notice that a conspiracy to manipulate LIBOR existed.

196. Due to the Defendants' fraudulent concealment, any statute of limitations affecting or limiting the rights of action by Plaintiffs or members of the Class was tolled until March 15, 2011.

197. The Defendants are equitably estopped from asserting that any otherwise applicable period of limitations has run.

CLASS ACTION ALLEGATIONS

198. Plaintiffs bring this action for

⁶⁶ Carrick Mollenkamp & Mark Whitehouse, "Study Casts Doubt on Key Rate."

themselves individually and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all others who owned (including beneficially in “street name”) any of the Relevant LIBOR-Based Debt Securities during the Class Period. Excluded from “Relevant LIBOR-Based Debt Securities” and the Class are debt securities issued by any Defendant as obligor.

199. The Class is so numerous that the joinder of all members is impracticable. During the Class Period there were outstanding more than 5,200 Relevant LIBOR-Based Debt Securities issued by corporate, state and municipal, and foreign sovereign issuers with an outstanding face value in excess of \$500 Billion. While the exact number of Class members is unknown to Plaintiffs at this time, Plaintiffs are informed and believe that there are at least thousands of geographically dispersed Class members who suffered injury, inter alia, by receiving less interest pursuant to their Relevant LIBOR-Based Debt Securities during the Class Period.

200. Plaintiffs’ claims are typical of the claims of the other members of the Class. Plaintiffs and the members of the Class sustained damages arising out of Defendants’ common course of conduct in violation of law as alleged herein. Defendants’ wrongful conduct in violation of the antitrust laws directly caused the injuries and damages of each member of the Class.

201. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class action litigation, including antitrust class action

litigation.

202. Common questions of law and fact exist as to all members of the Class, which common questions predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are:

- a. whether Defendants conspired with others to depress artificially LIBOR rates in violation of the Sherman Act;
- b. whether Defendants' conduct had an anticompetitive and manipulative effect on LIBOR during the Class Period;
- c. whether Defendants' conduct had a direct, substantial, reasonably foreseeable, and adverse impact upon interstate commerce in the United States during the Class Period;
- d. whether Defendants' conduct depressed the amounts of interest Plaintiffs and the members of the Class earned on their Relevant LIBOR-Based Debt Securities during the Class Period; and
- e. the appropriate measure of damages for the injury sustained by Plaintiffs and the members of the Class as a result of Defendants' unlawful activities.

203. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because joinder of all Class members is impracticable. The prosecution of separate actions by individual members of the Class would impose heavy burdens upon the courts and

Defendants, and would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Class. A class action, on the other hand, will achieve substantial economies of time, effort, and expense, and will assure uniformity of decision as to persons similarly situated without sacrificing procedural fairness or bringing about other undesirable results.

204. The interest of members of the Class in individually controlling the prosecution of separate actions is theoretical rather than practical. The Class has a high degree of cohesion, and prosecution of the action through a representative is not objectionable. The amounts at stake for individual Class members, while substantial in the aggregate, are not necessarily great enough to enable each of them to maintain a separate suit against Defendants. Plaintiffs do not anticipate any difficulty in the management of this action as a class action.

CLAIM FOR RELIEF
VIOLATION OF SECTION 1 OF
THE SHERMAN ACT

205. Plaintiffs incorporate by reference and reallege the preceding allegations, as though fully set forth herein.

206. The Defendants and their unnamed co-conspirators entered into and engaged in a continuing conspiracy, agreement, understanding, or concerted action in unreasonable restraint of interstate trade and commerce in the United States in violation of Section 1 of the Sherman Act.

207. During the Class Period, the Defendants

combined, conspired, and agreed to fix, maintain, and depress the LIBOR rates. Through their positions on the US\$ LIBOR panel, Defendants could and did control what LIBOR rates would be reported, and thus controlled the amounts of interest paid on the Relevant LIBOR-Based Debt Securities.

208. In furtherance of the conspiracy, Defendants fixed, maintained, depressed and stabilized LIBOR, a key component in determining the amounts of interest paid on Relevant LIBOR-Based Debt Securities. Accordingly, Defendants' conspiracy is a *per se* violation of Section 1 of the Sherman Act.

209. Defendants' conspiracy, and its resulting impact on the amounts of interest paid on Relevant LIBOR-Based Debt Securities, occurred in or affected interstate commerce.

210. As a direct, reasonably foreseeable, and substantial result of Defendants' unlawful conduct, Plaintiffs and members of the Class have suffered injury to their business or property.

211. Pursuant to Section 4 of the Clayton Act, Plaintiffs and members of the Class are each entitled to treble damages for the violations of the Sherman Act alleged herein.

RELIEF SOUGHT

Accordingly, Plaintiffs demand judgment against Defendants and each of them as follows:

A. Determining that this action may be maintained as a class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure, with Plaintiffs as class representatives and Plaintiffs' counsel as counsel for the Class;

B. Adjudging that Defendants have violated Section 1 of the Sherman Act;

C. Awarding to Plaintiffs and the Class three-fold the damages to be proved at trial;

E. Awarding to Plaintiffs and the Class their costs of the suit, including reasonable attorneys' fees; and

F. Affording to Plaintiffs and the Class such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial of all issues triable by a jury.

Dated: April 30, 2012

Karen L. Morris (Bar No. 1939701)

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[Excerpt from Majority Plaintiffs' Memorandum of Law in Support of Motion for Appointment of Interim Class Counsel and Consolidation of All Related Cases. MDL Docket No. 10; Sept. 1, 2011]

II. THIS LITIGATION IS APPROPRIATE FOR CONSOLIDATION

The Court should consolidate all the Related Actions into a single action because they all arise from common facts and present sufficiently common legal questions. Consolidation of different actions pending before a court is appropriate where, as here, the actions involve “common question[s] of law or fact.” See Fed. R. Civ. Proc. 42(a); *Kaplan*, 240 F.R.D. at 91. The central factual and legal issues presented by these actions are common.

Consolidation under Rule 42(a) is appropriate where there are factual and legal similarities among the actions, and the defendants overlap in substantial degree. 9 Wright & Miller, *Federal Practice and Procedure* §2384 p. 447 (“Actions involving the same parties are apt candidates for consolidation.”); see generally *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 724 & n.10 (1966) (“Under the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.”) (citing, *inter alia*, Fed. R. Civ. P. 42).

As the JPML noted, the Related Actions “share factual issues arising from allegations concerning defendants’ participation” in Libor setting. See Transfer Order, at 1. These overlapping issues include: whether Defendants agreed or conspired to

manipulate the Libor setting; whether Defendants did manipulate the Libor setting; the scope and duration of any such manipulation; and whether Defendants' conduct caused injury to Plaintiffs and the Class; and the appropriate measure of damages. Because these factual questions are common to all of the Related Actions – and because the issue of Defendants' combination, conspiracy or agreement is common, regardless of what type of Libor-based financial instrument Plaintiffs purchased – consolidation is needed. Consolidation will eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel, and the judiciary.

The Related Actions also share substantially overlapping legal claims. All claims concern Defendants' manipulation of Libor, and the impact of that manipulation. The Related Actions primarily allege federal antitrust claims, federal CEA claims, or both. As the Second Circuit has explained, “price manipulation is an evil that is always forbidden under every circumstance by both the [CEA] and the antitrust laws.” *Strobl v. New York Mercantile Exchange*, 768 F.2d 22, 28 (2d Cir. 1985).²⁸ “Therefore, application of the latter cannot be said to be repugnant to the purposes of the former.” *Id.* (rejecting the argument that the “antitrust laws no longer apply to activity that violates the [CEA]”); see *Friedman v. Salomon/Smith Barney*, No. 98 Civ. 5990, 2000 WL

²⁸ CEA claims are available only to persons who transact in certain types of futures contracts or options thereon. Section 22 of CEA, 7 U.S.C. § 25.

1804719, at *3 (S.D.N.Y. Dec. 8, 2000) (Buchwald, J) (same), *aff'd* 313 F.3d 796 (2d Cir. 2002), *cert denied* 540 U.S. 822 (2003). In *Strobl*, the plaintiffs tried their antitrust and CEA claims together in the same trial, and prevailed through verdict, post-judgment motions, and appeals. 768 F.2d at 27-28.

Consolidation is especially appropriate here because the antitrust and CEA claims stem from identical conduct. Potential differences between antitrust and CEA claims arise primarily from the fact that collusion greatly helps but is not required to prove manipulation in violation of the CEA. Also, the fact that different categories of the Class may rely on different authority to satisfy the antitrust direct injury requirements, does not prevent consolidation. See *In re Crude Oil Commodity Futures Litig.*, No. 1:11-cv-3600 (S.D.N.Y.) [D.E. 17]. These and any other potential differences may be easily addressed, if appropriate, through the subclassing discussed in Point I.B.4 *supra*.

The potential differences between the CEA and antitrust causes of action are insufficient to offset the efficiencies generated by consolidating all the actions. See *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 530 (3d Cir. 2004) (“*Warfarin*”) (“[T]he fact that there may be variations in the rights and remedies available to injured class members under the various laws of the fifty states in this matter does not defeat commonality and predominance.”); *Kaplan*, 240 F.R.D. at 91 (“Differences in causes of action . . . do not render consolidation inappropriate if the cases present sufficiently common questions of fact and law, and the differences do not outweigh the interests of judicial economy served by consolidation.”).

Rather, Rule 42 does not require that actions be identical in order to be consolidated. *Sofran v. LaBranche & Co., Inc.*, 220 F.R.D. 398, 401 (S.D.N.Y. 2004); *compare Crude Oil*, 1:11-cv-3600 (S.D.N.Y. July 22, 2011) [D.E. 17-19] (all plaintiffs proposed such consolidation where the antitrust claims involved different class members than the CEA claims did).

As this Court has held, differences in causes of action, defendants, or the class period do not render consolidation inappropriate where, as here, the cases present sufficiently common questions of fact and law, and the differences do not outweigh the interests of judicial economy served by consolidation. *Kaplan*, 240 at 88. The presence here of different parties – especially when most Defendants are overlapping – does not weigh against consolidation. “[C]onsolidation is not barred simply because the actions to be consolidated allege claims against different parties.” *Skwortz v. Crayfish Co., Ltd.* No. 00-CV-6766, 2001 WL 1160745, at *2 (S.D.N.Y. Sept. 28, 2001). *See also Pinkowitz v. Elan Corp., PLC*, No. 02-CV-865, 2002 WL 1822118, at *3 (S.D.N.Y. July 29, 2002) (“The fact that there are different parties in this action does not mean this case should not be consolidated.”). Accordingly, all of the Related Actions, and any similar actions that are subsequently filed in or transferred to this District should be consolidated.

**[Memorandum and Order.
MDL Docket No. 66; Nov. 29, 2011]**
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: LIBOR-Based Financial Instruments
Antitrust Litigation 11 MD 2262(NRB)
THIS DOCUMENT RELATES TO: All Cases

MEMORANDUM AND ORDER

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Pursuant to this Court's October 18, 2011 Memorandum and Order, counsel seeking to serve as interim class counsel have presented the Court with supplemental submissions and revised leadership proposals. For the reasons discussed below, we appoint Hausfeld LLP ("Hausfeld") and Susman Godfrey LLP ("Susman Godfrey") as interim class counsel for the putative class of over-the-counter plaintiffs, and we appoint Kirby McInerney LLP ("Kirby McInerney") and Lovell Stewart Halebian Jacobson LLP ("Lovell Stewart") as interim class counsel for the putative class of exchange-based plaintiffs. We also grant the motion to consolidate related class action complaints.

BACKGROUND

This multi-district litigation involves twenty-three related complaints filed against member banks of the British Bankers' Association ("BBA") London Interbank Offer Rate ("LIBOR") Panel (collectively

“defendants”). Plaintiffs in these cases allege that defendants artificially suppressed LIBOR by understating their borrowing costs to the BBA.

In our October 18, 2011 Memorandum and Order, we determined that even though all plaintiffs make similar substantive allegations, separate putative classes should be maintained for those plaintiffs who engaged in over-the-counter transactions and those plaintiffs who purchased financial instruments on an exchange. Because the record was unclear as to the proper classification of several of the plaintiffs, we requested that counsel inform us as to the plaintiffs they currently represent and whether those plaintiffs are over-the-counter purchasers or exchange-based purchasers. Counsel have now provided us with the requested information, and several firms have reorganized their leadership proposals to conform with our decision to maintain separate putative classes.

DISCUSSION

I. Interim Class Counsel Proposals

Previously, the law firms of Grant & Eisenhofer PA (“Grant & Eisenhofer”), Kirby McInerney, Robbins Geller Rudman & Dowd LLP (“Robbins Geller”), and Lovell Stewart had submitted a proposal under which the four firms would act as interim class counsel for both categories of plaintiffs. These firms have now divided, with two of the firms proposing to represent over-the-counter plaintiffs and the other two seeking to represent exchange-based plaintiffs. We are separately presented with an additional class counsel proposal for each of the putative classes. Thus, we are now faced with two proposals with respect to each putative class of plaintiffs.

A.Over-the-Counter Plaintiffs¹

1.Grant & Eisenhofer Proposal

Grant & Eisenhofer and Robbins Geller – previously part of the four-firm proposal – now seek to represent the putative class of over-the-counter plaintiffs (“Grant & Eisenhofer Proposal”). Robbins Geller currently represents two institutional plaintiffs, Carpenters Pension Fund of West Virginia and City of Dania Beach Police & Firefighters Retirement System, that purchased floating rate debt tied to LIBOR from one or more of the defendants. Grant & Eisenhofer currently represents Ravan Investments, LLC (“Ravan”), an institutional plaintiff that entered into unspecified types of over-the-counter transactions with defendant UBS. The Grant & Eisenhofer Proposal is also supported by plaintiff’s counsel in *Insulators & Asbestos Workers Local 14 v. Bank of Am. Corp.*, No. 11 Civ. 3781 (S.D.N.Y.).

2.Baltimore Proposal

Hausfeld and Susman Godfrey submit a competing

¹ We have also received a motion for appointment as interim class counsel from the law firms of Scott & Scott LLP and Robbins, Kaplan, Miller & Ciresi LLP. These firms seek to represent a putative class of plaintiffs that engaged in interest rate swaps only. This motion was submitted on November 15, 2011, roughly two and a half months after the deadline we set for counsel to submit motions for appointment as interim class counsel. We deny these firms’ motion on this ground alone, but we also note that after reviewing the firms’ submissions, we disagree that there is a need for separate putative class treatment for plaintiffs who engaged in different forms of over-the-counter transactions.

proposal with respect to the over-the-counter plaintiffs (“Baltimore Proposal”). These firms currently represent the Mayor and City Council of Baltimore in connection with Baltimore’s having entered into “hundreds of millions of dollars” of interest rate swaps with defendants.

B.Exchange-Based Plaintiffs

1.Kirby McInerney Proposal

Kirby McInerney and Lovell Stewart – the other two firms in the previous four-firm proposal – now seek to represent the putative class of exchange-based plaintiffs (“Kirby McInerney Proposal”). Kirby McInerney currently represents two foreign institutional investors, FTC Capital GmbH and Metzler Investment GmbH, that purchased exchange-based derivatives. Lovell Stewart currently represents Roberto E. Calle Gracey, an individual investor who purchased LIBOR-based futures contracts on the Chicago Mercantile Exchange. The Kirby McInerney Proposal also has the support of plaintiffs in six of the other cases pending before this Court.²

2.Lowey Dannenberg Proposal

The law firm Lowey Dannenberg Cohen & Hart PC (“Lowey Dannenberg”) also seeks to be appointed interim class counsel for the exchange-based plaintiffs. In the initial round of submissions on this issue, Lowey Dannenberg did not actually apply to serve as

² These plaintiffs are 303030 Trading LLC, Atlantic Trading USA, LLC, AVP Properties LLC, Independence Trading Inc., Gary Francis, and Nathaniel Haynes.

interim class counsel, but rather acquiesced to the previously referenced four-firm proposal, under which Lowey Dannenberg would have served as a “designated fiduciary” for exchange-based plaintiffs. Lowey Dannenberg currently represents Jeffrey Laydon and Richard Hershey, two individual investors who purchased LIBOR-based futures contracts.

II. Interim Class Counsel Selection

Rule 23(g) of the Federal Rules of Civil Procedure allows a court to “designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.” Fed. R. Civ. P. 23(g)(3). The designation of interim class counsel is especially encouraged in cases such as the instant matter where there are multiple, overlapping class actions that require extensive pretrial coordination. *See In re Air Cargo Shipping Servs. Antitrust Litig.*, 240 F.R.D. 56, 57 (E.D.N.Y. 2006) (citing MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.11 (2004)).

The considerations set out in Rule 23(g)(1)(A), which govern the appointment of class counsel once a class is certified, are widely accepted to apply to the designation of interim class counsel before certification as well. *See id.*; *see also Walker v. Discover Fin. Servs.*, No. 10-cv-6994, 2011 WL 2160889, at *2 (N.D. Ill. May 26, 2011). These criteria include: (1) the work counsel has done in identifying or investigating potential claims; (2) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel’s knowledge of the applicable law; and (4) the resources counsel will devote to representing the class. Fed. R. Civ. P. 23(g)(1)(A).

Unfortunately, the application of these factors does not guide us to a particular result in this case. All of the firms submitting applications have extensive experience in complex litigation, and we are more than confident that they have adequate knowledge of the applicable law. In addition, we have little doubt that the firms would each devote significant resources to prosecuting plaintiffs' claims. Finally, although certain of the firms may have brought suit earlier than others, all of the firms have demonstrated that they have thoroughly investigated the relevant claims, rendering this factor not determinative. We are therefore forced to rely on other case-specific factors to choose between the competing proposals.

A. Over-the-Counter Plaintiffs

Although the Grant & Eisenhofer Proposal carries the support of a greater number of plaintiffs, the Baltimore Proposal has the support of a plaintiff with by far the greatest economic interest. As previously referenced, the Mayor and City Council of Baltimore claim that Baltimore entered into hundreds of millions of dollars of interest rate swaps with defendants. Plaintiffs supporting the Grant & Eisenhofer Proposal do not allege to have held anywhere near this level of exposure. Furthermore, the market for interest rate swaps in general constitutes an extremely high percentage of the overall market for over-the-counter LIBOR-based transactions. Counsel for Baltimore present data suggesting that the worldwide nominal value of LIBOR-based interest rate swaps - \$300 million as of September 2008 - is nearly thirty times

the market for LIBOR-based debt (which is the market in which plaintiffs represented by Robbins Geller participated).³ While this case is not governed by the Private Securities Litigation Reform Act of 1995, and therefore we are not guided entirely by the magnitude of a plaintiff's economic interest, we nevertheless find this consideration highly relevant.

We also find persuasive the fact that Hausfeld maintains an office in London with a full-time staff of at least five solicitors. Given that the case appears to involve extremely complicated factual issues, we believe that having dedicated and locally trained attorneys at the site of the core operative facts could prove extremely beneficial.

Finally, although less important to our determination, we note that Hausfeld and Susman Godfrey have only ever sought to represent over-the-counter plaintiffs, while Grant & Eisenhofer and Robbins Geller previously sought to represent exchange-based plaintiffs as well. Although we have no doubt that the latter two firms would zealously pursue the interests of over-the-counter plaintiffs were we to appoint them, there is some possibility that these plaintiffs could be prejudiced by their counsel having minimized the antitrust standing questions facing the exchange-based plaintiffs, and more generally from having suggested that all plaintiffs

³ As previously described, Grant & Eisenhofer has not specified the type of over-the-counter transactions entered into by its client, Ravan. However, even if Ravan did enter into interest rate swaps, we safely assume that the size of its holdings did not approach that of Baltimore's.

should be treated in a like manner.

Based on these considerations, we appoint Hausfeld and Susman Godfrey as interim class counsel for the putative class of over-the-counter plaintiffs.

B.Exchange-Based Plaintiffs

Our decision with respect to interim class counsel for the exchange-based plaintiffs is less difficult. Kirby McInerney and Lovell Stewart currently represent two institutional plaintiffs and one individual plaintiff, and the firms' proposal has the support of plaintiffs in six other cases. In contrast, Lowey Dannenberg currently represents just two individual plaintiffs and its proposal has the support of no other plaintiffs. The diversity and sheer number of plaintiffs supporting the Kirby McInerney Proposal are compelling factors in favor of their appointment.

We also find that Kirby McInerney and Lovell Stewart have adequately addressed the Article III standing issues raised by Lowey Dannenberg with respect to the foreign plaintiffs represented by Kirby McInerney. With that said, we caution that if any representation made by Kirby McInerney and Lovell Stewart on this issue is found to be inaccurate, and the proposed plaintiffs lack standing as a result, Kirby McInerney and Lovell Stewart will be removed as lead counsel and Lowey Dannenberg will be substituted.⁴

⁴ This Court experienced the waste and delay that occurs when a proposed plaintiff is found to lack standing in *In re IMAX Securities Litigation*, 06 Civ. 6128 (S.D.N.Y). We have no interest in reliving that experience when the issue of standing has been raised up front.

Subject to this proviso, we appoint Kirby McInerney and Lovell Stewart as interim class counsel for the exchange-based plaintiffs.

III. Consolidation

We have also been presented a motion to consolidate the related class action complaints before this Court.⁵ (Docket no. 10 at 22-25.)

Consolidation of actions under Federal Rule of Civil Procedure 42(a) is appropriate when “actions before the court involve a common question of law or fact.” Fed. R. Civ. P. 42(a). Here, there is substantial overlap in defendants across the cases, and the underlying factual issues presented are seemingly identical—namely whether these defendants deliberately manipulated LIBOR. The legal issues presented are also common across the complaints, as the cases to be consolidated all involve claims under the Sherman Antitrust Act and/or the Commodity Exchange Act.

We therefore consolidate all related class action complaints pending before this Court, as well as any future class action complaints alleging

⁵ The motion does not seek consolidation of three cases not filed as class action complaints that were transferred to this Court by the Judicial Panel of Multi-District Litigation (“JPML”) on September 14, 2011: *Schwab Money Market Fund v. Bank of America Corp.*, No. 11 Civ. 6412 (N.D. Cal.); *Charles Schwab Bank v. Bank of America Corp.*, No. 11 Civ. 6411 (N.D. Cal.); *Schwab Short-Term Bond Market Fund v. Bank of America Corp.*, No. 11 Civ. 6409 (N.D. Cal.). Accordingly, we do not consolidate these actions with the related class action complaints.

similar conduct and raising the same legal claims.

CONCLUSION

For the foregoing reasons, we hereby order: (1) that the LIBOR-related class action complaints currently pending before this Court be consolidated for all purposes under Federal Rule of Civil Procedure 42(a),⁶ under the following caption: *In Re: Libor-Based Financial Instruments Antitrust Litigation*, Master File No. 1:11-md-02262-NRB; (2) that the law firms of Hausfeld LLP and Susman and Godfrey LLP are appointed to serve as interim class counsel for the putative class of over-the-counter plaintiffs; (3) that the law firms of Kirby McInerney LLP and Lovell Stewart Halebian Jacobson LLP are appointed to serve as interim class counsel for the putative class of exchange-based plaintiffs; and (4) within 20 days, interim class counsel shall submit to this Court a proposed order to facilitate their representation of the putative classes and to advance the conduct and progress of the litigation.⁷

SO ORDERED

⁶ The captions of these cases are: 11 Civ. 2613; 11 Civ. 2883; 11 Civ. 3128; 11 Civ. 3249; 11 Civ. 3423; 11 Civ. 3781; 11 Civ. 3925; 11 Civ. 4421; 11 Civ. 4736; 11 Civ. 5450; 11 Civ. 5638; 11 Civ. 5640; 11 Civ. 5641; 11 Civ. 5927; 11 Civ. 5928; 11 Civ. 5929; 11 Civ. 5930; 11 Civ. 5931; 11 Civ. 7676; 11 Civ. 7715.

⁷ If counsel believes that the litigation would benefit from an in-person conference before the Court to discuss the next steps to be taken in the litigation, they are invited to contact the Court so informing us.

Dated: New York, New York
November 29, 2011

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

**[Pre-Trial Order No. 2.
MDL Docket No. 206; Aug. 14, 2012]**
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE LIBOR-BASED FINANCIAL
INSTRUMENTS ANTITRUST
LITIGATION

THIS DOCUMENT RELATES TO:
Case No. 12 CV 1025 (NRB)

ELLEN GELBOIM and LINDA
ZACHER, individually for themselves
and on behalf of all others similarly
situated,

Plaintiffs

-against-

CREDIT SUISSE GROUP AG, *et al.*
Defendants

MDL No. 2262
Master Case
11-md-2262
(NRB)
ECF Case

**PRE-TRIAL
ORDER NO.
2**

UPON the Court's entry of Pre-Trial Order No. I (Doc 78-1) in the multi-district *LIBOR-Based Financial Instruments Antitrust Litigation* before this action, No. 12-cv-1025 (NRB), had been filed, and the Court's subsequent acceptance of this action into the MDL litigation (Docs 117, 152):

IT IS HEREBY ORDERED THAT:**A. Consolidation and Coordination of Bondholder Plaintiff Actions**

1. *Ellen Gelboim and Linder Zacher v. Credit Suisse Group AG, et al.*, Case No. 12 CV 1025 (NRB), is designated as the lead action for all class actions brought on behalf of holders of LIBOR-based debt securities not issued by any Defendant (“Bondholder Plaintiff Action”) that may hereafter be filed in or transferred to this Court as related to *In re LIBOR-Based Financial Instruments Antitrust Litigation*, MDL No. 2262.

2. If a case that arises out of the same subject matter as *In re LIBOR-Based Financial Instruments Antitrust Litigation* and is brought as a class action on behalf of a Bondholder plaintiff is hereafter filed in this Court or is transferred from another court (together. a “Subsequent Bondholder Plaintiff Action”), the Court will direct the Clerk to:

- a. file a copy of this Order in the separate file for such action;
- b. consolidate the Subsequent Bondholder Plaintiff Action with the Bondholder Plaintiff Action by transferring the case to the docket for *In re LIBOR-Based Financial Instruments Antitrust Litigation*, MDL No. 2262, and *Ellen Gelboim and Linda Zacher v. Credit Suisse Group AG, et al.*, Case No. 12-cv-1025 (NRB); and
- c. close the docket for the Subsequent Bondholder Plaintiff Action.

3. The Court requests the assistance of counsel in calling to the attention of the Court the filing of any Subsequent Bondholder Plaintiff Action that might properly be consolidated or coordinated as a debt-securities holder action.

4. Every document filed exclusively relating to the Bondholder Plaintiff Action shall bear the following caption:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|--|
| <p>IN RE LIBOR-BASED FINANCIAL INSTRUMENTS ANTITRUST LITIGATION</p> <hr/> <p>THIS DOCUMENT RELATES TO: BONDHOLDER PLAINTIFF ACTION, Case No. 12-cv-1025 (NRB)</p> | <p>MDL No. 2262 Master File No. 1:11-md-02262-NRB ECF Case</p> |
|---|--|

B. Organization of Bondholder Plaintiff Counsel

5. Pursuant to Fed. R. Civ. P. 23(g)(3), the Court designates as Interim Co-Lead Counsel for the Bondholder Plaintiff class. Weinstein Kitchenoff & Asher LLC and Morris and Morris LLC Counselors At Law (“Bondholder Plaintiff Interim Co-Leads”). who shall be solely responsible for coordinating and organizing plaintiffs in the conduct of the Bondholder Plaintiff Action and, in particular, shall have the following responsibilities.

- a. To make, brief, and argue motions, and to file papers and participate in proceedings initiated by other parties;
- b. To initiate, conduct, and defend discovery proceedings;
- c. To act as spokesperson at pretrial conferences;
- d. To negotiate with defense counsel with respect to settlement and other matters;
- e. To call meetings of counsel for plaintiffs in the Bondholder Plaintiff Action;
- f. To make all work assignments to plaintiffs' counsel for the Bondholder Plaintiff Action to facilitate the orderly and efficient prosecution of this litigation and to avoid duplicative or unproductive effort;
- g. To conduct trial and post-trial proceedings;
- h. To consult with and employ experts;
- i. To request that the Court approve settlements, if any, and fee awards;
- j. To allocate fees;
- k. To perform such other duties and to undertake such other responsibilities as they deem necessary or desirable in the prosecution of this litigation;
- l. To coordinate with co-lead counsel for the Exchange-Based Plaintiff Action, co-lead counsel for the Over-the-Counter Plaintiff Action, counsel for any Bondholder plaintiff, any other lead or co-lead class counsel that may hereafter be appointed, and counsel for

- non-class plaintiffs in *In re LIBOR-Based Financial Instruments Antitrust Litigation*; and
- m. To coordinate and communicate with defendants' counsel with respect to matters addressed in this paragraph or its subparts.

The designation of Bondholder Plaintiff Interim Co-Leads in this Paragraph 5 is without prejudice to the right of other counsel to move for modification of such designation upon good cause shown.

6. No motion, request for discovery, or other pretrial proceedings shall be initiated or filed by any plaintiff in the Bondholder Plaintiff Action except through Bondholder Plaintiff Interim Co-Leads, and no counsel in the Bondholder Plaintiff Action shall be authorized to perform any work in the case without the express authorization of the Bondholder Plaintiff Interim Co-Leads.

7. Bondholder Plaintiff Interim Co-Leads shall be the contact between plaintiffs' counsel in the Bondholder Plaintiff Action and defendants' counsel, Exchange-Based Plaintiffs' counsel, Over-the-Counter Plaintiffs' counsel, any other lead or co-lead class counsel that may hereafter be appointed, counsel for non-class plaintiffs in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, and any counsel for any Bondholder plaintiff, as well as spokespersons for plaintiffs' counsel in the Bondholder Plaintiff Action. Bondholder Plaintiff Action Co-Leads are designated as the contact persons from plaintiffs' counsel in the Bondholder Plaintiff Action and as the attorneys of record with whom the Court will be dealing throughout the course of this litigation.

8. All plaintiffs' counsel in the Bondholder Plaintiff Action shall submit their up-to-date time and expenses on a monthly basis in the form set forth by Bondholder Plaintiff Action Co-Leads or on such other schedule as may be established, from time-to-time, by Bondholder Plaintiff Action Co-Leads.

9. Defendants shall effect service of papers on plaintiffs in the Bondholder Plaintiff Action by serving a copy on each Bondholder Plaintiff Action Co-Lead by electronic mail (including the Court's Electronic Case Filing system), overnight mail, telecopy, or hand delivery. Bondholder Plaintiff Interim Co-Leads shall effect service on plaintiffs in the Bondholder Plaintiff Action by serving a copy on all other counsel for plaintiffs in the Bondholder Plaintiff Action by electronic mail (including the Court's Electronic Case Filing system), overnight mail, telecopy or hand delivery.

No Waiver

10. The terms of this Order, the consolidation and coordination ordered herein, and the appointment of Bondholder Plaintiff Interim Co-Leads shall not constitute a waiver by any party of any claims in or defenses to any of the actions.

SO ORDERED

Dated: New York, New York, August 14, 2012

NAOMI REICE BUCHWALD

UNITED STATES DISTRICT JUDGE

**[Excerpt from District Court hearing transcript,
pages 77-80. MDL Docket No. 551; Feb. 4, 2014]**

THE COURT: I think that the only other issue out there is the request for 54(b) certification. It's not happening. For two reasons. I one, I think it is pretty clear from what I wrote in the first place that I was never enthusiastic on that issue. And given the reaction of the Second Circuit more than once, it truly is time to give it up at least, at least now.

MR. SUBRAMANIAN: Your Honor, if I could address that briefly. The Second Circuit never addressed the 54(b) issue. In fact, the case that it relied on said that 54(b) was the vehicle to appeal this type of issue in this context.

THE COURT: I'm not -- look, this case has a wonderful host of interesting issues. We could send six issues up to the circuit. We're not doing that. We're not doing it seriatim. We're going to clean up this complaint.

I'm not saying that I'm ever certifying the question. But we're not picking and choosing particular questions and sending them up.

MR. SUBRAMANIAN: Your Honor, we're talking about a dispositive -- an issue that disposed of the primary claim in this entire multidistrict litigation.

The name of this litigation is the LIBOR Financial Instruments Antitrust Litigation. And all the plaintiffs, both in these active cases and in the stayed cases, are in favor of an appeal now because it makes perfect sense in terms of judicial economy, fostering

settlement, providing guidance for future claims, and in avoiding future duplicative trials down the road.

And the issue is fully separable from everything in the case. It's not just one of many issues that we could send up on appeal. This is a unique and important issue on the primary claim on the case.

And your Honor noted earlier that what you want to do at this phase of the case is figure out who is going forward, which parties, and so that everything could be cleaned up. Well part of that is figuring out whether there's an antitrust claim here and knowing that once and for all. And it serves a lot of purposes to get a definitive answer on that question.

And your Honor, I'm really sorry. But Mr. Silverman asked a question. We entertained it. I really would like to address the issue of the unjust enrichment claim at the very least as opposed -- you know, in reference to the nontransacting banks because I do think that there is a strong claim against the nontransacting banks on that basis.

THE COURT: I'm sure you do. But the fact is you've had a lot of briefing time. If I give you -- I don't play by my rules for you, I have to not play by my rules for everybody else who presumably came here prepared to say something and who is going to be frustrated because they didn't get to say what was on their mind. It's not that we've been here for two hours and that's a reason to stop, but these really were the questions that I needed the input of counsel on. The others I have a very smart law clerk and he and I can talk about this stuff and figure it out and we can read your cases and it's not going to -- whatever we decide

will not be enhanced by additional argument of counsel.

MS. MORRIS: Your Honor, Karen Morris for the bondholder plaintiffs. I just want to ask a question about the 54(b) decision.

Taking your point that you're going to be deciding on the various motions to dismiss, it may help the parties in having conversation to think about the organizational issues that you've mentioned, if you might entertain the 54(b) several months from now when your Honor's decision may come out, that way we'll have a sense of the issues that could go up to the Second Circuit; that way we'd get a timely indication so that for discovery we know which claims are in, which claimants are going to be here, so that we can organize the discovery in a reasonable way. So it's something I would ask the Court to entertain and maybe give us a little bit of direction so the parties can talk during this period while your Honor

THE COURT: I'm not prepared to give you an answer on that now.

I think we're done then.

**[Letter from the District Court to All Counsel.
MDL Docket No. 572; July 18, 2014]**
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

July 17, 2014

Re: In re LIBOR-Based Financial
Instruments Antitrust Litigation
11Md. 2262 (NRB)

Dear Counsel:

The issuance of our June 23, 2014 Memorandum and Order, which defines the contours of the complaints that we have considered to date, requires that we now address the next steps necessary to move this litigation forward.

At the outset, we wish to make it clear to all parties that we are well aware of the Supreme Court's decision to grant certiorari on the issue of the appealability of the antitrust issue at this stage of the litigation. However, given the length of time that can reasonably be expected to pass before the issue is resolved (regardless of the outcome in the Supreme Court), we cannot await the outcome and will proceed on the substantive record as it now stands.

Also, as a preliminary matter, considering the number of complaints in this MDL, it would be very helpful if the plaintiffs could select a liaison counsel who would serve much in the same way as Davis Polk has on behalf of defendants.

From this Court's perspective, the first order of business is a case-by-case determination of which claims remain in all the pending cases after the rulings in *LIBOR I, II, and III*. Once liaison counsel has been selected, it would be immensely helpful if the Court could be provided with an Excel spreadsheet charting all the pending cases, which claims in those cases have been dismissed, and which claims remain viable.

Further, I would hope that liaison counsel would confer with defendants' counsel so that the chart would be agreed upon before submission.

If, following the creation of the spreadsheet, the defendants conclude that there are viable motions to dismiss causes of action which have not been the subject of previous rulings by the Court, defendants should submit pre-motion letters in accordance with my individual practices. Plaintiffs whose claims are the subject of potential motions should file responsive letters. To that extent, we lift the stay on the later filed cases.

Obviously, another subject that must be addressed is the transition from interim to formal classes. Among the issues that we perceive are whether there should be adjustments to the existing classes and/or the creation of new ones. Further, we seek the parties' input on whether there is discovery that must precede the making of class certification motions. To achieve such input, the stay will be lifted in this respect as well. The Court does, however, expect that any such submission will be coordinated and not duplicative.

Finally, the spreadsheet should be submitted no later than August 5; any pre-motion letters by August

13; and plaintiffs' responsive letters by August 20. We anticipate holding a conference in September or very early October. After we receive the August submissions, we will set a date for that conference, as well as dates for submissions addressing the class certification issues we have noted and any other issues the parties may wish to raise.

Very truly yours,

Naomi Reice Buchwald
United States District Judge

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**[Letter to Judge Naomi Reice Buchwald on
behalf of all Plaintiffs.
MDL Docket No. 574. Aug. 5, 2014]**

[Susman Godfrey L.L.P. Letterhead]

August 5, 2014

BY HAND AND ECF

The Honorable Naomi Reice Buchwald
United States District Court for the Southern District
of New York
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *In re LIBOR-Based Financial Instruments
Antitrust Litigation*, No. 11-md-2262 (NRB)

Dear Judge Buchwald:

Counsel for the plaintiffs have conferred and respectfully request that the Court appoint Susman Godfrey LLP and Kirby McInerney LLP as liaison counsel for the class plaintiffs. In addition, as there are a large number of individual actions with issues that do not overlap completely with the class actions, we respectfully request that the Court appoint

Dickstein Shapiro as liaison counsel for the individual actions.

The enclosed spreadsheet, which was prepared in consultation with defendants and submitted with their agreement, charts all the pending cases, identifying which claims have been dismissed and which remain viable. The Court's decisions in *LIBOR I*, *II*, and *III* dismissed certain claims in the Over-the-Counter, Exchange-Based, and Bondholder putative class cases and the initial Schwab individual actions; those rulings are noted on the chart. The claims in the other cases have not been dismissed and therefore are identified as "pending" on the chart.¹ (Plaintiffs in the remaining cases are aware of the Court's decisions and respectfully reserve their rights on their pending claims.)

Liaison counsel will confer with defendants about a process for addressing issues related to this chart and the Court's July 17 letter, including (1) dismissals of claims in some cases by agreement, (2) amendments of

¹ The docket entry for *LIBOR I*, #286, states that motions to dismiss were granted in part in cases other than the lead cases. This docket entry appears to be in error as the motions to dismiss were not directed at the complaints in these other cases. For example, the cases brought by the City of Riverside (13-cv-0597), County of San Mateo (13-cv-0625), East Bay Municipal Utility District (13-cv-0626), the City of Richmond (13-cv-0627), and the County of San Diego (13-cv-0667), all represented by Cotchett, Pitre & McCarthy LLP, were transferred to the MDL on January 25, 2013, after the stay order was issued and the briefing on the motions to dismiss was complete, but the docket entry erroneously identifies them as cases in which the motions to dismiss were granted in part and denied in part.

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complaints (some plaintiffs plan to amend their complaints and do not intend to waive their rights by not identifying potential amendments on this chart), and (3) class case administration questions such as adjustments to existing classes, creation of new classes, and appointment of any interim lead counsel in the previously stayed class cases.

Sincerely,

William Christopher Carmody
SUSMAN GODFREY LLP

David Kovel
KIRBY MCINERNEY LLP

cc: All Counsel (By ECF)

**[Letter to Judge Naomi Reice Buchwald on
behalf of All Defendants, with Sched. A and B.
MDL Docket No. 594; Aug. 13, 2014]**

[Davis Polk & Wardwell LLP Letterhead]

August 13, 2014

BY HAND DELIVERY AND ECF

Re: *In re LIBOR-Based Financial Instruments
Antitrust Litigation,*
Master File No. 1:11-md-2262-NRB

Honorable Naomi Reice Buchwald
United States District Judge
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, New York 10007-1312

Dear Judge Buchwald:

Pursuant to Your Honor's letter to counsel dated July 17, 2014, this pre-motion letter is submitted on behalf of all defendants with respect to their proposed motion to dismiss plaintiffs' (1) federal and state antitrust; (2) federal and state RICO; (3) CEA; and (4) contract and unjust enrichment claims against defendants with which a plaintiff did not transact, based on the Court's rulings to date, and for a more definite statement regarding contract and unjust enrichment claims where plaintiffs fail to identify the defendants with which they dealt.

Antitrust

A number of the stayed actions assert claims under federal and state antitrust laws. Although the precise fact allegations vary somewhat, all are based on the same core theory, that the defendants restrained competition by conspiring to make false USD LIBOR submissions to the British Bankers Association (“BBA”). This Court has twice ruled, however, that the submission and publication of LIBOR rates was not a competitive process, and that even if the allegations of false reports were true as alleged, no harm to competition and thus no antitrust injury resulted. *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 962 F. Supp. 2d 606, 627 (S.D.N.Y. 2013) (*LIBOR II*); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 935 F. Supp. 2d 666, 687-89 (S.D.N.Y. 2013) (*LIBOR I*). In the face of these rulings, none of the federal and state antitrust claims can survive. Attached as Schedule A is a list of the actions asserting such claims.

RICO

Similarly, this Court ruled in *LIBOR I* that federal RICO claims must be dismissed for two reasons: the exclusion of claims covered by the federal securities laws and the absence of extraterritorial application. *LIBOR I*, 935 F. Supp. 2d at 726-34. The Court found that the alleged activities of the RICO “enterprise” were in England. *Id.* at 733-34. That finding is equally applicable to the RICO claims in all of the stayed actions. Although the Second Circuit has subsequently held that federal RICO claims can reach foreign conduct in some circumstances, it limited that holding to situations in which the alleged predicate criminal violations were based on laws with clearly

expressed extraterritorial application. *European Cmty. v. RJR Nabisco, Inc.*, __ F. 3d __, 2014 WL 1613878, at *5 (2d Cir. Apr. 23, 2014). Defendants submit that none of the alleged predicate violations in the remaining federal RICO claims have such extraterritorial application, and Plaintiffs do not allege domestic conduct sufficient to state a domestic RICO claim. Therefore, this Court's ruling regarding no extraterritorial application precludes those claims as well. In addition, most, if not all, of the federal RICO claims include allegations that would have been actionable under the federal securities laws and are therefore likewise precluded under the Court's alternative reasoning in *LIBOR I*, 935 F. Supp. 2d at 731.

The plaintiff in *Prudential Investment Portfolios 2 v. Bank of America Corp.*, No. 14-cv-4189 (S.D.N.Y. filed May 19, 2014), additionally asserts a RICO claim under New Jersey law. Defendants submit that that claim is even more clearly precluded by the Court's prior rulings. It is a "well-settled principle that 'New Jersey law regulates conduct in New Jersey, not outside the state,'" *Archut v. Ross Univ. Sch. of Veterinary Med.*, No. 10-1681 (MLC), 2012 WL 5867148, at *12 (D.N.J. Nov. 19, 2012) (quoting *Buccilli v. Timby, Brown & Timby*, 660 A.2d 1261, 1263 (N.J. App. Div. 1995)), and the New Jersey RICO statute fails to manifest any legislative intent to apply extraterritorially. The New Jersey RICO claim should therefore be dismissed as well. A list of the actions that assert federal and/or state RICO claims is attached as Schedule B.

CEA

The only stayed case asserting CEA claims is *Amabile v. Bank of America Corp.*, No. 13-cv-1700 (S.D.N.Y. filed Mar. 13, 2013), brought by individuals who allegedly traded Eurodollar futures contracts on undisclosed dates. Most of the CEA claims in *Amabile* should be dismissed in conformity with the Court's rulings in the Exchange-Based Plaintiffs' putative class action. First, to the extent that the *Amabile* plaintiffs allege persistent suppression of LIBOR and seek to recover based on transactions in Periods 1 and 2, those claims are plainly time-barred. *LIBOR I*, 935 F. Supp. 2d at 711-13; *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, --F. Supp. 2d --, --, 2014 WL 2815645, at *16-19 (S.D.N.Y. June 23, 2014) (*LIBOR III*). Second, all claims for "manipulation of LIBOR as a commodity" must also be dismissed. *LIBOR I*, 935 F. Supp. 2d at 720-21. Third, to the extent the plaintiffs allege episodic trader-based manipulation, all such claims must be dismissed because plaintiffs have alleged no injury as required by 7 U.S.C. § 25(a)(1). The *Amabile* plaintiffs fail to plead, as required by the Court's rulings, that any allegedly artificial submission, by any defendant, had a potential impact on the published LIBOR fix for any day on which the *Amabile* plaintiffs traded in a Eurodollar futures contract, much less that their position on that day was such that they were injured. Indeed, they do not even allege any dates on which they supposedly traded in Eurodollar futures contracts. See *LIBOR II*, 962 F. Supp. 2d at 620-21; *LIBOR III*, 2014 WL 2815645, at *7.

Breach of Contract and Unjust Enrichment

In *LIBOR III*, the Court ruled that, with respect to breach of contract/implied covenant of good faith and fair dealing and unjust enrichment, no claim lay by a plaintiff against a defendant with which it did not contract or have any dealings to support an unjust enrichment claim. *LIBOR III*, 2014 WL 2815645, at *23. A number of stayed actions include similar contract and/or unjust enrichment claims. In some cases, the complaints are specific as to the defendants with which plaintiffs dealt. But several actions plead contract and/or unjust enrichment claims without identifying the defendants with which they contracted or had dealings. A more definite statement under Fed. R. Civ. P. 12(e) is necessary in those cases so that defendants and the Court can identify the defendants, if any, against which plaintiffs can state a claim, as well as the contracts or other dealings that would allegedly form the basis for such a claim. *See Agilent Techs., Inc. v. Micromuse, Inc.*, 2004 U.S. Dist. LEXIS 20723, at *11 (S.D.N.Y. Oct. 19, 2004) (motions for more definite statement are appropriate “[w]here . . . a pleading is sufficient to provide notice of the claim but does not contain sufficient information to allow a responsive pleading to be framed without risk of prejudice”).¹ In other cases, similar to the action addressed in *LIBOR I*, the plaintiffs assert unjust enrichment claims despite not having dealt with any

¹ Identification of the contracts or other alleged dealings are appropriate to aid the defendants in assessing whether they have a motion to dismiss based on the particulars of such contract or other alleged dealing.

defendant, and therefore those claims must be dismissed. And in several other cases, similar to the action addressed in *LIBOR III*, named plaintiffs assert contract and/or unjust enrichment claims not only against defendants with which they allegedly transacted, but also defendants with which they allege no dealings.² To the extent the contract and/or unjust enrichment are alleged against non-transacting defendants, those claims should be dismissed as in *LIBOR III*.³ Attached as Schedule C is a list of the actions which assert contract and/or unjust enrichment claims without identifying defendants with which the plaintiffs dealt. Attached as Schedule D is a list of the actions which assert unjust enrichment claims by plaintiffs who did not deal with any defendant. Attached as Schedule E is a list of the actions which appear to assert contract and/or unjust enrichment claims against both contractual counterparties and “stranger” defendants.

² The proposed motions will set forth individualized arguments by certain defendants regarding the absence of an alleged contractual or other direct relationship between the plaintiff and the defendant.

³ Additionally, in *LIBOR II*, the court ruled that a plaintiff may not state a claim for breach of an express contractual provision absent “an explicit term” in the parties’ contract that precluded the conduct alleged by plaintiffs, and that a contractual provision that the parties’ interest rate would be based on USD LIBOR, “though it may give rise to an implied duty, is not such an explicit term.” *LIBOR II*, 962 F. Supp. 2d at 631 n.31. Claims for breach of an express contract that do not allege such an explicit term should therefore be dismissed as well.

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Respectfully yours,

/s/ Robert F. Wise

SCHEDULE A

Federal and state antitrust claims

FTC Capital GMBH, v. Credit Suisse Grp. AG (11-cv-2613) (federal)

Mayor and City Council of Balt. v. Bank of Am. Corp. (11-cv-5450) (federal)

Charles Schwab, N.A. v. Bank of Am. Corp.; Schwab Money Market Fund, v. Bank of Am. Corp.; Schwab Short-Term Bond Market Fund v. Bank of Am. Corp. (11-cv-6409; 11-cv-6411; 11-cv-6412) (federal; CA)

Ellen Gelboim v. Credit Suisse Grp. AG (12-cv-1025) (federal)

33-35 Green Pond Road Assocs., LLC v. Bank of Am. Corp. (12-cv-5822) (federal)

Lieberman v. Credit Suisse Grp. AG (12-cv-6056) (AK, AL, AZ, CA, DC, IA, KS, ME, MI, MN, MS, NE, NV, NM, NY, NC, ND, OR, SD, UT, VT, WV, WI and WY)

Courtyard at Amwell II, LLC v. Bank of Am. Corp. (12-cv-6693) (federal)

Adams v. Bank of Am. Corp. (12-cv-7461) (federal; NY)

Guar. Bank & Trust Co. v. Credit Suisse Grp. AG (13-cv-0346) (federal; AZ, CA, DC, FL, HI, IL, IA, KS, ME, MI, MN, MS, NE, NV, NM, NY, NC, ND, OR, SD, TN, VT, WV and WI)

L.A. Cnty. Emps. Ret. Ass'n v. Bank of Am. Corp. (13-cv-0398) (CA)

Earle v. Bank of Am. Corp. (13-cv-0407) (federal)

City of Riverside v. Bank of Am. Corp. (13-cv-0597)
(federal; CA)

Cnty. of San Mateo v. Bank of Am. Corp. (13-cv-0625)
(federal; CA)

E. Bay Mun. Util. Dist. v. Bank of Am. Corp. (13-cv-0626) (federal; CA)

City of Richmond v. Bank of Am. Corp. (13-cv-0627)
(federal; CA)

Cnty. of San Diego v. Bank of Am. Corp. (13-cv-0667)
(federal; CA)

Dirs. Fin. Grp. v. Bank of Am. Corp. (13-cv-1016) (CA)

Cnty. of Riverside v. Bank of Am. Corp. (13-cv-1135)
(AL, AK, AZ, CA, DC, IA, KS, ME, MI, MN, MS, NE,
NV, NM, NY, NC, ND, OR, SD, UT, VT, WV, WI and
WY)

*SEIU Pension Plans Master Trust v. Bank of Am.
Corp.* (13-cv-1456) (federal)

Amabile v. Bank of Am. Corp. (13-cv-1700) (federal)

Fed. Home Loan Mortg. Corp. v. Bank of Am. Corp.
(13-cv-3952) (federal)

Regents of the Univ. of Cal. v. Bank of Am. Corp. (13-
cv-5186) (federal; CA)

Cnty. of Sonoma v. Bank of Am. Corp. (13-cv-5187)
(federal; CA)

San Diego Ass'n of Gov'ts v. Bank of Am. Corp. (13-cv-
5221) (federal; CA)

Cnty. Of Sacramento v. Bank of Am. Corp. (13-cv-5569)
(federal; CA)

City of Houston v. Bank of Am. Corp. (13-cv-5616)
(federal; TX)

Principal Funds, Inc. v. Bank of Am. Corp. (13-cv-6013) (federal; IA)

Principal Fin. Grp., Inc. v. Bank of Am. Corp. (13-cv-6014) (federal; IA)

City of Phila. v. Bank of Am. Corp. (13-cv-6020)
(federal)

Nat'l Credit Union Admin. Bd. v. Credit Suisse Grp. AG (13-cv-7394) (federal; CA, IL and KS)

Cnty. of Mendocino v. Bank of Am. Corp. (13-cv-8644)
(federal; CA)

Fed. Deposit Ins. Corp. v. Bank of Am. Corp. (14-cv-1757) (federal; NY)

Bay Area Toll Auth. v. Bank of Am. Corp. (14-cv-3094)
(federal; CA)

Prudential Inv. Portfolios 2 v. Bank of Am. Corp. (14-cv-4189) (federal)

SCHEDULE B**Federal and state RICO claims**

Charles Schwab, N.A. v. Bank of Am. Corp.; Schwab Money Market Fund, v. Bank of Am. Corp.; Schwab Short-Term Bond Market Fund v. Bank of Am. Corp. (11-cv-6409; 11-cv-6411; 11-cv-6412) (federal)

Adams v. Bank of Am. Corp. (12-cv-7461) (federal)

L.A. Cnty. Emps. Ret. Ass'n v. Bank of Am. Corp. (13-cv-0398) (federal)

Payne v. Bank of Am. Corp. (13-cv-0598) (federal)

Cnty. of Riverside v. Bank of Am. Corp. (13-cv-1135) (federal)

Bay Area Toll Auth. v. Bank of Am. Corp. (14-cv-3094) (federal)

Prudential Inv. Portfolios 2 v. Bank of Am. Corp. (14-cv-4189) (NJ)

**[Letter to Judge Naomi Reice Buchwald on
behalf of FDIC and Freddie Mac.
MDL Docket No. 616; Aug. 20, 2014]**

[Dickstein Shapiro LLP Letterhead]

August 20, 2014

Via Hand Delivery and ECF

The Honorable Naomi Reice Buchwald
United States District Court Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re *In re LIBOR-Based Financial Instruments
Antitrust Litigation*,
Master File No. 1:11-md-02262-NRB – Antitrust

Dear Judge Buchwald:

Dickstein Shapiro LLP represents plaintiffs the Federal Deposit Insurance Corporation as Receiver for 38 closed banks (collectively, the “FDIC-R”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”). This letter responds to Defendant’ pre-motion letter asserting that antitrust claims in all stayed actions should be summarily dismissed based on the Court’s prior rulings in other cases (MDL Doc. 594).

This Court should decline Defendants’ request for summary dismissal. Defendants wrongly assert that the Complaints rest solely on the same “core theory” previously argued in *LIBOR I* and *LIBOR II*¹—that Defendants restrained competition by conspiring to make false LIBOR submissions to the British Bankers Association (“BBA”). Defendants’ assertion is not correct. Freddie Mac’s amended complaint, filed after the *LIBOR I* decision, alleges agreements, relevant markets, and harms to competition that materially differ from those addressed in *LIBOR I* or in *LIBOR II*. The FDIC-R’s complaint, filed after *LIBOR I* and *LIBOR II*, alleges generally similar facts and antitrust theories (together, the “Complaints”).

These additional allegations support a different result than *LIBOR I* or *LIBOR II*, and include: broader sets of conspirators and agreements;² additional anticompetitive effects in other defined markets; facts showing that the agreements constituted an unreasonable restraint of trade under a

¹ See generally *In re LIBOR-Based Financial Instruments Antitrust Litig.*, No. 1:11-md-02262-NRB, 935 F.Supp.2d 666, DL Doc. 286 (S.D.N.Y. 2013) (“LIBOR I”); *In re LIBOR-Based Financial Instruments Antitrust Litig.*, No. 1:11-md-02262-NRB, 962 F.Supp.2d 606, MDL Doc 389 (S.D.N.Y. 2013) (“LIBOR II”).

² The Complaints allege that the Panel Banks agreed among themselves *and with the BBA* (a Defendant) to publish artificially low LIBORs *and* to misrepresent LIBOR as a reliable benchmark for short-term interest rates. *Fed. Home Loan Mortg. Corp v. Bank of Am. Corp.*, No. 1:13-cv-03952-NRB, Am. Compl. ¶¶ 114-118 (S.D.N.Y. July 22, 2013) (Doc. 25) (“Freddie Mac Compl.”); *FDIC v. Bank of Am. Corp.*, No. 1:14-cv-01757-NRB, Compl. ¶¶ 320-328 (S.D.N.Y. Mar. 14, 2014) (Doc. 2) (“FDIC-R Compl.”).

rule-of-reason analysis, and not merely *per se* violations;³ and that the alleged injuries arose, not only from the fraudulent statements, but from adverse effects on the competitive process.

For example, the Complaints allege that the agreements discouraged innovation and effectively excluded competitors from the market for short-term interest rate benchmarks. Freddie Mac Compl. ¶¶ 4-5, 8, 114, 123; FDIC-R Compl. ¶¶ 320-321, 323, 327, 333. Absent collusion, Defendants would have had to compete on the merits to maintain LIBOR's position as the dominant benchmark.⁴ *Id.* Indeed, after the agreements were discovered in 2012, competition led to significant reforms to LIBOR. Freddie Mac Compl. ¶ 123; FDIC-R Compl. ¶ 333. These anticompetitive

³ Restraints that do not fit within the *per se* rule are analyzed under the rule of reason, in which the essential inquiry is whether or not the challenged agreement enhances competition in a particular market. *NCAA v. Bd. of Regents of Okla.*, 468 U.S. 85, 104 (1984). Even if an agreement was made as part of a cooperative process, the trier-of-fact must still determine the agreement's effect on price, quality, service, and/or innovation. *Id.* at 104-05 & n.28. The over-the-counter class proposed to include five rule-of-reason allegations in an amended complaint, but those limited allegations were materially different than the allegations in the Complaints and not addressed in *LIBOR II*.

⁴ Agreements that tend to exclude potential competitors are often deemed antitrust violations. *See, e.g., Associated Press v. United States*, 326 U.S. 1, 13-14 (1945) ("Trade restraints of this character, aimed at the destruction of competition, tend to block the initiative which brings newcomers into a field of business and to frustrate the free enterprise system which it was the purpose of the Sherman Act to protect."); *Klickads, Inc. v. Real Estate Bd. of NY, Inc.*, No. 04 Civ. 8024 (LBS) 2007 WL 2254721, at *9 (S.D.N.Y. Aug. 6, 2007).

effects injured market participants like Freddie Mac and the FDIC-R by depriving them of a reliable benchmark. Freddie Mac Compl. ¶¶ 5, 96, 123, 126; FDIC-R Compl. ¶¶ 323, 333, 336.

In addition, the Complaints allege that the Panel Banks competed for cash, not only in the London interbank loan submarket, but also against Panel and non-Panel Banks in various other submarkets (e.g., commercial paper, repos, sale of asset-backed securities). Freddie Mac Compl. ¶¶ 2-8, 38-39, 89, 124, 139-140; FDIC-R Compl. ¶¶ 321-322, 324. The Complaints allege that the collusive agreements harmed competition markets for cash by distorting the perceived supply/demand balance of money, reducing transparency, and increasing transaction costs. Freddie Mac Compl. ¶¶ 4, 88-89; FDIC-R Compl. ¶¶ 329-332, 334. Economic theory recognizes that disclosure of accurate information enhances efficiency and promotes competition, especially in financial markets. Freddie Mac Compl. ¶¶ 3-4, 120; FDIC-R Compl. ¶ 332.⁵ Absent collusion, the Panel Banks would have to have competed for cash on the merits by providing better products and prices. Freddie Mac Compl. ¶¶ 3, 89, 120, 122; FDIC-R Compl. ¶¶ 76, 321, 330, 332. These harms to the competitive process injured market participants like Freddie Mac and the FDIC-R by depriving them of accurate information regarding the prices of securities and the underlying

⁵ See also *In re High-Tech Employee Antitrust Litig.*, 289 F.R.D. 555, 568-70 (N.D. Cal. 2013) (agreements that impair price-discovery process can harm competition and cause antitrust injury).

demand and supply factors, and injecting false information into negotiations for the products they purchased and sold. Freddie Mac Compl. ¶¶ 90, 96, 120, 126; FDIC-R Compl. ¶¶ 330, 336.

Likewise, the Complaints allege that the agreements impaired the ability of non-Panel Banks to compete against the Panel Banks in the markets for LIBOR-based products because non-Panel Banks priced LIBOR-based products on the expectation that competitive market forces, not collusion, would determine short-term interest rates. Freddie Mac Compl. ¶¶ 4, 52, 55-59, 121; FDIC-R Compl. ¶¶ 322, 330-331, 333-334. The Complaints allege that the agreements were expressly forward-looking and therefore interfered with the competitive process by which counterparties negotiated prices for swap contracts and LIBOR-based derivatives. Freddie Mac Compl. ¶¶ 4, 90, 121; FDIC-R Compl. ¶¶ 75-77, 322, 330-331.⁶ At a minimum, these additional allegations justify a different result than in *LIBOR I* and *LIBOR II*.

Defendants acknowledge that the Complaints allege facts that were not set forth in the complaints at issue in *LIBOR I* and *LIBOR II*. Moreover, several recent developments, not all of which can be listed here, support the Complaints' allegations. The European Commission ("EC"), for example, found that agreements among Panel Banks harmed competition in other LIBOR-based markets. EC Vice President

⁶ See, e.g., *Nat'l Soc'y of Prof Eng'rs v. United States*, 435 U.S. 679, 692-94 (1978) (conduct that interfered with setting of prices by free market forces harmed competition).

Joaquin Alumina called “the *collusion* between banks who are supposed to be *competing* with each other” “shocking,” adding that “[h]ealthy *competition* and transparency are crucial for financial markets wo work properly.”⁷ In addition, Lloyds recently admitted that it systematically suppressed its LIBOR submissions to obtain short-term funding at artificially low rates—in the London interbank loan market and all other cash markets. *See, e.g., In re Lloyds Banking Grp. plc*, No. 14-18, 2014 WL 3783951, at *3 (C.F.T.C. July 28, 2014) (LIBOR is used as “a gauge of the market’s expectation of future central bank interest rates”); *id.* at *11 (accurate submissions “could potentially create an issue with buyers of our paper”); *id.* at *12 (company directive not to “make bids for cash in the market above the rate of the daily LIBOR fixing”); *id.* (LIBOR suppression preserved Lloyds’ ability to raise funds from other market participants at suppressed prices).⁸

In addition to the Complaints’ articulation of claims and theories not present in *LIBOR I* or *LIBOR II*, dismissal of the Complaints would deprive Freddie Mac and the FDIC-R of their rights to preserve their claims against the risk of waiver. While MDL

⁷ Antitrust: Commission fines banks €1.71 billion for participating in cartels in the interest rate derivatives industry, European Commission (Dec. 4, 2013), http://europa.eu/rapid/press-release_IP-13-1208_en.htm (emphasis added).

⁸ In the event that this Court authorizes amendments to complaints, Freddie Mac and the FDIC-R would amend their complaints to include these recent developments in the context of *per se* and rule-of-reason allegations.

proceedings facilitate coordination of cases for pretrial purposes, each plaintiff continues to litigate its own claims.⁹ Consequently, MDL litigants must press any “meaningfully different” arguments or those arguments may be waived. *See Sampo Japan Ins. Co. of Ame. v. Norfolk S. Ry Co.*, -- F.3d --, 2014 WL 3844155, at *19 (2d Cir. Aug. 6, 2014). For example, some courts have held that an antitrust plaintiff waived rule-of-reason arguments by pressing only *per se* theories. *See Nova Designs, Inc. v. Scuba Retailers Ass’n*, 202 F.3d 1088, 1090-91 (9th Cir. 2000).

Accordingly, Freddie Mac and the FDIC-R respectfully request the opportunity to brief and orally argue these additional allegations and theories either in opposition to motions to dismiss or, if the Court would prefer, in response to an Order to Show Cause.

Respectfully submitted,
Richard J. Leveridge
James R. Martin
Jennifer D. Hackett
DICKSTEIN SHAPIRO LLP
(202) 420-4778 direct dial
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cc: All Counsel of Record (via ECF)

⁹ *See, e.g., In re Brand Name Prescription Drugs Antitrust Litig.*, 115 F.3d 456,457 (7th Cir. 1997) (opt-outs could not appeal summary judgment against class because opt-outs were not parties and therefore not bound by judgment).

**[Letter to Judge Naomi Reice Buchwald on
behalf of Schwab Plaintiffs.
MDL Docket No. 619; Aug. 20, 2014]**

[Lieff Cabraser Heimann &
Bernstein, LLP Letterhead]

August 20, 2014

VIA ECF AND HAND DELIVERY

The Honorable Naomi Reice Buchwald
United States District Judge
500 Pearl Street
New York, NY 10007

Re: *In re LIBOR-Based Financial Instruments
Antitrust Litigation*, Master File No. 1:11-md-2262-
NRB; Case Nos. 13-cv-7005, 14-cv-3094

Dear Judge Buchwald:

We write on behalf of the Schwab plaintiffs (collectively, “Schwab”) and plaintiff Bay Area Toll Authority (“BATA,” and with Schwab, “Plaintiffs”) in response to Defendants’ August 13, 2014 letters regarding their anticipated motions to dismiss. Plaintiffs agree that full briefing will ultimately be warranted to address Defendants’ numerous arguments. Further, as discussed in a separate letter being filed today on behalf of all “direct action” plaintiffs, Schwab and BATA intend to amend their Complaints as of right. While Plaintiffs dispute that

any of their claims are deficient, those amendments may obviate, at least to some extent, Defendants' motions. Accordingly, rather than provide a point-by-point rebuttal to Defendants' letters, we summarize here Plaintiffs' initial responses to Defendants' primary arguments.¹

I. Procedural Background

In August 2011, Schwab filed three substantively identical non-class actions in the Northern District of California (the "Initial Schwab Actions"), asserting claims arising from Defendants' unlawful suppression of U.S.-Dollar LIBOR during the period August 2007 to May 2010. In September 2011, those cases were transferred to this Court for pretrial purposes in accordance with 28 U.S.C. § 1407 (Nos. 11-cv-6409, 11-cv-6411, and 11-cv-6412). The operative complaints, filed on April 30, 2012, included claims against Defendants for violations of the Sherman Act, RICO, and California's Cartwright Act, as well as claims under California common law for interference with economic advantage, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. By its Order of March 29, 2013, the Court, *inter alia*, dismissed Schwab's antitrust and RICO claims with prejudice and declined to exercise supplemental jurisdiction over Schwab's common-law claims. *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 935 F. Supp. 2d 666, 685-95, 724-36 (S.D.N.Y. 2013) ("*LIBOR I*").

¹ Plaintiffs reserve their right to raise additional arguments in opposing Defendants' motions.

Following the Court’s ruling, Schwab filed its present action in San Francisco Superior Court on April 29, 2013 (the “Schwab California Action”).² The Complaint includes (i) claims over which this Court declined to exercise supplemental jurisdiction, i.e., interference with prospective economic advantage, breach of the implied covenant of good faith and fair dealing, and unjust enrichment; and (ii) claims for fraud and rescission of contract, as well as for violations of California’s unfair competition law (Cal. Bus. & Prof. Code § 17200 (“UCL Section 17200”)), California’s securities laws (Cal. Corp. Code §§ 25400 & 25401), and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (“Securities Act”). Schwab further alleges that Defendants expressly or tacitly conspired to suppress LIBOR, and thus each Defendant is being sued both individually—as a primary violator of the law—and as a co-conspirator under California law. Schwab Compl. ¶¶ 50-257, 320-24. Defendants removed the Schwab California Action to the Northern District of California and then moved to transfer the case to this Court, which Schwab opposed. On October 2, 2013, the Judicial Panel on Multidistrict Litigation (“JPML”) ordered the case

² Schwab also filed a notice of appeal with respect to its antitrust and RICO claims, but the Second Circuit *sua sponte* dismissed the appeal for lack of appellate jurisdiction, reasoning that this Court’s order was not “final” under 28 U.S.C. § 1291. The U.S. Supreme Court is expected to address this issue in *Gelboim v. Bank of America Corp.*, No. 13-1174.

transferred, and on December 27, 2013, this Court denied Schwab's motion to remand.

On March 31, 2014, BATA filed an action in the Northern District of California, asserting Sherman Act, RICO, and Cartwright Act claims as well as claims under California law for fraud, interference with prospective economic advantage, breach of contract, unjust enrichment, and violation of UCL Section 17200. BATA also alleges, under California law, that Defendants conspired to suppress LIBOR. BATA Compl. ¶¶ 40-252, 288-92. On May 1, 2014, the JPML ordered BATA's case transferred to this Court.

II. Claim-Specific Arguments³

A. Sherman Act, Cartwright Act, and RICO Claims (BATA)

While BATA respectfully disagrees with the Court's rulings regarding antitrust injury, the "RICO Amendment" of the Private Securities Litigation Reform Act, and RICO extraterritoriality, we expect the Court is not inclined to reconsider them. At the same time, BATA wishes to preserve its appellate rights. Accordingly, if the Court determines to apply its prior rulings to BATA's claims, BATA will file an appeal.

³ Schwab and BATA join the arguments in the letter being submitted today by Richard Leveridge of Dickstein Shapiro LLP addressing Defendants' personal-jurisdiction arguments. Further, by not raising a personal-jurisdiction defense in the Initial Schwab Actions, Defendants have waived or forfeited any such defense regarding California.

**B. Contract and Unjust-Enrichment
Claims (Schwab and BATA)**

Defendants intend to move to dismiss Schwab's claims for breach of the implied covenant of good faith and fair dealing and for rescission of contract, to the extent those claims are asserted against Defendants with which Schwab "did not transact, based on the Court's rulings to date." Dkt. No. 594, at 1. BATA asserts claims for breach of contract against Bank of America, Citibank, and JPMorgan Chase & Co. based on interest-rate swaps BATA entered into with those counterparties. Defendants do not seek to dismiss those claims. *See* Dkt. No. 594, at 1, 3, 7-9 (BATA not included among cases in which Defendants will move to dismiss).

Regarding Schwab's contract claims, Defendants fail to specify what they consider a "stranger" Defendant. Nor do the Court's prior rulings address the circumstance where, as in the Schwab California Action, plaintiffs transacted with broker-dealer affiliates of LIBOR Panel Banks (in addition to transacting directly with certain Panel Banks). Among Schwab's transactions, for example, are those in which Schwab purchased LIBOR-based financial instruments from broker-dealer affiliates of Panel Banks that issued the instruments. Further, even were the Court to determine that a contract claim cannot lie against a Panel Bank Defendant with respect to Schwab's purchases of LIBOR-based instruments from the Panel Bank's affiliate, Schwab's unjust-enrichment claims would be unaffected. *See Process Specialties, Inc. v. Sematech, Inc.*, No. CIV. S-00414 FCD PAN, 2001 U.S. Dist. LEXIS 26261, at *63 (E.D. Cal. Nov. 8, 2001) ("there is no such [privity]

requirement under California law” with respect to unjust enrichment).

C. Fraud (Schwab and BATA)

Plaintiffs’ claims are, contrary to Defendants’ contention, timely. Plaintiffs respectfully disagree with the Court’s determination that by May 2008, “a person of ordinary intelligence would clearly have been on notice that LIBOR was probably being set at artificial levels” (*LIBOR I*, 935 F. Supp. 2d at 705). Indeed, Barclays recently “conceded” that its June 2012 settlement with the government constituted “the (first) occasion that Barclays disclosed its false 2007-2009 [LIBOR] submission rates.” *Carpenters Pension Trust Fund of St. Louis v. Barclays PLC*, 750 F.3d 227, 233 (2d Cir. 2014).

Even assuming *arguendo* the Court’s inquiry-notice ruling with respect to claims under the Commodity Exchange Act comports with the high threshold California law imposes for dismissal,⁴ those claims have been equitably tolled from the date a putative class complaint encompassing claims substantially similar to Plaintiffs’ claims, including the Over-the-Counter Plaintiffs’ August 5, 2011 class complaint, was filed. California’s equitable-tolling doctrine serves “to toll the statute of limitations in

⁴ See *Broberg v. Guardian Life Ins. Co. of Am.*, 171 Cal. App. 4th 912, 921 (2009) (“When a plaintiff reasonably should have discovered facts for purposes of the accrual of a cause of action or application of the delayed discovery rule is generally a question of fact, properly decided as a matter of law only if . . . the allegations in the complaint and facts properly subject to judicial notice[] can support only one reasonable conclusion.”).

favor of a plaintiff who acted in good faith where the defendant is not prejudiced by having to defend against a second action.” *Hatfield v. Halifax PLC*, 564 F.3d 1177, 1188 (9th Cir. 2009). Because this form of tolling “covers situations beyond those covered by *American Pipe*” (*id.*), it is irrelevant whether a California court would recognize “cross-jurisdictional tolling” under *American Pipe* (*see* Dkt. No. 595, at 1 n.2).⁵

Defendants’ argument that Plaintiffs “fail to plausibly allege that any purported reliance was reasonable or justified” (Dkt. No. 595, at 2) also lacks merit. Whether reliance on a misstatement or omission was reasonable “is a question of fact for the jury, and may be decided as a matter of law only if the facts permit reasonable minds to come to just one conclusion.” *Broberg*, 171 Cal. App. 4th at 921 (citation and internal quotation marks omitted). Further, this Court has held that if the offering materials for LIBOR-based financial instruments “described how LIBOR was calculated by reference to the ‘proper’ procedures rather than the manipulation that allegedly was occurring,” they “would contain a material misrepresentation,” and if those materials “did not describe how LIBOR was calculated,” they “would still be omitting that LIBOR was being

⁵ As Defendants effectively concede (*see* Dkt. No. 596, at 2 n.4), the statutes of limitations for Schwab’s claims for breach of the implied covenant of good faith and fair dealing, interference with prospective economic advantage, and unjust enrichment were tolled during the pendency of the Initial Schwab Actions. *See* 28 U.S.C. § 1367(d).

manipulated, surely a material omission.” *LIBOR I*, 935 F. Supp. 2d at 728. Accordingly, Defendants’ reliance on this Court’s statement that “no one bank could possibly guarantee that a particular LIBOR fix was determined in a manner that wholly complied with the BBA’s rules”⁶ misses the point. This is particularly so given Plaintiffs’ allegations that Defendants conspired to suppress LIBOR.⁷

D. Conspiracy (Schwab and BATA)

Defendants’ contention that BATA has not “pleaded claims for civil conspiracy at all” disregards that “[c]onspiracy is not a cause of action, but a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration.” *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 869 P.2d 454, 457 (Cal. 1994). Further, Plaintiffs have plausibly alleged a

⁶ Dkt. No. 595, at 2 (quoting *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 962 F. Supp. 2d 606, 631 n.31 (S.D.N.Y. 2013) (“*LIBOR II*”).

⁷ Defendants’ vague assertion that “certain Plaintiffs” fail to sufficiently allege “intent on the part of Defendants to induce reliance on any allegedly fraudulent conduct” (Dkt. No. 595, at 2) is likewise unavailing. *See, e.g.*, Schwab Compl. ¶ 59 (alleging Defendants’ motive to pay lower interest rates on LIBOR-based financial instruments); BATA Compl. ¶ 49 (same); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 MD 2262 (NRB), 2014 U.S. Dist. LEXIS 86765, at *76-77 (S.D.N.Y. June 23, 2014) (“*LIBOR III*”) (holding that Exchange-Based Plaintiffs sufficiently pled scienter). Plaintiffs also plead proximate causation, as they would not “have suffered the alleged damage even in the absence of the fraudulent inducement.” *Beckwith v. Dahl*, 205 Cal. App. 4th 1039, 1064 (2012).

conspiracy. *See* Schwab Compl. ¶¶ 50-257, 320-24; BATA Compl. ¶¶ 40-252, 288-92.

E. Interference with Prospective Economic Advantage (Schwab and BATA)⁸

Defendants incorrectly assert that Plaintiffs' claims for interference with prospective economic advantage are legally deficient because Plaintiffs fail to identify the business relationships Defendants disrupted and do not plausibly allege that Defendants intentionally interfered with those relationships. Among other things, with respect to Plaintiffs' transactions with Defendants' broker-dealer affiliates, the Court reasonably can infer at the pleading stage that Defendants knew of those business relationships. *See Eldorado Stone, LLC v. Renaissance Stone, Inc.*, No. 04cv2562 JM (LSP), 2005 U.S. Dist. LEXIS 45237, at *14 (S.D. Cal. Aug. 9, 2005) (plaintiffs' allegations "gave rise to an inference" that defendant knew of the relationships at issue). Relatedly, in light of Plaintiffs' well-pled allegations as to Defendants' motives for suppressing LIBOR, their far-reaching acts to further that scheme, and the manifestly foreseeable results of Defendants' actions (lower rates of return on LIBOR-based financial instruments), the Court reasonably can infer that Defendants "acted either with the desire to

⁸ Defendants assert that Plaintiffs' claims for interference with prospective economic advantage and for violation of UCL Section 17200 should be dismissed because, *inter alia*, they are partially or completely time-barred and Plaintiffs do not plead proximate causation. Those arguments fail for the reasons discussed in Section II.C., *supra*.

interfere or the knowledge that interference was certain or substantially certain to occur as a result of [their] action.” *Korea Supply Co. v. Lockheed Martin Corp.*, 63 P.3d 937, 957-58 (Cal. 2003).

F. Violation of UCL Section 17200
(Schwab and BATA)

Plaintiffs state claims for violations of UCL Section 17200. In short, contrary to Defendants’ assertions, (i) Plaintiffs’ claims, which arise from these California-based entities’ damages as a result of materials misstatements or omissions disseminated to them by Defendants or their affiliates, are not impermissibly extraterritorial;⁹ (ii) Schwab and BATA have statutory standing;¹⁰ and (iii) Plaintiffs plead deception, intent, and reliance (*see* Section II.C., *supra*).¹¹

⁹ *See Sullivan v. Oracle Corp.*, 254 P.3d 237, 248 (Cal. 2011) (“Certainly the UCL reaches any unlawful business act or practice committed in California.”).

¹⁰ *See* Cal. Bus. & Prof. Code § 17201 (defining “person” to include “corporations, firms, partnerships, joint stock companies, associations and other organizations of persons”); *Notrica v. State Comp. Ins. Fund*, 70 Cal. App. 4th 911, 939-44 (1999) (California’s State Compensation Insurance Fund was a “person” under the UCL).

¹¹ Defendants also assert that UCL Section 17200 claims cannot lie based on securities transactions, and that to the extent choice-of-law provisions provide for the law of a jurisdiction other than California, Plaintiffs cannot state such claims. As to the former argument, “[t]he California courts have expressly held that federal securities laws do not preempt Section 17200 generally.” *Strigliabotti v. Franklin Res., Inc.*, No. C 04-00883 SI, 2005 U.S. Dist. LEXIS 9625, at *29 (N.D. Cal. Mar. 7, 2005). At any rate, any such preclusion would not apply to the extent

G. Federal and State Securities Claims
(Schwab)

Schwab's securities claims are timely under the *American Pipe* rule or as a result of equitable tolling. See, e.g., *Benfield v. Mocatta Metals Corp.*, 26 F.3d 19, 23 (2d Cir. 1994) (*American Pipe* applied because there was "a sufficient commonality between [defendant]'s alleged acts of commodity wrongdoing and [plaintiff]'s allegation of RICO violations to preclude a claim by [defendant] of unfair surprise"); Section II.C., *supra* (discussing California's equitable-tolling doctrine).¹² Defendants' challenges to the specificity of Plaintiffs' allegations regarding the subject transactions, as well as to Plaintiffs' ability to plead loss causation or damages, are misplaced. See *N.J. Carpenters Health Fund v. Royal Bank of Scot. Grp., PLC*, 709 F.3d 109, 120 (2d Cir. 2013) (non-fraud claims under Sections 11 and 12(a)(2) require "ordinary notice pleading") (citation and internal quotation marks omitted); *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145, 156 (2d Cir. 2012)

Plaintiffs' claims arise from transactions in non-securities. See *id.* at *30 (assuming *arguendo* claims based on securities transactions are precluded, that "does not encompass all situations where securities are somehow implicated but not purchased or sold"). The choice-of-law question will turn on the specific language of any such choice-of-law provisions.

¹² The U.S. Supreme Court, in *Public Employees' Retirement System of Mississippi v. IndyMac MBS, Inc.*, No. 13-640, is expected to address whether *American Pipe* applies to the Securities Act's three-year time limitation.

(“Neither scienter, reliance, nor loss causation is an element of § 11 or § 12(a)(2) claims . . .”).

In light of the foregoing arguments and authorities, Defendants’ anticipated motions to dismiss lack merit. At any rate, because Plaintiffs intend to amend their Complaints as of right, Defendants’ motions should await the filing of amended pleadings.

Respectfully,

Steven E. Fineman

cc: All Counsel of Record (by ECF)

**[Letter to Judge Naomi Reice Buchwald on
behalf of City of Philadelphia.
MDL Docket No. 621; Aug. 20, 2014]**

[Quinn Emanuel Letterhead]

August 20, 2014

ELECTRONICALLY FILED

Honorable Naomi Reice Buchwald
United States District Court
for the Southern District of New York
500 Pearl Street
New York, New York 10007-1312

Re: The City of Philadelphia, et al. v. Bank of
America Corp., et al., 2:13-cv-04352 (E.D. Pa.)

Dear Judge Buchwald:

We write on behalf of plaintiffs City of Philadelphia (the “City”) and the Pennsylvania Intergovernmental Cooperation Authority (“PICA,” and together with the City, the “PA Plaintiffs”) in response to letters submitted by the Defendant banks requesting leave to move to dismiss certain claims brought in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, No. 11-md-2262. Defendants’ proposed motions are primarily aimed at complaints

distinct from the narrowly focused one brought by the PA Plaintiffs, and those grounds that do purportedly apply are meritless. Should the Court order full briefing of the issues raised by Defendants, we look forward to the opportunity.

The PA Plaintiffs' contract-based claims are timely and well-pleaded. Defendants do not appear to seek dismissal of these claims on the merits, nor a more definite statement, as they do for other complaints,¹ presumably because the PA Plaintiffs assert these claims solely against their contractual counterparties—specifically those Defendants with which the PA Plaintiffs entered directly into ISDA master agreements. Their sole ground for dismissal appears to be that these claims are untimely under Pennsylvania law.

The PA Plaintiffs' claims for breach of contract and breach of the implied covenant of good faith and fair dealing are timely under Pennsylvania's four-year statute of limitations. 42 Pa. Consol. Stat. § 5525(a).²

¹ See App. to Defendants' Aug. 13, 2014 Pre-Motion Submissions at 9-10 (ECF No. 593-1, Aug. 13, 2014).

² The statutes of limitation discussed herein do not run against PICA. Under Pennsylvania's doctrine of *nullum tempus*, a statute of limitations does not run against the Commonwealth or its agencies unless the statute specifically provides otherwise (which the applicable statutes do not). See, e.g., *City of Philadelphia v. Lead Indus. Ass'n*, 994 F.2d 112, 118-20 (3d Cir. 1993); *Commonwealth v. J. W. Bishop & Co.*, 439 A.2d 101 (Pa. 1981). PICA is a "public authority and instrumentality of the Commonwealth, exercising public powers of the Commonwealth as an agency and instrumentality

Pennsylvania law provides that the limitations period can be suspended by the continuing nature *both* of the PA Plaintiffs' contracts and of Defendants' wrongdoing. *Carbis Walker LLP v. Winner Int'l Inc.*, 2008 WL 4491497, at *39 (Pa. Com. Pl. Aug. 4, 2008) (“[A] continuing contract ... tolls the statute of limitations”); *Mantia v. N Ins. Co. of New York*, 39 Pa. D. & C. 4th 71, 88 (Com. Pl. 1998) (“When a defendant’s conduct is continuing in nature, the statute of limitations is tolled while that conduct continues.”) (citing *Dellape v. Murray*, 651 A.2d 638, 640 (Pa. Commw. 1994)). Both doctrines operate here to toll the four-year statute of limitations for so long as Defendants’ manipulation of LIBOR was continuing. Additionally, the PA Plaintiffs’ claims were preserved by the filing of LIBOR-related class-action complaints on behalf of the PA Plaintiffs and other class members, including *Carpenters Pension Fund of W.Va. v. Bank of Am. Corp.*, No. 11-cv-2883 (S.D.N.Y.) on April 27, 2011. See *Miller v. Fed Kemper Ins. Co.*, 352 Pa. Super. 581, 590 (1986).

The PA Plaintiffs’ unjust enrichment claims are timely and well-pleaded. Here, again, the PA Plaintiffs assert this claim solely against Defendants with whom they transacted directly, and Defendants seek neither dismissal on the merits nor a more definite statement. Furthermore, the PA Plaintiffs’ unjust enrichment claims are timely under Pennsylvania’s four-year statute of limitations, *Cole v. Lawrence*, 701 A.2d 987, 989 (Pa. Super. Ct. 1997),

thereof.” 53 P.S. § 12720.201. Consequently, the statutes of limitation discussed herein cannot dispose of PICA’s claims.

which as discussed above, was tolled by the continuing nature of the contracts and misconduct at issue, and the filing of class action complaints that expressly encompass these claims.

The PA Plaintiffs' fraud-based claims are timely and well-pleaded. The PA Plaintiffs' fraud-based claims are timely under Pennsylvania's two-year statute of limitations, 42 Pa. Consol. Stat. § 5524(7), which as discussed above was tolled by the continuing nature of Defendants' misconduct, and by the filing of the class-action complaints.

Defendants argue the PA Plaintiffs' reliance was unreasonable. Letter from Jeffrey T. Scott & David R. Gelfand to Hon. Naomi Reice Buchwald, at 2 (ECF No. 595, Aug. 13, 2014) ("Scott & Gelfand Letter"). As we point out in other letters, the scope of that "ask" is breathtaking. Defendants are asking the Court to rule, as a matter of law, that as early as 2007 no reasonable investor could ever have relied on LIBOR, so that every actor in this *multi-trillion-dollar* market was acting irrationally. The disconnect between Defendants' theory, and reality, requires *at least* waiting for discovery on this issue. This is also true with respect to reliance after May 2008 (*i.e.*, after the Court's "inquiry notice" date), given the market's continuing reliance on LIBOR. There is a difference between finding, for the purposes of inquiry notice, that investors arguably should have begun investigating by May 2008, and deeming every market actor (including many governments) to have acted irrationally in relying on LIBOR. *See, e.g., Miller v. Am. Bureau of Shipping, Inc.*, 1998 WL 879674, at *1 (9th Cir. Dec. 16, 1998) (mem.) (reversing dismissal of fraud claims for lack of reasonable reliance based on

plaintiffs being on inquiry notice).

Defendants similarly try to avoid practical realities by arguing they lacked intent to deceive even though they knew that LIBOR was being manipulated. The Court has already rejected that distinction, finding scienter was adequately pleaded under the Commodity Exchange Act. *See LIBOR III*, 2014 WL 2815645, at *14. This makes sense, as “[w]here representations are made to the public at large for the purpose of influencing the action of anyone who may act upon those representations, a common-law cause of action for fraud lies in favor of any individual who acts upon them and is injured thereby.” *Young v. Robertshaw Controls Co.*, 481 N.Y.S.2d 891, 893 (3d Dep’t 1984). Defendants cannot escape liability for falsifying LIBOR by claiming to have borne no ill will toward any particular investor who would be harmed.

Finally, Defendants also suggest it is unclear how their misconduct harmed certain plaintiffs. Whatever the merit of those arguments to other cases, it defies common sense to apply them to the PA Plaintiffs. As holders of financial instruments on which they were to receive LIBOR-based payments, the PA Plaintiffs felt directly the impact of LIBOR’s suppression, as alleged in the Complaint.³ Determining precisely how much

³ In the aiding and abetting and conspiracy context, Defendants assert that they neither knew of, nor substantially assisted each other’s misconduct. Scott & Gelfand Letter at 2-3. However, Plaintiff alleges facts showing that Defendants knew of each other’s false submissions, assisted this misconduct by suppressing their own submissions, and did so pursuant to a conspiracy among the clique of British Bankers’

less the PA Plaintiffs were paid is simply not a pleading burden. *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145, 167 (2d Cir. 2012), *cert. denied*, 133 S. Ct. 1624, 185 L. Ed. 2d 576 (U.S. 2013).

The PA Plaintiffs' interference claims are timely and well-pleaded. The PA Plaintiffs' interference claims are timely under Pennsylvania's two-year statute of limitations, *Bender v. McIlhatten*, 360 Pa. Super. 168, 173 (1987), which was suspended (as discussed above) by the continuing nature of both the contracts at issue and Defendants' wrongdoing.⁴ Defendants urge the PA Plaintiffs must allege Defendants knew of and "*intended* to interfere with Plaintiffs' contracts or business relations." Letter from Marc J. Gottridge to Hon. Naomi Reice Buchwald at 2-3 (ECF No. 596, Aug. 13, 2014). As discussed above in the context of the PA Plaintiffs' fraud claims, this slices the elements far too finely, as this Court has already held. *LIBOR III*, 2014 WL 2815646, at *14 ("[I]t may suffice for plaintiffs to allege that defendants knowingly engaged in unquestionably illegitimate conduct while fully comprehending the consequences in the market."). Defendants knew the PA Plaintiffs held LIBOR-linked instruments, and that their conduct would impact *every* LIBOR-based instrument. Such knowledge suffices even if Defendants' focus was not on the specific positions on

Association member banks.

⁴ The running of the limitations period was also suspended by the filing of class-action complaints. *See supra* at 2.

the PA Plaintiffs' books. See *Jacobs v. Continuum Health Partners, Inc.*, 776 N.Y.S.2d 279, 280 (2004) ("To state a cause of action for tortious interference with prospective business advantage, it must be alleged that the conduct . . . was undertaken for the sole purpose of harming plaintiff, or that such conduct was wrongful or improper independent of the interference allegedly caused thereby.") (emphasis added) (citation omitted).⁵

The PA Plaintiffs merely seek to preserve their rights on the antitrust claim. In response to the antitrust portion of the Letter from Robert Wise to Hon. Naomi Reice Buchwald, at 1 (ECF No. 594, Aug. 13, 2014), and in light of the Court's prior rulings in this area, the PA Plaintiffs are willing to reach an appropriate stipulation with Defendants that would allow dismissal of these claims, as long as the PA Plaintiffs' appellate rights are fully preserved.

Respectfully submitted,

Daniel L. Brockett

cc: All Counsel (via ECF)

⁵ Certain Defendants-including some of this nation's largest banks suggest they are beyond the reach of a Pennsylvania federal court. Letter from Joel Kurtzberg to Hon. Naomi Reice Buchwald (ECF No. 600, Aug. 13, 2014). As described in the August 20, 2014 letter to the Court from Richard J. Leveridge on this issue, Defendants' contacts with Pennsylvania, including via the LIBOR-linked instruments at issue in this case, amply support Pennsylvania's assertion of specific jurisdiction.

**[Letter to Judge Naomi Reice Buchwald on
behalf of California Public Entities.
MDL Docket No. 622; Aug. 20, 2014]**

[Cotchett, Pitre & McCarthy, LLP Letterhead]

August 20, 2014

VIA HAND DELIVERY AND ECF

Honorable Naomi Reice Buchwald
United States District Judge
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY 10007-1312

RE: In re LIBOR-based Financial Instruments
Antitrust Litigation, 11 MDL 2262 (NRB)

Dear Judge Buchwald:

This letter is filed pursuant to the Court's letter of July 17, 2014 (Docket No. 572) and in response to the letters of Defendants filed on August 13, 2014. (Docket Nos. 593-598).

Cotchett Pitre & McCarthy ("CPM") represents sixteen (16) public entity Plaintiffs in this litigation. These Plaintiffs are as follows: East Bay Municipal Utility District (EBMUD); City of Houston; County of Mendocino; City of Richmond; Richmond Joint Powers

Financing

Authority; Successor Agency to the Richmond Community Redevelopment Agency; City of Riverside; Riverside Public Financing Authority; County of Sacramento; County of San Diego; County of San Mateo; San Mateo County Joint Powers Financing Authority; San Diego Association of Governments (SANDAG); County of Sonoma; David E. Sundstrom, in his official capacity as Treasurer of the County of Sonoma; and The Regents of the University of California.¹ Collectively, these are referred to

¹ In certain instances, these Plaintiffs have jointly filed a complaint. Accordingly, while CPM represents sixteen Plaintiffs, these Plaintiffs have filed a total of eleven (11) Complaints, which are as follows: *City of Richmond, et al. v. Bank of America Corporation, et al.* (No. 3:13-0106) (N.D. Cal.), (No. 1:13-cv-00627) (SDNY); *County of San Mateo, et al. v. Bank of America Corporation, et al.* (No. 3:13-00108) (N.D. Cal.), (No. 1:13-cv-00625) (SDNY); *County of San Diego v. Bank of America Corporation, et al.* (No. 3:13-00048) (S.D. Cal.), (No. 1:13-cv-00667) (SDNY); *East Bay Municipal Utility District v. Bank of America Corporation, et al.* (No.3:13-0109) (N.D. Cal.), (No. 1:13-cv-00626) (SDNY); *City of Riverside, et al. v. Bank of America Corporation, et al.* (No. 5:13-cv-00062- VAP-SP) (C.D. Cal.), (1:13-cv-00597)(SDNY); *The Regents of the Univ. of California v. Bank of America Corp., et al.* (No. 3:13-cv-02921) (N.D. Cal.), (No 1 :13-cv-05186) (SDNY); *San Diego Assoc. of Governments v. Bank of America Corp., et al.* (No. 1:13-cv-01466) (S.D. Cal.), (No. 1:13-cv-05221) (SDNY); *County of Sonoma et al v. Bank of America Corp., et al.* (No. 1:13-cv-02979) (N.D. Cal.), (No. 1:13-cv-05187) (SDNY); *City of Houston v. Bank of America Corp., et al.* (No.4:13-cv-02149) (S.D. Tex.), (No. 1:13-cv-5616) (SDNY); *County of Sacramento v. Bank of America Corp., et al.* (No. 2:13-cv-01476) (E.D. Cal.), (No. 1:13-cv-05569) (SDNY); *County of Mendocino v. Bank of America*

herein as the “CPM Plaintiffs.”²

The causes of action asserted by the CPM Plaintiffs include: federal and state antitrust claims, and state law claims for breach of contract; breach of the implied covenant of good faith and fair dealing; unjust enrichment; interference with economic advantage; fraud; and negligent misrepresentation. In their letters of August 13, 2014, the Defendants challenge, raise issues with, and/or contest the viability of each of these causes of action.³

The CPM Plaintiffs will address these assertions in substantive opposition papers after motions to dismiss are filed. However, at this juncture, the CPM Plaintiffs, guided by the Court’s prior rulings, note their intention to amend their complaints and the claims asserted therein. In particular, while the CPM Plaintiffs have asserted allegations regarding their LIBOR transactions and the counterparties with whom they had dealings, they intend to provide additional specificity regarding these matters. The CPM Plaintiffs believe that the complaints, as

Corp., et al. (3:13-cv-05278, N.D. Ca.), (No. 1 :13-cv-8644, SDNY).

² In an effort to conserve the time and resources of the Court and the parties, rather than submitting sixteen separate letters, the CPM Plaintiffs join in this one omnibus letter.

³ Defendants also challenge the CPM Plaintiffs’ request for injunctive relief. (Docket No. 598 at 1). However, as Defendants note, the CPM Plaintiffs seek injunctive relief not as a freestanding claim but as a form of relief. As this is a question of “relief” rather than a question as to viability of causes of action, the CPM Plaintiffs submit that any inquiry on this issue is premature.

amended, will address the issues raised by Defendants.

Toward that end, the CPM Plaintiffs hereby join in and incorporate by reference the letter submitted today (August 20, 2014) by Richard J. Leveridge of Dickstein Shapiro, LLP, on behalf of the Direct Action Plaintiffs, respectfully requesting a proposed schedule governing the filing of amended complaints and pre-motion letters relating thereto. (Docket No. 610).⁴

Notwithstanding the above, in further response to Defendants' August 13, 2014 letters, the CPM Plaintiffs state as follows:

1. Breach of Contract/Breach of the Implied Covenant of Good Faith and Fair Dealing/Unjust Enrichment

In their letter of August 13, 2014 (Docket No. 594), Defendants, guided by the Court's *LIBOR III* holding, seemingly invite amendment of the complaints writing that "[a] more definite statement under Fed. R. Civ. P. 12(e) is necessary . . . so that defendants and the Court can identify the defendants, if any, against which plaintiffs can state a claim, as well as the contracts or other dealings that would allegedly form the basis for such a claim." In response, the CPM Plaintiffs note their intention to amend their complaints to provide further specificity regarding their LIBOR transactions and the counterparties with whom they had dealings,

⁴ The CPM Plaintiffs also join in the letter filed by the Dickstein Shapiro firm addressing the personal jurisdiction issues raised by the Defendants in their August 13, 2014 letter. (Docket No. 601).

which will address head-on the issue raised by Defendants with respect to these claims.⁵

2. Interference with Economic Advantage, Fraud and Negligent Misrepresentation

Defendants argue that the CPM Plaintiffs' claims for interference with economic advantage, fraud and negligent misrepresentation, are time-barred and that Plaintiffs have failed to make out viable claims (either in part or in toto) (Docket Nos. 595, 596).

With respect to the statute of limitations arguments, the CPM Plaintiffs believe that these arguments are premature. While the Court has considered statute of limitations issues with regard to other claims, it has not yet considered a statute of limitations analysis with regard to the state, common-law claims. Accordingly, the CPM Plaintiffs will be prepared to address issues related to the statutes of limitations, in response to the motions to dismiss that it is anticipated Defendants will file.⁶

⁵ *And see Process Specialties, Inc. v. Sematech, Inc.*, No. CIV. S-00414 FCD PAN, 2001 U.S. Dist. LEXIS 26261, at *63 (E.D. Cal. Nov. 8, 2001) (“there is no such [privity] requirement under California law” with respect to unjust enrichment).

⁶ In addition, the CPM Plaintiffs join other plaintiffs in noting that Defendants are incorrect in asserting that New York law applies to all state law claims and the timeliness thereof. Fifteen of the sixteen CPM Plaintiffs are California entities, and one is a Texas entity. Accordingly, the law of California and Texas will govern these entities' state law claims. *See, e.g., In re Lou Levy & Sons Fashions, Inc., Litigation*, MDL No. 856, No. 90 Civ. 0238 (TPG), 1991 U.S. Dist. LEXIS 16576 at *5-6 (S.D.N.Y. Nov. 15, 1991), *reaff'd on reconsideration*, 185 F. Supp. 1163 (S.D.N.Y. 1992) *aff'd*, 988

As to the substance of the fraud claims, Defendants' arguments also are misplaced. Defendants argue that the CPM Plaintiffs' reliance upon Defendants was unjustified (Docket No. 595). As an initial matter, the CPM Plaintiffs note that the issue of whether reliance on a misstatement or omission was reasonable "is a question of fact for the jury, and may be decided as a matter of law only if the facts permit reasonable minds to come to just one conclusion." *Broberg v. Guardian Life Ins. Co. of Am.*, 171 Cal. App. 4th 912, 921 (2009) (citation and internal quotation marks omitted); see *Jones v. Ray Ins. Agency*, 59 S.W.3d 739, 754 (Tex. App. 2001) ("ordinarily the issue of reliance in a fraud case is a question of fact") (citation omitted); *pet. for review denied, Ray Ins. Agency v. Jones*, 92 S.W.3d 530 (Tex. 2002). Moreover, and perhaps more to the point, the notion that reliance by plaintiffs was unjustified strains credulity. At best, Defendants' arguments only serve to underscore that motions to dismiss are premature and that discovery on this issue is needed.⁷

F.2d 311 (2d Cir. 1993) ("In multidistrict litigation transfers, the law of the transferor district must be applied."). Similarly, questions of choice of law are to be decided under the law of the transferor court. *Anschutz Corp. v. Merrill Lynch & Co., Inc.*, 690 F.3d 98, 112 (2d Cir. 2012).

⁷ The notion that Defendants did not intend to induce reliance is similarly unfounded. Nevertheless, and without conceding this point, it is anticipated that the amendments to the CPM Plaintiffs' complaints, which will provide additional detail about the CPM Plaintiffs' dealings with counterparties, will serve to underscore how Defendants intended to induce reliance in specific instances. Likewise, and without conceding

Given the breadth and depth of the allegations about the Defendants' wrongful conduct regarding the LIBOR market and the foreseeability of the consequences thereof, they cannot now assert that they did not know of CPM Plaintiffs' dealings and intend to interfere in CPM Plaintiffs' dealings. At a minimum, an inference must be drawn that they conducted themselves with knowledge that interference was likely. *See Korea Supply Co. v. Lockheed Martin Corp.*, 63 P.3d 937, 957-58 (Cal. 2003).

3. Antitrust Claims

With respect to the issues raised by Defendants in their August 13, 2014 letter (Docket No. 594) relating to the antitrust claims, and guided by the Court's prior rulings concerning these matters, the CPM Plaintiffs submit that they are prepared to work with Defendants to see if the parties can reach an appropriate stipulation regarding these claims so long as the CPM Plaintiffs' appellate rights are fully preserved.

Respectfully submitted,
s/Alexander Barnett

Cc: All Counsel of Record (via ECF)

Defendants' challenge to CPM Plaintiffs' negligent misrepresentation claims on grounds that the complaints fail to establish a "requisite relationship" between Defendants and the CPM Plaintiffs, any such arguments will fall away with amendments regarding dealings with specific counterparties.

**[Letter to Judge Naomi Reice Buchwald on
behalf of Prudential Investment Portfolios
MDL Docket No. 624; Aug. 20, 2014]**

[Quinn Emanuel Letterhead]

August 20, 2014

ELECTRONICALLY FILED

Honorable Naomi Reice Buchwald
United States District Court
for the Southern District of New York
500 Pearl Street
New York, New York 10007-1312

Re: *Prudential Investment Portfolios 2 & Prudential
Core Taxable Money Market Fund v. Bank of America
Corporation, et al.*, 1:14-cv-04189-NRB (S.D.N.Y.)

Dear Judge Buchwald:

We write on behalf of plaintiff (“Prudential”) in response to the letters submitted by the Defendant banks requesting leave to file motions to dismiss certain claims brought in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, No. 1 1-md-2262. As explained below, Defendants’ proposed motions are primarily aimed at complaints distinct from the narrowly y focused one brought on behalf of the two Prudential funds in this case, and those grounds that do purportedly apply are meritless.

Should the Court believe that full briefing is necessary to resolve the issues raised by the Defendants, we look forward to the opportunity to do so.

Amending the Complaint. Initially, we note that Defendants do not challenge large portions of Prudential's Complaint. Indeed, they concede that Prudential's breach of contract and unjust enrichment claims, asserted as to Defendant counterparties and governed by New Jersey's six-year statute of limitations, are controlled by this Court's ruling in *In re LIBOR-Based Fin. Instruments Antitrust Litig.* ("*LIBOR III*"), 2014 WL 2815645, at *20 (S.D.N.Y. June 23, 2014). However, to address concerns expressed in the Court's opinions and other issues raised in the Defendants' letters, Prudential intends to amend its Complaint in accordance with the schedule proposed in the letter from Richard J. Leveridge to the Court on August 20, 2014. We think any briefing schedule on a motion to dismiss should take into account that amendment, which will be filed on or before the jointly proposed deadline.

New Jersey law governs the timeliness of all Prudential's claims. For the timeliness analysis for various claims, Defendants refer to New York law. But Prudential is headquartered in and filed this case in *New Jersey*. It is settled that the law of the transferor jurisdiction continues to govern on all state-law issues. *See, e.g., Anschutz Corp. v. Merrill Lynch & Co., Inc.*, 690 F.3d 98, 112 (2d Cir. 2012); *In re Lou Levy & Sons Fashions, Inc.*, 1991 WL 254428, at *2 (S.D.N.Y. Nov. 15, 1991), *on reconsideration*, 785 F. Supp. 1163 (S.D.N.Y. 1992) *aff'd*, 988 F.2d 311 (2d Cir. 1993). Thus, neither New York's choice-of-law analysis nor C.P.L.R. § 202 applies to Prudential's

Complaint. Under New Jersey’s “most significant relationship” test, it is New Jersey-where Prudential received the misrepresentations, relied on them, formed the contracts at issue, and suffered the injury complained of-whose law applies. The application of New Jersey law moots most (if not all) challenges on the timeliness of Prudential’s claims.¹

¹ The limitations period governing certain of Prudential’s claims was also suspended by the filing of class-action complaints that included Prudential as part of the class and asserted causes of action that were substantially similar to, or based on the same facts as, claims Prudential now asserts. “*American Pipe* tolling is properly extended to claims of absent class members that involve the same evidence, memories, and witnesses as were involved in the initial putative class action.” *Cullen v. Margiotta*, 811 F.2d 698,719 (2d Cir. 1987) (collecting cases). See *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 393-94 n.14 (1977); *Tosti v. City of Los Angeles*, 754 F.2d 1485, 1489

(9th Cir. 1985) (“[A] related class action gives defendants full notice ‘of the need to preserve evidence and witnesses respecting the claims of *all* the members of the class. Tolling the statute of limitations thus creates no potential for unfair surprise” (quoting *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 353 (1983)); *Escott v. Barchris Constr. Corp.*, 340 F.2d 731, 734 (2d Cir. 1965) (tolling applies when prior class action “made [defendants] aware of the nature of the evidence that would be needed at trial”), *cert. denied*, 382 U.S. 816 (1965).

Defendants argue in a footnote that *American Pipe* tolling is inapplicable to state-law claims. Letter from Jeffrey T. Scott & David R. Gelfand to Hon. Naomi Reice Buchwald at I n.2, ECF No. 595 (Aug. 13, 2014). But the case Defendants cite states that “[a] federal court evaluating the timeliness of state law claims must look to the law of the relevant state to

Prudential's contract-based claims are timely, and well-pled. Prudential's claims for breach of contract and breach of the implied covenant of good faith and fair dealing are timely under New Jersey's six-year statute of limitations. N.J.S.A. § 2A:14-1. Defendants do not seek dismissal of these claims, nor do they seek a more definitive statement, as they have sought with respect to other complaints. *See* App. to Defendants' August 13, 2014 Pre-Motion Submissions, at 9-10 (ECF No. 593-1). This is likely because Prudential, unlike certain other plaintiffs, asserts its contract claims solely against its contractual counterparties, in conformity with *LIBOR III*.

Prudential's unjust enrichment claims are timely, and well-pled. Prudential's unjust enrichment claims are timely under New Jersey's six-year statute of limitations. *See Jacobson v. Celgene Corp.*, 2010 WL 1492869, at *3 (D.N.J. Apr. 14, 2010). Here, again, Prudential brings claims solely against Defendants with which it transacted directly. Defendants thus do not seek dismissal, or a more definitive statement as to Prudential's claims. *See* App. to Defendants' August 13, 2014 Pre-Motion Submissions at 11-13 (ECF No. 593-1).

determine ... to what extent, the statute of limitations should be tolled by the filing of a putative class action in another jurisdiction." *In re Bear Stearns Cos. Sec. Derivative & ERISA Litig.*, 2014 WL 463582, at *16 (S.D.N.Y. Feb. 5, 2014). Here, the law of the relevant state, New Jersey, provides that the filing a putative class action in federal court tolls the statute of limitations applicable to class members' state-law claims. *Staub v. Eastman Kodak Co.*, 320 N.J. Super. 34, 58 (App. Div. 1999).

Prudential's fraud-based claims are timely, and well-pled. Prudential's fraud-based claims are also timely under New Jersey's six-year statute of limitations. N.J.S.A. § 2A:14-1.

Defendants argue that Prudential's reliance was unreasonable. Letter from Jeffrey T. Scott & David R. Gelfand to l-Ion. Naomi Reice Buchwald at 2 (ECF No. 595, Aug. 13, 2014) ("Scott & Gelfand Letter"). The scope of that "ask" is breathtaking. Defendants are asking the Court to rule, as a matter of law, that as early as 2007 no reasonable investor could ever have relied on LIBOR. In other words, every actor in this *multitrillion-dollar market* was purportedly acting irrationally. Clearly, the severe disconnect between Defendants' theory, and reality, requires *at least* waiting for discovery on this issue. This is also true with respect to reliance after May 2008 (*i.e.*, after the Court's "inquiry notice" date), given the market's continuing reliance on LIBOR. There is a difference between finding that investors should have begun investigating by May 2008, and deeming every market actor (including many governments) to have acted irrationally in relying on LIBOR. *See, e.g., Miller v. Am. Bureau of Shipping, Inc.*, 1998 WL 879674, at *1 (9th Cir. Dec. 16, 1998) (mem.) (reversing dismissal of fraud claims for lack of reasonable reliance based on plaintiff's being on inquiry notice).

Defendants similarly try to avoid practical realities by arguing that they lacked intent to deceive even though they knew that LIBOR was being manipulated. The Court has already rejected that distinction, finding that scienter was adequately pled under the Commodity Exchange Act. *See LIBOR III*, 2014 WL 2815645, at *14. This makes sense, as

“[w]here representations are made to the public at large for the purpose of influencing the action of anyone who may act upon those representations, a common-law cause of action for fraud lies in favor of any individual who acts upon them and is injured thereby.” *Young v. Robertshaw Controls Co.*, 481 N.Y.S.2d 891, 893 (3d Dep’t 1984). Defendants cannot escape liability for falsifying LIBOR by claiming they bore no ill will toward any particular investor who would be harmed.

Finally, Defendants question how their misconduct harmed certain plaintiffs. Whatever the merit of those arguments in other cases, it defies common sense to apply them to Prudential. As a holder of instruments on which it was to receive LIBOR-based payments, Prudential was directly impacted by LIBOR’s suppression, as alleged in the Complaint. *See McCabe v. Ernst & Young, LLP.*, 494 F.3d 418,438 (3d Cir. 2007) (“[T]he test of proximate cause is satisfied where . . . conduct is a substantial contributing factor in causing [a] loss.”). Determining precisely how much less Prudential was paid is simply not a pleading burden. *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145, 167 (2d Cir. 2012).²

² In the aiding and abetting and conspiracy context, Defendants assert that they neither knew of, nor substantially assisted, each other’s misconduct. Scott & Gelfand Letter at 2-3. However, Prudential alleges facts showing that Defendants knew of each other’s false submissions, assisted this misconduct by suppressing their own submissions, and did so pursuant to a conspiracy among the LIBOR panel banks.

Prudential's negligent misrepresentation claims are timely, and well-pled. Prudential's negligence claims are timely under New Jersey's six-year statute of limitations. See *Goodman v. Goldman, Sachs & Co.*, 2010 WL 5186180, at *5 (D.N.J. Dec. 14, 2010). Defendants argue that plaintiffs lacked a "special relationship' with a non-counterparty." Scott & Gelfand Letter at 3. However, Prudential brings negligent misrepresentation claims solely against *counterparty* Defendants. Prudential's claims are also governed by New Jersey law, under which negligent misrepresentation liability "is not limited to special relationship situations." *Highlands Ins. Co. v. Hobbs Grp., LLC*, 373 F.3d 347, 355 (3d Cir. 2004). Rather, New Jersey imposes a duty whenever "called for by good faith and common decency," *id.*, which may extend to the investing public at large. *Id.* at 351 ("[A] defendant may be liable (because it owes a duty) to any reasonably foreseeable recipient who relies on the information.") (internal citation omitted); see, e.g., *Prudential Ins. Co. of Am. v. Credit Suisse Sec. (USA) LLC*, 2013 WL 5467093, at *20 (D.N.J. Sept. 30, 2013); *Prudential Ins. Co. of Am. v. Goldman, Sachs & Co.*, 2013 WL 1431680, at *9 (D.N.J. Apr. 9, 2013). These standards are met here, as Prudential alleges that Defendants knew that Prudential and other investors were relying on LIBOR's integrity.

Prudential's interference claims are timely, and well-pled. Prudential's interference claims are timely under New Jersey's six-year statute of limitations. N.J.S.A. 2A:14-1. Defendants urge that Prudential must allege that Defendants "*intended* to interfere with Plaintiffs' contracts or business relations." Letter from Marc J. Gottridge to Hon. Naomi Reice Buchwald

at 3 (ECF No. 596, Aug. 13, 2014). As discussed above in the context of Prudential's fraud claims, this slices the elements far too finely, as this Court has already held. *See Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1170 (3d Cir. 1993) (“[I]f there is no desire at all to accomplish the interference and it is brought about only as a necessary consequence of the conduct of the actor engaged in for an entirely different purpose, his knowledge of this makes the interference intentional.”) (quoting Restatement (Second) of Torts § 767 cmt.d). Defendants also suggest that intent to interfere with these *specific contracts* must be alleged. But Defendants knew that Prudential held LIBOR-linked instruments, and that their conduct would impact *every* LIBOR-based instrument. Such knowledge suffices even if Defendants' focus was not on the specific positions on Prudential's books. *See id.* (finding intentional interference sufficiently alleged as to “a particular category of contracts”); *LIBOR III*, 2014 WL 2815646, at *14 (“[I]t may suffice for plaintiffs to allege that defendants knowingly engaged in unquestionably illegitimate conduct while fully comprehending the consequences in the market.”). Here, it would be absurd to require that Defendants have particularized intent to interfere with each one of the hundreds of LIBOR-linked instruments held by Prudential.³

³ Certain Defendants, including some of this nation's largest banks, say they are beyond the reach of a New Jersey court. Letter from Joel Kurtzberg to Hon. Naomi Reice Buchwald (ECF No. 600, Aug. 13 2014). Prudential expects discovery to show Defendants had continuous and systematic

Prudential's state-Law RICO claim is distinct from the federal claims tire Court previously considered. Defendants do not appear to challenge Prudential's New Jersey RICO claims on timeliness grounds. Nor could they, as such claims are governed by a five-year, if not a six-year, period. *See Jat-wick Dev., Inc. v. Wilf*, No. MRS-C-184-92, slip op. at 8-15 (N.J. Ch. Div. Aug. 13, 2013).⁴ Instead, Defendants assert that New Jersey law only "regulates conduct in New Jersey." Letter from Robert F. Wise to Hon. Naomi Reice Buchwald at 2 (ECF No. 594, Aug 13, 2014). Yet New Jersey RICO applies to "crimes under the laws of *any other jurisdiction*," N.J.S.A. § 2C:41-1(a)(1) (emphasis added), and to any "enterprise which engaged in trade or commerce in New Jersey or *affected trade or commerce in New Jersey*," *State v. Casilla*, 362 N.J. Super. 554, 565-64 (App. Div. 2003) (emphasis added). Thus, "the effects of the defendants' alleged conspiratorial conduct upon stakeholders in this state provide a sufficient basis upon which territorial jurisdiction may be found under" New Jersey RICO. *Bondi v. Citigroup, Inc.*, 2005 WL 975856, at *23 (N.J.

contact with New Jersey that supp01t general jurisdiction. In any event, as described in the August 20, 2014 letter to the Court from Richard J. Leveridge, Defendants' contacts with New Jersey amply suppott New Jersey's assertion of specific jurisdiction.

⁴ We also note that unlike in federal RICO, securities fraud is a viable "predicate act" under New Jersey RICO. *See, e.g., N .J.S.A.2C:41-1(a)(p);Metzv. United Counties Bancorp.*,61 F.Supp.2d364,371 (D.N.J.1999). Thus, violations of the New Jersey blue sky law can give rise to RICO liability.

Sup. Ct. Feb. 28, 2005). Defendants' misconduct clearly "affected trade or commerce" in New Jersey, given LIBOR's prevalence as a financial benchmark, including for the instruments at issue here. *See Prudential v. Goldman*, 2013 WL 1431680, at *11 (New Jersey RICO applied based on fact that Prudential's reliance took place in the state). This Court's ruling that federal RICO cannot reach a foreign enterprise does not control the application of New Jersey RICO, which is broader than its federal counterpart.⁵

Respectfully submitted,

Daniel L. Brockett

cc: All Counsel (via ECF)

⁵ In response to the antitrust portion of Mr. Wise's above-cited letter, in light of the Court's prior rulings in this area, Prudential is willing to attempt to reach an appropriate stipulation with Defendants that would allow dismissal of these claims, as long as Prudential's appellate rights are fully preserved.

**[Letter to Judge Naomi Reice Buchwald on
behalf of Plaintiffs in stayed class action cases.
MDL Docket No. 626; Aug. 20, 2014]**

[SUSMAN GODFREY L.L.P. LETTERHEAD]

August 20, 2014

BY HAND AND ECF

The Honorable Naomi Reice Buchwald
United States District Court for the Southern District
of New York
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *In re LIBOR-Based Financial Instruments
Antitrust Litigation*, No. 11-md-2262 (NRB)

Dear Judge Buchwald:

We write as liaison counsel for the class cases to communicate the views of counsel in the previously stayed class cases in response to defendants' August 13 pre-motion letters. Counsel in the previously stayed class cases fall into three categories: (1) counsel seeking the creation of new interim classes, appointment of interim lead counsel, and amendment, (2) counsel seeking a stay, and (3) counsel seeking to join the OTC case. Counsel in the OTC and Exchange-

Based cases will also submit separate letters today relating specifically to their cases.

1. Counsel seeking the creation of new interim classes, appointment of interim lead counsel, and amendment

Counsel in cases seeking to represent classes of lenders, homeowners, and students¹ have asked us to communicate their request to seek the creation of new interim classes that do not presently exist, appointment as interim lead counsel for such classes, and the opportunity to file consolidated amended complaints.

Counsel in these cases believe it is appropriate to have a process for appointing interim lead counsel and filing consolidated amended complaints in order to ensure vigorous advocacy of their classes' claims. In addition, counsel note that the Court followed this procedure in the non-stayed class cases. Counsel in these cases propose the following schedule: motions for interim lead counsel filed by September 15, 2014, responses by October 3, 2014, and replies by October 13, 2014; consolidated amended complaints to be filed 30 days after the appointment of interim lead counsel.

¹ These cases are: *Berkshire Bank v. Bank of Am. Corp. et al.*, 12-cv-5723 (lenders); *Adams v. Bank of Am. Corp. et al.*, 12-cv-7461; *Earle v. Bank of Am. Corp.*, 13-cv-0407; *Payne v. Bank of Am. Corp. et al.*, 13-cv-0598 (homeowners); and *Weglarz et al. v. JP Morgan Chase Bank, N.A. et al.*, 13-cv-1198 and *Nagel v. Bank of America, N.A. and Am. Educ. Servs., Inc.*, 13-cv-3010 (students).

Generally speaking, counsel in these cases seek to amend to add factual allegations to address developments since their cases were stayed, the Court's prior rulings, and issues raised in defendants' pre-motion letters. Attached as Exhibits A through D are letters prepared by counsel in these cases who wished to provide additional detail about their views.

2. Counsel seeking a stay

Counsel in cases seeking to represent classes of owners of various types of LIBOR-based instruments purchased or otherwise acquired from entities other than the LIBOR panel banks² have asked us to communicate their request that the Court maintain the existing stay.

The *33-35 Green Pond Road* and *Courtyard at Amwell* cases are putative class actions asserting only Sherman Act claims. Given the Court's prior rulings, counsel in these cases believe the Court will dismiss these claims, which would dismiss these actions in their entirety. However, because of the pending Supreme Court proceedings in *Gelboim v. Bank of America Corp., et al.* (No. 13-1174), it is unclear whether plaintiffs in these cases could appeal immediately after a dismissal or must await the conclusion of litigation as to the remaining cases.

² These cases are: *33-35 Green Pond Road Assocs., LLC v. Bank of Am. Corp. et al.*, 12-cv-5822; *Courtyard at Amwell II, LLC v. Bank of Am. Corp., et al.*, 12-cv-6693; *Lieberman v. Credit Suisse Grp. AG et al.*, 12-cv-6056; *Guaranty Bank & Trust Co. v. Credit Suisse Grp. AG et al.*, 13-cv-0346; *L.A. Cnty. Emps. Ret. Ass'n ("LACERA") v. Bank of Am. Corp. et al.*, 13-cv-0398; and *Cnty. of Riverside v. Bank of Am. Corp. et al.*, 13-cv-1135.

Counsel in these cases therefore respectfully request a stay, which would not interfere with other aspects of this litigation, until *Gelboim* resolves their appellate rights. In the alternative, counsel in these cases respectfully request that the Court enter a Rule 54(b) judgment dismissing these cases so they may be properly appealed.

Counsel in the remaining cases in this category also believe that the outcome of *Gelboim* will likely have a significant effect on their cases because they also assert federal or state antitrust claims. They believe it would be most efficient to maintain the stay in their actions until the *Gelboim* proceedings have concluded. As an alternative, counsel in these cases respectfully request entry of a partial judgment under Rule 54(b) on their Sherman Act and RICO claims, subject to an agreement with defendants preserving their right to appeal and the arguments previously made by other counsel for appellate purposes, and a stay of proceedings on any remaining claims. The dismissal of the Sherman Act and RICO claims would leave a few categories of claims outstanding: state-law antitrust claims (*Lieberman*, *Guaranty Bank & Trust*, *LACERA*, and *County of Riverside*), unjust enrichment (*Lieberman* and *County of Riverside*), tortious interference (*LACERA* and *County of Riverside*), and state unfair business practices (*Guaranty Bank & Trust*). Counsel in these cases respectfully request that the Court maintain the stay as to these remaining claims pending completion of proceedings in *Gelboim*, given the significance of the antitrust claims, to conserve the resources of the Court and the parties.

3. Counsel seeking to join the OTC case

Two of the previously stayed class cases—*SEIU Pension Plans Master Trust v. Bank of America Corp. et al.*, 13-cv-1456 and *Highlander Realty, LLC et al. v. Citizens Bank of Mass. et al.*, 13-cv-2343—plead class definitions involving purchases of LIBOR-based instruments from the panel banks. *SEIU* is brought on behalf of bondholders who bought LIBOR-based instruments directly from one of the panel banks (Compl. ¶¶11, 166), which is part of the OTC class definition.³

Highlander Realty is brought on behalf of all borrowers of a subsidiary of panel bank RBS who had a LIBOR rate as an interest benchmark (Compl. ¶ 28), in part including persons who had an interest rate swap agreement based on LIBOR purchased directly from this RBS subsidiary (*see* Compl. ¶ 6)—which is part of the OTC class definition.⁴

Counsel in these cases have informed counsel for the OTC plaintiffs that their clients wish to serve as named plaintiffs and putative class representatives in the OTC action. They therefore respectfully request (and counsel for the OTC plaintiffs join in this request) that counsel for the OTC plaintiffs be permitted to add

³ *See* OTC Compl. ¶ 36 (“Non-derivative instruments include but are not limited to floating rate notes. Floating rate notes evidence an amount of money owed to the buyer from the seller. The interest rate on floating rate notes is adjusted at contractually-set intervals and is based on a variable rate index, such as LIBOR. Thus, floating rate notes can be indexed to LIBOR.”).

⁴ *See* OTC Compl. ¶ 35(f) (discussing interest rate swaps).

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the plaintiffs in the *SEIU* and *Highlander Realty* cases as named plaintiffs in the OTC action, after which the *SEIU* and *Highlander Realty* actions may be closed.⁵

Respectfully submitted,

William Christopher Carmody
SUSMAN GODFREY LLP

David Kovel
KIRBY MCINERNEY LLP

Cc: All Counsel (By ECF)

⁵ To the extent that a fuller response on the merits of arguments raised in the pre-motion letters is necessary, counsel in the class cases respectfully incorporate the arguments made in the other responses filed today to the pre-motion letters.