No. _____

IN THE

Supreme Court of the United States

HSBC HOLDINGS PLC, CITIGROUP GLOBAL MARKETS LIMITED, FIRST PENINSULA TRUSTEES LIMITED, AND BA WORLDWIDE FUND MANAGEMENT, ET AL.,

Petitioners,

v.

IRVING H. PICARD,

Respondent.

ON APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONERS' APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

CLEARY GOTTLIEB STEEN & HAMILTON LLP
Thomas J. Moloney
Counsel of Record
Jessa DeGroote
Joseph M. Kay
David Z. Schwartz
One Liberty Plaza
New York, New York 10006
212-225-2000

FRESHFIELDS BRUCKHAUS DERINGER US LLP
Timothy P. Harkness
David Y. Livshiz
601 Lexington Avenue, 31st Floor
New York, NY 10022
212-277-4000

PIERCE BAINBRIDGE BECK PRICE & HECHT LLP
Franklin B. Velie
Jonathan G. Kortmansky
277 Park Ave, 45th Floor
New York, New York 10172
212-484-9866

CLEARY GOTTLIEB STEEN & HAMILTON LLP
Carmine D. Boccuzzi, Jr.
E. Pascale Bibi
One Liberty Plaza
New York, New York 10006
212-225-2000

Counsel for Petitioners

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable Ruth Bader Ginsburg, Associate Justice of the Supreme Court of the United States as Circuit Justice for the Second Circuit:

Pursuant to Supreme Court Rule 13.5, Petitioners respectfully request that the time to file a petition for a writ of certiorari (the "Petition") in this matter be extended 59 days to and including August 30, 2019. The judgment of the Second Circuit was entered on February 25, 2019 (*see* App. A, *infra*), and the petitioners timely petitioned for panel rehearing and rehearing *en banc*. Those requests were denied on April 3, 2019 (*see* App. B, *infra*). Absent an extension of time, the Petition would be due on July 2, 2019. Petitioners are filing this application at least 10 days before that date. *See* S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

As described in brief below, these eighty-eight consolidated cases involving hundreds of defendants present important questions of federal law with significant international ramifications. Recognizing the seriousness of these questions, the Second Circuit, on April 23, 2019, granted a stay of its mandate pending the filing and disposition of the Petition.

BACKGROUND

These cases comprise eighty-eight separate adversary proceedings brought by the Trustee (the "Trustee") for the Bernard L. Madoff Investment Securities ("BLMIS") estate in the United States Bankruptcy Court for the Southern District of New York against hundreds of defendants—the Petitioners here—the vast majority of which are foreign entities. In these actions, the Trustee asserts claims against Petitioners pursuant to U.S. Bankruptcy Code Section 550(a)(2) to assess liability against alleged subsequent transferees with respect to initial fraudulent transfers from

BLMIS to foreign investment funds. The alleged subsequent transfers occurred overseas from these foreign investment funds to Petitioners and are governed by foreign law. The Trustee's attempt to impose liability on the recipients of these foreign transfers implicates critical issues of federal law and foreign relations, including the reach of the Bankruptcy Code in the face of the presumption against extraterritoriality and whether principles of international comity require deference to foreign liquidation proceedings.

In 2012, the District Court (Rakoff, J.) withdrew the reference to the Bankruptcy Court to decide these questions and on July 7, 2014, the District Court issued its decision. *Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 513 B.R. 222 (S.D.N.Y. 2014) (No. 12-mc-115 (JSR)) (*see* App. C, *infra*). The District Court, in holding that the U.S. Bankruptcy Code Section 550(a) does not apply extraterritorially, applied the Supreme Court's two-step focus test in *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010). *See* App. 49-59. In applying step one of the test, the District Court examined the text and surrounding provisions of Section 550(a) and found that nothing in either of these "suggests that Congress intended for this section to apply to foreign transfers." App. 54. In applying step two, the District Court found that the focus of Congressional concern with respect to Section 550(a), *i.e.*, "the transaction being regulated by section 550(a)(2)," is the foreign subsequent transfers, *i.e.*, transfers that occurred between foreign persons overseas, and "not the relationship of that property to a perhaps-distant debtor." App. 51. As a result, the District Court held that "section 550(a) does not apply extraterritorially to allow for the recovery of subsequent transfers received abroad by a foreign transferee from a foreign transferor." App. 62.

In the alternative, the District Court held that "the Trustee's use of section 550(a) to reach these foreign transfers was precluded by concerns of international comity" where the foreign

investment funds were involved in liquidation proceedings in their home countries which have their own rules concerning the disgorgement of transfers received from a debtor. App. 60. The District Court remanded the adversary proceedings to the Bankruptcy Court for further proceedings consistent with its opinion. App. 62-63.

The Bankruptcy Court (Bernstein, J.) for the Southern District of New York, which has administered hundreds of the Trustee's Madoff-related actions for over a decade, issued its decision applying the District Court's analysis to the actions consolidated in this appeal on November 22, 2016. Mem. Decision, Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC, Adv. No. 08-01789 (SMB), 2016 WL 6900689 (Bankr. S.D.N.Y. Nov. 22, 2016), ECF No. 14495 (*see* App. D, *infra*). The Bankruptcy Court dismissed certain claims against Petitioners on extraterritoriality grounds where the subsequent transfer occurred between a foreign transferor and foreign transferee located abroad. App. 124-151. The Bankruptcy Court also abstained on the basis of international comity from deciding all of the claims against Petitioners in which the Trustee sought to recover transfers made by foreign investment funds already subject to foreign liquidation proceedings under foreign law. App. 101-105. The Bankruptcy Court balanced the respective interests of the United States and the foreign nations, whose law applies to these foreign liquidation proceedings, and held that the foreign nations "have a greater interest in regulating the activity that gave rise to the [duplicative] claims asserted by the Trustee and the [foreign] liquidators." App. 98. The Bankruptcy Court also considered the expectations of foreign investors and the risks of double liability. App. 98. The Trustee appealed the District Court's holdings and Bankruptcy Court's dismissal of the actions on extraterritoriality and international comity grounds in September 2017.

On February 25, 2019, the Second Circuit issued its decision, vacating and remanding to the Bankruptcy Court for further proceedings consistent with its decision. App. 41. The Second Circuit declined to apply step one of the two-step focus test outlined in *Morrison* and concluded that Section 550(a) applies domestically where, as here, the initial fraudulent transfers from the debtor were made in the United States regardless of the foreign nature of the subsequent transfer actually sought to be recovered by the Trustee. App. 16, 40. In concluding that Section 550(a) applies domestically, the Second Circuit held that the "relevant transfer is the debtor's initial transfer" and the lower courts "erroneously focus[ed] on the subsequent transfer[s]." App. 39-40. The Second Circuit, in conflict with every other circuit to address the issue of international comity dismissals, also applied a *de novo* standard of review to the Bankruptcy Court's dismissals grounded in principles of international comity and concluded that, given the factual circumstances of these proceedings, "prescriptive comity considerations do not limit the reach of the Bankruptcy Code provisions." App. 41.

On March 11, 2019, Petitioners filed a timely petition for rehearing and rehearing *en banc*, which the Second Circuit denied on April 3, 2019.

These cases raise important questions regarding the intended reach of the U.S. Bankruptcy Code's recovery provisions and whether the doctrine of international comity ought to limit the reach of the Code where its application would have a dramatic impact on overlapping insolvency proceedings pending in other countries. Both of these questions implicate important issues of federal law and international relations.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file the Petition should be extended for fifty-nine days for the following reasons.

1. Petitioners are a group of hundreds of defendants, the majority of which are foreign. Coordinating among this group on the extraordinarily important and complex issues of the extraterritorial reach of the U.S. Bankruptcy Code and concerns of international comity necessitates and warrants additional time. Such time will allow Petitioners to coordinate and minimize the number of petitions for certiorari.

2. No prejudice would arise from the extension requested, as this Court would not consider the Petition until the October 2019 Term regardless of whether the fifty-nine day extension is granted.

CONCLUSION

For the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended fifty-nine days, up to and including August 30, 2019.

Dated: May 28, 2019
New York, New York

Respectfully submitted,

CLEARY GOTTLIEB STEEN & HAMILTON LLP

/s/ Thomas J. Moloney

Thomas J. Moloney
Counsel of Record
Jessa DeGroote
Joseph M. Kay
David Z. Schwartz
One Liberty Plaza
New York, New York 10006
T: 212-225-2000
F: 212-225-3999

Attorneys for HSBC Holdings plc, HSBC Bank plc, HSBC Securities Services (Luxembourg) S.A. (also sued as HSBC Fund Services (Luxembourg) S.A.), HSBC Securities Services (Ireland) Designated Activity Company (sued as HSBC Securities Services (Ireland) Limited), HSBC Securities Services (Bermuda) Limited, HSBC France, Dublin Branch (sued as HSBC Institutional Trust Services (Ireland) Limited), HSBC Institutional Trust Services (Bermuda) Limited, HSBC Bank USA., N.A., HSBC Cayman Services Limited (sued as HSBC Bank (Cayman) Limited), HSBC Private Banking Holdings (Suisse) S.A., HSBC Private Bank (Suisse) S.A., HSBC Bank Bermuda Limited, SICO Limited, Somers Dublin Designated Activity Company and Somers Nominees (Far East) Limited

FRESHFIELDS BRUCKHAUS DERINGER US LLP

Timothy P. Harkness
David Y. Livshiz
601 Lexington Avenue, 31st Floor
New York, NY 10022
T: 212-277-4000
F: 212-277-4001

Attorneys for First Peninsula Trustees Limited, individually and as Trustee of The Ashby Trust, The Ashby Trust, Ashby Investment Services Limited, Alpine Trustees Limited, individually and as Trustee of El Prela Trust, Port of Hercules Trustees Limited, individually and as Trustee of El Prela Trust, El Prela Trust, El Prela Group Holding Services, Ashby Holdings Services Limited, El Prela Trading Investments Limited and Tensyr Limited

PIERCE BAINBRIDGE BECK PRICE & HECHT LLP

Franklin B. Velie
Jonathan G. Kortmansky
277 Park Ave, 45th Floor
New York, New York 10172
212-484-9866

Attorneys for Appellee BA Worldwide Fund Management Limited

CLEARY GOTTLIEB STEEN & HAMILTON LLP

Carmine D. Boccuzzi, Jr.
E. Pascale Bibi
Lauren M. Irwin
One Liberty Plaza
New York, New York 10006
T: 212-225-2000
F: 212-225-3999

Attorneys for Citigroup Global Markets Limited, Citibank (Switzerland) AG and Citi Hedge Fund Services Limited

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APPENDIX A

In re Irving H. Picard,
917 F.3d 85 (2d Cir. 2019) (No. 17-2992)

17-2992(L)
In re Picard

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2018

(Argued: November 16, 2018 | Decided: February 25, 2019)

Docket Nos. 17-2992(L),
17-2995, 17-2996, 17-2999, 17-3003, 17-3004, 17-3005, 17-3006, 17-3007, 17-3008, 17-3009, 17-3010, 17-3011, 17-3012, 17-3013, 17-3014, 17-3016, 17-3018, 17-3019, 17-3020, 17-3021, 17-3023, 17-3024, 17-3025, 17-3026, 17-3029, 17-3032, 17-3033, 17-3034, 17-3035, 17-3038, 17-3039, 17-3040, 17-3041, 17-3042, 17-3043, 17-3044, 17-3047, 17-3050, 17-3054, 17-3057, 17-3058, 17-3059, 17-3060, 17-3062, 17-3064, 17-3065, 17-3066, 17-3067, 17-3068, 17-3069, 17-3070, 17-3071, 17-3072, 17-3073, 17-3074, 17-3075, 17-3076, 17-3077, 17-3078, 17-3080, 17-3083, 17-3084, 17-3086, 17-3087, 17-3088, 17-3091, 17-3100, 17-3101, 17-3102, 17-3106, 17-3109, 17-3112, 17-3113, 17-3115, 17-3117, 17-3122, 17-3126, 17-3129, 17-3132, 17-3134, 17-3136, 17-3139, 17-3140, 17-3141, 17-3143, 17-3144, 17-3862.

IN RE: IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L. MADOFF INVESTMENT SECURITIES LLC

Before:

JACOBS, POOLER, AND WESLEY, *Circuit Judges*.

These eighty-eight consolidated appeals come from dozens of related orders of the United States Bankruptcy Court for the Southern District of New York (Bernstein, *J.*). Plaintiff-Appellant Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC ("Madoff Securities"), alleges that Madoff Securities transferred property to foreign entities that subsequently transferred it to other foreign entities, including the hundreds of Appellees. The

Trustee contends that Madoff Securities' transfers are avoidable (meaning "voidable") as fraudulent under § 548(a)(1)(A) of the Bankruptcy Code. He thereby seeks to recover the property from the Appellees using § 550(a)(2) of the Bankruptcy Code. These actions were dismissed on the grounds that the presumption against extraterritoriality and international comity principles limit the scope of § 550(a)(2) such that the trustee of a domestic debtor cannot use it to recover property that the debtor transferred to a foreign entity that subsequently transferred it to another foreign entity. We disagree and hold that neither doctrine bars recovery in these actions. Accordingly, we **VACATE** the judgments of the bankruptcy court and **REMAND** for further proceedings.

ROY T. ENGLERT, JR., Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP, Washington, D.C. (David J. Sheehan, Seanna R. Brown, Torello H. Calvani, Catherine E. Woltering, Baker & Hostetler LLP, New York, NY, *for Plaintiff-Appellant Irving H. Picard*; Howard L. Simon, Windels Marx Lane & Mittendorf, LLP, New York, NY; Matthew B. Lunn, Young Conaway Stargatt & Taylor, LLP, New York, NY, *Special Counsel for the Trustee, on the brief*), *for Plaintiff-Appellant*.

JOSEPHINE WANG, General Counsel (Kevin H. Bell, Senior Associate General Counsel for Dispute Resolution, Nathanael S. Kelley, Associate General Counsel, *on the brief*), Securities Investor Protection Corporation, Washington, D.C., *for Intervenor Securities Investor Protection Corporation*.

FRANKLIN B. VELIE, Sullivan & Worcester LLP, New York, NY; THOMAS J. MOLONEY, Cleary Gottlieb Steen & Hamilton LLP, New York, NY (Diarra M. Guthrie, Samuel P. Hershey, Cleary Gottlieb Steen & Hamilton LLP, New York, NY; Timothy P. Harkness, David Y. Livshiz, Jill K. Serpa, Freshfields Bruckhaus Deringer US LLP, New York, NY; Marshall R. King, Gibson, Dunn & Crutcher LLP, New York, NY; Jonathan G. Kortmansky, Mitchell C. Stein, Sullivan & Worcester LLP, New York, NY, *on the brief*), *for Defendants-*

Appellees HSBC Holdings plc, et al., *UBS AG*, et al., *First Peninsula Trustees Limited*, et al., *and BA Worldwide Fund Management Limited*.

Eugene R. Licker, Ballard Spahr LLP, New York, NY, *for Defendants-Appellees Lighthouse Investment Partners, LLC, Lighthouse Supercash Fund Limited, and Lighthouse Diversified Fund Limited*.

Dean A. Ziehl (Harry D. Hochman, Alan J. Kornfeld, *on the brief*), Pachulski Stang Ziehl & Jones LLP, New York, NY, *for Amicus Curiae National Association of Bankruptcy Trustees, in support of Plaintiff-Appellant*.

Roger P. Sugarman, Kegler, Brown Hill + Ritter, Columbus, OH, *for Amici Curiae Professors of Conflict of Laws, in support of Plaintiff-Appellant*.

Andrea Dobin (Henry M. Karwowski, *on the brief*), Trenk, DiPasquale, Della Fera & Sodono, P.C., West Orange, NJ, *for Amici Curiae Bankruptcy Law Professors, in support of Appeal and Reversal*.

David Molton, Brown Rudnick LLP, New York, NY, *for Amicus Curiae Kenneth Krys, as Liquidator and Foreign Representative of Fairfield Sentry Limited, Fairfield Sigma Limited, and Fairfield Lambda Limited, in support of Plaintiff-Appellant and partial reversal*.

Daniel M. Sullivan (Matthew Gurgel, Benjamin F. Heidlage, *on the brief*), Holwell Shuster & Goldberg LLP, New York, NY, *for Amici Curiae Brian Child, Christopher Hill, Nilani Perera, Martin Trott, and Andrew Willins, in support of Defendants-Appellees*.

George T. Conway III (Emil A. Kleinhaus, Joseph C. Celentino, *on the brief*), Wachtell, Lipton, Rosen & Katz, New York, NY, *for Amicus Curiae Securities Industry and Financial Markets Association, in support of Defendants-Appellees*.

Richard A. Kirby, FisherBroyles, LLP, Washington, D.C. (Carole Neville, Dentons, New York, NY; Richard Levy, Pryor Cashman LLP, New York, NY, *on the brief*), *for Amici Curiae Lanx BM Investments, LLC,* et al., *in support of Defendants-Appellees.*

WESLEY, *Circuit Judge*:

These eighty-eight consolidated appeals arise from the ongoing fallout of Bernard Madoff's Ponzi scheme. As alleged, Bernard L. Madoff Investment Securities LLC ("Madoff Securities") fraudulently transferred billions of dollars to foreign investors, including the feeder funds at issue here. These feeder funds, the initial transferees of that property, subsequently transferred it to other foreign investors, a group that includes the hundreds of Appellees. Irving H. Picard, the Appellant and Trustee for the Liquidation of Madoff Securities, alleges these transfers are fraudulent, and thus avoidable (meaning "voidable"), under § 548(a)(1)(A) of the Bankruptcy Code. Invoking § 550(a)(2) of the Bankruptcy Code, the Trustee sued the Appellees to recover the property. The question before us is whether, where a trustee seeks to avoid an initial property transfer under § 548(a)(1)(A), either the presumption against extraterritoriality or international comity principles limit the reach of § 550(a)(2) such that the trustee cannot use it

to recover property from a foreign subsequent transferee that received the property from a foreign initial transferee.

Following an order of the United States District Court for the Southern District of New York (Rakoff, *J.*),[1] the United States Bankruptcy Court for the Southern District of New York (Bernstein, *J.*)[2] dismissed the Trustee's actions, holding in each that either the presumption against extraterritoriality or international comity principles prevent the Trustee from using § 550(a)(2) to recover this property. We disagree and hold that neither doctrine bars recovery in these actions. Accordingly, we vacate the judgments below and remand to the bankruptcy court for further proceedings.

BACKGROUND

Bernard Madoff orchestrated the largest Ponzi scheme in history through Madoff Securities, his New York investment firm. He enticed investors to buy into alleged investment funds by promising returns that seemed, and were, too good to be true. Rather than invest the money, Madoff commingled it in a checking

[1] *Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC* (*SIPC I*), 513 B.R. 222 (S.D.N.Y.), *supplemented by* 12-MC-115, 2014 WL 3778155 (S.D.N.Y. July 28, 2014).

[2] *Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC* (*SIPC II*), AP 08-01789 (SMB), 2016 WL 6900689 (Bankr. S.D.N.Y. Nov. 22, 2016).

account he held with JPMorgan Chase in New York. *See, e.g.*, *In re Bernard L. Madoff Inv. Sec. LLC.*, 721 F.3d 54, 59–60 (2d Cir. 2013). When investors wanted to withdraw their funds, Madoff sent them checks from this account. *Id.* at 73. In effect, Madoff paid his investors using money he received from other investors. In 2008, his fraudulent enterprise collapsed.

On December 15, 2008, the Securities Investment Protection Corporation, acting pursuant to the Securities Investor Protection Act of 1978 ("SIPA"), 15 U.S.C. §§ 78aaa *et seq.*, petitioned the United States District Court for the Southern District of New York for a protective order placing Madoff Securities into liquidation. *See, e.g.*, *In re Bernard L. Madoff Inv. Sec. LLC*, 740 F.3d 81, 84 (2d Cir. 2014). As we previously explained:

> SIPA establishes procedures for the expeditious and orderly liquidation of failed broker-dealers, and provides special protections to their customers. A trustee's primary duty under SIPA is to liquidate the broker-dealer and, in so doing, satisfy claims made by or on behalf of the broker-dealer's customers for cash balances. In a SIPA liquidation, a fund of "customer property" is established—consisting of cash and securities held by the broker-dealer for the account of a customer, or proceeds therefrom, 15 U.S.C. § 78*lll*(4)—for priority distribution exclusively among customers, *id.* § 78fff–2(c)(1). The Trustee allocates the customer property so that customers "share ratably in such customer property . . . to the extent of their respective net equities." *Id.* § 78fff–2(c)(1)(B).

Id. at 85 (alteration in original) (citation omitted). The Southern District court issued the protective order, appointed Picard as Trustee, and referred the case to the United States Bankruptcy Court for the Southern District of New York. *Id.* at 84–85 (citing Order, *SEC v. Bernard L. Madoff and Bernard L. Madoff Inv. Sec. LLC*, 08-10791 (LLS) (S.D.N.Y. Dec. 15, 2008), ECF No. 4).

Some debtors, such as Madoff Securities, complicate a SIPA trustee's task by unlawfully transferring customer property prior to the formation of a liquidation estate. To ensure that these transfers do not prevent a trustee from ratably distributing customer property, SIPA authorizes trustees to "recover any property transferred by the debtor which, except for such transfer, would have been customer property if and to the extent that such transfer is voidable or void under the provisions of [the Bankruptcy Code]." 15 U.S.C. § 78fff–2(c)(3).

The Bankruptcy Code, in turn, provides various means for trustees to avoid a debtor's transfers and, to the extent that a transfer is avoided, to recover the transferred property. *See* 11 U.S.C. §§ 541 *et seq.* Section 550(a)(1) allows trustees to recover property from the debtor's initial transferee. And § 550(a)(2) permits a trustee to recover property from any subsequent transferee.

Many of Madoff Securities' direct investors were "feeder funds." A feeder fund is an entity that pools money from numerous investors and then places it into a "master fund" on their behalf. A master fund—what Madoff Securities advertised its funds to be—pools investments from multiple feeder funds and then invests the money.

Three foreign feeder fund networks that invested with Madoff Securities are relevant to many of these appeals:

- Fairfield Greenwich Group is a network of funds operating in New York whose funds are organized in the British Virgin Islands ("BVI"), where Fairfield is in liquidation. In those proceedings, the bankruptcy court found, liquidators other than Picard have "brought substantially the same claims [that Picard brings here] against substantially the same group of defendants to recover substantially the same transfers [that Picard seeks to recover]." *SIPC II*, 2016 WL 6900689, at *13.

- The Kingate Funds is a network of funds organized in the BVI. Kingate is currently in liquidation proceedings in the BVI and Bermuda. Liquidators in those nations have brought substantially the same claims Picard brings here "against substantially the same defendants to recover substantially the same transfers" with "limited success." *Id.* at *14.

- The Harley International (Cayman) Limited Funds network is located in the Cayman Islands, where it is currently in liquidation. Picard pursued some relief in those proceedings in 2010.

Many of these feeder funds placed all or substantially all of their assets into Madoff Securities' investment vehicles. Fairfield, for example, invested 95% of its funds with Madoff Securities.

When a feeder fund investor wants to withdraw her money, she effectively needs to recover it from the master fund. The investor initiates a withdrawal by informing the feeder fund, which itself makes a withdrawal request from the master fund. The master fund then transfers the money to the feeder fund (the initial transfer), which subsequently transfers the money to its investor (the subsequent transfer).

Because Madoff Securities did not invest the money it received from the feeder funds, the invested funds accrued no actual gains, despite representations to the contrary by Madoff Securities personnel. When a feeder fund's investor initiated a withdrawal, Madoff Securities transferred commingled investor money from its JPMorgan Chase account in New York to the feeder fund, which subsequently transferred the money to its investor.

Master Fund (Madoff Securities)	*Initial transfer*	**Feeder Fund**	*Subsequent transfer*	**Investor** (Appellees)

The hundreds of Appellees are foreign subsequent transferees that invested in foreign feeder funds. In the bankruptcy court below, the Trustee sued the Appellees under § 550(a)(2) of the Bankruptcy Code to recover property the Appellees allegedly received from Madoff Securities via foreign feeder funds.[3] The Trustee contended that Madoff Securities' initial transfers to the feeder funds were avoidable as fraudulent under § 548(a)(1)(A) of the Bankruptcy Code.

The United States District Court for the Southern District of New York, Judge Rakoff, withdrew the reference to the bankruptcy court to determine whether § 550(a)(2) allows the Trustee to recover this property. In a July 2014 decision, the court held on two grounds that the Trustee could not proceed with these actions. First, it held that the presumption against extraterritoriality limits the scope of § 550(a)(2), such that a trustee may not use it to recover property that one foreign entity received from another foreign entity. Second, and alternatively, the court held that international comity principles limit the scope of § 550(a)(2) on these facts. The district court did not dismiss any of the Trustee's complaints but

[3] The Appellees contest whether the money the feeder funds sent them came entirely from Madoff Securities. For the purpose of these appeals, however, the Appellees assume that the Trustee could trace the money back to Madoff Securities. We make the same assumption.

instead remanded to the bankruptcy court for further proceedings consistent with its opinion.

On remand, and following further factual development, the United States Bankruptcy Court for the Southern District of New York, Judge Bernstein, applied the district court's reasoning and dismissed the Trustee's claims against the Appellees.

First, the court dismissed the claims against the Appellees that invested with Fairfield, Kingate, and Harley on international comity grounds. The court found that the United States "has no interest in regulating the relationship between [these funds] and their investors or the liquidation of [these funds] and the payment of their investors' claims." *SIPC II*, 2016 WL 6900689, at *14. It also found that the foreign nations where those entities are in liquidation "[have] a greater interest [than the United States] in regulating the activities that gave rise to the Trustee's subsequent transfer claims, particularly the validity or invalidity of payments by [the funds] to [their] investors and service providers." *Id.* at *16; *see also id.* at *14.

Second, the bankruptcy court dismissed the recovery claims against the remaining Appellees under the presumption against extraterritoriality. Interpreting our precedent and the district court's opinion, the bankruptcy court

concluded that the factors relevant to determining whether the transactions were extraterritorial were the locations from which the transfers were made and sent and the location or residence of the initial and subsequent transferee. The court dismissed the Trustee's claims because he had not alleged facts sufficient to support a domestic nexus under these criteria.[4]

The Trustee appealed the orders dismissing the recovery actions. We consolidated those appeals and now resolve them under the following principles.

DISCUSSION

We begin by unpacking the statutory scheme relevant to these appeals.

"SIPA serves dual purposes: to protect investors, and to protect the securities market as a whole." *In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d 229, 235 (2d Cir. 2011). To achieve these purposes, SIPA allows courts to appoint trustees, such as Picard, and endow them with certain authority over liquidation estates. This authority includes the power to "allocate customer property of the

[4] The court also found that some feeder funds had no connection to their country of organization, were managed and operated in the United States, and made their subsequent transfers from New York. It denied the motions to dismiss the actions involving their subsequent transfers and granted the Trustee leave to amend so he could show whether those transactions were domestic.

debtor," 15 U.S.C. § 78fff–2(c)(1), which SIPA defines as "cash and securities . . . at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted," *id.* § 78*lll*(4).

"Whenever customer property is not sufficient to pay in full the claims [against the debtor], the trustee may recover any property transferred by the debtor which, except for such transfer, would have been customer property if and to the extent that such transfer is voidable or void under the [Bankruptcy Code]." *Id.* § 78fff–2(c)(3).

The Trustee alleges Madoff Securities' initial transfers to the feeder funds are avoidable as fraudulent under § 548(a)(1)(A) of the Bankruptcy Code. That section provides:

> The trustee may avoid any transfer . . . of an interest of the debtor in property, or any obligation . . . incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily . . . made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted . . . .

11 U.S.C. § 548(a)(1)(A).

Only once a transfer is avoided may a trustee recover the underlying property. Section 550(a), the recovery provision, states:

> Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from . . . (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or . . . (2) any immediate or mediate transferee of such initial transferee.

Id. § 550(a).[5] Relevant here is § 550(a)(2), as the Trustee seeks to recover property from subsequent transferees.

I. The Presumption Against Extraterritoriality

The presumption against extraterritoriality is a canon of statutory construction. *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2100 (2016). It provides that, "[a]bsent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application." *Id.* This canon helps "avoid the international discord that can result when U.S. law is applied to conduct in foreign countries." *Id.* It also reflects the "commonsense notion that

[5] Section 550(b) limits a trustee's ability to recover under § 550(a)(2) from certain subsequent transferees who received property in good faith.

Congress generally legislates with domestic concerns in mind." *Id.* (quoting *Smith v. United States*, 507 U.S. 197, 204 n.5 (1993)).

An action may proceed if either the statute indicates its extraterritorial reach or the case involves a domestic application of the statute. The courts below found that neither criterion was satisfied and accordingly dismissed these actions.[6]

Because the reach and applicability of a statute are questions of statutory interpretation, we review a lower court's application of the presumption against extraterritoriality *de novo*. *See, e.g., Roach v. Morse*, 440 F.3d 53, 56 (2d Cir. 2006).

The Focus of § 550(a) in These Actions Is on the Debtor's Fraudulent Transfer of Property to the Initial Transferee.

The Supreme Court teaches that we must look to a statute's "focus" to determine whether a case involves a domestic application of that statute.

> If the conduct relevant to the statute's focus occurred in the United States, then the case involves a permissible domestic application even if other conduct occurred abroad; but if the conduct relevant to the

[6] Although the Supreme Court has referred to this extraterritoriality analysis as a "two-step framework," these "steps" need not be sequential. *See id.* at 2101 & n.5. Courts generally begin by asking whether the statute indicates its extraterritorial reach, but they are free "in appropriate cases" to begin by asking whether the case involves an extraterritorial application of the statute. *Id.* at 2101 n.5. This is an appropriate case for beginning with the latter question because we hold that the transactions here were domestic, and the extraterritorial reach of a statute is of no moment when a case is truly a domestic matter.

> focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory.

RJR Nabisco, 136 S. Ct. at 2101. The Supreme Court recently explained how to identify a statute's focus in *WesternGeco LLC v. ION Geophysical Corp.*, 138 S. Ct. 2129 (2018).

WesternGeco involved § 271(f) of the Patent Act, which prohibits the export of component parts of a patented product for assembly abroad. *Id.* at 2135 (citing 35 U.S.C. § 271(f)(2)). Plaintiffs alleging infringement under § 271(f)(2) can recover damages under 35 U.S.C. § 284. *Id.* The Federal Circuit held that § 271(f) does not allow plaintiffs to recover for lost foreign sales and vacated a jury award premised on such damages. *Id.* (citing *WesternGeco LLC v. ION Geophysical Corp.*, 791 F.3d 1340, 1343 (Fed. Cir. 2015)). Reversing, the Supreme Court explained that "[t]he focus of a statute is 'the object of its solicitude,' which can include the conduct it 'seeks to regulate,' as well as the parties and interests it 'seeks to protect' or vindicate." *Id.* at 2137 (brackets omitted) (quoting *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 267 (2010)). "When determining the focus of a statute, we do not analyze the provision at issue in a vacuum." *Id.* (citing *Morrison*, 561 U.S. at 267–69). Instead:

> If the statutory provision at issue works in tandem with other provisions, it must be assessed in concert with those other provisions. Otherwise, it would be impossible to accurately determine whether the application of the statute in the case is a "domestic application." And determining how the statute has actually been applied is the whole point of the focus test.

Id. (citation omitted) (citing *RJR Nabisco*, 136 S. Ct. at 2101).

Applying this principle, the Court identified the "overriding purpose" of the damages provision, § 284, as a remedy for infringement, because it asks how much a plaintiff is due because of infringement. *See id.* (quoting *General Motors Corp. v. Detox Corp.*, 461 U.S. 648, 655 (1983)). But because there is more than one way to infringe, the focus of § 284 depends on "the type of infringement that occurred." *See id.* In *WesternGeco*, that meant turning to § 271(f)(2), which the Court found focuses on domestic conduct because it regulates "the domestic act of 'suppl[ying] in or from the United States.'" *Id.* at 2137–38 (brackets in original) (quoting 35 U.S.C. § 271(f)(2)).

Thus, the Court held that "the focus of § 284, in a case involving infringement under § 271(f)(2), is on the act of exporting components from the United States," which is "domestic infringement." *Id.* at 2138. It rejected an argument that the statute focuses on damages, even though it authorizes them,

because "what a statute authorizes is not necessarily its focus." *Id.* Instead, the Court found that damages are "merely the means by which the statute achieves its end of remedying infringements." *Id.*

WesternGeco helps resolve two issues relevant to these cases: (1) whether we should look to the pertinent avoidance provision (here, § 548(a)(1)(A)) in determining the focus of § 550(a), and (2) the focus of § 550(a) in these actions.

1. We Must Look to § 548(a)(1)(A) to Determine the Focus of § 550(a) in These Cases Because the Provisions Work "In Tandem."

No one disputes that, in an action where a trustee seeks to recover property under § 550(a), we must at a minimum look to that section. The dispute is whether we must additionally look to the avoidance provision that enables a trustee's recovery. Section 550(a) applies only "to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title." 11 U.S.C. § 550(a). In other words, a trustee cannot use § 550(a) to recover property unless the trustee has first avoided a transfer under one of these provisions.

Like the infringement and damages provisions of the Patent Act, the Bankruptcy Code's avoidance and recovery provisions work "in tandem." *See WesternGeco*, 138 S. Ct. at 2137. In any given case, "it would be impossible to

accurately determine" the focus of § 550(a) without asking *why* a trustee can use it—*i.e.*, the purpose of the avoidance provision that enables the recovery action. *See id.* ("[D]etermining how the statute has actually been applied is the whole point of the focus test."). Just as the focus of § 284 of the Patent Act depends on the infringement provision that enables a plaintiff to seek damages, the focus of § 550(a) of the Bankruptcy Code depends on the avoidance provision that enables a trustee to recover property.

Thus, to determine § 550(a)'s focus in a given action, a court must also look to the relevant avoidance provision.

2. When Working In Tandem with § 548(a)(1)(A), § 550(a) Regulates a Debtor's Fraudulent Transfer of Property, and It Therefore Focuses on the Debtor's Initial Transfer.

The focus of a statute is the conduct it seeks to regulate, as well as the parties whose interests it seeks to protect. *See id.* The district court found that § 550(a) focuses on "the property transferred" and "the fact of its transfer." *SIPC I*, 513 B.R. at 227. On this theory, it concluded that a recovery action under § 550(a)(2) regulates the subsequent transfer of property: that from the initial transferee to the subsequent transferee.

But the harm to the estate as a result of its unlawful depletion began with the initial transfer. Section 548(a)(1)(A) allows a trustee to "avoid any transfer . . . of an interest of the debtor in property" that the debtor "made . . . with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted." 11 U.S.C. § 548(a)(1)(A). A general purpose of "the Bankruptcy Code's avoidance provisions, including 11 U.S.C. § 548, [is] protect[ing] a debtor's estate from depletion to the prejudice of the unsecured creditor." *In re Harris*, 464 F.3d 263, 273 (2d Cir. 2006) (Sotomayor, *J.*) (agreeing with *In re French*, 440 F.3d 145, 150 (4th Cir. 2006)). Thus, § 548(a)(1)(A)'s purpose is plain: it allows a trustee, for the protection of an estate and its creditors, to avoid a debtor's fraudulent, hindersome, or delay-causing property transfer that depletes the estate. *See In re French*, 440 F.3d at 150 ("[Section] 548 focuses not on the property itself, but on the fraud of transferring it.").

Section 550(a) works in tandem with § 548(a)(1)(A) by enabling a trustee to recover fraudulently transferred property. Recovery is the business end of avoidance. In that sense, § 550(a) "is a utility provision, helping execute the policy of § 548[(a)(1)(A)]" by "tracing the fraudulent transfer to its ultimate resting place

(the initial or subsequent transferee)." Edward R. Morrison, *Extraterritorial Avoidance Actions: Lessons from Madoff*, 9 Brook. J. Corp. Fin. & Com. L. 268, 273 (2014); *see also In re Ampal-Am. Israel Corp.*, 562 B.R. 601, 613 (Bankr. S.D.N.Y. 2017) (Bernstein, *J.*) (finding that when using § 550(a), "the trustee is essentially tracing property into the hands of the recipient—no different than a trustee under non-bankruptcy law").

We hold that, in recovery actions where a trustee alleges a debtor's transfers are avoidable as fraudulent under § 548(a)(1)(A), § 550(a) regulates the fraudulent transfer of property depleting the estate.[7] While § 550(a) authorizes recovery, "what a statute authorizes is not necessarily its focus." *WesternGeco*, 138 S. Ct. at 2138. When § 550(a) operates in tandem with § 548(a)(1)(A), recovery of property

[7] Section 548(a)(1)(A) allows a trustee to avoid a transfer on three grounds: that the debtor had "actual intent to [1] hinder, [2] delay, or [3] defraud any entity to which the debtor was or became . . . indebted." While this opinion concerns the third ground, we would apply the same logic in a case where a trustee sought to avoid transfers on the theory that the debtor sought to "hinder" or "delay" an entity. For example, if a trustee alleged that a debtor made a transfer intended to delay an entity, the focus of § 550(a) in that action would be on the delay-causing transfer of property that depletes the estate.

Section 550(a) may serve different purposes depending on which of the Bankruptcy Code's avoidance provisions enables recovery. We express no opinion on the focus of § 550(a) in actions involving any avoidance provision other than § 548(a)(1)(A).

is "merely the means by which the statute achieves its end of" regulating and remedying the fraudulent transfer of property. *See id.*

Thus, in actions involving both provisions, § 550(a) regulates the debtor's initial transfer. While the subsequent transfer may indirectly harm creditors by making property more difficult to recover, it is the initial transfer that fraudulently depletes the estate. Only the initial transfer involves fraudulent conduct, or any conduct, by the debtor.

The language of § 548(a)(1)(A) reflects this focus. It allows a trustee to avoid certain transfers "the debtor voluntarily or involuntarily . . . *made*." 11 U.S.C. § 548(a)(1)(A) (emphasis added). This can mean only the initial transfer, because the debtor has not *made* the subsequent transfer. Consequently, when a trustee seeks to recover subsequently transferred property under § 550(a), the only transfer that must be avoided is the debtor's initial transfer. *See Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 480 B.R. 501, 524 (Bankr. S.D.N.Y. 2012) ("[A]s a court's recovery power is generally coextensive with its avoidance power, it is logical that the relevant transfer for purposes of the presumption against extraterritoriality is only the transfer that is to be avoided, namely the initial

transfer." (quotation marks omitted)); *see also Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 501 B.R. 26, 30 (S.D.N.Y. 2013).

Two Supreme Court decisions reinforce this conclusion. In *WesternGeco*, the Court found that "the focus of § 284, in a case involving infringement under § 271(f)(2), is on the act of exporting components from the United States." 138 S. Ct. at 2138. Here, the focus of § 550(a), in a case involving fraudulent transfers avoidable under § 548(a)(1)(A), is on the debtor's act of transferring property from the United States. In *Morrison*, the Court held that § 10(b) of the Securities Exchange Act of 1934 regulates "deceptive conduct in connection with the purchase or sale of [certain] securit[ies]," meaning the statute focuses on "purchase-and-sale transactions." 561 U.S. at 266–67 (quotation marks omitted). By analogy, § 550(a) regulates a debtor's unlawful conduct—its fraudulent transfer of property. The statute thus focuses on that initial transfer, rather than the subsequent transfer made by the feeder fund.

The lower courts held, and the Appellees now argue, that the relevant Bankruptcy Code provisions regulate the *subsequent* transfer of property. Their readings erroneously overlook how § 548(a)(1)(A) shapes the focus of § 550(a) here.

The district court, for example, correctly recognized that the extraterritoriality analysis must consider "the regulatory focus of the Bankruptcy Code's *avoidance and recovery* provisions." *SIPC I*, 513 B.R. at 227 (emphasis added). And while we agree with the court's finding that § 548(a)(1)(A) "focuses on the nature of the transaction in which property is transferred," *id.*, we reject its conclusion that the appropriate "transaction" to determine the extraterritoriality question is the subsequent transfer. The only transfer § 548(a)(1)(A) is concerned with is the initial transfer, as this is the only transfer "the debtor . . . made." *See* 11 U.S.C. § 548(a)(1)(A).

The Appellees would have us ignore § 548(a)(1)(A) entirely and look only to § 550(a)(2). For the reasons stated above, we refuse to "analyze the provision at issue in a vacuum." *See WesternGeco*, 138 S. Ct. at 2137.[8]

[8] The Trustee contends that certain provisions of SIPA provide additional reasons for us to find that § 550(a) focuses on domestic conduct in these actions. Because we reach that holding without looking to SIPA, we express no opinion on whether SIPA is relevant to the focus of the Bankruptcy Code's avoidance and recovery provisions in cases where SIPA trustees seek to use them.

B. These Actions Involve Domestic Applications of the Bankruptcy Code Because § 550(a) Focuses on Regulating Domestic Conduct.

Recognizing that, in these actions, § 550(a) focuses on the debtor's initial transfer of property, we must decide whether Madoff Securities' transfers took place in the United States such that regulating them involves a domestic application of that statute. The lower courts, assuming the relevant transaction was the subsequent transfer, weighed the location of the account from which and to which the subsequent transfer was made, and the location or residence of the subsequent transferor and transferee. *See SIPC II*, 2016 WL 6900689, at *25. We decline to adopt this balancing test.

We hold that a domestic debtor's allegedly fraudulent, hindersome, or delay-causing transfer of property from the United States is domestic activity for the purposes of §§ 548(a)(1)(A) and 550(a).[9] The presumption against extraterritoriality therefore does not prohibit that debtor's trustee from recovering

[9] We recognize that our holding cites two nexuses to the United States: (1) the debtor is a domestic entity, and (2) the alleged fraud occurred when the debtor transferred property from U.S. bank accounts. We express no opinion on whether either factor standing alone would support a finding that a transfer was domestic.

such property using § 550(a), regardless of where any initial or subsequent transferee is located.

Our rule follows the Supreme Court's instruction that we look to "the conduct relevant to the statute's focus." *See, e.g.*, *RJR Nabisco*, 136 S. Ct. at 2101. The relevant conduct in these actions is the debtor's fraudulent *transfer* of property, not the transferee's *receipt* of property. When a domestic debtor commits fraud by transferring property from a U.S. bank account, the conduct that § 550(a) regulates takes place in the United States.

That resolves these cases. Madoff Securities is a domestic entity, and the Trustee alleges it fraudulently transferred property to the feeder funds from a U.S. bank account. These transfers are domestic activity. Because § 550(a) therefore regulates domestic conduct, these cases involve domestic applications of the statute.

Factoring the transferee's receipt of property into our analysis would not only misread the Bankruptcy Code's avoidance and recovery provisions, but also open a loophole. One can imagine a fraudster who, anticipating his downfall, gives his entity's property to friends and family members before a court freezes its assets. The Bankruptcy Code's avoidance and recovery provisions ordinarily

allow a trustee to claw back this property. But what would happen if the fraudster transferred the property to a foreign entity that then transferred it to another foreign entity? Under the Appellees' theory of § 550(a), that transfer would make the property recovery-proof, even if the subsequent foreign transferee then sent the property to someone located in the United States. The presumption against extraterritoriality is not "a limit upon Congress's power to legislate," but a canon of construction meant to guide our understanding of a statute's meaning. *See Morrison*, 561 U.S. at 255. We cannot imagine how it should guide us to read the Bankruptcy Code's creditor-protection provisions in this self-defeating way.

* * *

The lower courts erred by dismissing these actions under the presumption against extraterritoriality. Because we find that these cases involve a domestic application of § 550(a), we express no opinion on whether § 550(a) clearly indicates its extraterritorial application.

II. International Comity

The second issue is whether the district court erroneously dismissed these actions on international comity grounds. We apply international comity principles in two ways: "[first,] as a canon of construction, [comity] might shorten the reach

of a statute; [and] second, [comity] may be viewed as a discretionary act of deference by a national court to decline to exercise jurisdiction in a case properly adjudicated in a foreign state, the so-called comity among courts." *In re Maxwell Commc'n Corp. plc by Homan*, 93 F.3d 1036, 1047 (2d Cir. 1996). The first application is "prescriptive comity" and asks a question of statutory interpretation: should a court presume that Congress, out of respect for foreign sovereigns, limited the application of domestic law on a given set of facts? *See Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 817 (1993) (Scalia, *J.*, dissenting). The second application is "adjudicative comity." It asks whether, where a statute might otherwise apply, a court should nonetheless abstain from exercising jurisdiction in deference to a foreign nation's courts that might be a more appropriate forum for adjudicating the matter. *See id.*; *see also Royal & Sun All. Ins. Co. of Canada v. Century Int'l Arms, Inc.*, 466 F.3d 88, 93 (2d Cir. 2006).

We have previously declined to decide whether prescriptive and adjudicative comity are "distinct doctrines." *See In re Maxwell*, 93 F.3d at 1047. Although prescriptive and adjudicative comity sometimes demand similar

analysis,[10] each asks a different question and is rooted in a different legal theory. We therefore treat them as distinct doctrines, albeit related ones.[11]

This distinction reveals the appropriate standard of review for a lower court's order dismissing a case on international comity grounds. Prescriptive comity poses a question of statutory interpretation. We review those questions *de novo*.[12] *See, e.g.*, *Roach*, 440 F.3d at 56. Adjudicative comity abstention, on the other

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[10] In particular, the existence of parallel proceedings can factor into both doctrines. *Compare In re Maxwell*, 93 F.3d at 1048, 1052 (holding, in the context of applying a prescriptive comity choice-of-law test, that the existence of parallel foreign proceedings can factor into a foreign state's interest in applying its law to a dispute), *with Royal & Sun*, 466 F.3d at 92 (explaining, as a principle of adjudicative comity, that the existence of parallel foreign proceedings is sometimes a factor weighing in favor of abstention). Thus, while this opinion focuses on prescriptive comity, we occasionally look to our adjudicative comity precedent in assessing the weight of any foreign state's interest in applying its law.

[11] Numerous courts and scholars have done the same. *See, e.g.*, *Hartford Fire Ins. Co.*, 509 U.S. at 817, 820 (Scalia, *J.*, dissenting)); *Mujica v. AirScan Inc.*, 771 F.3d 580, 598 (9th Cir. 2014) ("There are essentially two distinct doctrines [that] are often conflated under the heading international comity." (quotation marks omitted) (quoting *In re S. African Apartheid Litig.*, 617 F. Supp. 2d 228, 283 (S.D.N.Y. 2009)); Maggie Gardner, *Retiring Forum Non Conveniens*, 92 N.Y.U. L. Rev. 390, 392 (2017); *see also Royal & Sun*, 466 F.3d at 92 (describing these doctrines as different) (citing Joseph Story, Commentaries on the Conflict of Laws § 38 (1834)); *JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V.*, 412 F.3d 418, 424 (2d Cir. 2005) ("International comity, as it relates to this case, involves not the choice of law but rather the discretion of a national court to decline to exercise jurisdiction over a case before it when that case is pending in a foreign court with proper jurisdiction.").

[12] The question of whether we review prescriptive comity dismissals *de novo* or for abuse of discretion arose in *In re Maxwell*, 93 F.3d at 1051. Although this Court hinted that *de*

hand, concerns a matter of judicial discretion. We thus review adjudicative comity dismissals for abuse of discretion. *See, e.g.*, *Royal & Sun*, 466 F.3d at 92. "However, because we are reviewing a court's decision to abstain from exercising jurisdiction, our review is 'more rigorous' than that which is generally employed under the abuse-of-discretion standard." *Id.* (quoting *Hachamovitch v. DeBuono*, 159 F.3d 687, 693 (2d Cir. 1998)). Thus, "[i]n review of decisions to abstain, there is little practical distinction between review for abuse of discretion and review *de novo*." *Id.* (quoting *Altos Hornos*, 412 F.3d at 422–23).[13]

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novo review should apply, we declined to decide the issue because the parties did not dispute the appropriate standard of review. *See id.* (noting that "[b]ecause the doctrine in theory is relevant to construing a statute's reach, one might expect that [we should apply] *de novo* review"). The Appellees dispute the appropriate standard here, but their advocacy for abuse-of-discretion review relies on inapposite adjudicative comity cases. *See* Appellee Br. 27 (citing, *e.g.*, *In re Vitamin C Antitrust Litig.*, 837 F.3d 175, 182 (2d Cir. 2016) ("We hold that the district court abused its discretion by not abstaining, on international comity grounds . . . ."), *vacated on other grounds by Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co. Ltd.*, 138 S. Ct. 1865 (2018); *Altos Hornos*, 412 F.3d at 422 ("Declining to decide a question of law on the basis of international comity is a form of abstention, and we review a district court's decision to abstain on international comity grounds for abuse of discretion.")).

[13] The Appellees argue that the higher standard of review announced in *Royal & Sun* does not bind us, either because that case relied on a decision applying its rule to *Burford* abstention or because *Royal & Sun* "has been superseded" by later cases. Appellee Br. 28–29; *see also Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). Both points are wrong. *Royal & Sun* itself was not a *Burford* case; it involved adjudicative comity abstention. *See* 466 F.3d at 92. And the argument that our subsequent cases not using *Royal & Sun*'s "more rigorous" language silently "superseded" that case is a nonstarter. *See, e.g.*, *Veltri v. Bldg. Serv. 32B-*

The lower courts held that comity principles require "choice-of-law analysis to determine whether the application of U.S. law would be reasonable under the circumstances, comparing the interests of the United States and the relevant foreign state." *SIPC I*, 513 B.R. at 231 (citing *In re Maxwell*, 93 F.3d at 1047–48). This is a question of prescriptive comity because it asks whether domestic law applies, rather than whether our courts should abstain from exercising jurisdiction. The bankruptcy court and both parties agree with this framing. We therefore analyze the lower courts' decisions through the lens of prescriptive comity.[14]

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At the threshold, "[i]nternational comity comes into play only when there is a true conflict between American law and that of a foreign jurisdiction." *In re Maxwell*, 93 F.3d at 1049. A true conflict exists if "compliance with the regulatory

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J Pension Fund, 393 F.3d 318, 327 (2d Cir. 2004) ("One panel of this Court cannot overrule a prior decision of another panel, unless there has been an intervening Supreme Court decision that casts doubt on our controlling precedent." (citation, brackets, and quotation marks omitted)).

[14] In a footnote, the Appellees separately argue that we should decline to exercise jurisdiction on adjudicative comity grounds. *See* Appellee Br. 68 n.33. "We do not consider an argument mentioned only in a footnote to be adequately raised or preserved for appellate review." *United States v. Restrepo*, 986 F.2d 1462, 1463 (2d Cir. 1993) (per curiam).

laws of both countries would be impossible." *Id.* at 1050 (citing *Hartford Fire,* 509 U.S. at 799). *In re Maxwell* held that "a conflict between two avoidance rules exists if it is impossible to distribute the debtor's assets in a manner consistent with both rules." *Id.*[15]

The record is unclear about whether issues litigated in the feeder funds' liquidation proceedings abroad would yield outcomes irreconcilable with the relief the Trustee demands in these cases.[16] While the Appellees allege that there are conflicts, we merely assume without deciding that these conflicts exist.[17]

Prescriptive comity "guides our interpretation of statutes that might otherwise be read to apply to [extraterritorial] conduct." *Id.* at 1047. The doctrine

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[15] In that decision, the panel found a true conflict between English and domestic law because "the parties . . . assumed that . . . English law would dictate a different distributional outcome than would United States law." *Id.*

[16] The district court found that BVI courts had "already determined that Fairfield Sentry could not reclaim transfers made to its customers under certain common law theories" and found this conclusion in conflict with the relief the Trustee now demands. *SIPC I*, 513 B.R. at 232. The Trustee disputes this finding. We decline to decide whether this allegation establishes a true conflict between domestic and foreign law.

[17] These consolidated appeals involve hundreds of Appellees that invested with numerous feeder funds, each involved in its own dispute below. Whether domestic adjudication would conflict with foreign adjudication may turn on different facts in different cases. The parties did not adequately brief us on how we should analyze these distinctions under our comity precedent. We therefore decline to address the issue.

does not require clear evidence that a statute does not reach extraterritorial conduct. *Id.* Rather, the doctrine is "simply a rule of construction" and "has no application where Congress has indicated otherwise." *Id.*

Comity in bankruptcy proceedings is "especially important" for two reasons. *Id.* at 1048. "First, deference to foreign insolvency proceedings will, in many cases, facilitate 'equitable, orderly, and systematic' distribution of the debtor's assets." *Id.* (quoting *Cunard S.S. Co. v. Salen Reefer Servs. AB*, 773 F.2d 452, 458 (2d Cir. 1985)). "Second, Congress explicitly recognized the importance of the principles of international comity in transnational insolvency situations when it revised the bankruptcy laws." *Id.* (citing 11 U.S.C. § 304 (repealed 2005)). In light of these considerations, "U.S. courts should ordinarily decline to adjudicate creditor claims that are the subject of a foreign bankruptcy proceeding," *Altos Hornos*, 412 F.3d at 424, because "[t]he equitable and orderly distribution of a debtor's property requires assembling all claims against the limited assets in a single proceeding," *id.* (brackets in original) (quoting *Finanz AG Zurich v. Banco Economico S.A.*, 192 F.3d 240, 246 (2d Cir. 1999)).

To enforce these principles, *In re Maxwell* announced a choice-of-law test. This test "takes into account the interests of the United States, the interests of the

foreign state, and those mutual interests the family of nations have in just and efficiently functioning rules of international law." *In re Maxwell*, 93 F.3d at 1048.

The United States has a compelling interest in allowing domestic estates to recover fraudulently transferred property. The prospect of recovery assures creditors and investors that they will receive their fair share of property in the event an American entity enters into bankruptcy or liquidation. Providing this safeguard is an important goal of the Bankruptcy Code's avoidance and recovery provisions. *See, e.g., Universal Church v. Geltzer*, 463 F.3d 218, 224 (2d Cir. 2006) (noting that a result that would undermine § 548(a)(2)'s avoidance provision "would be absurd because it would defeat the entire purpose of allowing trustees to protect and enhance the estate by avoiding [unlawful] transfers"). These features consequently benefit the American economy by making domestic entities more attractive to creditors and investors. Protecting these individuals, and therefore protecting our securities market, are the key purposes of SIPA. *See In re Madoff Securities*, 654 F.3d at 235.

When a debtor in American courts is also in liquidation proceedings in a foreign court, the foreign state has at least some interest in adjudicating property disputes. In appropriate cases, that interest will trump our own. *See In re Maxwell*,

93 F.3d at 1052. But no such parallel proceedings exist here—the feeder funds, not Madoff Securities, are the debtors in the foreign courts.[18] And the absence of such proceedings seriously diminishes the interest of any foreign state in our resolution of the Trustee's claims.[19]

The only foreign jurisdictions potentially interested in these disputes are those where a feeder fund that served as an initial transferee is in liquidation. But these interests are not compelling. Although "U.S. courts should ordinarily decline

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[18] We agree with Judge Batts, who employed similar reasoning in declining to dismiss class actions brought by Kingate investors against managers, consultants, administrators, and auditors associated with Kingate on adjudicative comity grounds:

> Although Defendants are correct that under Second Circuit law, foreign bankruptcy proceedings are generally given extra deference, . . . it is the [Kingate] Funds, rather than the Defendants, who are in liquidation in BVI and Bermuda. Thus, it is not clear that the normal justification for deferring to foreign bankruptcy proceedings, to allow "equitable and orderly distribution of a debtor's property," would apply under these circumstances.

In re Kingate Mgmt. Ltd. Litig., 09-5386 (DAB), 2016 WL 5339538, at *35 (S.D.N.Y. Sept. 21, 2016) (citations and footnote omitted), *affirmed*, No. 16-3450, 2018 WL 3954217 (2d Cir. Aug. 17, 2018).

[19] *In re Maxwell* itself emphasized the importance of parallel foreign proceedings to its holding. *See* 93 F.3d at 1052 ("In the present case, in which there is a parallel insolvency proceeding taking place in another country, failure to apply § 547 and § 502(d) does not free creditors from the constraints of avoidance law, nor does it severely undercut the policy of equal distribution. . . . [*But*] *a different result might be warranted were there no parallel proceeding* [*abroad*]*—and, hence, no alternative mechanism for voiding preferences . . . .*" (emphasis added)).

to adjudicate creditor claims that are the subject of a foreign bankruptcy proceeding," *Altos Hornos*, 412 F.3d at 424, the Trustee is not a creditor and his claims are not the subject of a foreign bankruptcy or liquidation proceeding, *see SIPC II*, 2016 WL 6900689, at *12 ("[T]here are no parallel foreign avoidance actions in which the Trustee seeks to recover from the Subsequent Transferees.").

Nor is the Trustee duplicating the liquidations of the feeder funds. The proceedings have different means and goals. The Trustee's task is tracing property of the estate to net winners among the feeder funds' investors. But the feeder funds' liquidations proceed under those funds' organizing documents, which are unlikely to discriminate between net winners and net losers.

Further, we defer to foreign liquidation proceedings because "[t]he equitable and orderly distribution of a debtor's property requires assembling all claims against the limited assets in a single proceeding." *Altos Hornos*, 412 F.3d at 424 (quoting *Finanz AG*, 192 F.3d at 246). This rationale makes sense where a creditor, unable to recover against a debtor in foreign court, attempts to do so in our courts. But in these cases, domestic law is also concerned with "equitable and orderly distribution"—of the Madoff Securities estate. Consolidating the Trustee's claims in federal court is more "equitable and orderly" than forcing him to litigate

different claims in different countries. SIPA and the Bankruptcy Code envision a unified proceeding, and we would frustrate this goal if we limited the reach of § 550(a) in these actions.

This is not to say the nations adjudicating the feeder funds' liquidations have no interest in these disputes. Those nations may wish to ensure that the feeder funds' creditors can recover as much property as possible. If the Trustee succeeds in these recovery actions, his success might frustrate the efforts of those entities' trustees to recover the same property in foreign court.

But those are not the comity concerns our precedent discusses in explaining when and why the Bankruptcy Code should give way to foreign law. Nor do we find them compelling enough to limit the reach of a federal statute that would otherwise apply here. The Bankruptcy Code gives us no reason to think Congress would have decided that trustees looking to recover property in domestic proceedings are out of luck when trustees in foreign proceedings may be interested in recovering the same property. In fact, § 550(a)(2) suggests the opposite: that by allowing trustees to recover property from even remote subsequent transferees, Congress wanted these claims resolved in the United States, rather than through piecemeal proceedings around the world.

We therefore hold that the United States' interest in applying its law to these disputes outweighs the interest of any foreign state. Prescriptive comity poses no bar to recovery when the trustee of a domestic debtor uses § 550(a) to recover property from a foreign subsequent transferee on the theory that the debtor's initial transfer of that property from within the United States is avoidable under § 548(a)(1)(A), even if the initial transferee is in liquidation in a foreign nation.

The lower courts, erroneously focusing on the subsequent transfer, found that the jurisdictions adjudicating the feeder funds' liquidations had a greater interest in resolving these disputes than the United States. The bankruptcy court, for example, concluded that "[t]he United States has no interest in regulating the relationship between the [feeder funds] and their investors or the liquidation of the [feeder funds] and the payment of their investors' claims." *SIPC II*, 2016 WL 6900689, at *14. It did so by assuming "[t]he United States' interest is purely remedial; the Bankruptcy Code allows the Trustee to follow the initial fraudulent transfer into the hands of a subsequent transferee." *Id.*

This conclusion rests on incorrect premises: that we should look only to § 550(a), assume the United States has purely remedial interests, and focus on the subsequent transfer of property. As we have explained, § 548(a)(1)(A) informs

§ 550(a)'s focus in these actions. That focus is on regulating and remedying a debtor's fraudulent transfer of property, and this means the relevant transfer is the debtor's initial transfer. The domestic nature of those transfers, and our nation's compelling interest in regulating them, tips the scales of *In re Maxwell*'s choice-of-law test in favor of domestic adjudication.

The district court found that "investors in these foreign funds had no reason to expect that U.S. law would apply to their relationships with the feeder funds." *SIPC I*, 513 B.R. at 232. But the court's premise is inaccurate. U.S. law is not regulating the investors' relationships with the feeder funds. It is regulating the debtor's property transfers to the feeder funds. Although regulating these transfers with recovery actions will affect the subsequent transferees, that consequence should not unfairly surprise them. When these investors chose to buy into feeder funds that placed all or substantially all of their assets with Madoff Securities, they knew where their money was going.

Finally, the district court observed that "the defendants here have no direct relationship" with Madoff Securities. *Id.* But the reason § 550(a)(2)'s tracing provision applies to *subsequent* transferees is ensuring that a trustee *can* recover from entities with no direct relationship to the debtor. If the directness of a transfer

were relevant to a trustee's ability to recover property under § 550(a)(2), we cannot see how a trustee could ever recover property from any subsequent transferee, foreign or domestic.

In sum, we find that prescriptive comity considerations do not limit the reach of the Bankruptcy Code provisions in these actions.

CONCLUSION

We **VACATE** the bankruptcy court's judgments dismissing these actions and **REMAND** for further proceedings consistent with this opinion.

APPENDIX B

Appendix B: Order Den. Reh'g, In re Irving H. Picard,
No. 17-2992 (2d Cir. Apr. 3, 2019), ECF No. 1408

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of April, two thousand nineteen.

ORDER

Docket Nos. 17-2992(L), 17-2995, 17-2996, 17-2999, 17-3003, 17-3004, 17-3005, 17-3006, 17-3007, 17-3008, 17-3009, 17-3010, 17-3011, 17-3012, 17-3013, 17-3014, 17-3016, 17-3018, 17-3019,17-3020, 17-3021, 17-3023, 17-3024, 17-3025, 17-3026, 17-3029, 17-3032, 17-3033, 17-3034, 17-3035, 17-3038, 17-3039, 17-3040, 17-3041, 17-3042, 17-3043, 17-3044, 17-3047, 17-3050, 17-3054, 17-3057, 17-3058, 17-3059, 17-3060, 17-3062, 17-3064, 17-3065, 17-3066, 17-3067, 17-3068, 17-3069, 17-3070, 17-3071, 17-3072, 17-3073, 17-3074, 17-3075, 17-3076, 17-3077, 17-3078, 17-3080, 17-3083, 17-3084, 17-3086, 17-3087, 17-3088, 17-3091, 17-3100, 17-3101, 17-3102, 17-3106, 17-3109, 17-3112, 17-3113, 17-3115, 17-3117, 17-3122, 17-3126, 17-3129, 17-3132, 17-3134, 17-3136,17-3139, 17-3140, 17-3141, 17-3143, 17-3144, 17-3862.

IN RE: IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L. MADOFF INVESTMENT SECURITIES LLC

Appellees filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

APPENDIX C

Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC,
513 B.R. 222 (S.D.N.Y. 2014) (No. 12-mc-115 (JSR))

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff, -v- BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	12-mc-115 (JSR) OPINION AND ORDER
In re: MADOFF SECURITIES	
PERTAINS TO: Consolidated proceedings on extraterritoriality issues	

JED S. RAKOFF, U.S.D.J.

The question here presented is whether section 550(a)(2) of the Bankruptcy Code applies extraterritorially in the context of this proceeding. Specifically, Irving H. Picard (the "Trustee"), the trustee appointed under the Securities Investor Protection Act ("SIPA"), 15 U.S.C. §§ 78aaa-78*lll*, to administer the estate of Bernard L. Madoff Investment Securities LLC ("Madoff Securities"), here seeks to recover funds that, having been transferred from Madoff Securities to certain foreign customers, were then in turn transferred to certain foreign persons and entities that comprise the defendants here at issue. These defendants seek to dismiss the Trustee's claims against them, arguing that 11 U.S.C. § 550(a)(2),

the Bankruptcy Code provision allowing for such recovery, does not apply extraterritorially. The Court assumes familiarity with the underlying facts of the Madoff Securities fraud and ensuing bankruptcy and recounts here only those facts that are relevant to the instant issues.

Central to the question here presented is the role of the so-called "feeder funds," foreign investment funds that pooled their own customers' assets for investment with Madoff Securities. As customers of Madoff Securities, the feeder funds at times withdrew monies from Madoff Securities, which they subsequently transferred to their customers, managers, and the like. When Madoff Securities collapsed in late 2008, many of these funds — which had invested all or nearly all of their assets in Madoff Securities — likewise entered into liquidation in their respective home countries. The Trustee seeks to recover not only the allegedly avoidable transfers made to the feeder funds but also subsequent transfers of alleged Madoff Securities customer property made by those funds to their immediate and mediate transferees. It is the recovery of those subsequent transfers — transfers made abroad between a foreign transferor and a foreign transferee — that is the subject of the instant consolidated proceeding.

For example, in October 2011, the Trustee filed an adversary proceeding against CACEIS Bank Luxembourg and CACEIS Bank (together, "CACEIS"), seeking $50 million in subsequent transfers of alleged Madoff Securities customer property. See Decl. of Jaclyn M.

Metzinger dated Mar. 23, 2013, Ex. A ("CACEIS Compl.") ¶ 2, No. 12 Civ. 2434, ECF No. 2 (S.D.N.Y. filed Apr. 2, 2012). CACEIS Bank Luxembourg is a Luxembourg société anonyme operating there, while CACEIS Bank is a French société anonyme operating in France. Id. ¶¶ 22-23. Both entities serve as custodian banks and engage in asset management for "corporate and institutional clients." Id. ¶¶ 3, 22-23.

The Trustee seeks to recover alleged Madoff Securities customer funds received by CACEIS. However, CACEIS did not invest directly with Madoff Securities; instead, it invested funds with Fairfield Sentry Limited and Harley International (Cayman) Limited, two Madoff Securities feeder funds that in turn invested CACEIS's assets in Madoff Securities. Id. ¶ 2. Fairfield Sentry is a British Virgin Islands ("BVI") company that had invested more than 95% of its assets in Madoff Securities. Id. It is currently in liquidation in the BVI and has settled the Trustee's avoidance and recovery action against it for a fraction of the Trustee's initial claim. See id. ¶¶ 24, 43. Harley is a Cayman Islands company that was also one of Madoff Securities' largest feeder funds, and it is now in liquidation in the Cayman Islands. Id. ¶ 25. The Trustee obtained a default judgment against Harley for more than $1 billion in November 2010. Id. ¶ 53. The Trustee alleges that CACEIS received $50 million in recoverable subsequent transfers as a customer of Fairfield Sentry and Harley, and he asserts a right to reclaim those transfers under 11 U.S.C. § 550(a)(2). See id. ¶¶ 60-69.

CACEIS and the other consolidated defendants have moved to dismiss the Trustee's complaints in their respective adversary proceedings, arguing that section 550(a)(2) of the Bankruptcy Code does not apply extraterritorially and therefore does not reach subsequent transfers made abroad by one foreign entity to another. These defendants previously moved to withdraw the reference to the Bankruptcy Court, and the Court granted that motion on a consolidated basis with respect to the following issue: "whether SIPA and/or the Bankruptcy Code as incorporated by SIPA apply extraterritorially, permitting the Trustee to avoid the initial Transfers that were received abroad or to recover from initial, immediate, or mediate foreign transferees." See Order at 3, No. 12 Misc. 115, ECF No. 167 (S.D.N.Y. June 7, 2012). The Court received briefing on this issue from the defendants, the Trustee, and the Securities Investor Protection Corporation ("SIPC") and heard oral argument on September 21, 2012. The Court concludes that (1) the application of section 550(a)(2) here would constitute an extraterritorial application of the statute, and (2) Congress did not clearly intend such an application. Moreover, given the factual circumstances at issue in these cases, even if section 550(a)(2) could be applied extraterritorially, such an application would be precluded here by considerations of international comity. This Opinion and Order addresses these issues in turn and directs further proceedings upon return to the Bankruptcy Court.

"It is a 'longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.'" Morrison v. Nat'l Australia Bank Ltd., 130 S. Ct. 2869, 2877 (2010) (quoting EEOC v. Arabian American Oil Co. ("Aramco"), 499 U.S. 244, 248 (1991)). This presumption against extraterritorial application of federal statutes "serves to protect against unintended clashes between our laws and those of other nations which could result in international discord." Aramco, 499 U.S. at 248.

In determining whether the presumption against extraterritoriality applies, the Court must determine, first, whether the factual circumstances at issue require an extraterritorial application of the relevant statutory provision; and second, if so, whether Congress intended for the statute to apply extraterritorially. See, e.g., Morrison, 130 S. Ct. at 2877-88 (engaging in this analysis with respect to section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b)); In re Maxwell Commc'n Corp. ("Maxwell I"), 186 B.R. 807, 816 (S.D.N.Y. 1995) (setting out this two-step inquiry in analyzing section 547 of the Bankruptcy Code).

The Court turns first to the question of whether the Trustee's use of section 550(a) here is in fact an extraterritorial application of the statute. In Morrison, when determining whether an underlying U.S.-based deception was sufficient to make application of section 10(b) of the Exchange Act domestic, rather than

extraterritorial, the Supreme Court looked to "the 'focus' of congressional concern," or, in other words, the "transactions that the statutes seeks to 'regulate.'" 130 S. Ct. at 2884.

The Trustee and SIPC argue that the "focus" of congressional concern in a SIPA liquidation is the regulation of the SIPC-member U.S. broker-dealer, so that the application of any of the incorporated provisions of the Bankruptcy Code is inherently domestic. But this argument proves too much. It cannot be that any connection to a domestic debtor, no matter how remote, automatically transforms every use of the various provisions of the Bankruptcy Code in a SIPA bankruptcy into purely domestic applications of those provisions. On the level of policy, this approach could raise serious issues of international comity, as discussed below. And, as a matter of precedent, Morrison suggests that such a sweeping approach fails to engage in the necessary analysis of the way in which the statutes are utilized, as "it is a rare case of prohibited extraterritorial application that lacks all contact with the territory of the United States." 130 S. Ct. at 2884. Accordingly, a mere connection to a U.S. debtor, be it tangential or remote, is insufficient on its own to make every application of the Bankruptcy Code domestic. Cf. Norex Petroleum Ltd. v. Access Indus., Inc., 631 F.3d 29, 33 (2d Cir. 2010) (per curiam) (stating, in the context of a RICO claim, that "simply alleging that some domestic conduct occurred cannot support a claim of domestic application").

The Court therefore looks to the regulatory focus of the Bankruptcy Code's avoidance and recovery provisions specifically. On a straightforward reading of section 550(a), this recovery statute focuses on "the property transferred" and the fact of its transfer, not the debtor. See 11 U.S.C. § 550(a) (allowing a trustee to recover "the property transferred . . . to the extent that a transfer is avoided" under one of the Bankruptcy Code's avoidance provisions). Moreover, section 548, the avoidance provision that is primarily at issue in these proceedings, similarly focuses on the nature of the transaction in which property is transferred, not merely the debtor itself. See, e.g., 11 U.S.C. § 548(c) (allowing a transferee who "takes for value and in good faith . . . [to] retain any interest transferred . . . to the extent that such transferee . . . gave value to the debtor in exchange for such transfer"); cf. In re Maxwell Commc'n Corp. ("Maxwell II"), 93 F.3d 1036, 1051 (2d Cir. 1996) (noting that "scrutiny of the transfer is at the heart of" an avoidance action). Accordingly, under Morrison, the transaction being regulated by section 550(a)(2) is the transfer of property to a subsequent transferee, not the relationship of that property to a perhaps-distant debtor.

To determine whether the transfers at issue in this consolidated proceeding occurred extraterritorially, "the court considers the location of the transfers as well as the component events of those transactions." Maxwell I, 186 B.R. at 817. Here, the relevant transfers and transferees are predominantly foreign:

foreign feeder funds transferring assets abroad to their foreign customers and other foreign transferees. See, e.g., CACEIS Compl. ¶ 2. This scenario is similar to circumstances found to implicate extraterritorial applications of the Bankruptcy Code's avoidance provisions in other cases. See, e.g., Maxwell I, 186 B.R. at 815 (finding application of 11 U.S.C. § 847 to be extraterritorial where "the antecedent debts were incurred overseas, the transfers on account of those debts were made overseas, and the recipients . . . [are] all foreigners"); In re Midland Euro Exch. Inc., 347 B.R. 708, 717 (Bankr. C.D. Cal. 2006) (noting that the parties agreed that the trustee's "claims would result in extraterritorial application of [11 U.S.C.] § 548" where "[t]he transferor was a Barbados corporation, the transferee was an English corporation, the funds originated from a bank account in London and, although transferred through a bank account in New York, eventually ended up in another bank account in England"). Although the chain of transfers originated with Madoff Securities in New York, that fact is insufficient to make the recovery of these otherwise thoroughly foreign subsequent transfers into a domestic application of section 550(a).[1] See Maxwell I, 186 B.R. at 816-17 (rejecting the claim that

[1] Nor is the fact that some of the defendants here allegedly used correspondent banks in the United States to process dollar-denominated transfers sufficient to make these foreign transfers domestic. See, e.g., Cedeno v. Intech Grp., Inc., 733 F. Supp. 2d 471, 472 (S.D.N.Y. 2010) (dismissing a RICO claim as impermissibly extraterritorial where "[t]he scheme's contacts with the United States, however, were limited to the movement of funds into and out of U.S.-based bank accounts").

the alleged preferential transfers were domestic because the funds for the transfers derived from the sale of U.S. assets); cf. Morrison, 130 S. Ct. at 2886 (rejecting the notion that the section 10(b) claim at issue was domestic because a significant portion of the fraudulent conduct occurred in the United States). Accordingly, the Court concludes that the subsequent transfers that the Trustee seeks to recover here are foreign transfers and thus would require an extraterritorial application of section 550(a).

The Court therefore turns to the second prong of the extraterritoriality inquiry: whether such an extraterritorial application was intended by Congress. The Supreme Court has explained that "'unless there is the affirmative intention of the Congress clearly expressed' to give a statute extraterritorial effect, 'we must presume it is primarily concerned with domestic conditions.'" Morrison, 130 S. Ct. at 2877 (quoting Aramco, 499 U.S. at 248). "When a statute gives no clear indication of an extraterritorial application, it has none." Id. In deciding whether Congress has "clearly expressed" such an intent, the Court looks first to the language of section 550(a), which reads:

> Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—
>
> > (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
> > (2) any immediate or mediate transferee of such initial transferee.

11 U.S.C. § 550(a).

Nothing in this language suggests that Congress intended for this section to apply to foreign transfers, and the Trustee does not argue otherwise. Cf. Maxwell I, 186 B.R. at 819 ("[N]othing in the language or legislative history of [11 U.S.C.] § 547 expresses Congress' intent to apply the statute to foreign transfers."); Midland, 347 B.R. at 717 ("Nothing in the text of [11 U.S.C.] § 548 indicates congressional intent to apply it extraterritorially."). The Court therefore looks to "context," Morrison, 130 S. Ct. at 2883, including surrounding provisions of the Bankruptcy Code, to determine whether Congress nevertheless intended that section 550(a) apply extraterritorially.

Attempting to rebut the presumption against extraterritoriality, the Trustee focuses on section 541 of the Bankruptcy Code, which defines "property of the estate" to include certain specified property "wherever located and by whomever held." 11 U.S.C. § 541(a). It is uncontested here that the phrase "wherever located" is intended to give the Trustee title over all of the debtor's property, regardless of whether it is physically present in the United States. See H.R. Rep. No. 82-2320, at 10, reprinted in 1952 U.S.C.C.A.N. 1960, at 1976. According to the Trustee, section 541 is incorporated into the avoidance and recovery provisions of the Bankruptcy Code, which use the phrase "an interest of the debtor in property" to define the transfers that may be avoided, a phrase

that is repeated in section 541 in defining "property of the estate." See, e.g., 11 U.S.C. § 548(a) (allowing a trustee to "avoid any transfer . . . of an interest of the debtor in property"); see also Begier v. I.R.S., 496 U.S. 53, 58-59 (1990) (looking to section 541's definition of "property of the estate" in defining "property of the debtor" under section 547). Under the Trustee's theory, section 541's reference to "wherever located and by whomever held" is thereby indirectly incorporated into the Bankruptcy Code's avoidance and recovery provisions, indicating that Congress intended that those provisions apply extraterritorially as well.

Though clever, the theory is neither logical nor persuasive. That section 541's definition of "property of the estate" may be relevant to interpreting "property of the debtor" does not necessarily imply that transferred property is to be treated as "property of the estate" under section 541 prior to recovery by the Trustee. As the Court of Appeals for the Second Circuit has explained,

> In accordance with 11 U.S.C. § 541(a)(1) (1988), the property of a bankruptcy estate includes (with exceptions not presently pertinent) "all legal or equitable interests of the debtor in property as of the commencement of the case;" and pursuant to 11 U.S.C. § 541(a)(3) (1988), the property of a bankruptcy estate also includes "[a]ny interest in property that the trustee recovers" under specified Bankruptcy Code provisions, including 11 U.S.C. § 550 (1988). . . . "If property that has been fraudulently transferred is included in the § 541(a)(1) definition of property of the estate, then § 541(a)(3) is rendered meaningless with respect to property recovered pursuant to fraudulent transfer actions." Further, "the inclusion of property recovered by the trustee pursuant to his avoidance powers in a separate definitional

> subparagraph clearly reflects the congressional intent that such property is not to be considered property of the estate until it is recovered."

In re Colonial Realty Co., 980 F.2d 125, 131 (2d Cir. 1992) (citation omitted) (quoting In re Saunders, 101 B.R. 303, 305 (Bankr. N.D. Fla. 1989)).

Under the logic of Colonial Realty, whether "property of the estate" includes property "wherever located" is irrelevant to the instant inquiry: fraudulently transferred property becomes property of the estate only after it has been recovered by the Trustee, so section 541 cannot supply any extraterritorial authority that the avoidance and recovery provisions lack on their own. See Maxwell I, 186 B.R. at 820 ("Because preferential transfers do not become property of the estate until recovered, § 541 does not indicate the Congress intended § 547 to govern extraterritorial transfers." (citing Colonial Realty, 980 F.2d at 131)); Midland, 347 B.R. at 718 (finding that "neither the plain language of the statute nor its reading in conjunction with other parts of the Code establish[es] congressional intent to apply § 548 extraterritorially," in part because "allegedly fraudulent transfers do not become property of the estate until they are avoided").[2]

[2] The Trustee asks the Court to adopt the Fourth Circuit's decision in In re French, 440 F.3d 145, 152 (4th Cir. 2006), which holds that the presumption against extraterritoriality does not apply to avoidance and recovery actions. However, the logic of French is inconsistent with the Second Circuit's decision in Colonial Realty, as French relies on a notion that the foreign property "would have been property of the debtor's estate" absent a fraudulent transfer, id., whereas Colonial Realty implies that section 541 would not

Indeed, the fact that section 541, by virtue of its "wherever located" language, applies extraterritorially may cut against the Trustee's argument. In Morrison, the Supreme Court similarly contrasted section 10(b) with another provision of the Exchange Act, noting that the other section "contains what [section] 10(b) lacks: a clear statement of extraterritorial effect. . . . [W]hen a statute provides for some extraterritorial application, the presumption against extraterritoriality operates to limit that provision to its terms." 130 S. Ct. at 2883; see also Norex, 631 F.3d at 33 ("Morrison . . . forecloses Norex's argument that because a number of RICO's predicate acts possess an extraterritorial reach, RICO itself possesses an extraterritorial reach.").

Nor does section 78fff-2(c)(3) of SIPA, which empowers a SIPA trustee to utilize the Bankruptcy Code's avoidance and recovery provisions to reclaim customer property, overcome the presumption against extraterritorial application. As with section 550(a) of the Bankruptcy Code, section 78fff-2(c)(3) of SIPA does not expressly provide for extraterritorial application; rather, it primarily incorporates the avoidance and recovery provisions of the Bankruptcy Code, suggesting that whatever limitations apply to an ordinary

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apply until after property has been recovered. In any event, French is also factually distinguishable, as "[m]ost of the activity surrounding [the relevant] transfer took place in the United States . . . [and] almost all of the parties with an interest in this litigation – the debtor, the transferees, and all but one of the creditors – are based in the United States, and have been for years." Id. at 154. Accordingly, the Court declines to adopt either French's reasoning or its ultimate determination.

bankruptcy likewise limit a SIPA liquidation. See 15 U.S.C. § 78fff-2(c)(3) (empowering a SIPA trustee to "recover any property transferred by the debtor which, except for such transfer, would have been customer property if and to the extent that such transfer is voidable or void under the provisions of Title 11"). As a more general matter, SIPA's predominantly domestic focus suggests a lack of intent by Congress to extend its reach extraterritorially. Cf. Morrison, 130 S. Ct. at 2878 (finding that the Exchange Act's focus is the purchase and sale of securities in the United States). For example, SIPA expressly excludes from SIPC membership brokers whose primary business is conducted outside of the United States, see 15 U.S.C. § 78ccc(a)(2)(A)(i), and likewise excludes as a "customer" any person whose claim arises out of transactions with a foreign subsidiary of a SIPC member, see 15 U.S.C. § 78*lll*(2)(C)(i). Furthermore, although the Trustee points to SIPA section 78eee(b)(2)(A)(i), which provides for "exclusive jurisdiction of such debtor and its property wherever located (including property located outside the territorial limits of such court . . .)," the effect of this provision is no different from that of section 841 of the Bankruptcy Code. See 15 U.S.C. § 78eee(b)(2)(A)(iii) (providing a SIPA trustee with "the jurisdiction, powers, and duties conferred upon a court of the United States having jurisdiction over cases under Title 11"). That is, although section 78eee(b)(2)(A)(i) uses the phrase "wherever located," this phrase relates only to property

of the debtor, which, as discussed above, includes transferred property only after it has been recovered by the Trustee.[3]

Finally, the Trustee contends that policy concerns require that section 550(a) of the Bankruptcy Code apply extraterritorially; that is, the Trustee argues that a contrary result would allow a U.S. debtor to fraudulently transfer all of his assets offshore and then retransfer those assets to avoid the reach of U.S. bankruptcy law. However, as other courts have found, the desire to avoid such loopholes in the law "must be balanced against the presumption against extraterritoriality, which serves to protect against unintended clashes between our laws and those of other nations which could result in international discord." Midland, 347 B.R. at 718. Assuming that any such intentional fraud occurred, the Trustee here may be able to utilize the laws of the countries where such transfers occurred to avoid such an evasion while at the same time avoiding international discord. Furthermore, although the Trustee argues that finding no extraterritorial application would undermine the primary policy objective of SIPA – the equitable distribution of customer funds to customers of the debtor – the Trustee has long insisted that indirect customers of Madoff Securities, like many of

[3] To the extent that the district court in In re Bevill, Bresler & Schulman, Inc., 83 B.R. 880 (D.N.J. 1988), found that SIPA applies extraterritorially, that case relied on an analysis that is outdated in light of the Supreme Court's decision in Morrison. See, e.g., id. at 896 (stating that "[e]xtraterritorial application of SIPA is also consistent with the extraterritorial application of other federal securities laws," including section 10(b)).

the defendants here, are not themselves creditors of the customer-property estate. See In re Bernard L. Madoff Inv. Sec. LLC, 708 F.3d 422, 427 (2d Cir. 2013) (adopting this position). Therefore, the Trustee's claim that the defendants here are being treated somehow more favorably than customer-beneficiaries of the SIPA estate — who are not similarly situated to these non-beneficiaries — is disingenuous, especially since the defendants here stand to benefit little, if at all, from the customer-property estate through their now-defunct feeder funds. In sum, the Court concludes that the presumption against extraterritorial application of federal statutes has not been rebutted here; the Trustee therefore may not use section 550(a) to pursue recovery of purely foreign subsequent transfers.

While the foregoing is dispositive, the Court further concludes, in the alternative, that even if the presumption against extraterritoriality were rebutted, the Trustee's use of section 550(a) to reach these foreign transfers would be precluded by concerns of international comity. Comity "is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." Maxwell II, 93 F.3d at 1046 (quoting Hilton v. Guyot, 159 U.S. 113, 163-64 (1895)); see also id. at 1047 (noting that "international comity is a separate notion from the 'presumption

against extraterritoriality,' and may "preclude the application" of an otherwise extraterritorial statute). Courts conducting a comity analysis must engage in a choice-of-law analysis to determine whether the application of U.S. law would be reasonable under the circumstances, comparing the interests of the United States and the relevant foreign state. See id. at 1047-48.

The Second Circuit has previously stated that "[c]omity is especially important in the context of the Bankruptcy Code." Id. at 1048. The facts underlying the instant proceeding illustrate why this is so. As is the case with Fairfield Sentry and Harley, many of the feeder funds are currently involved in their own liquidation proceedings in their home countries. These foreign jurisdictions have their own rules concerning on what bases the recipient of a transfer from a debtor should be required to disgorge it. See, e.g., In re Fairfield Sentry Ltd. Litig., 458 B.R. 665, 672 (S.D.N.Y. 2011) (noting that the foreign representative of Fairfield Sentry's estate had filed against its investors "statutory claims under BVI law for 'unfair preferences' and 'undervalue transactions'"). Indeed, the BVI courts have already determined that Fairfield Sentry could not reclaim transfers made to its customers under certain common-law theories — a determination in conflict with what the Trustee seeks to accomplish here. See Decl. of Marco E. Schnabl dated July 13, 2012, Ex. C., No. 12 Misc. 115, ECF No. 236 (S.D.N.Y. filed July 13, 2012).

The Trustee is seeking to use SIPA to reach around such foreign liquidations in order to make claims to assets on behalf of the SIPA customer-property estate — a specialized estate created solely by a U.S. statute, with which the defendants here have no direct relationship. Without any agreement to the contrary (which the Trustee does not suggest exists), investors in these foreign funds had no reason to expect that U.S. law would apply to their relationships with the feeder funds. Cf. Maxwell II, 93 F.3d at 1051 (finding that, for purposes of the comity analysis, "England has a much closer connection to these disputes than does the United States" where the transfer occurred in England and "English law applied to the resolution of disputes arising under" the credit agreements under which the relevant transfers were made). Given the indirect relationship between Madoff Securities and the transfers at issue here, these foreign jurisdictions have a greater interest in applying their own laws than does the United States. Accordingly, as the Second Circuit found in Maxwell II, "the interests of the affected forums and the mutual interest of all nations in smoothly functioning international law counsel against the application of United States law in the present case." Id. at 1053.

In sum, the Court finds that section 550(a) does not apply extraterritorially to allow for the recovery of subsequent transfers received abroad by a foreign transferee from a foreign transferor. Therefore, the Trustee's recovery claims are dismissed to the extent

that they seek to recover purely foreign transfers.[4] Except to the extent provided in other orders, the Court directs that the following adversary proceedings be returned to the Bankruptcy Court for further proceedings consistent with this Opinion and Order: (1) those cases listed in Exhibit A of item number 167 on the docket of 12-mc-115; and (2) those cases listed in the schedule attached to item number 468 on the docket of 12-mc-115 that were designated as having been added to the "extraterritoriality" consolidated briefing.

SO ORDERED.

Dated: New York, NY
July 6, 2014

JED S. RAKOFF, U.S.D.J.

[4] The Trustee argues that dismissal at this stage is inappropriate because additional fact-gathering is necessary to determine where the transfers took place. However, it is the Trustee's obligation to allege "facts giving rise to the plausible inference that" the transfer occurred "within the United States." Absolute Activist Value Master Fund Ltd. v. Ficeto, 677 F.3d 60, 69 (2d Cir. 2012). Here, to the extent that the Trustee's complaints allege that both the transferor and the transferee reside outside of the United States, there is no plausible inference that the transfer occurred domestically. Therefore, unless the Trustee can put forth specific facts suggesting a domestic transfer, his recovery actions seeking foreign transfers should be dismissed.

APPENDIX D

Mem. Decision, Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC, Adv. No. 08-01789 (SMB), 2016 WL 6900689 (Bankr. S.D.N.Y. Nov. 22, 2016), ECF No. 14495

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION,	:	Adv. P. No. 08-01789 (SMB)
Plaintiff,	:	SIPA LIQUIDATION
– against –	:	(Substantively Consolidated)
BERNARD L. MADOFF INVESTMENT SECURITIES LLC,	:	
Defendant.	:	
In re:	:	
BERNARD L. MADOFF,	:	
Debtor.	:	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, and Bernard L. Madoff,	:	Adv. P. No. 11-02732 (SMB)
Plaintiff,	:	
– against –	:	
BUREAU OF LABOR INSURANCE,	:	
Defendant.	:	

MEMORANDUM DECISION REGARDING CLAIMS TO RECOVER FOREIGN SUBSEQUENT TRANSFERS

A P P E A R A N C E S:

BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, NY 10111

David J. Sheehan, Esq.
Regina Griffin, Esq.
Thomas L. Long, Esq.

Seanna R. Brown, Esq.
Amanda E. Fein, Esq.
Catherine E. Woltering, Esq.
Of Counsel

Attorneys for Plaintiff, Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC

SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004

Robinson B. Lacy, Esq.
Of Counsel

- and -

SULLIVAN & WORCHESTER LLP
1633 Broadway
New York, NY 10019

Franklin B. Velie, Esq.
Jonathan G. Kortmansky, Esq.
Mitchell C. Stein, Esq.
Of Counsel

Liaison Counsel for All Subsequent Transferee Defendants[1]

LOWENSTEIN SANDLER LLP
1251 Avenue of the Americas
New York, NY 10022

Michael B. Himmel, Esq.
Amiad M. Kushner, Esq.
Lauren M. Garcia, Esq.
Of Counsel

Attorneys for Bureau of Labor Insurance

STUART M. BERNSTEIN
United States Bankruptcy Judge:

Bankruptcy Code § 550(a)(2) permits a trustee to recover an avoided fraudulent transfer or its value from "any immediate or mediate transferee," *e.g.*, a subsequent

[1] Other Defense Counsel listed on attached Appendix.

transferee of the initial transferee or prior subsequent transferee. Relying on this provision, Irving H. Picard (the "Trustee"), the trustee for the liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa, *et seq.* ("SIPA"), sued numerous subsequent transferees to recover the value of fraudulent transfers made by BLMIS in connection with the Ponzi scheme conducted by Bernard L. Madoff. In many cases, the initial transferee was a foreign feeder fund and the subsequent transferee was also a foreign entity. The proceedings before the Court primarily concern the application of section 550(a)(2) to subsequent transfers between foreign parties.

I do not write on a clean slate. Judge Rakoff of the United States District Court previously withdrew the reference and laid down some basic ground rules for determining whether the subsequent transfer claims should be dismissed. The parties to the proceedings before Judge Rakoff are referred to as the "Participating Subsequent Transferees." Judge Rakoff held that the Trustee could not pursue recovery of "purely foreign subsequent transfers" due to the application of the presumption against extraterritoriality. *SIPC v. BLMIS* (*In re BLMIS*), 513 B.R. 222, 231 (S.D.N.Y. 2014) ("*ET Decision*"), *supplemented by*, No. 12- mc- 1151 (JSR), 2014 WL 3778155 (S.D.N.Y. July 28, 2014). Alternatively, considerations of international comity supported dismissal. *Id.* at 231-32. The District Court did not dismiss any of the claims, and instead, returned the adversary proceedings to this Court for further proceedings consistent with its decision. *Id.* at 232.

The Participating Subsequent Transferees now seek dismissal of Trustee's claims. In addition, many similarly-situated subsequent transferees that did not participate in

the proceedings before Judge Rakoff (the "Non-Participating Subsequent Transferees") also seek dismissal under the *ET Decision*. In total, motions to dismiss are pending in eighty-eight adversary proceedings. The Trustee, in turn, seeks leave to amend many of his complaints to add allegations of domestic connections relating to the subsequent transfers. Finally, the Bureau of Labor Insurance (the "BLI"), a defendant in a separate adversary proceeding styled *Picard v. Bureau of Labor Insurance*, Adv. P. No. 11-02732, moves for judgment on the pleadings pursuant to Federal Civil Rule 12(c) relying on the *ET Decision*. The Participating Subsequent Transferees, the Non-Participating Subsequent Transferees and BLI are sometimes collectively referred to as the "Subsequent Transferees."

A majority of the Trustee's claims against Subsequent Transferees were made by and/or originated from the Fairfield Funds or the Kingate Funds (both defined below), the initial transferees of BLMIS. These funds are debtors in foreign insolvency proceedings and their liquidators have sought or could have sought to recover substantially the same transfers from the same transferees under the powers granted by the foreign insolvency courts. These subsequent transfer claims are dismissed on grounds of international comity without reaching the issue of extraterritoriality. As to the balance, where the Trustee is seeking to recover subsequent transfers between two foreign entities using foreign bank accounts (without consideration of a U.S. correspondent bank account), those claims are dismissed. Furthermore, because the Court has reviewed the Trustee's proffers regarding these transfers and found them wanting, the Trustee's motions for leave to amend his pleadings to incorporate the facts

alleged in the proffers are denied as futile. The remaining motions to dismiss and for leave to amend are resolved in accordance with the discussion that follows.

BACKGROUND

A. Introduction

The facts underlying the infamous Ponzi scheme perpetrated by Bernard L. Madoff are well-known and have been recounted in many reported decisions. *See, e.g.*, *Picard v. Ida Fishman Revocable Trust* (*In re BLMIS*), 773 F.3d 411, 414-15 (2d Cir. 2014), *cert. denied*, 135 S. Ct. 2859 (2015); *Picard v. JPMorgan Chase & Co.* (*In re BLMIS*), 721 F.3d 54, 58-59 (2d Cir. 2013), *cert. denied*, 134 S. Ct. 2895 (2014); *SIPC v. BLMIS* (*In re BLMIS*), 424 B.R. 122, 125-32 (Bankr. S.D.N.Y. 2010), *aff'd*, 654 F.3d 229 (2d Cir. 2011), *cert. denied*, 133 S. Ct. 25 (2012). Prior to his arrest in December 2008, Madoff perpetrated the largest Ponzi scheme ever discovered through the investment advisory side of BLMIS. He did not engage in any securities transactions on behalf of his customers, and sent them bogus customer statements and trade confirmations showing fictitious trading activity and profits. When customers requested redemptions from their accounts, BLMIS distributed cash from a commingled bank account that included other customers' investments.

While many individuals and entities invested with BLMIS directly, others did so through "feeder funds," which, in turn, invested with BLMIS. The feeder funds were often organized as foreign entities. The largest network of foreign feeder funds was operated by two entities: Fairfield Greenwich Group ("FGG") and Tremont Group Holdings, Inc. ("Tremont"). Even though they operated out of New York, FGG and

Tremont created multiple feeder funds organized in the British Virgin Islands ("BVI") and the Cayman Islands, respectively.

Following the commencement of BLMIS' liquidation, the Trustee sued the feeder funds to avoid and recover as fraudulent transfers distributions they received from BLMIS as initial transferees. He also sued the subsequent transferees, including feeder fund investors, management and service providers. Like the feeder funds, the subsequent transferees were often foreign individuals or entities.

B. The Presumption Against Extraterritoriality

Although the majority of claims are being dismissed on the ground of comity, the parties have focused most of their attention on the issue of extraterritoriality. In addition, the District Court focused on extraterritoriality, and a discussion of that issue first will assist the reader. The "presumption against extraterritoriality" is a "longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991) ("*Aramco*") (internal quotation marks and citations omitted); *accord RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2100 (2016) ("*Nabisco*"); *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 248 (2010) ("*Morrison*"). The presumption "serves to protect against unintended clashes between our laws and those of other nations which could result in international discord." *Aramco*, 499 U.S. at 248.

In *Morrison*, the Supreme Court clarified the presumption in a dispute involving the extraterritorial reach of 10(b) of the Securities and Exchange Act of 1934 ("Exchange

Act"). There, Australian investors sued National Australia Bank Limited ("National") for violations of the Exchange Act in connection with their investment in National stock traded on the Australian Stock Exchange. Although National was an Australian bank, it owned HomeSide Lending, Inc. ("HomeSide"), a mortgage service provider based in Florida. *Morrison*, 561 U.S. at 251. The complaint alleged that HomeSide and its executives manipulated HomeSide's financials to cause it to appear more valuable than it really was, and that National was aware of the deception but failed to act. *Id.* at 252. In other words, the wrongful conduct occurred in the United States. The United States District Court for the Southern District of New York dismissed the complaint for lack of subject matter jurisdiction because the acts that occurred in the United States were only a link in a securities fraud scheme that culminated abroad, and the Second Circuit affirmed on similar grounds. *Id.* at 253.

The Supreme Court affirmed, but on different grounds. It criticized the Second Circuit's use of the "conduct" and "effects" tests (sometimes referred to as a single test, the "conduct and effects test") to determine the applicability of § 10(b) claims.[2] The "effects" test asked "whether the wrongful conduct had a substantial effect in the United States or upon United States citizens," and the "conduct" test asked "whether the wrongful conduct occurred in the United States." *Id.* at 257 (quoting *SEC v. Berger*, 322 F.3d 187, 192-93 (2d Cir. 2003)). Justice Scalia described these standards as "complex in formulation and unpredictable in application." *Id.* at 248.

[2] The Court also explained that the presumption against extraterritoriality implicated dismissal based upon the failure to state a claim, FED. R. CIV. P. 12(b)(6), rather than dismissal for lack of subject matter jurisdiction under FED. R. CIV. P. 12(b)(1). *Morrison*, 561 U.S. at 253-54.

Instead, the presumption against extraterritoriality involves an exercise in statutory interpretation and a two-step analysis which can be examined in either order. "At the first step, we ask whether the presumption against extraterritoriality has been rebutted—that is, whether the statute gives a clear, affirmative indication that it applies extraterritorially." *Nabisco*, 136 S. Ct. at 2101; *accord Morrison*, 561 U.S. at 255 ("When a statute gives no clear indication of an extraterritorial application, it has none."). The first step does not impose a "clear statement rule," because even absent a "clear statement," the context of the statute can be consulted to give the most faithful reading. *Morrison*, 561 U.S. at 265. If the first step yields the conclusion that the statute applies extraterritorially, the inquiry ends.

If it does not, the court must turn to the second step to determine if the litigation involves an extraterritorial application of the statute:

> If the statute is not extraterritorial, then at the second step we determine whether the case involves a domestic application of the statute, and we do this by looking to the statute's "focus." If the conduct relevant to the statute's focus occurred in the United States, then the case involves a permissible domestic application even if other conduct occurred abroad; but if the conduct relevant to the focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory.

Nabisco, 136 S. Ct. at 2101; *accord Morrison*, 561 U.S. at 266-67 (court must look to the "'focus' of congressional concern," *i.e.*, the "objects of the statute's solicitude"). Courts however, must be wary in concluding too quickly that some minimal domestic conduct means the statute is being applied domestically:

> [I]t is a rare case of prohibited extraterritorial application that lacks *all* contact with the territory of the United States. But the presumption against extraterritorial application would be a craven watchdog indeed if it retreated to its kennel whenever *some* domestic activity is involved in the case.

Morrison, 561 U.S. at 266 (emphasis in original).

The *Morrison* Court first concluded that the plaintiffs had failed to rebut the presumption against the extraterritorial application of section 10(b) of the Exchange Act. *See id.* at 265. Having then held that the focus of Section 10(b) was upon the purchase and sales of securities in the United States, *id.* at 266, the Court concluded that the plaintiffs had failed to state a claim on which relief could be granted and affirmed the dismissal of the complaint on this ground. *Id.* at 273.

C. Extraterritoriality and the Trustee's Recovery Efforts

After *Morrison*, the issue of whether the Bankruptcy Code's avoidance and recovery provisions reached foreign transfers was first addressed in these cases in *Picard v. Bureau of Labor Ins.* (*In re BLMIS*), 480 B.R. 501 (Bankr. S.D.N.Y. 2012) ("*BLI*"). BLI, a Taiwanese entity, invested in Fairfield Sentry, a large BLMIS feeder fund organized in the BVI. BLI submitted a redemption request to Fairfield Sentry and provided wire instructions. Pursuant to those instructions, Fairfield Sentry sent $42,123,406 from a Dublin bank account to a New York JP Morgan Account specified by BLI, and the redemption payment was then sent on to BLI's JP Morgan account in London. *Id.* at 509. Following his appointment, the Trustee sought to recover the subsequent transfers made by Fairfield Sentry to BLI pursuant to section 550 of the Bankruptcy Code. BLI moved to dismiss arguing, *inter alia*, that the Trustee's claims were barred by the presumption against extraterritoriality.[3]

[3] BLI did not argue that comity barred the claim and the Court did not address it. *BLI,* 480 B.R. at 526 n. 24.

Denying the motion, the Bankruptcy Court began with *Morrison*'s second step. Judge Lifland held that the "focus" of "the avoidance and recovery sections [of the Bankruptcy Code] is on the initial transfers that deplete the bankruptcy estate and not on the recipient of the transfers or the subsequent transfers." *Id.* at 524; *accord Begier v. Internal Revenue Serv.*, 496 U.S. 53, 58 (1990) (stating that "the purpose of the [preference] avoidance provision is to preserve the property includable within the bankruptcy estate – the property available for distribution to creditors"); *French v. Liebmann (In re French),* 440 F.3d 145, 154 (4th Cir.) ("[T]he Code's avoidance provisions protect creditors by preserving the bankruptcy estate against illegitimate depletions."), *cert. denied*, 549 U.S. 815 (2006). The depletion of the BLMIS estate occurred domestically because the transfers at issue originated from BLMIS' JPMorgan account in New York and went to Fairfield Sentry's New York account at HSBC. *BLI*, 480 B.R. at 525. "As the focus of Section 550 occurred domestically, the fact that BLI received BLMIS's fraudulently transferred property in a foreign country does not make the Trustee's application of this section extraterritorial." *Id.*[4]

While this conclusion was dispositive, Judge Lifland also addressed the first step in the inquiry and concluded that Congress expressed a clear intention that § 550 should apply extraterritorially. *Id.* at 526. A statute does not require a "clear statement" that it applies abroad, and the court may consider the statutory context "in searching for a

[4] The Court added that pragmatic considerations supported its conclusion. "In particular if the avoidance and recovery provisions ceased to be effective at the borders of the United States, a debtor could end run the Code by 'simply arrang[ing] to have the transfer made overseas,' thereby shielding them from United States law and recovery by creditors." *BLI*, 480 B.R. at 525 (quoting *Maxwell Commc'n Corp. plc v. Societe General plc* (*In re Maxwell Commc'n Corp. plc*), 186 B.R. 807, 816 (S.D.N.Y.1995) ("*Maxwell I*"), *aff'd on other grounds,* 93 F.3d 1036 (2d Cir.1996) ("*Maxwell II*")).

clear indication of statutory meaning." *Id.* at 526 (quoting *United States v. Weingarten,* 632 F.3d 60, 65 (2d Cir.2011)). "Congress demonstrated its clear intent for the extraterritorial application of Section 550 through interweaving terminology and cross-references to relevant Code provisions." *Id.* at 527. Specifically, the term "property of the estate" includes property "wherever located, and by whomever held" that was property of the debtor at the commencement of the case." 11 U.S.C. § 541(a)(1). Thus, "property of the estate" extends to property located worldwide. *Id.*; *accord* 28 U.S.C. § 1334(e)(1) (granting the District Court exclusive jurisdiction "of all the property, wherever located, of the debtor as of the commencement of [the bankruptcy] case, and of property of the estate").

The avoidance provisions of the Bankruptcy Code grant a trustee the power to avoid certain prepetition transfers "of an interest of the debtor in property," *e.g.*, 11 U.S.C. § 548(a)(1), the same term used in Bankruptcy Code § 541 to define the scope of "property of the estate." *BLI*, 480 B.R. at 527. For this reason, the concepts of "property of the estate" and "property of the debtor" are the same, separated only by time. As the Supreme Court explained in *Begier*, § 541 "delineates the scope of 'property of the estate' and serves as the postpetition analog to § 547(b)'s 'property of the debtor.'" *Id.* (quoting *Begier,* 496 U.S. at 58–59) (internal quotation marks omitted). Accordingly, "(i) 'property of the debtor' subject to the preferential transfer provision is best understood as that property that would have been part of the estate had it not been transferred before the commencement of the bankruptcy proceedings" and (ii) "the purpose of the avoidance provision is to preserve the property includable within the bankruptcy estate." *Id.* (quoting *Begier*, 496 U.S. at 58); *accord French*, 440 F.3d at 151

("Section 541 defines 'property of the estate' as, *inter alia,* all 'interests of the debtor in property.' 11 U.S.C. § 541(a)(1). In turn, § 548 allows the avoidance of certain transfers of such 'interest[s] of the debtor in property.' 11 U.S.C. § 548(a)(1). By incorporating the language of § 541 to define what property a trustee may recover under his avoidance powers, § 548 plainly allows a trustee to avoid any transfer of property that *would have been* 'property of the estate' prior to the transfer in question—as defined by § 541—even if that property is not 'property of the estate' *now*.") (emphasis in original); *contra Maxwell I,* 186 B.R. at 820-21 (concluding that Congress did not clearly express its desire that Bankruptcy Code § 547 applies to foreign transfers of the debtor's property); *Barclay v. Swiss Fin. Corp. Ltd.* (*In re Midland Euro Exch. Inc.*), 347 B.R. 708, 718 (Bankr. C.D. Cal. 2006) (concluding that Congress did not intend for § 548 to apply extraterritorially).

Section 550, in turn, allows the trustee to recover the avoided transfer from the initial transferee, the person for whose benefit the transfer was made or the subsequent transferee:

> [B]y incorporating the avoidance provisions by reference, Section 550 expresses the same congressional intent regarding extraterritorial application. Thus, Congress expressed intent for the application of Section 550 to fraudulently transferred assets located outside the United States and the presumption against extraterritoriality does not apply.

BLI, 480 B.R. at 528.

D. The *ET Decision*

1. Extraterritoriality

Less than two years after the issuance of the *BLI* decision, District Judge Rakoff reached the opposite conclusion in the *ET Decision*.[5] As mentioned above, the *ET Decision* was issued in connection with consolidated motions to dismiss filed by the Participating Subsequent Transferees. Since the District Court was looking at multiple cases, it described the complaint in *Picard v. CACEIS Bank Luxembourg*, Adv. P. No. 11-02758 ("*CACEIS Complaint*") as an example. There, the two CACEIS defendants (collectively, "CACEIS") were organized and operating in Luxembourg or France. *ET Decision*, 513 B.R. at 225. They invested in two foreign feeder funds, Fairfield Sentry Limited ("Fairfield Sentry"), a BVI company in liquidation in the BVI, and Harley International (Cayman) Limited ("Harley"), a Cayman Islands company in liquidation in the Cayman Islands. (*CACEIS Complaint* at ¶¶ 2, 24-25.) Fairfield Sentry and Harley invested substantially all of their assets with BLMIS, received initial transfers from BLMIS and subsequently transferred some or all of those funds directly or indirectly to CACEIS. (*Id.* at ¶¶ 2, 37, 44, 46, 49, 58.) The Trustee sued the feeder funds to avoid and recover the initial transfers they had received from BLMIS. He settled with one of the feeder funds, obtained a default judgment against the other, and pursued CACEIS to recover subsequent transfers in the amount of $50 million received from the feeder funds. *ET Decision*, 513 B.R. at 225-26.

[5] The motions to dismiss before Judge Rakoff were briefed before Judge Lifland issued the *BLI* decision, and the *ET Decision* did not mention it.

Judge Rakoff first considered whether the Trustee was attempting to apply § 550 extraterritorially. He initially cautioned that "a mere connection to a U.S. debtor, be it tangential or remote, is insufficient on its own to make every application of the Bankruptcy Code domestic." *Id.* at 227. He then looked to the "regulatory focus" of the Bankruptcy Code's avoidance and recovery provisions, and concluded that both § 548 and § 550(a) focused on the property transferred and the fact of the transfer, not the debtor. *Id.*; *but see French*, 440 F.3d at 150 ("§ 548 focuses not on the property itself, but on the fraud of transferring it."). "Accordingly, under *Morrison,* the transaction being regulated by section 550(a)(2) is the transfer of property to a subsequent transferee, not the relationship of that property to a perhaps-distant debtor." *ET Decision*, 513 B.R. at 227.

To determine whether the subsequent transfers occurred extraterritorially, "the court considers the location of the transfers as well as the component events of those transactions." *Id.* (quoting *Maxwell I,* 186 B.R. at 817). Returning to the *CACEIS Complaint*, Judge Rakoff observed that "the relevant transfers and transferees are predominately foreign: foreign feeder funds transferring assets abroad to their foreign customers and other foreign transferees." *Id.* Under similar factual circumstances, the *Maxwell* and *Midland* courts had found transfers between foreign entities "to implicate extraterritorial applications of the Bankruptcy Code's avoidance provisions." *Id.* at 227-28. Finally, the fact that the chain of transfers originated with BLMIS in New York or that the subsequent transferees allegedly used correspondent banks in the United States to process the dollar-denominated transfers was insufficient "to make the recovery of these otherwise thoroughly foreign subsequent transfers into a domestic application of

section 550(a)." *Id.* at 228 & n. 1. Accordingly, the Trustee was seeking to recover foreign transfers that required the extraterritorial application of § 550(a). *Id.* at 228.

The District Court then turned to the question of whether Congress intended the extraterritorial application of section 550(a). Here too, the *ET Decision* disagreed with *BLI*. First, "[n]othing in [the language of section 550(a)] suggests that Congress intended for this section to apply to foreign transfers. . . ." *Id.* at 228. Judge Rakoff next looked to context and surrounding Bankruptcy Code provisions. *Id.* The Trustee had argued that § 541's definition of "property of the estate," which included property held worldwide, indicated Congress' intent to allow the Trustee to recover "property of the debtor" that, but for the fraudulent transfer, would have been "property of the estate" as of the commencement of the bankruptcy case. *Id.* at 228-29. Judge Rakoff rejected the Trustee's argument for the same reason the District Court rejected a similar argument in *Maxwell I;* fraudulently transferred "property of the debtor" only becomes "property of the estate" *after* recovery, *ET Decision*, 513 B.R. at 229 (citing *Fed. Deposit Ins. Corp. v. Hirsch* (*In re Colonial Realty Co.*), 980 F.2d 125, 131 (2d Cir.1992)), "so section 541 cannot supply any extraterritorial authority that the avoidance and recovery provisions lack on their own." *Id.*; *accord Maxwell I,* 186 B.R. at 820; *Midland,* 347 B.R. at 718.[6] Furthermore, the use of the phrase "wherever located" in § 541 indicating Congress' intent to apply that section extraterritorially, undercut the conclusion that § 548 or SIPA

[6] The District Court also rejected Trustee's argument that provisions of SIPA and policy concerns support extraterritorial application of section 550(a). *ET Decision*, 513 B.R. at 230-31.

§ 78fff-2(c)(3),[7] which did not include similar language, also applied extraterritorially. *ET Decision*, 513 B.R. at 230.

Based on those observations, the District Court "conclude[d] that the presumption against extraterritorial application of federal statutes ha[d] not been rebutted [and] the Trustee therefore may not use section 550(a) to pursue recovery of purely foreign subsequent transfers." *Id.* at 231.

2. Comity

In the alternative, the District Court ruled that "the Trustee's use of section 550(a) to reach these foreign transfers would be precluded by concerns of international comity." *Id.* at 231. Comity "is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." *Id.* (quoting *Maxwell II*, 93 F.3d at 1046 (in turn quoting *Hilton v. Guyot,* 159 U.S. 113, 163–64 (1895))). A comity inquiry requires a "choice-of-law analysis to determine whether the application of U.S.

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[7] SIPA § 78fff-2(c)(3) authorizes the SIPA trustee to recover pre-filing transfers of customer property even though customer property was not property of the SIPA debtor at the time of the transfer under applicable non-bankruptcy law. It provides:

> Whenever customer property is not sufficient to pay in full the claims set forth in subparagraphs (A) through (D) of paragraph (1), the trustee may recover any property transferred by the debtor which, except for such transfer, would have been customer property if and to the extent that such transfer is voidable or void under the provisions of Title 11. Such recovered property shall be treated as customer property. For purposes of such recovery, the property so transferred shall be deemed to have been the property of the debtor and, if such transfer was made to a customer or for his benefit, such customer shall be deemed to have been a creditor, the laws of any State to the contrary notwithstanding.

law would be reasonable under the circumstances, comparing the interests of the United States and the relevant foreign state." *ET Decision*, 513 B.R. at 231 (citing *Maxwell II*, 91 F.3d at 1047-48).

Judge Rakoff observed that many feeder funds, such as Fairfield Sentry Limited and Harley International (Cayman) Limited, the two initial transferees in *CACEIS*, were also in liquidation proceedings abroad, and had their own rules governing the recovery of transfers. *Id.* at 232. The BVI courts in Fairfield Sentry had already rejected the liquidators' common law claims to reclaim the transfers made to its own investors, and the "Trustee [wa]s seeking to use SIPA to reach around such foreign liquidations in order to make claims to assets on behalf of the SIPA customer-property estate — a specialized estate created solely by a U.S. statute, with which the defendants here have no direct relationship." *Id.* These investors had no reason to expect that U.S. law would govern their relationships with their feeder funds, and "[g]iven the indirect relationship between [BLMIS] and the transfers at issue here, these foreign jurisdictions have a greater interest in applying their own laws than does the United States." *Id.* Accordingly, as the Second Circuit found in *Maxwell II,* "the interests of the affected forums and the mutual interest of all nations in smoothly functioning international law counsel against the application of United States law in the present case." *Id.* (quoting *Maxwell II,* 93 F.3d at 1053).

Although the District Court ultimately ruled that the "Trustee's recovery claims are dismissed to the extent that they seek to recover purely foreign transfers," *id.*, the District Court did not actually dismiss any of the complaints. Instead, the District Court concluded:

> Here, to the extent that the Trustee's complaints allege that both the transferor and the transferee reside outside of the United States, there is no plausible inference that the transfer occurred domestically. Therefore, unless the Trustee can put forth specific facts suggesting a domestic transfer, his recovery actions seeking foreign transfers should be dismissed.

ET Decision, 513 B.R. at 232 n. 4.

The District Court returned the cases to this Court "for further proceedings consistent with this Opinion and Order." *Id.* at 232. Accordingly, I view my task as entailing the review of the subsequent transfer allegations to determine whether they survive dismissal under the extraterritoriality or comity principles enunciated in the *ET Decision*.

E. Post-*ET Decision* Proceedings

After the adversary proceedings were returned to this Court, the parties stipulated to the *Scheduling Order*.[8] Exhibit A to the *Scheduling Order* listed those defendants that were parties to the proceedings before Judge Rakoff and to the *ET Decision*, *i.e.*, the Participating Subsequent Transferees. Exhibit B listed defendants who were not parties to the *ET Decision* but contended that they were similarly situated, *i.e.*, the Non-Participating Subsequent Transferees. The *Scheduling Order* set forth a briefing schedule to address whether the Trustee's existing claims against the Subsequent Transferees should be dismissed and whether the Trustee should be permitted to amend the complaints. The Trustee and the Participating and Non-Participating Subsequent Transferees were also permitted to file pleadings relevant to each individual adversary proceeding, including short supplemental briefs and, in the

[8] *Order Concerning Further Proceedings on Extraterritoriality Motion and Trustee's Omnibus Motion for Leave to Replead and for Limited Discovery* which the Court so ordered on December 10, 2014 (as amended, the "*Scheduling Order*") (ECF Doc. # 8800).

case of the Trustee, either a proposed amended complaint or proffered allegations supporting an amended complaint. (*See Scheduling Order* at ¶¶ 3-5, 8.) To facilitate the Court's and the Defendant's review and analysis, the Trustee was required to include a chart (the "Chart") summarizing the Trustee's position as to why the motions should be denied. (*Id.* at ¶ 6.)[9]

Importantly, the *Scheduling Order* included certain stipulations relating to the place of formation or citizenship of the subsequent transferors and Subsequent Transferees. (*Scheduling Order* at ¶ M ("Exhibits A and B list as the party's 'Location' the jurisdiction under whose laws the transferors and transferees that are not natural persons are organized, and the citizenship of the transferors and transferees that are natural persons, in each case as of the time of the transfers, as alleged in the complaints or as agreed by the Trustee and the respective transferees.").)[10] According to Exhibits A and B, none of the subsequent transferors were "located" in the United States, but some of the Subsequent Transferees were.

The Subsequent Transferees filed their supplemental motion to dismiss on December 31, 2014. (*See Consolidated Supplemental Memorandum of Law In Support of the Transferee Defendants' Motion to Dismiss Based on Extraterritoriality* on

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9 The first adversary proceeding listed on the Chart was dismissed after briefing. (*Stipulation and Order for Voluntary Dismissal of Adversary Proceeding with Prejudice*, dated Feb. 12, 2016 (Adv. Pro. No. 09-01154 ECF # 132).) The motion to dismiss the subsequent transfer claim asserted in that proceeding against Vizcaya Partners Limited and the Trustee's motion to amend the complaint are denied as moot.

10 No party was precluded from arguing that the stipulated "Location" was or was not preclusive in determining whether the transferor or transferee was "foreign" for purpose of the motions or otherwise. (*Scheduling Order* at ¶ M.)

December 31, 2014 ("*Subsequent Transferees Brief*") (ECF Doc. # 8903).) The parties seeking dismissal were listed in Appendix A. (*See Subsequent Transferees Brief* at 1.) The Trustee filed his response on June 26, 2015. (*Trustee's Memorandum of Law In Opposition to the Transferee Defendants' Motion to Dismiss Based on Extraterritoriality and in Further Support of Trustee's Motion for Leave to Amend Complaints* ("*Trustee Brief*") (ECF Doc. # 10287).) The response was limited to the defendants listed in Exhibit 1 to the *Trustee Brief*.

Meanwhile, BLI, whose dismissal motion had been denied by the Bankruptcy Court in *BLI*, asked to be included as a Non-Participating Subsequent Transferee in the returned proceedings. The Trustee opposed the request, and the Court denied it explaining that unlike the Subsequent Transferees, BLI had "litigated the extraterritoriality [issue] and . . . lost it." (Transcript of 11/19/2014 Hr'g at 31:10-15 (ECF Doc # 9542).) BLI subsequently moved for judgment on the pleadings pursuant to Federal Civil Rule 12(c) based on the holdings of the *ET Decision*.[11] After extended colloquy with the Trustee's counsel who argued, among other things, that the complaint in *BLI* should not be dismissed under the *ET Decision*, counsel expressed the willingness that I decide the BLI motion on the merits as part of the omnibus motion raising the same issues. (Transcript of 7/29/2015 Hr'g at 20:7-18 (ECF Doc # 11158).)

[11] *See Memorandum of Law In Support of Defendant Bureau of Labor Insurance's Motion for Judgment on the Pleadings*, dated Apr. 9, 2015 (ECF Adv. P. No. 11-02732 Doc. # 86).

D. Parties' Legal Arguments

The Subsequent Transferees and the Trustee disagree about the scope of the *ET Decision*. Initially, the Trustee argues that the *ET Decision* was limited to resolving the "purely legal" issue of whether SIPA and the Bankruptcy Code apply extraterritorially to allow the Trustee to recover purely foreign transfers. (*Trustee Brief* at 14-16.) The Subsequent Transferees responds that the *ET Decision* was not limited to an abstract legal issue and was issued upon consideration of both factual and legal arguments. Thus, the *ET Decision* was binding on the Participating Subsequent Transferees and persuasive as to the Non-Participating Subsequent Transferees. (*Reply Consolidated Supplemental Memorandum of Law In Support of Transferee Defendants' Motion to Dismiss Based on Extraterritoriality*, dated Sept. 30, 2015, at 6-7 ("*Subsequent Transferees Reply*") (ECF Doc. # 11542).)

Next, the Subsequent Transferees assert that their motions to dismiss the *existing* claims should be granted because the Trustee failed to respond to those arguments and relied solely on new allegations in his proposed amended complaints. Accordingly, the Court should grant the branch seeking dismissal. (*Subsequent Transferees Reply* at 4.) The Trustee, however, sought leave to amend many of the complaints to avoid dismissal under the *ET Decision* by adding allegations that implied domestic "components" to the subsequent transfers. He broke these allegations down into nineteen categories (the "Chart Factors"), summarized them in the Chart annexed to the *Trustee Brief* as Ex. 2, and the Chart showed which factors applied to specific Subsequent Transferees. The Trustee argues that all of these factors were relevant to determining whether the subsequent transfers were extraterritorial because the *ET*

Decision instructed the Court to consider the location of the transfers as well as the "component events of those transactions." (*Trustee Brief* at 18.) The Subsequent Transferees respond that none of the Trustee's nineteen factors say anything about the location of the transfers which comprised the crux of the *ET Decision*. (*Subsequent Transferee Reply* at 8, 18-33.) They also add that the holistic approach endorsed by the Trustee was rejected by the Supreme Court in *Morrison*. (*Id.* at 17-18.)

Lastly, the Trustee argues that the branch of the *ET Decision* that addressed comity applied only to the extent the subsequent transfers were foreign transfers, and Judge Rakoff's decision was limited to comity's "potential application" to the cases. (*Trustee Brief* at 33-34.) The Trustee also attacks the comity ruling on the merits arguing that the cases fail the applicable two-prong test requiring a parallel proceeding and a true conflict of law and facts sufficient to justify abstention. (*Id.* at 34-37.) The Subsequent Transferees respond that the comity ruling provides an alternative basis for dismissal to the presumption against extraterritoriality. Moreover, the Trustee's merits attack on Judge Rakoff's comity holding confuse two separate doctrines — "comity of courts" and "comity of nations." (*Subsequent Transferee Reply* at 36-40.)

DISCUSSION

A. Effect of the *ET Decision*

The parties offer dramatically different interpretations of the scope and effect of the *ET Decision*. The Subsequent Transferees view the *ET Decision* as a "mandate" that requires the dismissal of the Trustee's claims to the extent subsequent transfers were made between two parties residing outside of the United States. (*Subsequent Transferees Reply* at 1.) The Trustee, on the other hand, argues that the *ET Decision*

decided a "purely legal" issue and "recognized that the inquiry is whether the *conduct* alleged in the complaints is extraterritorial." (*Trustee Brief* at 2 (emphasis in original).)

The truth lies somewhere between. The *ET Decision* did not simply decide that § 550(a)(2) did not apply extraterritorially, one prong of the two prong test. Judge Rakoff also considered the second prong, concluding that the "focus" of the statute was the subsequent transfer. Using the *CACEIS Complaint* as an example, he held that a complaint required extraterritorial application of § 550(a)(2) if "the relevant transfers and transferees are predominantly foreign: foreign feeder funds transferring assets abroad to their foreign customers and other foreign transferees." *ET Decision*, 513 B.R. at 227.

He did not, however, dismiss any complaints, including the *CACEIS Complaint*. Instead, he returned the cases involving the Participating Subsequent Transferees to this Court "for further proceedings consistent with this Opinion and Order." *Id.* at 232. Consequently, the Court must examine the allegations in the complaints or the proposed amendments involving the Participating Subsequent Transferees to determine if the alleged transfers require the extraterritorial application of § 550(a)(2), or, as the *Nabisco* Court explained, whether "the conduct relevant to the statute's focus occurred in the United States," *Nabisco*, 136 S. Ct. at 2101, bearing in mind that "it is a rare case of prohibited extraterritorial application that lacks *all* contact with the territory of the United States." *Morrison*, 561 U.S. at 266 (emphasis in original). Moreover, the Court must decide whether any particular subsequent transfer claim should be dismissed on the ground of international comity.

The District Court's re-referral did not involve the Non-Participating Subsequent Transferees, and the Court is not similarly bound. The Non-Participating Subsequent Transferees nevertheless argue that the *ET Decision* should govern the outcome of their motions to dismiss under the law of the case doctrine. The *ET Decision* was decided in the context of the BLMIS SIPA liquidation, and "different adversary proceedings in a bankruptcy case do not constitute different 'cases.'" (*Subsequent Transferees Brief* at 7-8 (quoting *Bourdeau Bros. v. Montagne* (*In re Montagne*), No. 08-1024 (CAB), 2010 WL 271347, at *6 (Bankr. D. Vt. Jan. 22, 2010)).)

The Court considers the *ET Decision* highly persuasive in the Non-Participating Subsequent Transfer cases, and notes that the parties have approached the disposition of the motions by applying the dictates of the *ET Decision* to the Participating and Non-Participating Subsequent Transferees in the same manner. Furthermore, even if I would reach a conclusion different from Judge Rakoff, applying different rules would lead to conflicting decisions on the same facts. Finally, although the Trustee successfully opposed BLI's efforts to be included with the other Non-Participating Subsequent Transferees, he effectively conceded its inclusion when his counsel stated that the Court should decide BLI's motion for judgment on the pleadings in accordance with the *ET Decision*. Accordingly, all of the motions to dismiss the complaints, and BLI's motion for judgment on the pleadings, will be governed by the *ET Decision*.

B. International Comity

Although the District Court relied on international comity as an alternative basis to dismiss the subsequent transfer claims, I begin there because it presents a more straightforward analysis. The District Court held that "even if the presumption against

extraterritoriality were rebutted, the Trustee's use of section 550(a) to reach these foreign transfers would be precluded by concerns of international comity." *ET Decision*, 513 B.R. at 231. Dismissing an action based on comity is a form of abstention, *JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V.*, 412 F.3d 418, 422 (2d Cir. 2005), by which "states normally refrain from prescribing laws that govern activities connected with another state 'when the exercise of such jurisdiction is unreasonable.'" *Maxwell II*, 93 F.3d at 1047-48 (quoting RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 403(1)).

> Whether so legislating would be "unreasonable" is determined "by evaluating all relevant factors, including, where appropriate," such factors as the link between the regulating state and the relevant activity, the connection between that state and the person responsible for the activity (or protected by the regulation), the nature of the regulated activity and its importance to the regulating state, the effect of the regulation on justified expectations, the significance of the regulation to the international system, the extent of other states' interests, and the likelihood of conflict with other states' regulations.

Id. at 1048 (citing RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 403(2)). When considering a motion to abstain, a "court is not restricted to the face of the pleadings, but may review affidavits and other evidence to resolve factual disputes concerning its jurisdiction to hear the action." *Kingsway Fin. Servs., Inc. v. Pricewaterhousecoopers, LLP*, 420 F. Supp. 2d 228, 233 n.5 (S.D.N.Y. 2005) (quoting *DeLoreto v. Ment*, 944 F. Supp. 1023, 1028 (D. Conn. 1996)).

International comity is especially important in the context of the Bankruptcy Code. *Maxwell II*, 93 F.3d at 1048. First, deference to foreign insolvency proceedings promotes the goals of fair, equitable and orderly distribution of the debtor's assets. *Id.*; *accord Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 713 (2d Cir.1987)

("American courts have long recognized the particular need to extend comity to foreign bankruptcy proceedings."); *Cunard S.S. Co. Ltd. v. Salen Reefer Servs. AB*, 773 F.2d 452, 458 (2d Cir.1985) ("American courts have consistently recognized the interest of foreign courts in liquidating or winding up the affairs of their own domestic business entities."). Second, Congress has explicitly recognized the central concept of comity under chapter 15 of the Bankruptcy Code when providing additional assistance to foreign representatives under 11 U.S.C. § 1507(b).[12] *Cf. Maxwell II*, 93 F.3d at 1048 ("Congress explicitly recognized the importance of the principles of international comity in transnational insolvency situations when it revised the bankruptcy laws. *See* 11 U.S.C. § 304.").

In reaching the conclusion that claims based on foreign transfers should be dismissed out of concern for international comity, the District Court emphasized that many of the foreign BLMIS feeder funds were in liquidation proceedings in their home

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[12] Section 1507(b) provides:

> (b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure-
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> (1) just treatment of all holders of claims against or interests in the debtor's property;
>
> (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;
>
> (3) prevention of preferential or fraudulent dispositions of property of the debtor;
>
> (4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and
>
> (5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

Comity was one of six factors under former Bankruptcy Code § 304, but under § 1507(b), "comity [has been] raised to the introductory language to make it clear that it is the central concept to be addressed." H.R. REP. No. 109-31, at 1507 (2005).

countries subject to their own rules relating to the disgorgement of transfers, the BVI court had already decided in the case of the "Fairfield Funds" – Fairfield Sentry Limited ("Fairfield Sentry"), Fairfield Sigma Limited ("Fairfield Sigma") and Fairfield Lambda Limited ("Fairfield Lambda") – that the liquidators could not reclaim transfers to the feeder fund investors under certain common law theories. The Trustee was attempting to reach around the foreign liquidations to make claims on behalf of a SIPA estate with whom the feeder fund investors – here, the Subsequent Transferees – had no reason to expect that U.S. law would apply to their relationships with the debtor feeder funds. *ET Decision*, 513 B.R. at 232.

The Trustee argues that the District Court did not decide this issue "beyond its potential application to purely foreign subsequent transfers," and its decision is not implicated at all if this Court finds that the transfers were "sufficiently domestic to apply United States law." (*Trustee Brief* at 33 ("[I]f this Court determines after analyzing the component events and transactions that the transfers are not foreign but sufficiently domestic to apply United States law, then the District Court's alternative rationale of comity is not implicated.").) However, the *ET Decision* plainly stated the opposite, holding that comity considerations required dismissal "even if the presumption against extraterritoriality were rebutted." *ET Decision*, 513 B.R. at 231; *accord Maxwell II*, 93 F.3d at 1047 (international comity is separate from the presumption against extraterritoriality, and may be applied to preclude the application of a U.S. statute to conduct clearly subject to that statute).

The Trustee next implies that Judge Rakoff got it wrong. He argues that for comity to apply, the defendants must demonstrate that "(i) parallel proceedings in the

United States and overseas constitute a true conflict between American law and that of a foreign jurisdiction and (ii) the specific facts . . . are sufficiently *exceptional* to justify abstention' to outweigh the district court's general obligation to exercise its jurisdiction." (*Trustee Brief* at 34 (citations and quotation marks omitted) (emphasis in original).) According to the Trustee, BLMIS is not the subject of a parallel liquidation proceeding overseas and no exceptional circumstances support the application of comity. (*Id.* at 34-37.)

Judge Rakoff plainly ruled that comity applies at least where the feeder fund that was the initial transferee was the subject of a foreign liquidation proceeding with its own rules of disgorgement. Moreover, the Trustee misapprehends the branch of the comity doctrine invoked by Judge Rakoff. The Second Circuit has recognized that "international comity" describes two distinct doctrines: first, "as a canon of construction, it might shorten the reach of a statute; second, it may be viewed as a discretionary act of deference by a national court to decline to exercise jurisdiction in a case properly adjudicated in a foreign state, the so-called comity among courts." *Maxwell II*, 93 F.3d at 1047; *accord Bigio v. Coca-Cola Co.*, 448 F.3d 176, 178 (2d Cir. 2006) (Rakoff, J., sitting by designation), *cert. denied*, 549 U.S. 1282 (2007).

The Trustee's dual factors (parallel proceedings and exceptional facts) apply to the latter branch of comity – comity among courts. *See, e.g., Royal & Sun Alliance Ins. Co. of Canada v. Century Int'l Arms, Inc.*, 466 F.3d 88, 92-97 (2d Cir. 2006). Comity among courts is inapplicable here because there are no parallel foreign avoidance actions in which the Trustee seeks to recover from the Subsequent Transferees. Instead, Judge Rakoff was referring to comity among nations, a canon of construction that limits

the reach of the Bankruptcy Code's avoidance and recovery provisions. *ET Decision*, 513 B.R. at 231 ("Courts conducting a comity analysis must engage in a choice-of-law analysis to determine whether the application of U.S. law would be reasonable under the circumstances . . . .").

Comity among nations does not require parallel proceedings, and Judge Rakoff was not referring to the existence or nonexistence of parallel proceedings involving BLMIS. Instead, the reference to foreign proceedings in which the liquidators asserted claims for similar relief against the feeder fund investors informed his conclusion that those foreign jurisdictions had a greater interest in the application of their own laws than the United States had in the application of U.S. law. *See ET Decision*, 513 B.R. at 232 ("Given the indirect relationship between [BLMIS] and the transfers at issue here, these foreign jurisdictions have a greater interest in applying their own laws than does the United States.").

The District Court illustrated this conclusion with references to the Fairfield Sentry liquidation in the BVI. Fairfield Sentry had invested 95% of its funds with BLMIS, and went into liquidation in the BVI shortly after the disclosure of Madoff's Ponzi scheme. Prior to the disclosure of Madoff's fraud and the Fairfield Sentry liquidation, Fairfield Sentry shareholders who redeemed their shares were paid redemption prices based upon the Net Asset Value ("NAV") of their shares, which, in turn, was based on the assumed total value of Fairfield Sentry's assets. In computing NAVs, Fairfield Sentry assigned substantial value to its investment in BLMIS, but the subsequent revelation of Madoff's Ponzi scheme, and the worthlessness of the BLMIS

investments, meant that the earlier computations of NAV and the redemption prices were wrong and grossly inflated.

Fairfield Sentry, acting at the behest of the BVI liquidators, sued the redeeming shareholders in the BVI (the "BVI Redeemer Actions") to recover the redemption payments. It argued that the shareholders had redeemed their investments at an inflated price based upon an erroneous computation of the NAV that governed the redemption price of their shares. The defendants in the BVI Redeemer Actions are the immediate Subsequent Transferees of Fairfield Sentry, the initial transferee of BLMIS in many of the cases before this Court.

In *Fairfield Sentry Ltd. v. Migani*, [2014] UKPC 9, the Privy Council affirmed the lower courts and dismissed Fairfield Sentry's claims against the redeemers. The Privy Council concluded that the redemption price was determined at the time of the redemption based on the facts then known and not upon information that subsequently became available. *See id.* at ¶¶ 2, 24, 30-31. The court further concluded that although the subscription agreements signed by the redeemers contained a New York choice of law provision, New York law was irrelevant. Fairfield Sentry's right to recover the redemptions depended on the articles of association and was governed by BVI law. *Id.* at ¶ 20.

The Fairfield Sentry liquidators also brought redeemer actions in New York (the "US Redeemer Actions," and with the BVI Redeemer Actions, the "Redeemer Actions"). The background to the US Redeemer Actions is discussed in *In re Fairfield Sentry Ltd.*, 458 B.R. 665 (S.D.N.Y. 2011). In April 2010, the liquidators began filing lawsuits in

New York state court against banks that had purchased shares in Fairfield Sentry and against their customers to whom they had resold the shares – the unknown beneficial owners. *Id.* at 671-72. The liquidators initially asserted only state law claims for money had and received, unjust enrichment, mistaken payment and constructive trust, advancing the same theory of recovery as the BVI Redeemer Actions. *Id.* at 672.

In June 2010, the liquidators filed a chapter 15 proceeding which was recognized by this Court. The liquidators subsequently commenced substantially similar US Redeemer Actions in this Court, and removed the state court actions to this Court. *Id.* As of today, there are 305 US Redeemer Actions pending before the Court, (*see Notice of Status Conference*, dated July 8, 2016 (ECF Adv. Proc. No. 10-03496 Doc. # 898)), involving 747 defendants. (*Transcript of July 28, 2016 Hr'g.* at 8 (ECF Adv. Proc. No. 10-03496 Doc. # 906).)[13] In addition to their original state law claims, the liquidators have amended or propose to amend many of the complaints in the US Redeemer Actions to assert statutory claims under the BVI Insolvency Act (the "BVI Act").

The Amended Complaint in *Fairfield Sentry Ltd. (in Liquidation) v. UBS Fund Servs. (Ireland) Ltd.* (*In re Fairfield Sentry Ltd.*), Adv. Proc. No. 11-01258 (Bankr. S.D.N.Y.) is typical. It asserts claims to recover unfair preferences under section 245 of the BVI Act[14] paid to UBS Ireland and the beneficial shareholders. It also asserts claims

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[13] The defendants in forty-one removed actions moved to remand those actions to state court. The proceedings ordered by the District Court in connection with those motions has been held in abeyance while litigation proceeded in the BVI.

[14] Section 245 of the BVI Insolvency Act provides in pertinent part:

> (1) Subject to subsection (2), a transaction entered into by a company is an unfair preference given by the company to a creditor if the transaction (a) is an insolvency transaction; (b) is entered into within the vulnerability period; and (c) has the effect of putting the creditor into a position which, in the event of the company going into

against the same defendants to recover "undervalue" transactions, which correspond to U.S. constructive fraudulent transfer claims, under section 246 of the BVI Act.[15] If the liquidators prevail on their BVI statutory claims, the court may avoid the transaction in whole or in part, restore the parties to the position they would have been in if they had not entered into the transaction, BVI Act § 249(1)(a), (b), and under certain circumstances, follow the property into the hands of third parties. *See* BVI Act §§ 249, 250. In short, the Fairfield Sentry liquidators have brought substantially the same claims against substantially the same group of defendants to recover substantially the same transfers brought by the Trustee against the Fairfield Sentry Subsequent Transferees.

Although the District Court did not specifically mention the "Kingate Funds" – Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd. – its liquidators have also brought actions that mirror the Trustee's claims in this Court. The Kingate Funds were BLMIS feeder funds that suffered the same fate as the Fairfield Funds, and wound up in

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insolvent liquidation, will be better than the position he would have been in if the transaction had not been entered into.

(2) A transaction is not an unfair preference if the transaction took place in the ordinary course of business. . . .

[15] Section 246 of the BVI Insolvency Act provides in pertinent part:

(1) Subject to subsection (2), a company enters into an undervalue transaction with a person if (a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration; or (b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company; and (c) in either case, the transaction concerned (i) is an insolvency transaction; and (ii) is entered into within the vulnerability period.

(2) A company does not enter into an undervalue transaction with a person if (a) the company enters into the transaction in good faith and for the purposes of its business; and (b) at the time when it enters into the transaction, there were reasonable grounds for believing that the transaction would benefit the company. . . .

liquidation in Bermuda and the BVI. Acting through their liquidators, the Kingate Funds brought suit in Bermuda against several service providers (Kingate Management Limited ("KML")[16] and FIM Limited and FIM Advisors (collectively, "FIM")) and their direct and indirect shareholders and affiliates, as the ultimate recipients, to recover overpaid fees based on erroneous NAVs under both legal and equitable theories. (*See Amended Statement of Claim*, dated Feb. 12, 2012, annexed as Exhibit A to the *Reply Declaration of Anthony M. Gruppuso, Esq.*, dated May 31, 2016 (ECF Adv. Proc. No. 09-01161 Doc. # 273).) The Kingate Funds also asserted tort and breach of contract claims against the service providers and their ultimate owners, Messrs. Carlo Grosso and Federico Ceretti.

In a decision dated September 25, 2015, the Supreme Court of Bermuda rendered its Judgment on Preliminary Issues. *See Kingate Global Fund Ltd.* (*In Liquidation*) *v. Kingate Management Ltd.*, [2015] SC (Bda) 65 Com (Bermuda). Adhering to the Privy Council's decision in *Fairfield Sentry*, the Bermuda court concluded that monthly NAV determinations were binding on the Kingate Funds and their members in the absence of bad faith or manifest error for the purpose of calculating subscription and redemption prices, *id.* at ¶ 81, and were similarly binding with respect the fees paid to KML. *Id.* at ¶ 116. Furthermore, BLMIS' bad faith or manifest error which led to the erroneous calculation of the NAVs did not affect KML's right to fees, *id.* at ¶ 142, but if KML induced the Funds' mistake, KML's contractual entitlement to fees was no defense to the unjust enrichment claim to the extent the payment exceeded the true NAV. *Id.* at ¶ 163.

[16] KML is in liquidation in Bermuda.

The Trustee has sued the same defendants as well as the Kingate Funds and two additional service providers, Citi Hedge Fund Services Limited and HSBC Bank Bermuda Limited. (*See Picard v. Ceretti* (*In re BLMIS*), Adv. Proc. No. 09-01161.) He seeks to avoid the initial transfers to the Kingate Funds, and recover the initial transfers and subsequent transfers from the immediate and mediate transferees of the Kingate Funds. In connection with his efforts, the Trustee sought, *inter alia*, to compel the Bermuda liquidators to produce the discovery that the Bermuda defendants had produced to them. Referring to the Bermuda action during his motion to compel discovery, the Trustee argued that "[i]n this proceeding, the Trustee seeks to recover the same moneys from the same parties." (*Reply Memorandum of Law in Support of the Trustee's Motion to Compel Defendants to Produce Documents and Participate in Discovery,* dated May 31, 2016, at 7 (ECF Adv. Proc. # 09-01161 Doc. # 272).)

The Trustee's subsequent transfer claims arising from initial transfers to the Fairfield Funds and the Kingate Funds (together, sometimes referred to as the "Funds") duplicate the actions brought by the respective liquidators, with limited success, against substantially the same defendants to recover substantially the same transfers. In this respect, the Trustee's claims against the Subsequent Transferees of those funds attempt to reach around the proceedings in those foreign insolvency courts, and subject the common defendants to duplicative claims by different plaintiffs.

As between the United States on the one hand and the BVI and Bermuda on the other, the latter jurisdictions have a greater interest in regulating the activity that gave rise to the common claims asserted by the Trustee and the liquidators. The Funds were formed under foreign law, and their liquidation, including the marshaling of assets and

the payment of claims, is governed by local insolvency law, to which particular deference is due under our own jurisprudence. The United States has no interest in regulating the relationship between the Funds and their investors or the liquidation of the Funds and the payment of their investors' claims. The United States' interest is purely remedial; the Bankruptcy Code allows the Trustee to follow the initial fraudulent transfer into the hands of a subsequent transferee, although the presumption against extraterritoriality, discussed in the next section, may dictate otherwise. In fact, the Trustee has successfully argued that the investors in feeder funds have no recourse under SIPA against the BLMIS customer property estate because they were not customers of BLMIS. *See Kruse v. Bricklayers & Allied Craftsman Local 2 Annuity Fund* (*In re BLMIS*), 708 F.3d 422, 426-28 (2d Cir. 2013); *SIPC v. Jacqueline Green Rollover Account*, 12 Civ. 1039 (DLC), 2012 WL 3042986, at *13 (S.D.N.Y. July 25, 2012), *SIPC v. BLMIS* (*In re BLMIS*), 515 B.R. 161, 169 (Bankr. S.D.N.Y. 2014).

Finally, although the subscription agreements, at least in the case of Fairfield Sentry, were governed by New York law, the Privy Council in *Fairfield Sentry* ruled that the redemptions were governed by the Articles of Association and BVI law. *Migani*, UKPC 9, at ¶ 10. Thus, if the shareholders had any expectations relating to which law governed redemptions, they should have expected BVI law to govern. Furthermore, forum selection and choice of law clauses in agreements do "not preclude a court from deferring on grounds of international comity to a foreign tribunal where deference is otherwise warranted." *Altos Hornos de Mexico*, 412 F.3d at 429. And since the Trustee has not argued that New York law governed any aspect of the relationships between the Kingate Funds and their service providers or their shareholders, there is no basis to

conclude that these transferees should have expected United States or New York law to govern the payments made to them or the recovery of the payments in the event of the Kingate Funds' liquidation.

Accordingly, the recovery of Subsequent Transfers under 11 U.S.C. § 550(a)(2) arising from the avoidance of initial transfers made by BLMIS to the Fairfield Funds or the Kingate Funds is barred under the doctrine of comity as interpreted in the *ET Decision*, and if the initial transfers cannot be avoided, there can be no recovery from subsequent transferees. 11 U.S.C. § 550(a) ("to the extent a transfer is avoided . . . the trustee may recover . . . "). This category includes all of the claims identified in the Chart pertaining to the following adversary proceedings: 09-01161, 09-01239, 10-05346, 10-05348, 10-05351, 10-05355, 11-02149, 11-02493, 11-02537, 11-02538, 11-02539, 11-02540, 11-02541, 11-02542, 11-02553, 11-02554, 11-2568, 11-02569, 11-02570, 11-02571, 11-02572, 11-02573, 11-02730, 11-02731, 11-02762, 11-02763, 11-02910, 11-02922, 11-02923, 11-02925, 11-02929, 12-01002, 12-01004, 12-01005, 12-01019, 12-01021, 12-01022, 12-01023, 12-001025, 12-01046, 12-01047, 12-01194, 12-01195, 12-01202, 12-01205, 12-01207, 12-01209, 12-01210, 12-01211, 12-01216, 12-01512, 12-01513, 12-01565, 12-01566, 12-01577, 12-01669, 12-01676, 12-01677, 12-01680, 12-01690, 12-01693, 12-01694 and 12-01695. In addition, the claims against BLI are based on subsequent transfers from Fairfield Sentry, the initial transferee. *See BLI*, 480 B.R. at 506-07. Furthermore, all of the subsequent transfers alleged in Adv. Proc. Nos. 12-01697 and 12-01700 and identified in the Chart originated with Fairfield Sentry or Fairfield Sigma. These claims are dismissed on comity grounds and leave to amend is denied.

In several multi-defendant, multi-transferor adversary proceedings, the following defendants received subsequent transfers only from the Fairfield Funds or the Kingate Funds:

Table 1

Adv. Proc. No.	Subsequent Transferee
09-01364	HSBC Private Bank (Suisse) S.A.
10-05120	BGL BNP Paribas S.A.
10-05353	Natixis; Tensyr Ltd.
11-02758	Caseis Bank
11-02784	Somers Nominees (Far East) Ltd.
12-01576	BGL BNP Paribas Luxembourg S.A.; BNP Paribas (Suisse); BNP Paribas S.A.
12-01698	Banque Internationale a Luxembourg (Suisse) S.A. (f/k/a Dexia Private Bank (Switzerland) Ltd.); Banque Internationale a Luxembourg S.A. (f/k/a Dexia Banque Internationale a Luxembourg S.A.), individually and as successor in interest to Dexia Nordic Private Bank S.A.; RBC Dexia Investor Services Bank S.A.; RBC Dexia Investors Services España, S.A.
12-01699	Royal Bank of Canada; Royal Bank of Canada Trust Company (Jersey) Ltd.; Royal Bank of Canada (Asia) Ltd.; Royal Bank of Canada (Suisse) S.A.; RBC Dominion Securities Inc.

These subsequent transfer claims are dismissed, and leave to amend is denied.

Finally, the Chart indicates that the following Subsequent Transferees received subsequent transfers from the Kingate Funds and/or the Fairfield Funds as well as another transferor:

Table 2

Adv. Proc. No.	Subsequent Transferee
10-05120	BNP Paribas Securities Services S.A.
11-02758	Caceis Bank Luxembourg
11-02784	Somers Dublin Ltd.
12-01273	Mistral (SPC)
12-01278	Zephyros Ltd.
12-01576	BNP Paribas Arbitrage SNC; BNP Paribas Bank & Trust Cayman Ltd.; BNP Paribas Securities Services, S.A.; BNP Paribas Securities Services Succursale de Luxembourg
12-01699	Guernroy Ltd.; Royal Bank of Canada (Channel Islands) Ltd.
12-01702	Dove Hill Trust

These claims are dismissed (and the Trustee's motions for leave to amend are denied), to the extent the Fairfield Funds or the Kingate Funds received the initial transfers, again for the same reasons.

Judge Rakoff also observed that Harley International ("Harley") was in liquidation in the Cayman Islands, *ET Decision*, 513 B.R. at 225 (citing *CACEIS Complaint*). According to the Chart, Harley made transfers to the following defendant Subsequent Transferees:

Table 3

Adv. Proc. No.	Subsequent Transferee
09-01364	HSBC Bank PLC
10-05353	Bloom Asset Holdings Fund
11-02758	CACEIS Bank Luxembourg
11-02759	Nomura International PLC
11-02760	ABN AMRO Bank N.V.

11-02761	KBC Investments Ltd.
11-02784	Somers Dublin Ltd.
11-02796	BNP Paribas Arbitrage SNC

By order dated Feb. 5, 2010, the Cayman Islands Grand Court, Financial Services Division ("Grand Court"), recognized the Trustee as the sole representative of the BLMIS estate in the Cayman Islands. *In re BLMIS*, 2010 (1) CILR 231, at ¶ 6 (Grand Ct. Cayman Is.). He subsequently issued a summons seeking disclosure, information and documents from the official liquidators relevant to potential causes of action that Harley might have had against any Fortis entity, and in particular, its former administrator, Fortis Prime Fund Solutions (IOM) Ltd. ("Fortis"), now known as ABN AMRO Fund Services (IOM) Ltd. *In re Harley Int'l (Cayman) Ltd.*, 2012(1) CILR 178, at ¶ 5 (Grand Ct. Cayman Is.). The Grand Court dismissed the Trustee's application, because it was "the function of Harley's official liquidators, not the trustee, to investigate whether or not Harley has any cause of action against its former professional service providers." *Id.* After the official liquidators rendered their report and served a copy on the Trustee, the Trustee filed an application to seal it, but the Grand Court denied the sealing application. *Id.* at ¶ 20.

It is not clear whether the Trustee pursued any further relief in the Harley liquidation, but he actively litigated avoidance claims in connection with the Cayman Islands liquidation of two funds operated by the Primeo Fund. One of the Primeo Funds was a feeder fund with its own BLMIS account, but following a restructuring in April 2007, both Primeo Funds operated strictly as sub feeder funds of two BLMIS feeder funds, Alpha Prime Fund Ltd. and Herald Fund SPC. *Picard v. Primeo Fund (In*

Liquidation), 2014(1) CILR 379 ("*Primeo*"), at ¶ 3 (Ct. App. Cayman Is.). The Trustee commenced proceedings against the Primeo Fund as an initial and subsequent transferee to recover preferential and fraudulent transfers under U.S. bankruptcy law and to recover preferences under § 145 of the Cayman Islands Companies Law (or equivalent common law rules). *Id.* at ¶ 5. The Cayman Islands Court of Appeal ultimately ruled that the Trustee was entitled to pursue claims against the Primeo Funds under the avoidance provisions of Cayman Islands law, but not under U.S. law. *Id.* at ¶¶ 55, 57, 59.

As in the case of the Fairfield Funds and the Kingate Funds, the Cayman Islands has a greater interest in regulating the activities that gave rise to the Trustee's subsequent transfer claims, particularly the validity or invalidity of payments by Harley to its investors and service providers. The United States, on the other hand, has no interest in regulating the transfers from a foreign fund to its investors or service providers. The only U.S. connection to those transfers is the Trustee's right under the Bankruptcy Code to follow BLMIS' fraudulent transfers into the hands of third parties who did not deal with BLMIS directly. Moreover, the Trustee has asserted claims against other transferees in Cayman Islands liquidation proceedings, and the Cayman Islands Court of Appeal has acknowledged his right to sue in the Cayman Islands and invoke Cayman Islands avoidance law. Finally, those who invested in Harley and lost their investments have no rights against BLMIS, and must seek to recoup their investments through the Cayman Islands liquidation proceedings.

The Subsequent Transferees have also identified three subsequent transferors that are in liquidation in Luxembourg: Luxalpha SICAV, Oreades SICAV and

Luxembourg Investment Fund U.S. Equity Plus. Although the principles discussed above might suggest that any Subsequent Transfer claims emanating from transfers by these debtors should also be barred, the Court is not prepared to reach this conclusion on the current state of the record. The Court has not been directed to any information regarding those liquidations, whether Luxembourg law allows the liquidator to avoid and recover preferences or fraudulent transfers (regardless of what they are called) and whether the Trustee is attempting to make an end-run around those proceedings. Accordingly, the Court declines to dismiss those claims or deny leave to amend on the basis of comity, without prejudice to any party's right to supplement the record through an appropriate motion.

C. Extraterritoriality

1. Introduction

The Court next considers the balance of the claims under the doctrine of extraterritoriality and whether the allegations supplied in the complaints and/or proffers rebut the presumption against extraterritoriality by alleging, in each case, a domestic transfer. The rules that govern motions to dismiss under Federal Civil Rule 12(b)(6) apply to this branch of the motions to dismiss. To state a legally sufficient claim, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted); *accord Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678; *accord Twombly*, 550 U.S. at 556. Courts do not

decide plausibility in a vacuum. Determining whether a claim is plausible is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 556. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557).

The *ET Decision* was concerned with foreign transfers. It did not, however, define or provide a test to determine when a transfer was "foreign" except that "purely foreign transfers" – transfers between two foreign entities that do not reside in the United States using non-U.S. bank accounts (or correspondent U.S. bank accounts) – are obviously "foreign." The Subsequent Transferees argue that a party is "foreign" if it was formed under foreign law, as all of the non-individual Subsequent Transferees were, or is the citizen of another nation as are the two individual Subsequent Transferees discussed below. (*Subsequent Transferees Brief* at 12.) However, the *ET Decision* never mentioned "citizenship" or "domicile," although it did highlight the place of organization as the *sine qua non* of foreignness. *See ET Decision*, 513 B.R. at 227-28 (discussing the facts in *Midland Euro Exchange*). In addition, the District Court stated that "to the extent that the Trustee's complaints allege that both the transferor and the transferee reside outside of the United States, there is no plausible inference that the transfer occurred domestically." *ET Decision*, 513 B.R. at 232 n. 4. While meant as an admonition directed to the Trustee, the statement suggests that a transfer between two

entities organized under foreign law might nonetheless be domestic if the parties "resided" in the United States.

The District Court did not explain what it meant by "reside," but it meant something more than mere presence. "[E]ven where the claims touch and concern the territory of the United States, they must do so with sufficient force to displace the presumption against extraterritorial application. See *Morrison,* 561 U.S. 247, 130 S. Ct. at 2883–2888. Corporations are often present in many countries, and it would reach too far to say that mere corporate presence suffices." *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1669 (2013).

In addition, it does not appear that that the District Court equated residence for purposes of extraterritoriality with the test for personal jurisdiction as the Trustee seems to do. First, the tests for personal jurisdiction and extraterritoriality are not the same. *Absolute Activist Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60, 69 (2d Cir. 2012) ("Ewing's lack of contact with the United States may provide a basis for dismissing the case against him for lack of personal jurisdiction . . . but the transactional test announced in *Morrison* does not require that each defendant alleged to be involved in a fraudulent scheme engage in conduct in the United States.").

Second, the *CACEIS Complaint* included numerous allegations relating to personal jurisdiction:

> 6. The CACEIS Defendants are subject to personal jurisdiction in this judicial district because they purposely availed themselves of the laws and protections of the United States and the state of New York by, among other things, knowingly directing funds to be invested with New York-based BLMIS through the Feeder Funds. The CACEIS

> Defendants knowingly received subsequent transfers from BLMIS by withdrawing money from the Feeder Funds.
>
> 7. By directing investments through Fairfield Sentry, a Fairfield Greenwich Group ("FGG") managed Madoff feeder fund, the CACEIS Defendants knowingly accepted the rights, benefits, and privileges of conducting business and/or transactions in the United States and New York. Upon information and belief, the CACEIS Defendants entered, or caused their agent to enter, into subscription agreements with Fairfield Sentry under which they submitted to New York jurisdiction, sent copies of the agreements to FGG's New York City office, and wired funds to Fairfield Sentry through a bank in New York. In addition, the CACEIS Defendants are part of the CACEIS Group, which maintains an office in New York City. The CACEIS Defendants thus derived significant revenue from New York and maintained minimum contacts and/or general business contacts with the United States and New York in connection with the claims alleged herein.

(*CACEIS Complaint* at ¶¶ 6-7.) Despite these allegations, the District Court held that the "subsequent transfers that the Trustee seeks to recover are foreign transfers." *ET Decision*, 513 B.R. at 228.[17] The District Court also discounted the allegation that "the

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[17] The Trustee points out that the *ET Decision* did not mention the personal jurisdiction allegations, (*Trustee's Brief* at 21-22), and adds that the District Court erroneously concluded that the *CACEIS Complaint* did not allege a New York choice of law provision. (*Id.*at 22 n. 93.) The text in the *CACEIS Complaint* spanned just nineteen pages. Judge Rakoff undoubtedly read it, and his failure to mention the allegations relating to personal jurisdiction implies that he deemed them to be irrelevant to the issue of extraterritoriality.

In addition, the Trustee is wrong when he says that the *CACEIS Complaint* alleged that the CACEIS subscription agreements contained New York choice of law clauses and that Judge Rakoff wrongly concluded that they did not. Rather, the *CACEIS Complaint* alleged that subscription agreements that the CACEIS defendants signed included a submission to New York jurisdiction. (*CACEIS Complaint* ¶ 7 ("Upon information and belief, the CACEIS Defendants entered, or caused their agent to enter, into subscription agreements with Fairfield Sentry under which they submitted to New York jurisdiction. . . .").) In fact, the Fairfield Sentry liquidators have sued the CACEIS defendants in this Court to recover the same subsequent transfers/redemptions under both New York and BVI law, asserting personal jurisdiction, *inter alia*, under subscription agreements that include a provision containing a submission to jurisdiction in New York without mentioning that New York law governs. *See Fairfield Sentry Ltd. (In Liquidation) v. CACEIS Bank Luxembourg,* Adv. Pro. No. 10-03624 (SMB) (Bankr. S.D.N.Y.) (ECF Adv. Pro. No. 10-03624 Doc. # 31, at ¶ 21); *Fairfield Sentry Ltd. (In Liquidation) v. CACEIS Bank EX IXIS IS,* Adv. Pro. No. 10-03871 (SMB) (Bankr. S.D.N.Y.) (ECF Adv. Pro. No. 10-03871 Doc. # 22, at ¶ 21). Finally, the reference to the absence of a New York choice of law provision and

CACEIS Defendants are part of the CACEIS Group, which maintains an office in New York City."

Rather, it appears that the District Court was concerned with where the parties conducted their operations. Its conclusion that the CACEIS defendants were foreign was based on the fact that they were organized and "operating" in foreign countries. *ET Decision*, 513 B.R. at 225. On the other hand, several of the feeder funds involved in these cases were organized in one country but maintained no operations or office other than a post office box in their home country, did not employ anyone in the home country, and were organized as exempt companies that could not solicit investors in their own countries. Instead, they were run from another location, often New York, by the employees of affiliated entities, and identified the affiliate's address as their own when conducting business. In addition, one subsequent transferor, Fairfield Greenwich Limited (Cayman), was registered to do business in New York. Where the Trustee alleges non-conclusory facts to the effect that the subsequent transferor and Subsequent Transferee conducted their principal and only operations in the United States and maintained their bank accounts in the United States, it is plausible to infer that the subsequent transfer occurred domestically.

This brings me to the critical factor – where the transfer occurred. Judge Rakoff's reference to where the parties resided was secondary. While the U.S. citizenship or residency of the parties may support the inference that the transaction is domestic, the

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creditor expectations appeared in the portion of the *ET Decision* addressing comity, not extraterritoriality. *ET Decision*, 513 B.R. at 232.

focus is the location of the transfer and not the location of the parties to the transfer; and a transfer from one foreign account to another foreign account is still a foreign transfer. *See Absolute,* 677 F.3d at69 ("While it may be more likely for domestic transactions to involve parties residing in the United States, '[a] purchaser's citizenship or residency does not affect where a transaction occurs; a foreign resident can make a purchase within the United States, and a United States resident can make a purchase outside the United States.'") (quoting *Plumbers' Union Local No. 12 Pension Fund v. Swiss Reins. Co.,* 753 F. Supp. 2d 166, 178 (S.D.N.Y.2010)). Furthermore, a mere allegation that the transaction "took place in the United States" is insufficient to allege a domestic transaction, "[a]bsent factual allegations suggesting that the Funds became irrevocably bound within the United States or that title was transferred within the United States, including, but not limited to, facts concerning the formation of the contracts, the placement of purchase orders, the passing of title, *or the exchange of money*." *Id.* at 70 (emphasis added).

In addition, it is necessary to distinguish between the transfer and the steps necessary to carry it out. In *Loginovskaya v. Batrachenko*, 764 F.3d 266 (2d Cir. 2014), decided after the *ET Decision*, the Court dealt with the extraterritorial application of § 22 of the Commodity Exchange Act ("CEA"). There, the plaintiff was a Russian citizen and resident; the defendant was a U.S. citizen residing in Moscow, and the CEO of the Thor Group, an international financial services group based in New York that managed investment programs chiefly in commodities futures and real estate. Investors would invest in Thor United which, in turn, was supposed to invest in one of the Thor programs. The defendant induced the plaintiff to invest in the Thor program, she

transferred $720,000 to Thor United's bank accounts in New York, but eventually lost her investment. *Id.* at 268-69.

The plaintiff sued the defendant alleging that he had engaged in fraudulent conduct in violation of CEA § 40.[18] Applying its holding in *Absolute*, the Court explained that in order for the plaintiff to rebut the presumption against extraterritoriality and demonstrate that her investment was a domestic transaction, she would have to show that "the transfer of title or the point of irrevocable liability for such an interest occurred in the United States." *Id.* at 274. The plaintiff purchased an interest in Thor United, and the investment contracts with Thor United were negotiated and signed in Russia. *Id.* Although Thor United was incorporated in New York, "a party's residency or citizenship is irrelevant to the location of a given transaction." *Id.* (quoting *Absolute,* 677 F.3d at 70) (internal quotation marks omitted). Furthermore, although the plaintiff transferred her funds to Thor United's bank account in New York,

> [t]hese transfers . . . were actions needed to carry out the transactions, and not the transactions themselves — which were previously entered into when the contracts were executed in Russia. The direction to wire transfer money to the United States is insufficient to demonstrate a domestic transaction.

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[18] Section 40 states in pertinent part as follows:

> (1) It shall be unlawful for a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—
>
> (A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or
>
> (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

7 U.S.C. § 6*o*(1) (2008).

Id. at 275.

The *ET Decision* imposed additional limitations on the Trustee's ability to allege a domestic transfer. First, a transfer to a correspondent bank located in the United States is not a domestic transfer for purposes of extraterritoriality. *ET Decision*, 513 B.R. at 228 n. 1. "Correspondent accounts are accounts in domestic banks held in the name of foreign financial institutions. Typically, foreign banks are unable to maintain branch offices in the United States and therefore maintain an account at a United States bank to effect dollar transactions." *Licci v. Lebanese Canadian Bank, SAL,* 673 F.3d 50, 56 n. 3 (2d Cir.2012) (citations and internal quotation marks omitted), *certifying questions to* 984 N.E.2d 893 (N.Y. 2012). In this way, the use of a correspondent bank facilitates the transfer of dollar-denominated payments to a foreign country. The District Court's pronouncement reflects the view that although the purposeful use of a correspondent bank account may support personal jurisdiction, *Official Comm. of Unsecured Creditors v. Bahrain Islamic Bank*, 549 B.R. 56, 68 (S.D.N.Y. 2016), the routing of transfer to a U.S. bank account to facilitate the transfer to a foreign bank account is not a domestic transaction for extraterritoriality purposes. *See Cendeño v. Intech Grp., Inc.*, 733 F. Supp. 2d 471, 472 (S.D.N.Y. 2010) (concluding that RICO did not apply extraterritorially where the scheme's contacts with the United States were limited to the movement of funds into and out of U.S. based bank accounts), *aff'd*, 457 F. App'x. 35 (2d Cir. 2012); *Maxwell I*, 186 B.R. at 817 n. 5 (debtor's payment of overdraft debt owed to U.K. bank, routed through the creditor's U.S. account and

immediately credited to the U.K. overdraft, was not a domestic transfer).[19]

Second, the *ET Decision* implies that an otherwise extraterritorial subsequent transfer beyond the reach of § 550(a)(2) cannot be drawn back as the result of a later, subsequent transfer of the funds to the United States. The Trustee had argued before the District Court that the policy of § 550(a) would be undermined if a U.S. debtor could intentionally transfer its money offshore and retransfer it to the United States to avoid the reach of the Bankruptcy Code. *ET Decision*, 513 B.R. at 231. Judge Rakoff rejected the policy argument, stating that in such a circumstance, "the Trustee here may be able to utilize the laws of the countries where such transfers occurred to avoid such an evasion while at the same time avoiding international discord." *Id.* The statement suggests that once funds have been transferred beyond the territorial reach of the recovery provisions under Bankruptcy Code § 550(a)(2), the re-transfer of those funds back to the United States cannot be recovered as a subsequent transfer under the Bankruptcy Code.

Third, the District Court did not adopt *Maxwell I*'s "component events" test, at least as the Trustee reads it. Trustee advocates for an expanded test to determine that a transfer is domestic, including the following "component events" he derives from *Maxwell I*:

> (i) the debtor's location; (ii) the defendants' location; (iii) where the defendants engaged in business regarding the transaction; (iv) what

[19] The Court is bound to apply the District Court's ruling on the use of a correspondent bank account. Nevertheless, if title to the cash passed to the Subsequent Transferee when it reached a U.S. correspondent bank account, and the Subsequent Transferee was then free to use the money as it saw fit, the transfer occurred domestically under the Second Circuit case law discussed earlier. Moreover, the transferee may have made subsequent transfers from the U.S. correspondent bank account to other domestic transferees, and consequently, the funds may never have left the United States.

> transaction and agreements the parties entered into that led to the debt that the transfers were used to pay; (v) where the parties' relationship was centered when conducting the transaction underlying the debt that triggered the transfers; (vi) the law governing the parties' transactions; and (vii) how the transaction was concluded.

(*Trustee Brief* at 18.)[20] Initially, the continuing relevance of certain "component events" that the Trustee culls from *Maxwell I* is open to question. *Maxwell I* was decided when the "conduct" and "effect" tests were controlling law in this Circuit, and several of the "component events" identified by the Trustee refer to where conduct "relating to" the transfer occurred rather than where the transfer itself occurred. These include "where the defendants engaged in business regarding the transaction" and "where the parties' relationship was centered when conducting the transaction underlying the debt that triggered the transfers." (*Trustee's Brief* at 18.) *Morrison* subsequently abrogated the "conduct" and "effects" tests because they led to unpredictable results, Morrison, 561 U.S. at 256, 261; *accord Loginovskaya*, 764 F.3d at 274 n. 9 (stating that *Morrison* dispensed with the "conduct and effects" test), and the Trustee's conduct-related "component events" call for the type of analysis that *Morrison* rejected.

Similarly, the *Maxwell I* Court distinguished certain conduct as "preparatory" to the transfers. *Maxwell I*, 186 B.R. at 817 ("Even assuming that the transfers were

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[20] I do not adopt the Trustee's characterization of the "component events" identified by the *Maxwell I* Court. Ruling that the transfers were extraterritorial, the *Maxwell I* Court observed that the debtor's and the transferee banks' relationship was centered in England, the transfers satisfied antecedent debts that arose in England, and the debtor repaid the debts by transferring the funds to the U.K. *Maxwell I*, 186 B.R. at 817. The U.S. sale that was the source of the funds was also a component event, but was "more appropriately characterized as a preparatory step to the transfers," and was "insufficient—in light of the absence of any other domestic connection—to characterize the transfers as occurring within the borders of the U.S." *Id.* Notably, the District Court focused on the location of the recipients. The debtor-transferor was an English holding company but its United States affiliates accounted for most of the debtor's asset pool. *See id.* at 812.

initiated in the U.S. after the U.S. assets were sold, this conduct is more appropriately characterized as a preparatory step to the transfers.") (citing *Gushi Bros. Co. v. Bank of Guam,* 28 F.3d 1535, 1538 (9th Cir.1994) ("[C]onduct occurring within the United States which, standing alone, is merely preparatory or incidental to the proscribed conduct does not confer ... jurisdiction.")). The *Morrison* Court expressly criticized the distinction between "merely preparatory" conduct in the United States and conduct in the United States that rendered the transaction domestic. *Morrison*, 561 F.2d at 258.

In truth, the conduct to which the Trustee points was, at most, those "actions needed to carry out the transactions, and not the transactions themselves." *Loginovskaya*, 764 F.3d at 275.

2. The Nineteen Chart Factors

In furtherance of his argument that the subsequent transfers in these cases were predominately domestic, the Trustee's submission included the Chart that was required by the *Scheduling Order*. (*Trustee's Brief*, Ex. 2-A, 2-B.) The Chart listed and explained nineteen factors he argued were germane to the determination whether to dismiss a complaint on extraterritoriality grounds, and showed which factors applied to each case. Many of the factors are patently irrelevant under the criteria discussed in the *ET Decision* and the Second Circuit cases discussed above. Some relate to the selection of United States governing law or venue in the agreements between the subsequent transferor and transferee (Factors 2, 3). These contract provisions have nothing to do with where the parties exchanged the cash. And alleging that a feeder fund paid a fee to a defendant Subsequent Transferee using BLMIS customer property, (Factor 14), is just another way of saying the feeder fund transferred customer property, an essential

element of a subsequent transfer claim. It says nothing about the domestic nature of the transfer.

Other factors center on the Subsequent Transferee's knowledge that it was entrusting or investing assets with a foreign feeder fund that entrusted or invested the feeder fund's assets with BLMIS for the supposed purpose of investing in U.S. equity and Treasury securities in the United States. (Factors 4-7.) Judge Rakoff considered the U.S. origin of the initial transfer, and rejected it. *ET Decision*, 513 B.R. at 228 ("Although the chain of transfers originated with Madoff Securities in New York, that fact is insufficient to make the recovery of these otherwise thoroughly foreign subsequent transfers into a domestic application of section 550(a)."). In addition, the *CACEIS Complaint* alleged that the defendants had knowingly invested with the New York-based BLMIS through the feeder funds, but that allegation did not affect Judge Rakoff's conclusion that the subsequent transfers were foreign. A Subsequent Transferee's knowledge that it was investing in a foreign feeder fund that it knows will invest or entrust money with BLMIS does not, without more, render the subsequent redemption of that investment domestic.

Two other factors refer to fees received based on BLMIS' performance or fees for investing with a feeder fund or soliciting others to invest in the fund. (Factors 14, 15.) None of these factors or their underlying allegations pertain to the factors on which Judge Rakoff focused: the "foreignness" of the parties and the location of the sending and receiving bank accounts.

The Trustee also places significance on the fact that some Subsequent Transferees filed customer claims in the BLMIS liquidation. (Factor 17.) The Subsequent Transfers have no relevance to the customer claim. The customer's net equity claim is determined under the Net Investment Method approved by the Second Circuit in *In re BLMIS*, 654 F.3d 229 (2d Cir. 2011), *cert. denied,* 133 S. Ct. 24 (2012), and computes the difference between the amount the customer deposited and the amount he withdrew. The relevant withdrawals are the initial transfers the customer received from BLMIS, not the subsequent transfers a third-party received from a BLMIS customer such as a feeder fund. If the Subsequent Transferee was also a BLMIS investor, the third party subsequent transfers are unrelated to his net equity claim. If, on the other hand, the Subsequent Transferee was not a BLMIS investor and is asserting a BLMIS claim to recover his investment in the feeder fund, the Trustee has successfully argued that feeder fund investors were not BLMIS customers under SIPA, and as discussed above in the comity section of this opinion, do not have allowable net equity claims for that reason.

Finally, many of the factors relied on by the Trustee touch on the actions by the Subsequent Transferee in its own right or through a U.S. affiliate or U.S. service provider relating to its investment in the feeder fund and BLMIS. These include allegations that the Subsequent Transferee conducted due diligence in the United States, or used U.S. affiliates or U.S. agents for this and other purposes, in connection with the transfers or transactions at issue. (Factors 8-11.) Other factors relate more generally to a relationship between the feeder fund and the Subsequent Transferee. These include allegations that the parties "had significant U.S. connections by virtue of the Defendant's

communications with specific Feeder Fund offices, sales representatives, agents, employees, and/or other representatives located in the U.S," (Factor 13), or the Subsequent Transferee "participated in Feeder Fund management, and/or is an entity created by, or for the benefit of, Feeder Fund management." (Factor 16.)

The proffers discussed below rely heavily on these U.S. connections and include allegations that the U.S. agents or U.S. affiliates dominated and controlled the Subsequent Transferee, and actually conducted its operations. The Trustee cites *SEC v. Gruss*, No. 11 Civ. 2420, 2012 WL 3306166 (S.D.N.Y. Aug. 13, 2012) ("*Gruss II*") for support. (*See, e.g., Trustee's Supplemental Memorandum of Law in Opposition to the Motion to Dismiss Based on Extraterritoriality Filed by Natixis S.A., Bloom Asset Holdings Fund, and Tensyr Limited, and in Further Support of Trustee's Motion for Leave to Amend*, dated June 26, 2015, at 11 n. 9 (stating that the *Gruss* court found that "issues of fact existed regarding whether an offshore fund was "foreign" for purposes of extraterritoriality where complaint alleged that operational and investment decisions for the offshore fund were made in New York, 'such that for all intents and purposes, the [offshore fund] was based in New York.'") ECF Adv. Pro. No. 10-05353 Doc. # 101).) *Gruss*, however, undercuts rather than supports the Trustee.

In *Gruss*, the defendant was the chief financial officer of DBZCO which managed several, separate hedge funds, including the Onshore Fund and the Offshore Fund, the latter a Cayman Islands fund. *SEC v. Gruss*, 859 F. Supp.2d 653, 655 (S.D.N.Y. 2012) ("*Gruss I*"). The defendant transferred money without authority from the Offshore Fund to the Onshore Fund. The transfers typically occurred between U.S. bank accounts and often involved a transfer to a U.S. entity. *Id.* at 656. The SEC brought an

enforcement action against the defendant alleging that the unauthorized transfers violated the Investment Advisers Act ("IAA").

The defendant moved to dismiss arguing, among other things, that the complaint was barred by the presumption against extraterritoriality. The District Court disagreed. It distinguished the SEC action under the IAA from the private law suit under the Exchange Act in *Morrison*, and concluded that *Morrison* did not apply. In support of its conclusion, the District Court cited section 929P(b) of the Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (2010). Section 929P(b), enacted after *Morrison*, which allows the SEC and U.S. Government to bring certain enforcement actions based on conduct in the United States or conduct outside the United States that has a "foreseeable substantial effect within the United States." *Id.* at 664 & n. 4.[21] The District Court speculated that section 929P(b) restored the "conduct and effects test" for actions brought by the SEC or the Department of Justice. *Id.* at 664 n. 4.

The District Court next concluded that even if *Morrison* applied, the SEC had rebutted the presumption against extraterritoriality because the transactions were domestic. The majority of Offshore Fund investors affected by the unauthorized

[21] Section 929P(b) amended the Securities Act of 1933, the Exchange Act and the IAA by granting the district court jurisdiction over actions or proceedings brought by the SEC or the United States involving "(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or (2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States." In *Parkcentral Global Hub Ltd. v. Porsche Automobile Holdings SE*, 763 F.3d 198 (2d Cir. 2014), the Court of Appeals questioned the import of the post-*Morrison* amendment. *Morrison* made clear that the already district court had subject matter jurisdiction even if the presumption against extraterritoriality meant it could not reach the merits. *Id.* at 211 n 11.

transfers were located in the United States and the investors in both funds were impacted by the fraud. *Id.* at 665. Moreover, the inter-fund transfers occurred domestically between U.S. bank accounts. *Id.* at 665-66.

The District Court then returned to the "conduct and effects test:" "the Complaint alleges other relevant facts that would have been dispositive under the conduct and effects test, which may have been revived with Section 929P(b) of the Dodd–Frank Act." *Id.* at 666. These allegations included New York-based DBZCO's activities relating to and control of the Offshore Fund. It made all operational and investment decisions, monitored its performance and compliance with all regulatory requirements, negotiated the terms of its contracts, retained and borrowed money on its behalf, distributed offering and subscription documents to potential investors and listed the Offshore Fund's address in care of DBZCO at DBZCO's New York address. In addition, accounting services for the Offshore Fund's investment and other activities were performed primarily in New York, DBZCO's investor relations personnel distributed financial and performance information to individual investors, and the Offshore Fund's cash was held at and paid from U.S. bank and brokerage accounts. *Id.*

The Complaint also included allegations quoting or paraphrasing statements in the offering memoranda and financial statements that showed a relationship between U.S.-based securities and the Offshore Fund's investors and investments. For example, the securities were marketed "to permitted U.S. persons . . . [and] to accredited investors and qualified purchasers, as defined by the U.S. securities laws," the investment objectives included investing in U.S. securities, and investors would be required to pay certain U.S. taxes for dividend income and certain other interest from

domestic investments, the auditors of the Offshore Fund were located in New York, investors were instructed to wire their subscription payments to a Citibank account in New York and DBZCO would send shareholders quarterly unaudited financial information from DBZCO. *Id.* The U.S.-based control, connections and decision-making cited by the District Court read like the Trustee's playbook; the same allegations permeate the Trustee's proffers.

Following the denial of the motion to dismiss, the defendant sought to certify an appeal to the Court of Appeals, arguing, *inter alia*, that the issue for certification presented a controlling question of law regarding extraterritoriality. The District Court denied the motion in *Gruss II*, observing that the controlling question was not purely legal and involved factual questions under the "conducts and effects" test. "For example, while the Offshore Fund's Offering Memoranda stated that it was a foreign entity governed by foreign law, the Complaint alleges that the actual 'operational and investment decisions for the Offshore Fund were all made ... in DBZCO's New York office such that for all intents and purposes, the Offshore Fund was based in New York.'" *Gruss II*, 2012 WL 3306166, at *3. This holding is the portion of the *Gruss II* decision cited by the Trustee to support his contention that the location of the U.S-based management and control are relevant to the question of extraterritoriality.

The Trustee's reliance ignores that the District Court's discussion related to the "conduct and effects" test that, it speculated, had been restored when the SEC or the Government brought the action. As far as the Trustee's subsequent transfer claims are concerned, the "conduct and effects test" was abrogated by *Morrison*, and he cannot rely on the allegations in *Gruss* that the District Court highlighted as relevant to the

extraterritoriality issues raised in that case. While the control or the management of a foreign transferor or transferee by a U.S. affiliate may support the inference that the entity resides in the United States in the limited circumstances discussed earlier, that conduct relating to the transfer occurred in the United States or occurred outside the United States with foreseeable U.S. effects is irrelevant to the extraterritorial analysis.

In the end, the *ET Decision* identifies only four possibly relevant facts to consider in determining whether the Trustee has rebutted the presumption against extraterritoriality: (i) the location of the account from which the transfer was made, (ii) the location of the account to which the transfer was made, (iii) the location or residence of the subsequent transferor and (iv) the location or residence of the Subsequent Transferee. The single most important factor in determining whether the presumption against extraterritoriality has been rebutted is obvious; where did the subsequent transfer – the exchange of cash and passage of title – occur.[22] If the subsequent transfer occurred domestically – from a U.S. account to a U.S. account (excluding a correspondent account) – it is a domestic subsequent transfer. As the Second Circuit explained in *Absolute*, foreign entities can engage in domestic transfers. Conversely, a foreign subsequent transfer between domestic entities is still a foreign subsequent transfer. In addition, where the situs of the subsequent transfer is not alleged, but the Trustee alleges that it occurred between U.S. residents, the *ET Decision* permits the Court to infer that the subsequent transfer was domestic.

[22] The Trustee did not include a factor addressing where the Subsequent Transferor became irrevocably bound to make the transfer to the Subsequent Transferee, presumably because the District Court focused exclusively on the location of the transfer.

Finally, I conclude that a transfer by a U.S. resident from a U.S. account even to a foreign transferee rebuts the presumption against extraterritoriality. The *ET Decision* did not address this possibility. This type of transfer is analogous to the initial transfers by BLMIS to foreign feeder funds. It is true that BLMIS was a U.S. citizen and made initial rather than subsequent transfers, but BLMIS' U.S. citizenship and the subsequent transferor's U.S. residence are analytically the same. No one has suggested that BLMIS' recovery of an avoided transfer from an initial transferee foreign feeder fund is barred by the presumption against extraterritoriality, and there is no reason to treat subsequent transfers by a U.S. resident from a U.S. bank account differently.

The relevant Chart factors are, therefore, few. Only one factor in the Chart, Factor 12, purports to identify instances in which the "Defendant utilized U.S. bank account to receive transfers (includes correspondent accounts maintained by Defendants in their own name at U.S. banks)." As noted, the District Court rejected the notion that the transfer using a U.S. correspondent account made the transfer domestic, and I am bound by that conclusion. The Chart does not include a corresponding factor that the subsequent transferor used a U.S. bank account in connection with the transfer, but the Trustee's proffers include numerous allegations to that effect. Two others touch on the location or residence of the transferor and the Subsequent Transferee. Factor 1 purports to identify the transferors that maintained their principal operations in the United States, suggesting that the United States was their principal place of business. Factor 19 corresponds to those transferees that the Trustee asserts maintained a U.S. office utilized in connection with the transfer. Finally, Factor 18 identifies U.S. citizens that received subsequent transfers.

3. The Disposition of the Motions to Dismiss and Leave to Amend

A substantial number of the Subsequent Transfer claims that were not dismissed on the ground of comity are subject to dismissal based on extraterritoriality and require scant comment. They do not include allegations that the Subsequent Transferee used a U.S. bank in connection with the transactions,[23] that the transferor maintained its principal operations in the United States, that the transferee is a U.S. citizen or that the transferee maintained a U.S. office utilized in connection with the transfer. The following subsequent transfer claims are dismissed on this basis of extraterritoriality:

Table 4

A.P. No.	Defendant-Transferee	Transferor
09-01364	Thema Fund Ltd.	Thema Wise Investments
09-01364	HSBC Securities Services (Luxembourg) S.A.	Alpha Prime Fund Ltd. (Bermuda); Hermes International Fund (BVI); Lagoon Investment Ltd. (BVI); Thema Fund Ltd. (BVI); Lagoon Investment Trust (BVI); Thema Wise Investments (BVI)
09-01364	HSBC Institutional Trust Services (Ireland) Ltd.	Thema International (Ireland)
09-01364	HSBC Securities Services (Ireland) Ltd.	Thema International Fund (Ireland)
09-01364	HSBC Institutional Trust Services (Bermuda) Limited	Alpha Prime Fund Ltd. (Bermuda); Hermes International Fund (BVI); Thema Fund Ltd. (BVI); Thema Wise Investments (BVI); Lagoon Investment Limited (BVI)
09-01364	HSBC Securities Services (Bermuda) Limited	Alpha Prime Fund Ltd. (Bermuda); Thema Fund Ltd. (BVI); Thema Wise Investments (BVI); Lagoon Investment Limited (BVI); Hermes International Fund (BVI);
09-01364	HSBC Fund Services (Luxembourg) S.A.	Hermes International Fund Ltd. (BVI)

[23] Although the Chart indicates in some cases that the defendant used a U.S. bank account in connection with the transaction, the relevant proffer or pleading does not allege that the subsequent transfer was made to a U.S. account.

A.P. No.	Defendant-Transferee	Transferor
09-01364	HSBC Bank Bermuda Limited	Alpha Prime Fund Ltd. (Bermuda); Hermes International Fund (BVI); Thema Fund Ltd. (BVI); Thema Wise Investments (BVI); Lagoon Investment Limited (BVI)
09-01364	Hermes International Fund Limited	Lagoon Investment Ltd. (BVI)
09-01364	Lagoon Investment Trust	Lagoon Investment Ltd. (BVI)
09-01364	Equus Asset Mgmt. Ltd	Thema Fund Ltd. (BVI); Thema International (Ireland); Thema Wise Investments (BVI)
09-01364	Hermes Asset Management Limited	Hermes International Fund (BVI); Lagoon Investment Ltd. (BVI); Lagoon Investment Trust (BVI)
09-01364	Thema Asset Mgmt. (Bermuda)	Thema Fund Ltd. (BVI); Thema Wise Investments (BVI)
09-01364	Thema Asset Management Limited (BVI)	Thema International (Ireland)
10-04285	UBS Third Party Management Company SA	Luxalpha SICAV (Lux.)
10-04285	Access International Advisors Ltd.	Groupement Financier Ltd. (BVI); Luxalpha SICAV (Lux.)
10-04285	Access Management Luxembourg SA (f/k/a Access International Advisors (Luxembourg) SA) as Represented by its Liquidator Maitre Fernand Entringer	Groupement Financier Ltd. (BVI); Luxalpha SICAV (Lux.)
10-04285	Access Partners SA as represented by its Liquidator Maitre Fernand Entringer	Groupement Financier Ltd. (BVI); Luxalpha SICAV (Lux.)
10-05120	Inter Investissements S.A. (f/k/a Inter Conseil S.A.)	Oreades SICAV (Lux.)
10-05311	M&B Capital Advisers Sociedad de Valores, S.A.	Landmark Investment Fund Ireland (Ireland); Luxembourg Investment Fund U.S. Equity Plus (Lux)
10-05311	Reliance Management (Gibraltar)Limited	Luxembourg Investment Fund U.S. Equity Plus (Lux.)
10-05311	UBS Third Party Management Company SA	Luxembourg Investment Fund U.S. Equity Plus (Lux.)

a. *Picard v. UBS AG*, Adv. Pro. No. 10-04285

The Chart identifies the following remaining subsequent transfer claims in this adversary proceeding:

Table 5

A.P. No.	Defendant-Transferee	Transferor
10-04285	UBS AG	Luxalpha SICAV (Lux.); Groupement Financier Ltd. (BVI)
10-04285	UBS (Luxembourg) SA	Groupement Financier Ltd. (BVI); Luxalpha SICAV (Lux.)
10-04285	UBS Fund Services (Luxembourg) SA	Groupement Financier Ltd. (BVI); Luxalpha SICAV (Lux.)
10-04285	Patrick Littaye	Groupement Financier Ltd. (BVI); Luxalpha SICAV (Lux.)
10-04285	Pierre Delandmeter	Groupement Financier Ltd. (BVI); Luxalpha SICAV (Lux.)

Luxalpha and Groupement Financier were BLMIS feeder funds. (*Proffered Second Amended Complaint*, dated June 26, 2015 at ¶2 ("*UBS Proffered SAC*") (ECF Adv. P. No. 10-04285 Doc. # 210).) According to the Chart, the Trustee does not contend that they maintained their principal operations in the United States or were citizens of the United States. (Factors, 1, 18.) Moreover, the *UBS Proffered SAC* alleges that Luxalpha was a Luxembourg fund, (*UBS Proffered SAC* at ¶ 55), and Groupement Financier was a BVI investment fund. (*Id.* at ¶ 61.) In addition, and with three exceptions discussed below, the Chart also indicates that the Subsequent Transferees did not use a U.S. office in connection with the transfers. Hence, the transfers took place between non-U.S. residents. To overcome the presumption against extraterritoriality, the Trustee must therefore allege facts showing that the actual transfer of funds occurred domestically.

The *UBS Proffered SAC* says little about the location of the subsequent transfers. It alleges that "[r]edemptions in U.S. dollars for Groupement Financier, Groupement Levered and Luxalpha were also processed through UBS S.A.'s account at UBS AG in Stamford, Connecticut," (*id.* at ¶ 97), and BLMIS sent Luxalpha redemption payments to UBS SA's account in Stamford, Connecticut and then to Luxalpha's bank account at UBS SA. (*Id.* at ¶ 173.) The proffer does not explain what "processing" a redemption means; either the redemptions were paid from a U.S. account to a U.S. account or they were not. Furthermore, where Luxalpha received its redemption payments from BLMIS relates to the initial transfer, not the subsequent transfer. The Trustee apparently assumes that if the feeder fund received the redemption in a U.S. account, it must have made the subsequent transfer from that U.S. account. The Trustee does not, however, allege that the subsequent transfers were made from the Connecticut account or another U.S. account or received in a U.S. account. Since the Trustee has failed to allege that these subsequent transfers between foreign entities was made domestically, he has failed to rebut the presumption against extraterritoriality and the claims are dismissed.

As to the exceptions, the Chart indicates that UBS AG maintains a U.S. office "utilized in connection with the transaction." The *UBS Proffered SAC* alleges that "UBS AG is a Swiss public company with registered and principal offices at Bahnhofstrasse 45, CH-8001 Zurich, and Aeschenvorstadt 1, CH-4051 Basel, Switzerland. UBS AG is the parent company of the global UBS bank, and is present in New York, with offices at 299 Park Avenue, New York, NY 10171 and 101 Park Avenue, New York, NY 10178. It also conducts daily business activities in Stamford, Connecticut and other locations in the United States." (*Id.* at ¶ 42.) In essence, the Trustee alleges that UBS AG is a foreign

corporation doing business in New York although he does not allege that it is registered to do business in New York or anywhere else in the United States. Furthermore, he does not allege that any subsequent transfer occurred domestically, and as the Subsequent Transferor was plainly foreign, he has failed to overcome the presumption that these transfers were extraterritorial.

The last two defendant Subsequent Transferees identified on the Chart are Pierre Delandmeter and Patrick Littaye. The *UBS Proffered SAC* alleges that Delandmeter is a citizen of Belgium, (*id*. at ¶ 53), a director of defendants Access Management Luxembourg S.A. and Access Partners S.A., each of which is a Luxembourg limited liability company (*id*. at ¶¶ 48, 49), and a director of non-party Access International Advisors Inc. ("AIA Inc."), a New York corporation. (*Id*. at ¶ 50.) He was also a "Legal Advisor" to Groupement and Groupement Levered, both foreign funds, and a "Director and Legal Advisor" to Luxalpha, a Luxembourg fund. (*See id*. at ¶¶ 53, 55.) The Trustee alleges that Delandmeter received legal fees from Luxalpha and Groupement, (*id*. at ¶ 292), and "upon information and belief," also received subsequent transfers from subsequent transferees AIA Ltd., AIA LLC, AP (Lux), and AML (f/k/a AIA (Lux)). (*Id*. at ¶ 292.)

The *UBS Proffered SAC* alleges Littaye is "a citizen of France," (*id*. at ¶ 50), but the parties have stipulated that he is located in Belgium. (*Scheduling Order*, Ex. 2, at 4.) Littaye was a co-founder, Partner, Chairman, and Chief Executive Officer and co-owner of AIA LLC, a director of Luxalpha and Groupement and Groupement Levered and co-owner of AIA Ltd., AML and Access Partners. (*UBS Proffered SAC* at ¶ 50.) According to the Trustee, Littaye "received millions of dollars of Subsequent Transfers, in an

amount to be proven at trial," "[a] significant amount of the Subsequent Transfers received by AIA Ltd., AIA LLC, AP (Lux), and AML (f/k/a AIA (Lux)) were subsequently transferred to Littaye . . . either directly or indirectly, in the form of distributions, payments, or other transfers of value," and "upon information and belief," Littaye received at least $6.5 million in compensation "from bank accounts controlled by Access's New York office." (*Id.* at ¶ 291.)

As with the case of the other subsequent transfers, the *UBS Proffered SAC* does not allege the location of the transferor or transferee accounts or that the subsequent transfers occurred domestically.

Consequently, all of the Subsequent Transfer claims appearing on the Chart that relate to this adversary proceeding are dismissed.

b. Tremont and the Rye Funds

Tremont operated a group of BLMIS feeder funds all of which had some variation of a name that included "Rye Select Broad Market" (collectively, the "Rye Funds"). Certain Rye Funds that included "Portfolio" in their names – Rye Select Broad Market Portfolio Limited ("Rye Portfolio"), Rye Select Broad Market XL Portfolio Limited ("Rye XL Portfolio") and Rye Select Broad Market Insurance Portfolio LDC ("Rye Insurance Portfolio") – were registered in the Cayman Islands, and are sometimes collectively referred to as the "Rye Cayman Funds." Three other Rye funds – Rye Select Broad Market Fund L.P. ("Rye Broad Market"), Rye Select Broad Market XL Fund L.P. ("Rye XL") and Rye Select Broad Market Prime Fund L.P. ("Rye Prime Fund") – were formed in Delaware, and are sometimes collectively referred to as the "Rye Delaware Funds,"

and with the Rye Cayman Funds, the "Rye Funds." (*See Proffered Second Amended Complaint*, dated June 26, 2015 ("*HSBC Proffered SAC*") at ¶¶ 388-90 (ECF Adv. P. No. 09-01364 Doc. # 399).)

The Rye Cayman Funds exemplify feeder funds organized under foreign law that had no connection, from an operational standpoint, with their country of organization. Several proffered pleadings submitted by the Trustee discuss their principal places of operations. The *HSBC Proffered SAC* is typical. According to the Trustee, the Rye Funds were managed from and maintained their principal places of business and headquarters in Rye, New York. (*Id.* at ¶ 392.) Tremont's New York employees, among other things, conducted the Rye Funds' marketing, operations, diligence, and their communications with investors, (*id.* at ¶ 393), and served on their boards. (*Id.* at ¶ 395.) The Rye Cayman Funds had "registered offices" in the Cayman Islands, but had no operating offices or operations there, (*id.* at ¶ 392), and as "exempted" companies, could not solicit or accept investments from Cayman Island investors. (*Id.* at ¶ 394.) Finally, Rye Funds maintained their accounts at the Bank of New York where they received subscriptions and from which they paid redemptions. (*See id.* at ¶ 396; *see also Trustee's Proffered Allegations Pertaining to the Extraterritoriality Issue as to Mistral (SPC)*, dated June 26, 2015 ("*Mistral Proffer*"), at ¶ 46 (alleging that beginning in the fall of 2006 if not earlier, Tremont closed the Rye Cayman Funds' Bermuda-based bank accounts, and thereafter made every redemption payment from the fund's New York-based accounts at the Bank of New York) (ECF Adv. Pro. No. 12-01273 Doc. # 57).)

The Rye Cayman Funds had to operate from somewhere if not the Cayman Islands. Although the Trustee does not allege that the Rye Cayman Funds were

registered to do business in New York, the Court concludes that the Trustee has adequately alleged that they maintained their principal and only operations in New York and that they therefore resided in New York. In addition, they made the subsequent transfers at issue at least since the fall of 2006 if not earlier from an account located in New York.

Furthermore, and with certain exceptions discussed in footnotes 27 and 32, the proffers allege that the subsequent transfers were received in a U.S.-based bank account or support the inference that they were received in a U.S.-based account based on the provisions of the subscription/redemption agreements requiring that redemptions be paid to a U.S.-account. The following table summarizes the latter group of transfers:

Table 6

A.P. No.	Transferee	ECF Doc. No. of Proffer	Proffer Reference

09-01364[24]	HSBC Bank plc	399	¶ 421[25]
10-05120	BNP Paribas Securities Services, S.A.	73	¶ 92[26]
12-01576	BNP Paribas Securities Services, S.A.; BNP Paribas Bank & Trust Cayman Ltd.; BNP Paribas Arbitrage SNC[27]	64	¶ 92
10-05354	ABN AMRO BANK N.V., p/k/a Royal Bank of Scotland, N.V.	101	¶¶ 65-69[28]

[24] According to the Chart, this adversary proceeding also involves a subsequent transfer from Thema International Fund plc ("Thema") to HSBC Bank plc. Although the Chart indicates that Thema International maintained its principal operations in the United States, Thema International is an Irish entity, (*HSBC Proffered SAC* at ¶ 64), and I have been unable to locate a factual allegation in the 141-page *HSBC Proffered SAC* that Thema International maintained its principal operations in New York. Furthermore, the Chart does not indicate that HSBC Bank plc used a U.S. office in connection with the transaction. Accordingly, the subsequent transferor and Subsequent Transferee are foreign entities that did not reside in the United States. According to the *HSBC Proffered SAC,* following a redemption request, Thema received $14,094,388.97 in a N.Y.-based HSBC Bank USA account for the benefit of HSBC Bank plc, (*id.* at ¶¶ 540-41), and subsequently transferred the same amount to HSBC plc. (*Id.* at ¶¶ 542-43.) It is not entirely clear whether the *HSBC Proffered SAC* is alleging that HSBC Bank plc was BLMIS' initial transferee with Thema acting as its agent, or Thema's subsequent transferee. If the latter, the Trustee has failed to rebut the presumption against extraterritoriality and the claim is dismissed. Although the *HSBC Proffered SAC* implies that Thema made the subsequent transfer from a N.Y.-based custodial account, it does not identify the location of the transferee account. Thus, the only U.S. connection is the source of the subsequent transfer, and this is insufficient based on the criteria discussed earlier.

The Chart also lists two transfers from BLMIS to Thema International and Lagoon Investment. These appear to be initial transfers, not Subsequent Transfers, and are beyond the scope of the *ET Decision*, which interpreted 11 U.S.C. § 550(a)(2).

[25] Paragraph 421 states in relevant part: "HSBC Bank plc received at least $53,000,000 from Rye XL Portfolio to HSBC Bank plc's account at HSBC Bank USA."

[26] Paragraph 92, which applies to all of the BNP entities listed in the table, states in relevant part: "Defendants executed subscription agreements for investments in the Tremont Funds that were domestic in nature.. . . . [T]he subscription agreements requested that Tremont direct redemptions to BNP's bank account in New York."

[27] Despite its listing in the Chart, the Complaint does not allege that any Rye Cayman Fund made a subsequent transfer to BNP Paribas Securities Services Succursale de Luxembourg, and it is not mentioned in the Trustee's Proffer. This defendant was included in the motion to dismiss, and accordingly, any claims arising from alleged subsequent transfers by a Rye Cayman Fund to this BNP entity are dismissed.

In addition, Complaint alleges claims arising from subsequent transfers by a Rye Cayman Fund to BNP Paribas Bank & Trust (Canada) ("BNP Canada"), a Canadian entity, which was also included in the motion to dismiss but omitted from the Trustee's opposition and the Proffer. These subsequent transfer claims are also dismissed.

[28] Paragraphs 65-69 state in relevant part:

> 65. ABN/RBS instructed Tremont to make all transfers in connection with the 2006 Transactions to ABN/RBS's bank account in New York. In the 2006 Swap Confirmation, ABN/RBS instructed Tremont to make all payments to ABN/RBS via a bank account that ABN/RBS held at its New York branch; ABN/RBS received all payments from Rye Portfolio Limited XL in its New York account. In connection with ABN/RBS's investment

12-01273	Mistral (SPC)	57	¶¶ 18-19[29]
12-01278	Zephyros Limited	58	¶¶ 20-21[30]
12-01698	RBC Dexia Investor Services Trust	57	¶ 28[31]

in Rye Portfolio Limited, Subscription Agreements provided that redemption payments would be made to ABN/RBS's bank account at its New York branch; ABN/RBS received all payments from Rye Portfolio Limited in its New York account. Accordingly, every one of the subsequent transfers at issue was sent from the Tremont Funds' bank accounts in New York to ABN/RBS's bank account in New York.

66. ABN/RBS maintained a bank account at its ABN AMRO Bank NV New York Branch in New York, which was a "resident of the United States" according to its July 2008 USA Patriot Act Certification. ABN/RBS designated that account . . . in the 2006 Transactions to receive both collateral and redemption payments – the subsequent transfers at issue – from the Tremont Funds.

67. With respect to the 2006 Transactions, Rye Portfolio Limited XL utilized its bank account at the Bank of New York to transfer each of the collateral payments at issue to ABN/RBS's bank account at its New York Branch.

68. Likewise, Rye Portfolio Limited utilized its account at the Bank of New York to transfer each redemption payment to ABN/RBS at its New York bank account.

69. Similarly, with regard to the transfers sent and received in connection with the 2007 Transactions, ABN/RBS designated its bank account at its ABN AMRO Bank NV New York Branch to receive both collateral and redemption payments from the Tremont Funds. Utilizing their bank accounts at the Bank of New York, Rye Broad Market XL and Rye Broad Market – the Tremont Funds involved with the 2007 Transactions – made transfers of collateral and redemption payments to ABN/RBS's bank account at its New York Branch.

[29] Paragraphs 18-19 state in relevant part: "New York or New Jersey was the situs selected by Mistral for making and receiving such transfers. Specifically, Mistral used a bank account at the Northern Trust International Banking Corporation in New York or New Jersey to effect such payments (the "U.S. Account"). . . . With respect to Rye Portfolio Limited, Mistral designated such use of this U.S. Account in subscription and redemption documents. . . ."

[30] Paragraphs 20-21 state in relevant part: "The United States was the situs selected by Zephyros for making and receiving such transfers. Specifically, Zephyros used the bank account of its U.S.-based administrator/custodian SEI at Wachovia National Bank in the United States to effect such payments (the "U.S. Account"). . . . Zephyros designated such use of the U.S. Account in a Fairfield Sentry subscription agreement and in Rye Portfolio Limited redemption documents . . . ."

[31] Paragraph 28 states: "Upon information and belief based on the other RBC-Dexia entities' designations of their own U.S. bank account (by and large at Citibank in New York), RBC-Dexia Trust similarly designated and received its redemptions from Rye Portfolio Limited into a bank account in the United States."

12-01699	Guernroy Limited[32]	54	¶¶ 28-29[33]

Several of the Subsequent Transferees contend that the Trustee failed to allege that the bank accounts used to effect the subsequent transfers were not correspondent accounts, and he therefore failed to allege a domestic transaction.[34] (*See Reply Memorandum in Further Support of the BNP Paribas Defendants' Motion to Dismiss Based on Extraterritoriality*, dated Sept. 30, 2015, at 2, 10, 25 (ECF Adv. Pro. No. 10-04457 No. Doc. # 93).) The *ET Decision* does not suggest that the Trustee must allege

[32] The Chart includes the defendant Royal Bank of Canada (Channel Islands) Limited ("RBC-CI"), and the Complaint, Ex. N, alleges that Rye Portfolio subsequently transferred $4,637,106 to "Guernroy or RBI-CI." (*See also Complaint*, dated June 6, 2012 at ¶ 86 (ECF Adv. P. No. 12-01699 Doc. # 1).) The Proffer alleges that the RBC-CI's New York accounts at Deutsche Bank and JP Morgan Chase Bank received redemptions for other entities, (*Trustee's Proffered Allegations Pertaining to the Extraterritoriality Issue as to Royal Bank of Canada*, dated June 26, 2015 at¶ 29(ECF Adv. P. No. 12-01699 Doc. # 54)), but does not allege that RBC-CI received any redemptions in its own name. The motion to dismiss included claims alleging subsequent transfers from Rye Portfolio to RBC-CI; these claims are dismissed and leave to amend is denied.

[33] Paragraphs 28-29 state in relevant part: "New York was the situs repeatedly selected by Defendants for both receiving redemptions and remitting subscriptions. . . . RBC-Guernroy also used an account in RBC-CI's name at JPMorgan Chase Bank in New York to receive redemptions from . . . Rye Portfolio Limited. . . ."

[34] After briefing, the Trustee apprised the Court of the decision in *Official Comm. of Unsecured Creditors of Arcapita, Bank B.S.C. v. Bahrain Islamic Bank*, 549 B.R. 56 (S.D.N.Y. 2016), and implied that it undercut the *ET Decision*'s conclusion that the use of a correspondent bank account did not support a domestic transfer. (*Letter from David J. Sheehan, Esq. to the Court*, dated Apr. 7, 2016 (ECF Doc. # 13051).) In *Arcapita*, the Official Committee of Unsecured Creditors (the "Committee") brought a preference action, seeking to avoid and recover preferential transfers that had been made to the defendants' New York correspondent bank accounts. The defendants moved to dismiss for lack of personal jurisdiction. The District Court concluded that the use of New York correspondent accounts supported the assertion of personal jurisdiction, *id.* at 68; *accord Licci v. Lebanese Canadian Bank, SAL*, 984 N.E.2d 893, 900 (N.Y. 2012), and added that "if preferential transfers are found to have occurred, they occurred at the time the funds were transferred into the New York correspondent bank accounts." *Arcapita*, 549 B.R. at 70.

As the Second Circuit indicated in *Absolute*, whether sufficient contacts with the United States support the assertion of personal jurisdiction is a different question from whether a transaction is domestic for purposes of extraterritoriality. The use of a U.S. correspondent bank account to process a dollar-denominated transaction may confer personal jurisdiction over the transferee but under the *ET Decision*, does not render an otherwise foreign transfer domestic. *Arcapita* does not modify the District Court's conclusion.

the use of a non-correspondent bank account to survive the dismissal of his subsequent transfer claims. While the claims may not ultimately survive for this reason, that must await future development of the facts which go outside the record and cannot be considered on this motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Accordingly, the motions to dismiss the claims included in Table 6 are denied and leave to amend is granted to the extent of these claims.

c. Fairfield Greenwich

Two of the adversary proceedings (Nos. 12-01701 and 12-01702) involve subsequent transfers by Fairfield Greenwich (Bermuda) Ltd. ("Fairfield Bermuda") and Fairfield Greenwich Ltd. (Cayman Islands) ("Fairfield Cayman"), both organized under foreign law (Bermuda and the Cayman Islands, respectively). They were part of FGG. They received fees from FGG feeder funds, including Greenwich Sentry, L.P., and Greenwich Sentry Partners, L.P. (collectively, "Greenwich Sentry") and Fairfield Sentry, and distributed the fees to FGG partners. (*Trustee's Proffered Allegations Pertaining to the Extraterritoriality Issue as to Defendants SafeHand Investments, Strongback Holdings Corporation, and PF Trustees limited in its Capacity as Trustee of RD Trust*, dated June 26, 2015 ("*SafeHand Proffer*"), at ¶¶ 2-4 (ECF Adv. Proc. No. 12-01701 Doc. # 62); *see Proffered Allegations Pertaining to the Extraterritoriality Issue as to Defendants Dove Hill Trust and FG Investors Ltd.*, dated June 26, 2015 ("*Dove Hill Proffer*"), at ¶¶ 3-5 (ECF Adv. Proc. No. 12-01702 Doc. # 61).) To the extent they received fees from or originating with the Fairfield Sentry (or Fairfield Lambda or Fairfield Sigma), the subsequent transfer claims are barred under the doctrine of comity. The balance of the discussion concerns the transfers that originated with other

feeder funds, including Greenwich Sentry, that were not the subject of foreign liquidation proceedings.[35]

Fairfield Cayman maintained its principal place of business in New York, (*SafeHand Proffer* at ¶ 13; *Dove Hill Proffer* at ¶¶ 4, 32), and "operated out of FGG's New York headquarters." (*SafeHand Proffer* at ¶ 3, *accord id.* at ¶ 6.) Although "formed under foreign law, it reported its principal place of business as FGG's New York headquarters, *registered to do business in the State of New York*, and listed its principal executive office as FGG's New York headquarters," (*SafeHand Proffer* at ¶ 40 (emphasis added); *accord* (*Dove Hill Proffer* at ¶ 36; *Fairfield Proffered SAC* ¶ 258))[36], and never had employees or an office in the Cayman Islands or in Ireland, where it was initially organized. (*Dove Hill Proffer* at 36.) Fairfield Cayman is similar to the Rye Cayman Funds, and accordingly, the Trustee has alleged that Fairfield Cayman resides in New York.

On the other hand, the Trustee has failed to allege that Fairfield Bermuda maintained its principal operations or principal place of business in New York or the United States. Fairfield Bermuda provided risk management services and acted as placement agent to a number of FGG investment vehicles and feeder funds and also allegedly provided investment advisory services to Fairfield Sentry. (*Fairfield Proffered*

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35 The Greenwich Sentry entities were both Delaware limited partnerships, and debtors in jointly administered chapter 11 proceedings in this Court. (*See In re Greenwich Sentry, L.P.*, Case No. 10-16229 (SMB).)

36 The *Fairfield Proffered SAC* refers to the *Proffered Second Amended Complaint*, dated June 26, 2015 (ECF Adv. P. No. 09-1239 Doc. # 187). The allegations in the *Fairfield Proffered SAC* are incorporated by reference in the *SafeHand Proffer* at ¶ 47 and the *Dove Hill Proffer* at ¶ 60.

SAC at ¶ 56.) Although the Trustee avers that Fairfield Bermuda "operated out of FGG's New York headquarters," (*SafeHand Proffer* at ¶ 3; *accord id.* at ¶ 6; *see id.* at ¶ 42), he also alleges that it had a small number of employees in Bermuda and rented a small office there. (*SafeHand Proffer* at ¶ 42; *Dove Hill Proffer* at ¶ 43; *Fairfield Proffered SAC* at ¶¶ 273-74.) The Bermuda employees performed some risk analysis on the Fairfield Sentry assets but reported to FGG New York personnel. (*Fairfield Proffered SAC* at ¶ 199.) Fairfield Bermuda also maintained a bank account in Bermuda. (*Id.* at ¶ 272.) Unlike Fairfield Cayman, Fairfield Bermuda did not report its principal place of business as New York, and in a marketing publication entitled "The Firm and Its Capabilities," at 7, FGG listed Fairfield Bermuda's office address as Suite 606, 12 Church Street, Hamilton Bermuda HM11.[37] Finally, the Trustee alleged in the Amended Complaint, dated July 20, 2010, at ¶ 121 (Adv. Pro. No. 09-01239 ECF Doc. # 23) filed in *Picard v. Fairfield Sentry Limited*, that Fairfield Bermuda maintained its principal place of business in Hamilton, Bermuda.

i. *Picard v. SafeHand Inv.*, Adv. Pro. No. 12-01701

A. The Parties

The Chart identifies three defendant Subsequent Transferees, SafeHand Investments ("SafeHand"), Strongback Holdings ("Strongback") and PF Trustees Limited in its capacity as trustee of RD Trust ("PF" and collectively with SafeHand and Strongback, the "Piedrahita Entities"). The Piedrahita Entities were formed by Andrés

[37] A copy of "The Firm and Its Capabilities" is attached to the *Declaration of Jeffrey E. Baldwin in Support of FG Foreign Defendant Motion to Dismiss Based on Extraterritoriality*, dated Sept. 30, 2015, as Exhibit 3 (ECF Adv. Proc. No. 12-01701 Doc. # 68). The Trustee quoted from it in the *Fairfield Proffered SAC* at ¶¶ 426-27.

Piedrahita, a founding partner of FGG, to receive his partnership distributions from FGG. (*SafeHand Proffer* at ¶ 1.) The fees charged investors in Fairfield Sentry and Greenwich Sentry were funneled to Fairfield Cayman and Fairfield Bermuda, and then distributed to Piedrahita through SafeHand, Strongback and PF. (*Id.* at ¶¶ 3-5, 7, 14.) To protect the hundreds of millions of distributions he ultimately received, Piedrahita moved his profit distributions into entities like these three defendants created in foreign countries. (*Id.* at ¶ 15.) According to the Trustee, the Piedrahita Entities and Piedrahita received $219,004,944. (*Id.* at ¶ 14.)

Piedrahita was a citizen of the Republic of Colombia and the United Kingdom, but resided in the United States for most of his adult life and obtained permanent resident status. (*SafeHand Proffer* at ¶¶ 9-10.) At all relevant times, the Piedrahita Entities were Cayman Island entities. (*Id.* at ¶¶ 16, 21, 25.)[38] The *SafeHand Proffer* indicates that Piedrahita controlled the Piedrahita Entities. It further alleges that SafeHand maintained a P.O. Box as its registered address in the Cayman Islands, and implies that it did not have any employees or offices other than the post office box. (*Id.* at ¶ 16.) Furthermore, as an exempt company, it could not engage in business in the Cayman Islands except to further its business interests outside of the Cayman Islands, (*id.*), and when Piedrahita formed SafeHand he indicated to the U.S. Government that SafeHand was a "foreign eligible entity with a single owner electing to be disregarded as a separate entity." (*Id.* at ¶ 17 (internal quotation marks omitted).) The Trustee concludes form this election that SafeHand effectively served as Piedrahita's later ego.

[38] Strongback was formed in the Cayman Islands in November 2001, but was subsequently deregistered in December 2011 and reregistered in Malta. All of the subsequent transfers at issue occurred while it was a Cayman Islands entity.

(*Id.*) These allegations imply that SafeHand conducted no operations in the Cayman Islands, and to the extent it conducted any operations, it did so through Piedrahita in the United States.

The *SafeHand Proffer* did not include similar allegations regarding Strongback and PF that would support the conclusion that they reside in the United States. Although it includes the conclusory allegation that Strongback served as Piedrahita's alter ego, (*id.* at ¶ 22), it does not allege where it maintained an office or whether it had any employees. PF was also a Cayman Islands entity with a registered office at the same address as SafeHand, (*id.* at ¶ 26), and is now the sole owner of SafeHand. (*Id.* at ¶ 28.) The *SafeHand Proffer* does not otherwise include allegations pertaining to its operations, offices or employees, if any.

B. The Subsequent Transfers

The allegations regarding the transfers are confusing. Initially, the *SafeHand Proffer* alleges that Fairfield Cayman made the subsequent transfers from a New York account, (*id.* at ¶ 13), but does not identify the location of the account that was the source of the Fairfield Bermuda payments. The Trustee alleges that SafeHand received $212,777,342 in distributions from Fairfield Cayman and $6,227,602 in distributions from Fairfield Bermuda, (*id.* at ¶ 20), and SafeHand received those payments in a New York *correspondent* account in New York. (*Id.* at ¶ 18.) The amount allegedly paid to SafeHand corresponds to the amounts allegedly received by all three Piedrahita

Entities.[39] (*See id.* at ¶ 14.) In addition, although the *SafeHand Proffer* states that subsequent transfers were deposited in Strongbacks' New York account at Wachovia Bank in New York, (*id.* at ¶ 24), the proffer does not allege the amount of those subsequent transfers, and the schedule of subsequent transfers made to Strongback that is attached to the Amended Complaint is blank. (*See Amended Complaint*, App'x III, Ex. B.) Accordingly, the Trustee does not identify any subsequent transfers made to Strongback. The Trustee's failure to allege any domestic subsequent transfers to Strongback fails to rebut the presumption against extraterritoriality, and any such claims are dismissed.

The claims against PF seemed to be based solely on its status as the parent of SafeHand. (*See SafeHand Proffer* at ¶ 28 ("RD Trust is now the sole owner of Safehand. Thus, PF Trustees in its capacity as trustee of RD Trust, owns and is in possession of all transfers that were received by Safehand.").) The *SafeHand Proffer* does not identify any subsequent transfers to PF in its own name, and an exhibit to the Amended Complaint indicates that SafeHand "and/or" PF received $172,631,780 in subsequent transfers. (*Amended Complaint*, App'x III, Ex. A.) The Trustee has not alleged a domestic subsequent transfer to PF, and has not articulated a basis to pierce SafeHand's corporate veil, which is presumably governed by Cayman Islands law, and hold PF liable for the transfers to SafeHand. Accordingly, the Trustee has failed to rebut the

[39] Much of this amount originated from fees paid by Fairfield Sentry. (*See Amended Complaint*, dated May 31, 2013 ("*Amended Complaint*"), App'x II, Ex. C; App'x II, Ex. D (ECF Adv. P. No. 12-01701 Doc. # 13).)

presumption against extraterritoriality, and the subsequent transfer claims asserted against PF are also dismissed.

This leaves SafeHand. As noted, the transfers that originated with the Fairfield Funds are dismissed on grounds of comity. The transfers from Fairfield Cayman were made by a U.S. resident from a U.S. account. Although SafeHand received the subsequent transfers in a correspondent account, the allegations are sufficient under the criteria discussed above to rebut the presumption against extraterritoriality. Hence, the motion to dismiss these claims is denied.

The claims alleging subsequent transfers from Fairfield Bermuda are dismissed. They were made by a foreign entity, the Trustee does not allege that they were made from a U.S. bank account, and they were made to correspondent bank account. SafeHand's residence, the only connection to the United States, is insufficient to rebut the presumption of extraterritoriality.

ii. *Picard v. Barreneche, Inc.*, Adv. Pro. No. 12-01702

A. FG Investors

FG Investors was created by Charles Murphy, an FGG partner, to receive distributions from FGG, (*Dove Hill Proffer* at ¶ 1), and operated in the same manner and for the same purposes as the Piedrahita Entities. (*See id.* at ¶¶ 4-5.) FG Investors was formed under Cayman Islands law but controlled by Murphy, a U.S. citizen and New York resident, from New York. (*Dove Hill Proffer* at ¶¶ 9-12.) The *Dove Hill Proffer* does not allege where or whether it maintained offices or operations, or whether it employed anyone.

According to the *Dove Hill Proffer*, FG Investors received at least $5,941,335 from Fairfield Cayman to FG Investors and at least $675,700 from FG Bermuda. A substantial portion of the transfers originated from Fairfield Sentry, (*Complaint*, dated June 6, 2012, ("*Complaint*") App'x II C (ECF Adv. P. No. 12-01702 Doc. # 1)), and are not recoverable on grounds of comity. As in SafeHand's case, the Fairfield Cayman subsequent transfers were made from its New York account at JP Morgan Chase. (*Dove Hill Proffer* at ¶ 17; *see id.* at ¶ 37.) The *Dove Hill Proffer* does not, however, allege where FG Investors received the subsequent transfers. Nevertheless, the Trustee alleges that the transfers were made by an entity registered to do business in New York from a New York account, and as in the case of SafeHand, the allegations are sufficient to rebut the presumption against extraterritoriality. Hence, the motion to dismiss these claims is denied.

The claims alleging subsequent transfers from Fairfield Bermuda to FG Investors are dismissed for the same reasons discussed in connection with SafeHand. Unlike Fairfield Cayman, *Dove Hill Proffer* does not allege facts showing that Fairfield Bermuda resided in the United States or made the subsequent transfers from a U.S. account, and as noted, does not allege where FG Investors received the transfers.

B. Dove Hill Trust

Dove Hill Trust ("DHT") was created by Yanko della Schiava, a FGG sales employee, to receive salary and bonus payments from FGG. (*Dove Hill Proffer* at ¶¶ 1, 22, 27.) He was also a Fairfield Sentry investor, and DHT received a redemption payment. (*Id.* at ¶ 22.) The proffer does not allege where DHT was formed or maintained its principal place of business. However, the *Complaint* alleged that Asiaciti

Trust Singapore Pte Ltd. acted as DHT's trustee and maintained its location at 163 Penang Road, #02-01 Winsland House II, Singapore, 238463. (*Complaint* at ¶ 76.)

The proffer alleges that Fairfield Cayman transferred at least $400,000 to DHT, (*Dove Hill Proffer* at ¶ 7), although an exhibit annexed to the *Complaint* identifies only one transfer in the amount of $59,039. (*Complaint*, App'x III, Ex. B.) As noted earlier, Fairfield Cayman was registered to do business in New York and made its subsequent transfers from New York-based bank accounts. (*Dove Hill Proffer* at ¶ 30.) The *Dove Hill Proffer* further alleges that DHT used New York bank accounts "in connection with the transfers at issue," (*id.* at ¶ 29), but does not allege, unlike the allegations in many other proffers, that Dove Hill received the transfers in a U.S. Account. Nevertheless, the transfers were made by a U.S. resident from a N.Y. account, the Trustee has rebutted the presumption against extraterritoriality and the motion to dismiss these claims is denied.

d. Remaining Claims

i. *Picard v. Cardinal Mgmt., Inc.*, Adv. Pro. No. 10-04287

The parties have stipulated that Cardinal Management, the subsequent transferor, and Dakota Global Investments, the Subsequent Transferee, are foreign entities, (*Scheduling Order*, Ex. A at 8), and neither the Chart nor the proffer, (*see Trustee's Proffered Allegations Pertaining to the Extraterritoriality Issue as to Dakota Global Investments, Ltd.*, dated June 26, 2015 (ECF Adv. P. No. 10-04287 Doc. # 69)), indicates that either maintained offices in the United States. The only arguably pertinent allegation in the proffer is that "Dakota's agents also had Cardinal on occasion utilize a U.S. branch of Wachovia Bank to facilitate its transfers of money from BLMIS." (*Id.* at ¶ 19.) This statement refers to the initial transfer from BLMIS to Cardinal, not

the subsequent transfers from Cardinal to Dakota. The Trustee has failed to rebut the presumption against extraterritoriality, and the claim is dismissed.

ii. *Picard v. Equity Trading Portfolio, Ltd.*, Adv. Pro. No. 10-04457

The Trustee alleges that Equity Trading Portfolio Ltd. ("Equity Portfolio"), a BVI entity, (*BNP Proffer* at ¶ 147 (ECF Adv. P. No. 10-04457 Doc. # 90)),[40] and a BLMIS customer, subsequently transferred $15 million to BNP Paribas Arbitrage SNC ("BNP Arbitrage"). (*Id.*) The Trustee does not indicate in the Chart that Equity Portfolio maintained its principal operations in the United States (Factor 1), and the *BNP Proffer* does not allege otherwise.

The Trustee alleges that BNP Arbitrage resides in New York with offices located at 787 Seventh Avenue. (*Id.* at ¶ 5.) However, the Trustee alleged in the Complaint, dated Nov. 30, 2010 (ECF Adv. P. No. 10-04457 Doc. # 2), that BNP Arbitrage was organized under the laws of France and maintained an office in Paris with no mention of New York. (Complaint at ¶ 13.) Furthermore, the *BNP Proffer* incorporated the Complaint by reference, (*BNP Proffer* at ¶ 158), and thus, the Trustee has made contradictory allegations on this point without any effort to explain the contradiction.

Nevertheless, even if the transferor and transferee did not reside in the United States, the *BNP Proffer* alleges that the subsequent transfer was wholly domestic. BLMIS wired a $15 million redemption payment to an HSBC account in New York "held in the name of Citco Bank Nederland N.V., Dublin Branch for the benefit of Equity

[40] This is the same *BNP Proffer* referred to earlier. The Trustee submitted this proffer in four adversary proceedings.

Portfolio," and "Equity Portfolio transferred $15 million into an account held by BNP in New York on behalf of BNP Arbitrage." (*Id.* at ¶ 162.) As noted in an earlier citation to their response, BNP Defendants contend that the Trustee did not allege the use of non-correspondent accounts, but I do not read the *ET Decision* to impose that pleading burden on the Trustee. Accordingly, the motion to dismiss this subsequent transfer claim is denied, and leave to amend is granted.

iii. *Picard v. Radcliffe Inv., Ltd.*, Adv. Pro. No. 10-04517

The Trustee contends that Radcliffe Investments Limited made a subsequent transfer to Rothschild Trust Guernsey Limited ("Rothschild Trust"). As alleged in the *Proposed First Amended Complaint*, dated June 26, 2015 ("*Radcliffe Proposed FAC*")(ECF Adv. P. No. 10-04517 Doc. # 46), Radcliffe opened an account number 1FR-100 (the "Account") with BLMIS, but was a "mere passive investment vehicle," (*id.* at ¶ 44), and Rothschild Trust managed, controlled and actually owned the Account. (*Id* at ¶¶ 8-9.) Radcliffe was formed under the laws of the Cayman Islands, and maintained its registered office in Georgetown, Cayman Islands. (*Id.* at ¶ 8.) Rothschild Trust was incorporated under the laws of Guernsey, and maintained its principal place of business in Guernsey. (*Id.* at ¶ 9.) The defendant Robert D. Salem, a London businessman, was the ultimate beneficiary of the transfers at issue. (*Id.* at ¶ 10.) Mr. Salem is in default, (*id.* at ¶ 10 n. 2), and will not be mentioned further. The *Radcliffe Proposed FAC* further alleges, "[u]pon information and belief, that Radcliffe was owned by a Guernsey-based trust, and Rothschild Trust was the trustee of the Guernsey-based trust. (*Id.* at ¶ 8.) The *Radcliffe Proposed FAC* does not allege, and the Chart does not indicate, that either Radcliffe or Rothschild maintained an office or conducted business operations in the

United States other than the ownership of and the activities relating to Radcliffe's BLMIS account.

On or about May 31, 2007, Rothschild Trust directed BLMIS to close the Account and transfer the proceeds to the Rothschild Trust account at JP Morgan Chase Bank. "Upon information and belief, the routing number for the [Rothschild] Trust Account is only used for accounts opened in New York with U.S. banking institutions." (*Id.* at ¶¶ 46-47.) On June 5, 2007, BLMIS wired $7,120,054, of which $2,120,054 represented fictitious profits. (*Id.*, Ex. B, at 7.) The Trustee alleges that a similar letter was sent to BLMIS on or about October 31, 2007, (*id.* at ¶ 46), but the last transfer occurred on September 20, 2007, (*id.*, Ex. B, at 8), and no transfer was made in response to the October letter.

Under Bankruptcy Code § 550(a), the Trustee can recover an avoided transfer from the initial transferee or the entity that benefitted from the initial transfer, *id.* §550(a)(1), or from a subsequent transferee. *Id.*, § 550(a)(2). The Trustee asserts all three theories against Rothschild Trust; the initial transfer was made to the Rothschild Trust, (*Radcliffe Proposed FAC* at ¶ 39), (2) the initial transfer was made for the benefit of the Rothschild Trust, (*id.* at ¶ 39), and (3) upon information and belief, the Rothschild Trust is the subsequent transferee of Radcliffe. (*Id.* at ¶ 41.) The three theories are mutually exclusive, *see Bonded Fin. Servs., Inc. v. European Am. Bank*, 838 F.2d 890, 895-966 (7th Cir. 1988); *SIPC v. BLMIS* (*In re BLMIS*), 531 B.R. 439, 474 (Bankr. S.D.N.Y. 2015), and Rothschild Trust's possible status as the initial transferee or the entity for whose benefit the initial transfer was made is beyond the scope of the *ET Decision*.

The *Radcliffe Proposed FAC* does not identify a subsequent transfer because it does not identify a transfer from Radcliffe to Rothschild Trust; BLMIS transferred the cash directly to Rothschild Trust. Accordingly, any subsequent transfer claim is dismissed. Since the *ET Decision* did not address the question of extraterritoriality in connection with initial transfers or the entities for whose benefit the initial transfers were made, this disposition does not affect those claims.

iv. *Picard v. UBS AG*, Adv. Pro. 10-05311

According to the Chart, Luxembourg Investment Fund U.S. Equity Plus ("Luxembourg Fund") made subsequent transfers to UBS AG, UBS (Luxembourg) S.A. ("UBS Lux") and UBS Fund Services (Luxembourg) SA ("UBS Fund Services").[41] The Luxembourg Fund is a sub-fund of Luxembourg Investment Fund, a Luxembourg corporation, and both are in liquidation in Luxembourg. (*Amended Complaint*, dated June 26, 2015 ("*UBS Proffered AC*") at ¶¶ 41-42 (ECF Adv. P. No. 10-05311 Doc. # 221).) The Chart does not indicate that the Luxembourg Fund conducted its principal operations in New York (Factor 1), and I infer that it is a foreign entity that did not reside in the United States.

As to the Subsequent Transferees, the Chart does not indicate that either UBS Lux or UBS Fund Services used an office in connection with the transaction (Factor 19), and the *UBS Proffered AC* alleges that both were formed under Luxembourg law and maintained their registered offices there. (*UBS Proffered AC* at ¶¶ 49-50.) The Chart indicates that UBS AG used a U.S. office in connection with the transaction, and the

[41] The Trustee also alleged a subsequent transfer claim against UBS Third Party Management Company SA, but that claim has been dismissed for the reason noted earlier.

UBS Proffered AC alleges that UBS AG is a Swiss public company with its principal offices in Basel, Switzerland. In addition, it also maintains offices at 299 Park Avenue, New York, NY 10171 and 101 Park Avenue, New York, NY 10178 and it conducts daily business activities in Stamford, Connecticut and other locations in the United States. (*Id.* at ¶ 48.) Accordingly, UBS AG resides in the United States, but UBS Lux and UBS Fund Services are foreign transferees without any domestic connection.

Although the Chart indicates that the UBS defendants received the transfers from the Luxembourg Fund, the *UBS Proffered AC* includes slightly different allegations. It avers that UBS Lux received approximately $5.5 million in fees from the Luxembourg Fund, (*id.* at ¶ 303(a)), UBS Fund Services received at least $748,000 from the Luxembourg Fund, (*id.* at ¶ 303(b)), and UBS AG received at least $1.7 million from UBS Lux and UBS Fund Services which was comprised, in part, of amounts they had received from the Luxembourg Fund. (*Id.* at ¶ 303(d).) In other words, UBS AG was an immediate transferee of UBS Lux and UBS Fund Services. It further alleges that UBS Fund Services received the Luxembourg Fund's redemption payments from BLMIS at UBS Fund Services' account at UBS AG's Stamford, Connecticut branch which then went to the Luxembourg Fund's bank account at UBS SA, (*id.* at ¶ 274), but these allegations relate to the initial transfers from BLMIS to the Luxembourg Fund, and not the subsequent transfers.

In fact, the Court is unable to locate any allegations within the four corners of the ninety-seven page *UBS Proffered AC* that identify the location of the subsequent transfers and the *UBS Proffered AC* does not imply that they occurred in the United States. Moreover, if the subsequent transfers to UBS Lux and UBS Fund Services

cannot be recovered on grounds of extraterritoriality, the subsequent transfers from those entities to UBS AG are also beyond the reach of Bankruptcy Code § 550(a)(2). Accordingly, the Trustee has failed to rebut the presumption against extraterritoriality, and these subsequent transfer claims are dismissed.

v. *Picard v. Natixis*, Adv. Pro. No. 10-05353

The Trustee alleges that Bloom Asset Holdings Fund ("Bloom") received subsequent transfers in the sum of $191 million from Groupement and $18 million from Alpha Prime Fund Limited ("Alpha Prime").[42] (*Trustee's Proffered Allegations Pertaining to the Extraterritoriality Issue as to Natixis S.A., Bloom Asset Holdings Fund, and Tensyr Limited*, dated June 26, 2015 ("*Natixis Proffer*"), at ¶ 68 (ECF Adv. P. No. 10-05353 Doc. # 102).) As noted earlier, the Trustee did not take the position that Groupement or Alpha Prime maintained their principal operations in the United States, but the Trustee now contends that they did. In fact, Groupement, Alpha Prime and Bloom are all foreign entities, and the *Natixis Proffer* does not allege that they maintained offices or resided in the United States.

Instead, the Trustee attempts to tie Bloom to the United States through allegations relating to Natixis FP, a domestic corporation. According to the *Natixis Proffer*, Bloom is an indirect subsidiary of Natixis, S.A., a corporate and investment bank created in November 2006 under the laws of France, (*id.* at ¶ 5), and Natixis is the parent of "an international network of financial institutions, service providers, and banks that maintained operations and offices in the United States through numerous

[42] The Trustee also alleges claims in this adversary proceeding relating to subsequent transfers by Fairfield Sentry and Harley that have already been dismissed on comity grounds.

subsidiary entities, including Defendants Natixis FP and Bloom. (*Id.*) Bloom's "corporate function was to act as a non-U.S. taxpayer on behalf of Natixis FP to invest in BLMIS Feeder Funds and other hedge funds that did not permit direct investments by U.S. taxpayers like Natixis FP." (*Id.* at ¶ 14; *accord id* at ¶ 15.) Two affiliates of Natixis, including Natixis FP, operated from the "same principal place of business in New York," (*id.* at ¶ 11), and controlled and directed the transactions on behalf of Bloom with the Subsequent Transferor-feeder funds. (*Id.* at ¶¶ 13-24.) The substance of these allegations is that Natixis F.P., a New York entity, ran Bloom for its own benefit, and utilized Bloom letterhead that listed Bloom's address as 9 West 57th Street in Manhattan. (*Id.* at ¶ 79.)

The underlying Complaint does not identify the subsequent transfers to Bloom or any of the other subsequent transferees. (*See Picard v. Natixis, Complaint*, dated Dec. 8, 2008, at ¶¶ 223-36 (ECF Doc. # 1).) The *Natixis Proffer* refers to only one subsequent transfer to Bloom. Access International Advisors, LLC ("Access"), Groupement's manager, (*Natixis Proffer* at ¶ 44), wired Bloom more than $150 million in Groupement redemption proceeds through a New York correspondent account at State Street Bank & Trust Co., N.A. (*Id.* at ¶ 80.) The proffer does not identify the location of the transferor account, and since the transferee account is a correspondent account, it does not allege a domestic transfer.[43] Furthermore, Groupement does not reside in the United States.

[43] In contrast, the *Natixis Proffer* alleges that Natixis requested that Fairfield Sentry send redemptions to a Deutsche Bank account in New York, (*Natixis Proffer* at ¶ 114), and Harley paid its redemptions to a New York-based Northern Trust bank account. (*Id.* at ¶ 187.)

Accordingly, the Trustee has failed to rebut the presumption against extraterritoriality, and the subsequent transfer claims against Bloom are dismissed.

The parties are directed to confer for the purpose of submitting consensual orders consistent with the dispositions of the motions in each adversary proceeding. If they cannot submit consensual orders, they should settle orders on notice to the other parties in those adversary proceedings.

Dated: New York, New York
November 21, 2016

/s/ *Stuart M. Bernstein*
STUART M. BERNSTEIN
United States Bankruptcy Judge

APPENDIX

ALLEN & OVERY LLP
1221 Avenue of the Americas
New York, NY 10020

Michael S. Feldberg, Esq.
Of Counsel

ARNOLD & PORTER LLP
555 Twelfth Street, N.W.
Washington, DC 20004

Scott B. Schreiber, Esq.
Of Counsel

BAKER & MCKENZIE LLP
2300 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201

David W. Parham, Esq.
Of Counsel

CHALOS & CO, P.C.
55 Hamilton Avenue
Oyster Bay, New York 11771

George M. Chalos, Esq.
Of Counsel

CLEARY GOTTLIEB STEEN & HAMILTON LLP
One Liberty Plaza
New York, NY 10006

Thomas J. Moloney, Esq.
Lawrence B. Friedman, Esq.
David E. Brodsky, Esq.
Carmine D. Boccuzzi, Jr., Esq.
Breon S. Peace, Esq.
Ari D. Mackinnon, Esq.
Elizabeth E. Vicens, Esq.
Of Counsel

CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eight Avenue
New York, NY 10019-7475

Richard Levin, Esq.

David Greenwald, Esq.
Of Counsel

DAVIS & GILBERT LLP
1740 Broadway
New York, NY 10019

Joseph Cioffi, Esq.
Bruce Ginsberg, Esq.
James R. Serritella, Esq.
Of Counsel

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017

Elliot Moskowitz, Esq.
Andrew Ditchfield, Esq.
Of Counsel

DECHERT LLP
1095 Avenue of the Americas
New York, NY 10036

Gary J. Mennitt, Esq.
Of Counsel

FLEMMING ZULACK WILLIAMSON ZAUDERER LLP
One Liberty Plaza
New York, NY 10006

John F. Zulack, Esq.
Elizabeth O'Connor, Esq.
Of Counsel

FRESHFIELDS BRUCKHAUS DERINGER US LLP
601 Lexington Avenue
31st Floor
New York, NY 10022

David J. Onorato, Esq.
David Y. Livshiz, Esq.
Of Counsel

FRIEDMAN KAPLAN SEILER & ADELMAN LLP
7 Times Square
New York, NY 10036

Robert J. Lack, Esq.
Of Counsel

GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York,

Marshall R. King, Esq.
Gabriel Herrmann, Esq.
Of Counsel

GOODWIN PROCTER LLP
620 Eighth Avenue
New York, NY 10018

Christopher Newcomb, Esq.
William P. Weintraub, Esq.
Of Counsel

HOGAN LOVELLS US LLP
875 Third Avenue
New York, NY 10022

Marc. J. Gottridge, Esq.
Benjamin J.O. Lewis, Esq.
Erin Marie Meyer, Esq.
Of Counsel

JONES DAY
222 East 41st Street
New York, NY 10017

Thomas E. Lynch, Esq.
Julie R. Gorla, Esq.
Of Counsel

KATTEN MUCHIN ROSENMAN LLP
575 Madison Avenue
New York, NY 10022-2585

Anthony Paccione, Esq.
Bruce Sabados, Esq.
Brian Muldrew, Esq.
Mark Ciani, Esq.
Allison Wuertz, Esq.
Of Counsel

KELLEY DRYE & WARREN LLP
101 Park Avenue
New York, NY 10178

Daniel Schimmel, Esq.
Of Counsel

KING & SPALDING LLP
1185 Avenue of the Americas
New York, NY 10036-4003

Richard A. Cirillo, Esq.
Of Counsel

LATHAM & WATKIN LLP
885 Third Avenue
New York, NY 10022

Thomas J. Giblin, Esq.
Christopher Harris, Esq.
Of Counsel

O'MELVENY & MYERS LLP
Seven Times Square
New York, NY 10036

William J. Sushon, Esq.
Shiva Eftekhari, Esq.
Daniel S. Shamah, Esq.
Of Counsel

OTTERBOURG P.C.
230 Park Avenue
New York, NY 10169

Peter Feldman, Esq.
Andrew S. Halpren, Esq.
Of Counsel

PAUL HASTINGS LLP
75 East 55th Street
New York, NY 10022

Barry Sher, Esq.
Jodi Kleinick, Esq.
Mor Wetzler, Esq.
Of Counsel

PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036

Gregg M. Mashberg, Esq.
Richard L. Spinogatti, Esq.
Of Counsel

ROPES & GRAY LLP
1211 Avenue of the Americas
New York, NY 10036

Robert S. Fischler, Esq.
Martin J. Crisp, Esq.
Of Counsel

SHEARMAN & STERLING LLP
599 Lexington Avenue
New York, NY 10022

Brian H. Polovoy, Esq.
Of Counsel

SHEPPARD MULLIN RICHTER & HAMPTON LLP
30 Rockefeller Plaza
New York, NY 10112

Malani J. Cademartori, Esq.
Blanka K. Wolfe, Esq.
Of Counsel

STEPTOE & JOHNSON LLP
2121 Avenue of the Stars, Suite 2800
Los Angeles, CA 90067

Seong J. Kim, Esq.
Of Counsel

WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
New York, NY 10007

Charles C. Platt, Esq.
Andrea J. Robinson, Esq.
George W. Shuster, Jr., Esq.
Of Counsel

WILMER CUTLER PICKERING HALE & DORR LLP
60 State Street
Boston, MA 02109

Benjamin Loveland, Esq.
Of Counsel

WROBEL SCHATZ & FOX
1040 Avenue of the Americas, Suite 1101
New York, NY 10018

Philip R. Schatz, Esq.
Of Counsel

WUERSCH & GERING
100 Wall Street, 10 Fl.
New York, NY 10005

Samuel D. Levy, Esq.
Of Counsel

APPENDIX E

Corporate Disclosure Statement

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, counsel[1] for:

1. HSBC Private Banking Holdings (Suisse) S.A. identifies HSBC Holdings plc and HSBC Finance (Netherlands) as corporations that directly or indirectly own 10% or more of any class of HSBC Private Banking Holdings (Suisse) S.A.'s equity interests.

2. HSBC Private Bank (Suisse) S.A. identifies HSBC Holdings plc, HSBC Finance (Netherlands), and HSBC Private Banking Holdings (Suisse) S.A. as corporations that directly or indirectly own 10% or more of any class of HSBC Private Bank (Suisse) S.A.'s equity interests.

3. SICO Limited identifies HSBC Holdings plc, HSBC Finance (Netherlands), HSBC Private Banking Holdings (Suisse) S.A. and HSBC Private Bank (Suisse) S.A. as corporations that directly or indirectly own 10% or more of any class of SICO Limited's equity interests.

4. HSBC Securities Services (Ireland) Designated Activity Company (sued as HSBC Securities Services (Ireland) Limited) identifies HSBC Holdings plc, HSBC UK Holdings Ltd, HSBC Bank plc, Midcorp Limited, Griffin International Limited, HSBC Europe B.V., and HSBC Securities Services Holdings (Ireland) Designated Activity Company as corporations that directly or indirectly own 10% or more of any class of HSBC Securities Services (Ireland) Designated Activity Company's equity interests.

5. HSBC France, Dublin Branch (sued as HSBC Institutional Trust Services (Ireland) Limited, which changed its name to HSBC Institutional Trust Services (Ireland)

[1] Pursuant to Supreme Court Rule 13.5, petitioners and their counsel are listed on Appendix F, which is attached hereto.

Designated Activity Company and subsequently merged with HSBC France) identifies HSBC Holdings plc, HSBC UK Holdings Ltd, HSBC Bank plc, HSBC Bank plc (Paris Branch) and HSBC France as corporations that directly or indirectly own 10% or more of any class of HSBC France, Dublin Branch's equity interests.

6. HSBC Bank USA, N.A. identifies HSBC Holdings plc, HSBC Overseas Holdings (UK) Limited, HSBC North America Holdings Inc., and HSBC USA Inc. as corporations that directly or indirectly own 10% or more of any class of HSBC Bank USA, N.A.'s equity interests.

7. Somers Dublin Designated Activity Company identifies HSBC Holdings plc, HSBC UK Holdings Ltd, HSBC Bank plc, HSBC Bank plc (Paris Branch), HSBC France and HSBC France (Dublin Branch) as corporations that directly or indirectly owns 10% or more of any class of Somers Dublin Designated Activity Company's equity interests.

8. Somers Nominees (Far East) Limited identifies HSBC Holdings plc, HSBC Overseas Holdings (UK) Limited, and HSBC Bank Bermuda Limited as corporations that directly or indirectly own 10% or more of any class of Somers Nominees (Far East) Limited's equity interests.

9. HSBC Institutional Trust Services (Bermuda) Limited identifies HSBC Holdings plc, HSBC Overseas Holdings (UK) Limited and HSBC Bank Bermuda Limited as corporations that directly or indirectly own 10% or more of any class of HSBC Institutional Trust Services (Bermuda) Limited's equity interests.

10. HSBC Securities Services (Bermuda) Limited identifies HSBC Holdings plc, HSBC Overseas Holdings (UK) Limited and HSBC Bank Bermuda Limited as corporations that

directly or indirectly own 10% or more of any class of HSBC Securities Services (Bermuda) Limited's equity interests.

11. HSBC Bank Bermuda Limited identifies HSBC Holdings plc and HSBC Overseas Holdings (UK) Limited as corporations that directly or indirectly own 10% or more of any class of HSBC Bank Bermuda Limited's equity interests.

12. HSBC Securities Services (Luxembourg) S.A. (also sued as HSBC Fund Services (Luxembourg) S.A.) identifies HSBC Holdings plc and HSBC Bank plc as corporations that directly or indirectly own 10% or more of any class of HSBC Securities Services (Luxembourg) S.A.'s equity interests.

13. HSBC Cayman Services Limited (sued as HSBC Bank (Cayman) Limited) identifies HSBC Holdings plc, HSBC Overseas Holdings (UK) Limited, and HSBC Bank Bermuda Limited as corporations that directly or indirectly own 10% or more of any class of HSBC Cayman Services Limited's equity interests.

14. HSBC Bank plc identifies HSBC Holdings plc as a corporation that directly or indirectly owns 10% or more of any class of HSBC Bank plc's equity interests.

15. HSBC Holdings plc, which directly or indirectly owns 10% or more of any class of all other HSBC Defendants' equity interests, identifies HKSCC Nominees Limited as directly or indirectly owning 10% or more of any class of HSBC Holdings plc's equity interests. HKSCC Nominees Limited is the legal owner of securities that are deposited into the Hong Kong Exchanges and Clearing Limited Central Clearing and Settlement System by those securities' beneficial holders.

16. BG Financial Group directly or indirectly owns 10% or more of the equity interests of Defendant Banco General SA Banca Privada; and Banco General and BG Financial

Group directly or indirectly own 10% or more of the equity interests of BG Valores, SA, F/K/A, Wall Street Securities, SA.

17. Zurich Finance Company AG, Zurich Insurance Company Ltd, and Zurich Insurance Group Ltd as corporations that directly or indirectly own 10% or more of any class of ZCM Asset Holding Company (Bermuda) Limited's equity interests.

18. FIM Limited has no corporate parent and no publicly held corporation owns 10% or more of its stock.

19. FIM Limited owns 98% of FIM Advisers LLP.

20. LGT Bank in Liechtenstein Ltd. states that it is indirectly owned by LGT Group Foundation, which is not a publicly held corporation.

21. LGT Bank (Switzerland) Ltd. states that it is indirectly owned by LGT Group Foundation, which is not a publicly held corporation.

22. OFI MGA Alpha Palmares, FKA Oval Alpha Palmares states that it has no parent company and no publicly-held corporation owns ten percent or more of its stock.

23. Oval Palmares Europlus states that it has no parent company and no publicly-held corporation owns ten percent or more of its stock.

24. UMR Select Alternatif states that it has no parent company and no publicly-held corporation owns ten percent or more of its stock

25. Koch Industries, Inc., as successor in interest to Koch Investment (UK) Company, by and through its undersigned counsel, makes the following disclosures:

Koch Industries, Inc. is a privately owned company. No public corporation owns ten percent (10%) or more of its stock.

26. Schroder AG is a wholly owned subsidiary of Schroders plc, which is a publicly held corporation. No other publicly held corporation owns ten percent (10%) or more of the stock of Schroder AG.

27. The following entities own (either directly or indirectly) 10% or more of any class of equity interests in Falcon Private Bank Ltd.: Aabar Trading S.a.r.l.; Aabar Holdings S.a.r.l.; Aabar Investments PJS; International Petroleum Investment Company (IPIC); and Mubadala Investment Company PJSC.

28. UBS AG; UBS (Luxembourg) S.A. ("UBSL"); UBS Fund Services (Luxembourg) S.A. ("UBSFSL"); UBS Deutschland AG ("UBSD"), as successor in interest to Dresdner Bank LateinAmerika AG; and UBS Third Party Management Company S.A. ("UBSTPM"), certify that:

a. Defendant-Appellee UBS AG is wholly owned by UBS Group AG, a publicly traded corporation. Chase Nominees Ltd., London, a nominee company, holds more than 10% of the share capital of UBS Group AG. UBS AG lacks information about whether Chase Nominees Ltd. is a publicly held corporation.

b. Defendant-Appellee UBSD changed its name and legal form, and is now known as UBS Europe SE.

c. Defendant-Appellee UBSL was merged into UBS Europe SE.

d. UBS Europe SE is a private non-governmental party, and UBS Group AG owns, directly or indirectly, 10 percent or more of the stock of UBS Europe SE. No publicly held corporation other than UBS Group AG owns 10 percent or more of UBS Europe SE's stock.

e. Defendant-Appellee UBSFSL is a private non-governmental party, and UBS Group AG owns, directly or indirectly, 10 percent or more of the stock of UBSFSL. No publicly held corporation other than UBS Group AG owns 10 percent or more of UBSFSL's stock.

f. Defendant-Appellee UBSTPM is a private non-governmental party, and UBS Group AG owns, directly or indirectly, 10 percent or more of the stock of UBSTPM. No publicly held corporation other than UBS Group AG owns 10 percent or more of UBSTPM's stock.

29. Bank Julius Baer & Co. Ltd. ("BJB"), through its undersigned attorneys, identifies Julius Baer Group Ltd. as directly or indirectly owning 10% or more of any class of BJB's equity interests.

30. Atlantic Security Bank (a private non-governmental party) is a subsidiary of Atlantic Security Holding Corporation. Atlantic Security Holding Corporation, an entity incorporated in the Cayman Islands, is the owner of 100% of the shares of Atlantic Security Bank.

31. Platinum All Weather Fund Limited ("Platinum") is a limited liability exempted company incorporated in the Cayman Islands. Nomura International Plc and LGT Bank (Switzerland) Ltd directly or indirectly own 10% or more of a class of the company's equity interests.

32. Parson Finance Panama S.A. identifies Bamont Trust Company Ltd. as its parent corporation.

33. Banque SYZ SA, formerly known as Banque Syz & Co. SA, by and through its undersigned attorneys, makes the following disclosure: Financière SYZ SA owns more

than 10% of the equity interests of Banque SYZ SA. No other corporation owns 10% or more of the equity interests of Banque SYZ SA. No corporation owns 10% or more of the equity interests of Financière SYZ SA.

34. M&B Capital Advisers, S.A., formerly known as M&B Capital Advisers Sociedad de Valores, S.A., by and through its undersigned counsel, makes the following disclosure: Alakin Inversiones, S.L.U. owns more than 10% of the equity interests of M&B Capital Advisers S.A. No other corporation owns 10% or more of any class of the equity interests of M&B Capital Advisers, S.A. No corporation owns 10% or more of any class of the equity interests of Alakin Inversiones, S.L.U.

35. Trincastar Corporation, by and through its undersigned counsel, makes the following disclosure: Wuhu Ltd., Bahamas, a company incorporated under the laws of The Bahamas, owns more than 10% of the equity interests of Trincastar Corporation. No other corporation owns 10% or more of any class of the equity interests of Trincastar Corporation.

36. Unifortune Asset Management SGR SPA, by and through its undersigned counsel, makes the following disclosure: Unifortune SA owns more than 10% of the equity interests of Unifortune Asset Management SGR SPA. No other corporation owns 10% or more of any class of the equity interests of Unifortune Asset Management SGR SPA. No corporation owns 10% or more of any class of the equity interests of Unifortune SA.

37. Unifortune Conservative Fund, by and through its undersigned counsel, makes the following disclosure: Unifortune Conservative Fund is not a corporate entity having capacity to be sued.

38. ABN AMRO Retained Custodial Services (Ireland) Limited ("AA Retained") and ABN AMRO Custodial Services (Ireland) Limited ("AA Custodial," and together with AA Retained, the "AA Respondents"), by and through their undersigned counsel, hereby disclose that ABN AMRO Support Services (Ireland) Limited ("AA Support Services") owns 10% or more of the equity of AA Retained. AA Support Services owns 10% or more of the equity of AA Custodial. AA Support Services is wholly owned by ABN AMRO Bank N.V. which, in turn, is wholly owned by ABN AMRO Group N.V. ABN AMRO Group N.V. is owned by Stichting Administratiekantoor Beheer Financiële Instellingen, a foundation held by the Dutch State, and Stichting Administratiekantoor Continuïteit ABN AMRO Group, a publicly held foundation. Except as described above, no entity directly or indirectly owns more than 10% of the equity interests of AA Retained or AA Custodial.

39. ABN AMRO Retained Nominees (IOM) Limited ("AA Nominees"), by and through its undersigned counsel, hereby discloses that ABN AMRO Retained FS (IOM) Limited ("AA Fund Services") owns 10% or more of the equity of AA Nominees. AA Fund Services is wholly owned by ABN AMRO Support Services (Ireland) Limited ("AA Support Services"). AA Support Services is wholly owned by ABN AMRO Bank N.V. which, in turn, is wholly owned by ABN AMRO Group N.V. ABN AMRO Group N.V. is owned by Stichting Administratiekantoor Beheer Financiële Instellingen, a foundation held by the Dutch State, and Stichting Administratiekantoor Continuïteit ABN AMRO Group, a publicly held foundation. Except as described above, no entity directly or indirectly owns more than 10% of the equity interests of AA Nominees.

40. Royal Bank of Canada represents that it is a publicly traded corporation listed on the New York and Toronto Stock Exchanges. No publicly held corporations owns 10% or more of Royal Bank of Canada's common stock. Royal Bank of Canada Singapore Branch is an overseas bank branch of Royal Bank of Canada.

41. Guernroy Limited, Royal Bank of Canada (Channel Islands), Limited, Royal Bank of Canada Trust Company (Jersey) Limited, and Royal Bank of Canada Dominion Securities Inc. represent that they are all indirect, wholly owned subsidiaries of Royal Bank of Canada.

42. Royal Bank of Canada (Suisse) S.A. represents that it has been acquired by and merged into Banque SYZ S.A. Financière SYZ S.A. owns 100% of the equity interests of Banque SYZ S.A. No corporation owns 10% or more of the equity interests of Financière SYZ S.A.

43. Lloyds TSB Bank PLC represents that it is now known as Lloyds Bank PLC. Lloyds Banking Group PLC owns 100% of the shares of Lloyds Bank PLC.

44. Barfield Nominees Limited represents that Northern Trust Corporation, The Northern Trust Company, The Northern Trust International Banking Corporation, The Northern Trust Scottish Limited Partnership, Northern Trust GFS Holdings Limited, Northern Trust Fiduciary Services (Guernsey) Limited, and Doyle Administration Limited directly or indirectly own 10% or more of any class of its shares.

45. Northern Trust Corporation represents that it is not owned by any entity that requires reporting.

46. Access International Advisors Limited represents that it is a private non-governmental party, and has two corporate parents, Dalestrong Ltd. and Access International Advisors,

Inc. No publicly held corporation owns 10% or more of the stock of Access International Advisors Ltd.

47. Access Management Luxembourg S.A. represents that it is a private non-governmental party, and has one corporate parent, Access Partners S.A. No publicly held corporation owns 10% or more of its stock.

48. Access Partners S.A. (Luxembourg) represents that it is a private non-governmental party, and has no corporate parent. No publicly held corporation owns 10% or more of its stock.

49. RBC Dexia Investor Services Bank S.A. represents that it is now known as RBC Investor Services Bank S.A. RBC Investor Services Bank S.A. is an indirect wholly-owned subsidiary of Royal Bank of Canada. Royal Bank of Canada is a publicly traded corporation listed on the New York and Toronto Stock Exchanges. No publicly held corporations own 10% or more of Royal Bank of Canada's common stock.

50. RBC Dexia Investor Services Espana S.A. represents that it is now known as Bancoval S.A. Bancoval S.A. is a wholly owned subsidiary of Banco Inversis Net S.A., and its ultimate corporate parent is Banca March S.A. No corporation owns 10% or more of the equity interests of Banca March S.A.

51. Banque Lombard Odier & Cie SA identifies LO Holding SA as its parent corporation and states that no publicly held corporation directly or indirectly owns 10% or more of its equity interests.

52. Banque Cantonale Vaudoise states that it has no parent corporation and identifies the Canton de Vaud as a corporate entity that owns 10% or more of its equity interests.

53. Société Générale Private Banking (Suisse) S.A. identifies Société Générale S.A. as its ultimate parent corporation and states that no other publicly held corporation directly or indirectly owns 10% or more of its equity interests.

54. Société Générale Private Banking (Lugano-Svizzera) S.A., acting by and through its successor, Société Générale Private Banking (Suisse) S.A., identifies Société Générale S.A. as its ultimate parent corporation and states that no other publicly held corporation directly or indirectly owns 10% or more of its equity interests.

55. Socgen Nominees (UK) Limited identifies Société Générale S.A. as its ultimate parent corporation and states that no other publicly held corporation directly or indirectly owns 10% or more of its equity interests.

56. Lyxor Asset Management S.A. identifies Société Générale S.A. as its ultimate parent corporation and states that no other publicly held corporation directly or indirectly owns 10% or more of its equity interests.

57. Société Générale Holding de Participations S.A. identifies Société Générale S.A. as its ultimate parent corporation and states that no other publicly held corporation directly or indirectly owns 10% or more of its equity interests.

58. SG AM AI Premium Fund L.P. identifies Lyxor Asset Management Inc. as its general partner and states that it has no parent corporation and no publicly held corporation owns 10% or more of its equity interests.

59. Lyxor Asset Management Inc. identifies Société Générale S.A. as its ultimate parent corporation and states that no other publicly held corporation directly or indirectly owns 10% or more of its equity interests.

60. SG Audace Alternatif states that it has no parent corporation and no publicly held corporation owns 10% or more of its equity interests.

61. SGAM AI Equilibrium Fund states that it has no parent corporation and no publicly held corporation owns 10% or more of its equity interests.

62. Lyxor Premium Fund states that it has no parent corporation and no publicly held corporation owns 10% or more of its equity interests.

63. Société Générale S.A. states that it has no parent corporation and no publicly held corporation owns 10% or more of its equity interests.

64. Société Générale Bank & Trust S.A. identifies Société Générale S.A. as its ultimate parent corporation and states that no other publicly held corporation directly or indirectly owns 10% or more of its equity interests.

65. Banque Privée Espírito Santo S.A., in liquidation, identifies Espírito Santo Financière S.A., a wholly-owned subsidiary of Espírito Santo Financial Group S.A., as its 100% shareholder and states that Banque Privée Espírito Santo S.A. was declared bankrupt on September 19, 2014 by decision of the Swiss Financial Market Supervisory Authority (FINMA), which appointed Carrard Consulting SA as Liquidator to conduct the liquidation.

66. Bordier & Cie states that it has no parent corporation and no publicly held corporation directly or indirectly owns 10% or more of its equity interests.

67. Fairfield International Managers, Inc. and Safehand Investments each owns more than 10% of Fairfield Greenwich Limited's equity interests.

68. Fairfield International Managers, Inc. and Safehand Investments each owns more than 10% of Fairfield Greenwich (Bermuda), Ltd.'s equity interests.

69. Fairfield Greenwich Limited owns more than 10% of Fairfield Greenwich Advisors LLC's equity interests.

70. There are no entities to report that directly or indirectly own 10% or more of any class of Fairfield International Managers, Inc.'s equity interests.

71. There are no entities to report that directly or indirectly own 10% or more of any class of Fairfield Greenwich Capital Partners' equity interests.

72. There are no entities to report that directly or indirectly own 10% or more of any class of Share Management LLC's equity interests.

73. Inteligo Bank Ltd. Panama Branch ("Inteligo"), formerly known as Blubank Ltd., is a corporation organized and incorporated under the laws of the Commonwealth of the Bahamas and that it is a wholly-owned subsidiary of Inteligo Group, Corp. (formerly IFH International Corp.), an entity incorporated under the laws of the Republic of Panama. Inteligo Group, Corp. does not have any parent corporations and no publicly-held company has an ownership interest of 10% or more in Inteligo Group, Corp.'s shares.

74. Banco Bilbao Vizcaya Argentaria S.A. ("BBVA") has no parent corporation nor is there any publicly held corporation owning 10% or more of its stock.

75. Naidot & Co. ("Naidot") has no parent corporation nor is there any publicly held corporation owning 10% or more of its stock.

76. Bank Vontobel AG (f/k/a Bank J. Vontobel & Co. AG) and Vontobel Asset Management Inc. are wholly-owned subsidiaries of Vontobel Holding AG, a publicly held corporation.

77. Abu Dhabi Investment Authority ("ADIA") states that ADIA receives funds from the Government of Abu Dhabi for investment and makes available to the Government of Abu

Dhabi, as needed, the financial resources to secure and maintain the future welfare of the Emirate of Abu Dhabi. ADIA does not issue shares.

78. Quilvest Finance Ltd. (n/k/a QS Finance Ltd.) states that Quilvest Europe S.A. is its corporate parent and there is no publicly held corporation owning 10% or more of its stock.

79. KBC Investments Ltd. ("KBC Investments") states that its parent is KBC Bank N.V., and KBC Bank N.V.'s parent is KBC Group N.V., which is the ultimate parent of KBC Investments. KBC Group N.V. is publicly held and indirectly owns all of the stock of KBC Investments.

80. EFG Bank S.A. is a branch of EFG Bank AG. EFG Bank AG is a wholly-owned subsidiary of EFG International AG, a holding company headquartered in Zurich, Switzerland. EFG International AG's registered shares are listed on the SIX Swiss Exchange.

81. EFG Bank (Monaco) S.A.M. is a wholly-owned subsidiary of EFG International AG, a holding company headquartered in Zurich, Switzerland. EFG International AG's registered shares are listed on the SIX Swiss Exchange.

82. EFG Bank & Trust (Bahamas) Limited is a wholly-owned subsidiary of EFG International AG, a holding company headquartered in Zurich, Switzerland. EFG International AG's registered shares are listed on the SIX Swiss Exchange.

83. Certain assets and liabilities of BSI AG were acquired and assumed by EFG Bank AG. EFG Bank AG is a wholly-owned subsidiary of EFG International AG, a holding company headquartered in Zurich, Switzerland. EFG International AG's registered shares are listed on the SIX Swiss Exchange.

84. Orbita Capital Return Strategy has no corporate parents, affiliates, and/or subsidiaries.

85. Arden Asset Management, Inc. certifies that it has no parent corporation and that no publicly-traded corporate entity directly or indirectly owns 10% or more of any class of the stock of Arden Asset Management, Inc.

86. Arden Endowment Advisers Limited certifies that it has no parent corporation and that no publicly-traded corporate entity directly or indirectly owns 10% or more of any class of the stock of Arden Endowment Advisers Limited.

87. Arden Asset Management LLC certifies that it has no parent corporation and that no publicly-traded corporate entity directly or indirectly owns 10% or more of any class of the stock of Arden Asset Management LLC.

88. Cathay Life Insurance Co. Ltd. is wholly owned by Cathay Financial Holdings Co. Ltd., a publicly held corporation.

89. CACEIS Bank is wholly owned by CACEIS S.A. CACEIS S.A. is owned by Credit Agricole, which is publicly a held corporation.

90. CACEIS Bank, Luxembourg Branch, is a branch of CACEIS Bank. CACEIS Bank is wholly owned by CACEIS S.A. CACEIS S.A. is owned by Credit Agricole, which is publicly held corporation.

91. The Sumitomo Trust & Banking Co., Ltd. (now known as Sumitomo Mitsui Trust Bank, Limited), by and through its attorneys, Becker, Glynn, Muffly, Chassin & Hosinski LLP, hereby discloses that is a wholly-owned subsidiary of Sumitomo Mitsui Trust Holdings, Inc.

92. Public Institution for Social Security ("PIFSS") hereby states that it has no parent corporation and there is no publicly held corporation owning 10% or more of stock in PIFSS.

93. The immediate shareholders in Tensyr Limited are Intertrust Nominees (Jersey) Limited and Intertrust Nominees 2 (Jersey) Limited (the "Nominees").

a. The Nominees hold the shares pursuant to declarations of trust in favor of Intertrust Corporate Trustee (Jersey) Limited (the "Trustee") in its capacity as trustee of the Tensyr Charitable Trust.

b. The Trustee is 100% owned by Intertrust Fiduciary Services (Jersey) Limited ("Intertrust Fiduciary"), and both the Trustee and Intertrust Fiduciary are regulated by the Jersey Financial Services Commission as regulated trust company businesses.

c. Intertrust Fiduciary is 100% indirectly owned by Intertrust N.V. which is a publicly traded company.

94. Fullerton Capital PTE, Ltd. is wholly owned by Fullerton (Private) Limited. Fullerton Capital PTE, Ltd. submits this disclosure statement without prejudice to or waiver of any rights or defenses it may have, including without limitation, defenses based upon lack of personal jurisdiction or improper service of process.

95. First Peninsula Trustees Limited has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.

96. Port of Hercules Trustees Limited has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.

97. Ashby Holding Services Limited is 100% owned by Port of Hercules Trustees Limited, a privately held entity (as nominee for First Peninsula Trustees Limited).

98. Ashby Investment Services Limited is 100% owned by Port of Hercules Trustees Limited, a privately held entity (as nominee for First Peninsula Trustees Limited).

99. El Prela Trading Investments Limited is 100% owned by Port of Hercules Trustees Limited, a privately held entity.

100. Alpine Trustees Limited has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.

101. El Prela Group Holding Services Limited is 100% owned by Port of Hercules Trustees Limited, a privately held entity.

102. The Ashby Trust is a trust that has no parent corporation or stock.

103. The El Prela Trust is a trust that has no parent corporation or stock.

104. Multi-Strategy Fund Limited is a mandatary of the Province of Québec and is a wholly-owned subsidiary of Caisse de dépôt et placement du Québec (the "Caisse"). No corporation directly or indirectly owns 10% or more of the equity interests of the Caisse, which is also a mandatary of the Province of Québec.

105. CDP Capital Tactical Alternative Investments was merged into CDP Capital inc. on September 1, 2005, prior to the commencement of the action that is the subject of this appeal. CDP Capital inc. was then a mandatary of the Province of Québec and a wholly-owned subsidiary of the Caisse. CDP Capital inc. was dissolved on December 31, 2015.

106. Inter Investissements S.A., f/k/a Inter Conseil S.A., is a société anonyme (a public company limited by shares) incorporated and organized under the laws of Luxembourg. Téthys SAS holds 100 percent of the shares of Inter Investissements S.A. Téthys SAS is

not a publicly traded corporation and has no parent company, and no publicly held corporation owns more than ten percent of its shares.

107. PF Trustees Limited[2] hereby states that it has no parent corporation and that no publicly-held company owns 10% or more of its stock.

108. SafeHand Investments hereby states that it is wholly owned by RD Trust and that no publicly-held company owns 10% or more of its stock.

109. Strongback Holdings Corporation hereby states that it is wholly owned by RD Trust and that no publicly-held company owns 10% or more of its stock.

110. SIX SIS AG, formerly known as SIS SegaInterSettle AG, is a wholly owned subsidiary of SIX Securities Services AG, and UBS AG and Credit Suisse AG each indirectly owns 10% or more of SIX SIS AG's stock.

111. Kingate Management Limited has no corporate parent and no publicly-held company owns 10% or more of its stock.

112. Stichting administratiekantoor beheer financiële instellingen owns more than 10% of the equity interests in SNS Bank N.V. (now known as de Volksbank N.V.).

113. Stichting Administratiekantoor Bewaarbedrijven SNS owns more than 10% of the equity interests in SNS Global Custody B.V.

114. Banca Carige SPA is a wholly-owned subsidiary of Gruppo Banca Carige which is a publicly owned company. The only shareholder of Gruppo Banca Carige with shares exceeding 10% is Malacalza Investimenti.

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[2] PF Trustees is listed as a petitioner in its capacity as trustee of RD Trust.

115. National Bank of Kuwait S.A.K., now known as National Bank of Kuwait S.A.K.P., is a publicly traded company with no parent corporation or holder of more than 10% of its stock.

116. Kookmin Bank is wholly owned by KB Financial Group Inc., which is a publicly traded company with no parent corporation or holder of more than 10% of its stock.

117. Korea Exchange Bank, which has become KEB Hana Bank, has become Hana Financial Group as its parent, which is believed not to have any holder of more than 10% of its stock.

118. Meritz Fire & Marine Insurance Co., Ltd. ("Meritz"), a private, non-government party, files its corporate ownership statement and certifies as follows:

Meritz Financial Group, Inc. owns 10% or more of Meritz's stock. No other corporation directly or indirectly owns 10% or more of any class of the equity interests of Meritz.

119. Nomura International plc states that Nomura International plc is a wholly-owned subsidiary of Nomura Europe Holdings plc, which, in turn, is a wholly-owned subsidiary of Nomura Holdings, Inc., a publicly traded company.

120. Banco Itaú International, f/k/a Banco Itaú Europa International, states that Banco Itaú International's direct corporate parent is Itau BBA International, plc and its corporate grandparents are Itau International Holding Limited., ITB Holding Brasil Participações Ltda., Itaú Unibanco S.A. and Itaú Unibanco Holding S.A.

121. Itaú Europa Luxembourg, S.A., f/k/a Banco Itaú Europa Luxembourg, S.A., states that Itaú Europa Luxembourg, S.A.'s direct corporate parent is Itau BBA International plc and its corporate grandparents are Itau International Holding Limited., ITB Holding Brasil Participações Ltda., Itaú Unibanco S.A. and Itaú Unibanco Holding S.A.

122. Delta National Bank and Trust Company is a nongovernmental corporate party for which the Delta North Bankcorp Inc. owns 10% or more of its stock.

123. Banque Internationale à Luxembourg S.A. hereby states that Legend Holdings Corporation owns 10% or more of its stock.

124. Banque Internationale à Luxembourg (Suisse) S.A. hereby states that Banque Internationale à Luxembourg SA owns 10% or more of its stock.

125. Dakota Global Investments, Ltd. hereby states that Rafale Partners, Inc. owns 10% or more of its stock.

126. Credit Suisse AG has listed debt securities and warrants in the United States and elsewhere. Credit Suisse AG is a wholly owned subsidiary of Credit Suisse Group AG, a corporation organized under the laws of Switzerland. Credit Suisse Group AG's shares are listed on the SIX Swiss Exchange and are also listed on the New York Stock Exchange in the form of American Depositary Shares.

127. Credit Suisse AG, Nassau Branch is a branch of Credit Suisse AG.

128. Credit Suisse AG, Nassau Branch Wealth Management is a department of Credit Suisse AG, Nassau Branch.

129. Credit Suisse AG, Nassau Branch LATAM Investment Banking is a department of Credit Suisse AG, Nassau Branch.

130. Credit Suisse Wealth Management Limited (CSWML) was a subsidiary of Credit Suisse (Bahamas) Limited. On January 1, 2008, CSWML assigned its business, rights, and obligations to Credit Suisse AG, Nassau Branch (Wealth Management Department). CSWML was removed from the Registrar of Companies on December 29, 2008.

131. Credit Suisse (Luxembourg) SA is wholly owned by Credit Suisse AG.

132. Credit Suisse International (named herein as "Credit Suisse International Limited") is indirectly wholly owned by Credit Suisse Group AG.

133. Credit Suisse Nominees (Guernsey) Limited is wholly owned by Credit Suisse AG.

134. Credit Suisse (UK) Limited is indirectly wholly owned by Credit Suisse AG. Credit Suisse PSL GmbH also owns voting interests in Credit Suisse (UK) Limited, and Credit Suisse PSL GmbH is wholly owned by Credit Suisse AG.

135. Credit Suisse London Nominees Limited is wholly owned by Credit Suisse (UK) Limited.

136. Credit Suisse Securities (USA) LLC is wholly owned by Credit Suisse (USA), Inc. Credit Suisse (USA), Inc. is wholly owned by Credit Suisse Holdings (USA), Inc. Credit Suisse Holdings (USA), Inc. is wholly owned by Credit Suisse AG.

137. No corporate entity directly or indirectly owns 10% or more of any class of Solon Capital's equity interests.

138. Credit Suisse International owns 100% of Zephyros Limited's equity interests.

139. Lighthouse Investment Partners, LLC, d/b/a Lighthouse Partners ("Partners"); Lighthouse Supercash Fund Limited, n/k/a Lighthouse Low Volatility Fund Limited ("Supercash"); and Lighthouse Diversified Fund Limited ("Diversified") make the following disclosures:

a. Partners is a wholly-owned subsidiary of Navigator Global Investments Limited, an Australian Securities Exchange-listed company;

b. Supercash is not a publicly traded corporation, has no parent corporation, and no publicly held corporation owns 10% or more of its stock; and

c. Diversified is not a publicly traded corporation, has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

140. ABN AMRO Bank N.V. (known as The Royal Bank of Scotland N.V. and presently known as NatWest Markets N.V.) states that it is a wholly owned subsidiary of RBS Holdings N.V., which is a wholly owned subsidiary of RFS Holdings B.V., of which 97.7% is owned by The Royal Bank of Scotland Group plc. No publicly held corporation owns 10% or more of the stock of The Royal Bank of Scotland Group plc.

141. BA Worldwide Fund Management Ltd. ("BAWFM") states that it is a closely-held BVI company, more than 10% of which is indirectly owned by UniCredit Bank Austria AG, which itself is a subsidiary of UniCredit S.p.A., a publicly-held corporation whose shares trade on the Borsa Italiana, Italy's main stock exchange.

142. Odyssey Alternative Strategies Fund Limited ("Odyssey") by and through its counsel, states that it has no parent corporation nor is there any publicly held corporation owning 10% or more of its stock.

143. Fairfield Investment Fund Limited (a private non-governmental party), through its attorneys, states that the following corporate entities own, directly or indirectly, 10% or more of any class of its equity interest: Banco Bilbao Vizcaya Argentaria and Lion Global Investors Ltd.

144. Grosvenor Investment Management Ltd., Grosvenor Private Reserve Fund Limited, Grosvenor Balanced Growth Fund Limited, and Grosvenor Aggressive Growth Fund Limited (collectively, the "Grosvenor Defendants-Appellees"), by and through undersigned counsel, makes the following disclosure:

No corporation directly or indirectly owns 10% or more of any class of equity interests in any of the Grosvenor Defendants-Appellees.

145. Lion Global Investors Limited ("LGI") (a corporate non-governmental party) states that LGI is 70%-owned by Great Eastern Holdings Limited ("Great Eastern") and 30%-owned by Orient Holdings Private Limited ("Orient Holdings"). Great Eastern is majority-owned and Orient Holdings is wholly-owned by Oversea-Chinese Banking Corporation Limited ("OCBC"). LGI, Great Eastern, Orient Holdings and OCBC are corporations formed under the laws of Singapore.

146. Bureau of Labor Insurance ("BLI") certifies that BLI is a governmental entity organized under the laws of the Republic of China, and is exempt from this requirement pursuant to U.S. Supreme Court Rules 14(1)(b) and 29(6); without limitation to the foregoing, BLI certifies that it has no corporate parent and no publicly held corporation owns 10% of BLI's stock.

147. Barclays Bank (Suisse) S.A. is an indirect subsidiary of Barclays Bank PLC. Barclays Bank PLC is in turn a direct subsidiary of Barclays PLC, a publicly held company whose shares are listed on the London Stock Exchange. No other corporation owns 10% or more of the stock of Barclays Bank (Suisse) S.A.

148. CaixaBank, S.A. is the successor by merger by absorption to the bank formerly known (and named herein) as Barclays Bank S.A. CriteriaCaixa owns 40% interest in CaixaBank, S.A., whose shares are listed in Spain. CriteriaCaixa is solely owned by "la Caixa" Banking Foundation.

149. The only holder of more than 10% of the ownership interest in Appellee Bank Audi S.A.M.-Audi Saradar Group, FKA Dresdner Bank Monaco S.A.M. is Banaudi Holding

Cyprus. The only holder of more than 10% of the ownership interest in Banaudi Holding Cyprus is Bank Audi sal. The only holder of more than 10% of the ownership interest in Bank Audi sal is Deutsche Bank Trust Company Americas, which holds common shares in its capacity as a depositary.

150. UKFP (Asia) Nominees Limited (a non-operational entity) is wholly owned by Henderson Global Investors Asset Management Limited, which in turn is wholly owned by Henderson Global Investors (Holdings) Limited, which in turn is wholly owned by HGI Group Limited, which in turn is wholly owned by Henderson Holdings Group Limited, which in turn is wholly owned by Henderson Global Group Limited, which in turn is wholly owned by HGI Asset Management Group Limited, which in turn is wholly owned by Henderson Group Holdings Asset Management Limited, which in turn is wholly owned by Janus Henderson Group plc. (formerly known as Henderson Group plc.).

151. Intesa Sanpaolo S.p.A. is a publicly held corporation that has no parent corporation. No publicly held corporation owns 10% or more of Intesa Sanpaolo S.p.A.'s stock.

152. Eurizon Capital SGR S.p.A.[3] is wholly owned by Intesa Sanpaolo S.p.A., a publicly held company.

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[3] The Complaint in Case No. 17-1352 names as defendants Eurizon Capital SGR S.p.A., f/k/a Nextra Alternative Investments SGR S.p.A. ("Eurizon Capital"), Eurizon Low Volatility, f/k/a Nextra Low Volatility ("Eurizon Low Volatility"), Eurizon Low Volatility II, f/k/a Nextra Low Volatility II ("Eurizon Low Volatility II"), Eurizon Low Volatility PB, f/k/a Nextra Low Volatility PB ("Eurizon Low Volatility PB"), Eurizon Medium Volatility, f/k/a Nextra Medium Volatility ("Eurizon Medium Volatility"), Eurizon Medium Volatility II, f/k/a Nextra Medium Volatility II ("Eurizon Medium Volatility II"), and Eurizon Total Return, f/k/a Nextra Total Return ("Eurizon Total Return"). The Complaint characterizes Eurizon Low Volatility, Eurizon Low Volatility II, Eurizon Low Volatility PB, Eurizon Medium Volatility, Eurizon Medium Volatility II, and Eurizon Total Return each as an Italian "fondo comune di investimento," which is not a legal entity under Italian law. The assets of these funds were managed and promoted by

153. Eurizon Capital SGR S.p.A. is the only corporation that directly or indirectly owns 10% or more of any class of units in Eurizon Low Volatility.

154. First Abu Dhabi Bank PJSC ("FAB") (formerly known as First Gulf Bank PJSC), discloses that it is a publicly held corporation whose shares are admitted to trading on the Abu Dhabi Securities Exchange (ADX).

155. Merrill Lynch Bank (Suisse) S.A. was merged into Bank Julius Baer & Co. Ltd. ("BJB") on May 31, 2013. Merrill Lynch Bank (Suisse) S.A., through its undersigned attorneys, identifies Julius Baer Group Ltd. as directly or indirectly owning 10% or more of any class of BJB's equity interests.

156. Merrill Lynch International is an indirect wholly-owned subsidiary of Bank of America Corporation, a publicly traded corporation. Bank of America Corporation has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

157. Zedra Trust Company (Jersey) Limited, formerly known (and named herein) as Barclays Private Bank & Trust Limited, is an indirect wholly owned subsidiary of Zedra Holdings S.A. Each of Barclays PLC and Zedra S.A. owns 10% or more of the stock of Zedra Holdings S.A. Barclays PLC is a publicly held company whose shares are listed on the London Stock Exchange and which also has American Depositary Receipts listed on the New York Stock Exchange. Zedra S.A. is privately held, and no other corporation owns

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the asset manager, Eurizon Capital. Moreover, prior to the filing of the Complaint, the assets of Eurizon Low Volatility II and Eurizon Low Volatility PB were merged into Eurizon Low Volatility, and the assets of Eurizon Medium Volatility II were merged into Eurizon Medium Volatility. On August 1, 2013, the assets of Eurizon Medium Volatility and Eurizon Total Return were merged into Eurizon Low Volatility. Accordingly, the only fund that exists today, and which is currently managed by Eurizon Capital, is Eurizon Low Volatility.

10% or more of its stock. Except as stated above, no corporation directly or indirectly owns 10% or more of the stock of Zedra Trust Company (Jersey) Limited.

158. Standard Chartered Financial Services Luxembourg (S.A.) states that it is a company in official liquidation under the laws of the Grand Duchy of Luxembourg; that it is an indirect wholly-owned subsidiary of Standard Chartered PLC; and that Temasek Holdings (Private) Limited is the only corporation of which Defendant-Appellee is aware that directly or indirectly owns 10 percent or more of any of Standard Chartered PLC's equity interests.

159. Standard Chartered Bank International (Americas) Ltd. states that it is a wholly-owned subsidiary of Standard Chartered Bank, which in turn is a wholly-owned subsidiary of Standard Chartered Holdings Ltd., which in turn is a wholly-owned subsidiary of Standard Chartered PLC. Temasek Holdings (Private) Limited is the only corporation of which Defendant-Appellee is aware that directly or indirectly owns 10 percent or more of any of Standard Chartered PLC's equity interests.

160. Standard Chartered International (USA) Ltd., which has been converted into a limited liability company and renamed Standard Chartered International (USA) LLC, states that it is a wholly-owned subsidiary of Standard Chartered Holdings Inc., which in turn is an indirect wholly-owned subsidiary of Standard Chartered PLC. Temasek Holdings (Private) Limited is the only corporation of which Defendant-Appellee is aware that directly or indirectly owns 10 percent or more of any of Standard Chartered PLC's equity interests.

161. Equity interests in Korea Investment Trust Management Company are wholly owned by its parent Korea Investment & Securities, which is in turn wholly owned by Korea Investment Holdings Co. Ltd., a Korean publicly traded company.

162. Natixis Financial Products LLC (successor-in-interest to Natixis Financial Products Inc.) is a wholly-owned subsidiary of Natixis North America LLC, which is an indirect wholly-owned subsidiary of Natixis S.A.

163. Natixis S.A. (in its own capacity and as successor-in-interest to IXIS Corporate & Investment Bank [incorrectly also named in the complaint as Natixis Corporate and Investment Bank]) is owned in part by Group BPCE, a French banking group that is not publicly traded. Natixis S.A. is in part publicly held and traded on the Euronext Paris Exchange.

164. Ten percent or more of the equity interest in Bloom Asset Holdings Fund is indirectly held by Natixis S.A.

165. Union Securities Investment Trust Co., Ltd. ("USITC") discloses that the following corporations directly or indirectly own 10% or more of USITC's equity interests: Union Bank of Taiwan, Pai-Ying Investment Co., Ltd., Quen-Jzo Investment Co, Ltd. and Tien-Sheng Investment Co., Ltd.

166. BNP Paribas S.A., a publicly traded company, states that no publicly held corporation owns more than 10% of its shares.

167. BNP Paribas (Suisse) SA identifies BNP Paribas S.A. as a corporation that directly or indirectly owns 10% or more of any class of BNP Paribas (Suisse) SA's equity interests.

168. BNP Paribas Arbitrage SNC identifies BNP Paribas S.A. as a corporation that directly or indirectly owns 10% or more of any class of BNP Paribas Arbitrage SNC's equity interests.

169. BNP Paribas Bank & Trust Cayman Limited identifies BNP Paribas Securities Services S.C.A. as a corporation that directly or indirectly owns 10% or more of any class of BNP Paribas Bank & Trust Cayman Limited's equity interests.

170. BGL BNP Paribas S.A. (sued as BGL BNP Paribas Luxembourg S.A.) identifies BNP Paribas S.A. and BNP Paribas Fortis Bank SA/NV (formerly Fortis Bank SA/NV) as corporations that directly or indirectly own 10% or more of any class of BGL BNP Paribas S.A.'s equity interests.

171. BNP Paribas Securities Services S.C.A., Luxembourg Branch (sued as BNP Paribas Securities Services – Succursale de Luxembourg) is a branch of BNP Paribas Securities Services S.C.A., which identifies BNP Paribas S.A. as a corporation that directly or indirectly owns 10% or more of any class of its equity interests.

172. BNP Paribas Securities Services S.C.A. (sued as BNP Paribas Securities Services S.A.) identifies BNP Paribas S.A. as a corporation that directly or indirectly owns 10% or more of any class of BNP Paribas Securities Services S.C.A.'s equity interests. On June 30, 2011, BNP Paribas Securities Services S.A. converted into an S.C.A. (a *société en commandite par actions*).

173. Crédit Agricole S.A., a publicly traded French corporate entity, identifies SAS Rue La Boétie, a corporation wholly-owned by the Regional Banks of Crédit Agricole, as the majority owner of Crédit Agricole S.A. No publicly held corporation owns 10% or more of the stock of Crédit Agricole S.A.

174. CA Indosuez (Switzerland) S.A., f/k/a Crédit Agricole (Suisse) S.A., states that it is wholly owned by CA Indosuez Wealth Management, f/k/a Crédit Agricole Private Banking S.A. CA Indosuez Wealth Management is wholly owned by Crédit Agricole Corporate and Investment Bank. Crédit Agricole Corporate and Investment Bank is owned by Crédit Agricole S.A., which is a publicly traded French corporate entity, the majority owner of which is SAS Rue La Boétie, a corporation wholly-owned by the Regional Banks of Crédit Agricole.

175. Crédit Agricole Corporate and Investment Bank, 1301 Avenue of the Americas New York, NY 10019, d/b/a Crédit Agricole Private Banking Miami, f/k/a Calyon S.A., d/b/a Crédit Agricole Miami Private Bank, Successor in Interest to Credit Lyonnais S.A., is owned by Crédit Agricole S.A., which is a publicly traded French corporate entity, the majority owner of which is SAS Rue La Boétie, a corporation wholly-owned by the Regional Banks of Crédit Agricole.

176. Bank Hapoalim B.M., states that it is a publicly held corporation and that no other publicly held corporation owns 10% or more of Bank Hapoalim B.M. stock.

177. Bank Hapoalim (Switzerland) Ltd., states that it is wholly owned by Bank Hapoalim B.M. and that no other publicly held corporation owns 10% or more of Bank Hapoalim (Switzerland) Ltd.'s stock.

178. Citibank (Switzerland) AG is wholly owned by Citicorp Banking Corporation, Delaware (USA), which is in turn owned by Citigroup Inc. Citigroup Inc. is a publicly held corporation that has no parent corporation. No publicly held corporation owns 10% or more of Citigroup Inc.

179. Citigroup Global Markets Limited is a 90.5% owned subsidiary of Citigroup Global Markets Holdings Bahamas Limited and 9.5% owned subsidiary of Citigroup Global Markets Europe Limited. Citigroup Global Markets Europe Limited is owned by Citigroup Global Markets Holdings Bahamas Limited. Citigroup Global Markets Holdings Bahamas Limited is an indirect wholly owned subsidiary of Citigroup Financial Products Inc. Citigroup Financial Products Inc. is a wholly owned subsidiary of Citigroup Global Markets Holdings Inc. Citigroup Global Markets Holdings Inc. is a wholly owned subsidiary of Citigroup Inc. Citigroup Inc. is a publicly held corporation that has no parent corporation. No publicly held corporation owns 10% or more of Citigroup Inc.

180. Citi Hedge Fund Services, Ltd. changed its name to Citi Fund Services (Bermuda), Ltd. in January 2013. In March 2016, Citi Fund Services (Bermuda), Ltd. was acquired by SS&C Technologies Holdings, Inc., subsequently changing its name to SS&C Fund Services (Bermuda) Ltd. SS&C Fund Services (Bermuda) Ltd. is ultimately wholly owned by SS&C Technologies Holdings, Inc., a publicly held corporation that has no parent corporation. No publicly held corporation owns 10% or more of SS&C Technologies Holdings, Inc.

APPENDIX F

List of Petitioners

Number	Case Number	Moving Parties	Moving Attorneys
1.	17-2992	Banque Lombard Odier & Cie SA, FKA Lombard Odier Darier Hentsch & Cie	John F. Zulack, Esq., Allegaert Berger & Vogel LLP 111 Broadway, 20th Floor New York, New York 10006
2.	17-2995	Union Securities Investment Trust Co., Ltd.	Malani J. Cademartori, Esq., Direct: 212-653-8700 Sheppard, Mullin, Richter & Hampton LLP 30 Rockefeller Plaza New York, NY 10112
3.	17-2995	Union USD Global Arbitrage Fund	Malani J. Cademartori, Esq.
4.	17-2995	Union USD Global Arbitrage A Fund	Malani J. Cademartori, Esq.
5.	17-2995	Union Arbitrage Strategy Fund	Malani J. Cademartori, Esq.
6.	17-2996	Banque Cantonale Vaudoise	John F. Zulack, Esq., Allegaert Berger & Vogel LLP 111 Broadway, 20th Floor New York, New York 10006
7.	17-2999	Grosvenor Investment Management Ltd.	Russell T. Gorkin, Esq., Proskauer Rose LLP 11 Times Square New York, NY 10036 Gregg M. Mashberg, Esq., Partner Proskauer Rose LLP 11 Times Square New York, NY 10036
8.	17-2999	Grosvenor Aggressive Growth Fund Limited	Russell T. Gorkin, Esq. Gregg M. Mashberg, Esq., Partner
9.	17-2999	Grosvenor Balanced Growth Fund Limited	Russell T. Gorkin, Esq. Gregg M. Mashberg, Esq., Partner

10.	17-2999	Grosvenor Private Reserve Fund Limited	Russell T. Gorkin, Esq. Gregg M. Mashberg, Esq., Partner
11.	17-3003	BSI AG, individually and as successor in interest to Banco Del Gottardo	David Farrington Yates, Esq., Direct: 212-488-1211 Kobre & Kim LLP 6th Floor 800 3rd Avenue New York, NY 10022 Adam Lavine, Esq., Direct: 212-488-1279 Kobre & Kim LLP 6th Floor 800 3rd Avenue New York, NY 10022
12.	17-3004	First Gulf Bank	George M. Chalos, Direct: 516-721-4076 Chalos & Co., P.C. 55 Hamilton Avenue Oyster Bay, NY 11771 Briton Paul Sparkman, Attorney Direct: 713-574-9454 Chalos & Co., P.C. 7210 Tickner Street Houston, TX 77055
13.	17-3005	Parson Finance Panama S.A.	Eugene F. Getty, Esq., Direct: 212-889-2821 Kellner Herlihy Getty & Friedman LLP 470 Park Avenue South, 7N New York, NY 10016
14.	17-3006	Delta National Bank and Trust Company	Lawrence Joel Kotler, Esq., Direct: 215-979-1514 Duane Morris LLP 1540 Broadway New York, NY 10036
15.	17-3007	Unifortune Asset Management SGR SPA	Richard B. Levin, Esq., Jenner & Block LLP

			919 3rd Avenue New York, NY 10022 Carl Nicholas Wedoff, Esq., Direct: 212-891-1653 Jenner & Block LLP 919 3rd Avenue New York, NY 10022
16.	17-3007	Unifortune Conservative Fund	Richard B. Levin, Esq. Carl Nicholas Wedoff, Esq.
17.	17-3008	National Bank of Kuwait SAK	Richard A. Cirillo, Esq., King & Spalding LLP 1185 Avenue of the Americas New York, NY 10036
18.	17-3009	Natixis S.A. (in its own capacity and as successor-in-interest to IXIS Corporate & Investment Bank)	Bruce M. Ginsberg, Esq., Direct: 212-468-4820 Davis & Gilbert LLP 1740 Broadway New York, NY 10019 James R. Serritella, Esq., Direct: 212-468-4945 Davis & Gilbert LLP 1740 Broadway New York, NY 10019
19.	17-3009	Natixis Financial Products LLC (as successor-in-interest to Natixis Financial Products Inc.)	Bruce M. Ginsberg, Esq. James R. Serritella, Esq.
20.	17-3009	Bloom Asset Holdings Fund	Bruce M. Ginsberg, Esq. James R. Serritella, Esq.
21.	17-3009	Tensyr Limited	Timothy P. Harkness, Esq., Direct: 212-277-4000 Freshfields Bruckhaus Deringer US LLP 31st Floor 601 Lexington Avenue New York, NY 10022 David Y. Livshiz, Esq.,

			Direct: 212-277-4000 Freshfields Bruckhaus Deringer US LLP 31st Floor 601 Lexington Avenue New York, NY 10022
22.	17-3010	Cathay Life Insurance Co. Ltd.	Scott D. Lawrence, Esq., Direct: 214-720-4300 Akerman LLP Suite 3600 2001 Ross Avenue Dallas, TX 75201 David W. Parham, Esq., Direct: 214-720-4345 Akerman LLP Suite 3600 2001 Ross Avenue Dallas, TX 75201
23.	17-3011	Barclays Bank (Suisse) S.A.	Marc J. Gottridge, Esq., - Direct: 212-909-0643 [COR NTC Retained] Hogan Lovells US LLP 875 3rd Avenue New York, NY 10022 Andrew M. Harris, Esq. Direct: 212-918-5712 Hogan Lovells US LLP 875 Third Avenue New York, NY 10022
24.	17-3011	Barclays Bank S.A.	Marc J. Gottridge, Esq. Andrew M. Harris, Esq.
25.	17-3011	Barclays Private Bank & Trust Limited	Marc J. Gottridge, Esq. Andrew M. Harris, Esq.
26.	17-3012	Arden Asset Management LLC	M. William Munno, Esq., Attorney Direct: 212-574-1200 Seward & Kissel LLP 1 Battery Park Plaza

			New York, NY 10004 Michael Benjamin Weitman, Esq., Direct: 212-574-1486 Seward & Kissel LLP 1 Battery Park Plaza New York, NY 10004
27.	17-3012	Arden Asset Management Inc.	M. William Munno, Esq. Michael Benjamin Weitman, Esq.
28.	17-3012	Arden Endowment Advisers, Ltd.	M. William Munno, Esq. Michael Benjamin Weitman, Esq.
29.	17-3013	Royal Bank of Canada	Mark Thomas Ciani, Esq., Direct: 212-940-8800 Katten Muchin Rosenman LLP 575 Madison Avenue New York, NY 10022 Anthony L. Paccione, Esq., Katten Muchin Rosenman LLP 575 Madison Avenue New York, NY 10022
30.	17-3013	Guernroy Limited	Mark Thomas Ciani, Esq. Anthony L. Paccione, Esq.
31.	17-3013	Royal Bank of Canada (Channel Islands) Limited	Mark Thomas Ciani, Esq. Anthony L. Paccione, Esq.
32.	17-3013	Royal Bank of Canada Singapore Branch	Mark Thomas Ciani, Esq. Anthony L. Paccione, Esq.
33.	17-3013	Royal Bank of Canada (Suisse) S.A.	Mark Thomas Ciani, Esq. Anthony L. Paccione, Esq.
34.	17-3013	RBC Dominion Securities Inc.	Mark Thomas Ciani, Esq.

			Anthony L. Paccione, Esq.
35.	17-3013	Royal Bank of Canada Trust Company (Jersey) Limited	Mark Thomas Ciani, Esq. Anthony L. Paccione, Esq.
36.	17-3014	SNS Bank N.V.	Charles C. Platt, Direct: 212-230-8860 Wilmer Cutler Pickering Hale and Dorr LLP 7 World Trade Center 250 Greenwich Street New York, NY 10007 Andrea J. Robinson, Esq., Direct: 617-526-6360 Wilmer Cutler Pickering Hale and Dorr LLP 60 State Street Boston, MA 02109 George W. Shuster, Jr., Esq., Direct: 212-937-7232 Wilmer Cutler Pickering Hale and Dorr LLP 7 World Trade Center 250 Greenwich Street New York, NY 10007
37.	17-3014	SNS Global Custody B.V.	Charles C. Platt Andrea J. Robinson, Esq. George W. Shuster, Jr., Esq.
38.	17-3016	Koch Industries, Inc., as successor in interest to Koch Investment (UK) Company	Jonathan P. Guy, Esq., Direct: 202-339-8516 Orrick, Herrington & Sutcliffe LLP 1152 15th Street, NW Washington, DC 20005
39.	17-3018	Kookmin Bank	Richard A. Cirillo, Esq., King & Spalding LLP 1185 Avenue of the Americas

			New York, NY 10036
40.	17-3019	Bank Julius Baer & Co., Ltd.	Eric Brian Halper, Esq., Direct: 212-402-9413 McKool Smith, PC 47th Floor 1 Bryant Park New York, NY 10036 Virginia Weber, Esq., Direct: 212-402-9417 McKool Smith, PC 47th Floor 1 Bryant Park New York, NY 10036
41.	17-3020	Six Sis AG	Andreas A. Frischknecht, Esq. Direct: 212-257-6960 Chaffetz Lindsey LLP 33rd Floor 1700 Broadway New York, NY 10019 Erin Valentine, Esq., Direct: 212-257-6960 Chaffetz Lindsey LLP 33rd Floor 1700 Broadway New York, NY 10019
42.	17-3021	Trincastar Corporation	Richard B. Levin, Esq., Jenner & Block LLP 919 3rd Avenue New York, NY 10022 Carl Nicholas Wedoff, Esq., Direct: 212-891-1653 Jenner & Block LLP 919 3rd Avenue New York, NY 10022
43.	17-3023	Schroder & Co. Bank AG	Martin. J Crisp Direct: 212-596-9000 Ropes & Gray LLP 1211 Avenue of the Americas New York, NY 10036
44.	17-3024	Bureau of Labor Insurance	Jennifer Fiorica Delgado

			Direct: 646-414-6962 Lowenstein Sandler LLP 18th Floor 1251 Avenue of the Americas New York, NY 10020 Zachary Rosenbaum, Direct: 212-204-8690 Lowenstein Sandler LLP 1251 Avenue of the Americas New York, NY 10020
45.	17-3025	Caceis Bank, Luxembourg Branch	Daniel Schimmel, Esq., Direct: 646-927-5500 Foley Hoag LLP 1301 Avenue of the Americas, 25th Floor New York, NY 10019
46.	17-3025	Caceis Bank	Daniel Schimmel, Esq.
47.	17-3026	CA Indosuez (Switzerland) S.A., f/k/a Crédit Agricole (Suisse) S.A.	Elizabeth Vicens, Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006
48.	17-3026	Crédit Agricole S.A.	Elizabeth Vicens Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006
49.	17-3029	Solon Capital, Ltd., c/o Appleby Corporate Services (Bermuda) Canons Court 22 Victoria Street Hamilton HM 12 Bermuda	William J. Sushon, Esq., O'Melveny & Myers LLP Times Square Tower 7 Times Square New York, NY 10036
50.	17-3032	Quilvest Finance Ltd.	Thomas E. Lynch, Esq. Direct: 212-326-3939 Jones Day 250 Vesey Street New York, NY 10281
51.	17-3033	Lloyds TSB Bank PLC	Mark Thomas Ciani, Esq.,

			Direct: 212-940-8800 Katten Muchin Rosenman LLP 575 Madison Avenue New York, NY 10022 Anthony L. Paccione, Esq., Katten Muchin Rosenman LLP 575 Madison Avenue New York, NY 10022
52.	17-3034	Atlantic Security Bank	Scott Schreiber, Esq., Rosa J. Evergreen, Esq. Direct: 202-942-5000 Arnold & Porter Kaye Scholer LLP 601 Massachusetts Avenue, NW Washington, DC 20001
53.	17-3035	Orbita Capital Return Strategy Limited	Gary J. Mennitt, Esq., Direct: 212-698-3831 Dechert LLP 27th Floor Mailroom 1095 Avenue of the Americas New York, NY 10036
54.	17-3038	The Sumitomo Trust & Banking Co., Ltd.	Michael Zeb Landsman, Esq., Direct: 212-888-3033 Becker, Glynn, Muffly, Chassin & Hosinski LLP 16th Floor 299 Park Avenue New York, NY 10171 Jordan E. Stern, Esq., Direct: 212-888-3033 Becker, Glynn, Muffly, Chassin & Hosinski LLP 16th Floor 299 Park Avenue New York, NY 10171
55.	17-3039	Zephyros Limited	William J. Sushon, Esq., O'Melveny & Myers LLP Times Square Tower 7 Times Square

			New York, NY 10036
56.	17-3040	Merrill Lynch Bank (Suisse) S.A.	Pamela A. Miller, Esq., Direct: 212-326-2088 O'Melveny & Myers LLP Times Square Tower 7 Times Square New York, NY 10036
57.	17-3041	Northern Trust Corporation, 50 LaSalle Street Chicago, IL 60603	Mark Thomas Ciani, Esq., Direct: 212-940-8800 Katten Muchin Rosenman LLP 575 Madison Avenue New York, NY 10022 Anthony L. Paccione, Esq., Katten Muchin Rosenman LLP 575 Madison Avenue New York, NY 10022
58.	17-3041	Barfield Nominees Limited, Trafalgar Court Les Baques St. Peters Port Guernsey United Kingdom	Mark Thomas Ciani, Esq. Anthony L. Paccione, Esq.
59.	17-3042	Crédit Agricole Corporate and Investment Bank, 1301 Avenue of the Americas New York, NY 10019, d/b/a Crédit Agricole Private Banking Miami, f/k/a Calyon S.A., d/b/a Crédit Agricole Miami Private Bank, Successor in Interest to Crédit Lyonnais S.A.	Elizabeth Vicens, Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006
60.	17-3043	Korea Exchange Bank, Individually And As Trustee For Korea Global All Asset Trust I-1, And For Tams Rainbow Trust III	Richard A. Cirillo, Esq., King & Spalding LLP 1185 Avenue of the Americas New York, NY 10036
61.	17-3043	Korea Investment Trust Management Company	John D. Giampolo, Esq., Direct: 212-382-3300 Wollmuth Maher & Deutsch LLP 500 5th Avenue New York, NY 10110
62.	17-3044	Nomura International plc	Brian H. Polovoy, Esq., Shearman & Sterling LLP 599 Lexington Avenue

			New York, NY 10022 Randall L. Martin, Esq., Shearman & Sterling LLP 599 Lexington Avenue New York, NY 10022
63.	17-3047	Societe Generale Private Banking (Suisse) S.A., FKA SG Private Banking Suisse S.A.	John F. Zulack, Esq., Allegaert Berger & Vogel LLP 111 Broadway, 20th Floor New York, New York 10006
64.	17-3047	Societe Generale Private Banking (Lugano-Svizzera) S.A., FKA SG Private Banking (Lugano-Svizzera) S.A.	John F. Zulack, Esq.
65.	17-3047	Socgen Nominees (UK) Limited	John F. Zulack, Esq.
66.	17-3047	Lyxor Asset Management S.A., as Successor in Interest to Barep Asset Management S.A.	John F. Zulack, Esq.
67.	17-3047	Societe Generale Holding De Participations S.A., as Successor in Interest to Barep Asset Management S.A	John F. Zulack, Esq.
68.	17-3047	SG AM AI Premium Fund L.P., FKA SG AM Alternative Diversified U.S. L.P.	John F. Zulack, Esq.
69.	17-3047	Lyxor Asset Management Inc., as General Partner of SG AM AI Premium Fund L.P., FKA SGAM Asset Management, Inc.	John F. Zulack, Esq.
70.	17-3047	SG Audace Alternatif, FKA SGAM AI Audace Alternatif	John F. Zulack, Esq.
71.	17-3047	SGAM AI Equilibrium Fund, FKA SGAM Alternative Multi Manager Diversified Fund	John F. Zulack, Esq.
72.	17-3047	Lyxor Premium Fund, FKA SGAM Alternative Diversified Premium Fund	John F. Zulack, Esq.
73.	17-3047	Societe Generale, S.A., as Trustee for Lyxor Premium Fund	John F. Zulack, Esq.
74.	17-3047	Societe Generale Bank & Trust S.A.	John F. Zulack, Esq.
75.	17-3047	OFI MGA Alpha Palmares, FKA Oval Alpha Palmares	Brian J. Butler, Esq., Direct: 315-218-8000

			Bond, Schoeneck & King, PLLC 1 Lincoln Center 110 West Fayette Street Syracuse, NY 13202
76.	17-3047	Oval Palmares Europlus	Brian J. Butler, Esq.
77.	17-3047	UMR Select Alternatif	Brian J. Butler, Esq.
78.	17-3047	Bank Audi S.A.M.-Audi Saradar Group, FKA Dresdner Bank Monaco S.A.M.	Gary J. Mennitt, Esq., Direct: 212-698-3831 Dechert LLP 27th Floor Mailroom 1095 Avenue of the Americas New York, NY 10036
79.	17-3050	Intesa Sanpaolo S.p.A., as Successor in Interest to Banca Intesa SpA 1 William Street New York, NY 10004	Andrew Ditchfield, Direct: 212-450-3009 Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Elliot Moskowitz, Esq., Direct: 212-450-4241 Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017
80.	17-3050	Eurizon Capital SGR S.p.A., Eurizon Capital SGR SpA (as Successor in Interest to Eurizon Investimenti SGR SpA, f/k/a Nextra Investment Management SGR SpA, and Eurizon Alternative Investments SGR Spa, f/k/a Nextra Alternative Inv Piazzatte Giordano Dell'Amore 3 20121 Milan Italy	Andrew Ditchfield Elliot Moskowitz, Esq.
81.	17-3050	Eurizon Low Volatility, Piazzetta Giordano Dell'Amore 3 c/o Eurizon Capital SGR SpA 20121 Milan Italy, FKA Nextra Low Volatility	Andrew Ditchfield Elliot Moskowitz, Esq.
82.	17-3050	Eurizon Low Volatility II, Piazzetta Giordano Dell'Amore 3 c/o Eurizon Capital SGR SpA	Andrew Ditchfield Elliot Moskowitz, Esq.

		20121 Milan Italy, FKA Nextra Low Volatility II	
83.	17-3050	Eurizon Low Volatility PB, Piazzetta Giordano Dell'Amore 3 c/o Eurizon Capital SGR SpA 20121 Milan Italy, FKA Nextra Low Volatility PB	Andrew Ditchfield Elliot Moskowitz, Esq.
84.	17-3050	Eurizon Medium Volatility, Piazzetta Giordano Dell'Amore 3 c/o Eurizon Capital SGR SpA 20121 Milan Italy, FKA Nextra Medium Volatility	Andrew Ditchfield Elliot Moskowitz, Esq.
85.	17-3050	Eurizon Medium Volatility II, Piazzetta Giordano Dell'Amore 3 c/o Eurizon Capital SGR SpA 20121 Milan Italy, FKA Nextra Medium Volatility II	Andrew Ditchfield Elliot Moskowitz, Esq.
86.	17-3050	Eurizon Total Return, Piazzetta Giordano Dell'Amore 3 c/o Eurizon Capital SGR SpA 20121 Milan Italy, FKA Nextra Total Return	Andrew Ditchfield Elliot Moskowitz, Esq.
87.	17-3054	Itau Europa Luxembourg, S.A., f/k/a Banco Itau Europa Luxembourg, S.A.	Brian H. Polovoy, Esq., Shearman & Sterling LLP 599 Lexington Avenue New York, NY 10022 Randall L. Martin, Esq., Shearman & Sterling LLP 599 Lexington Avenue New York, NY 10022
88.	17-3054	Banco Itaú International, f/k/a Banco Itaú Europa International	Brian H. Polovoy, Esq. Randall L. Martin, Esq.
89.	17-3057	UBS AG	Gabriel Herrmann, Esq., Gibson, Dunn & Crutcher LLP 200 Park Avenue New York, NY 10166 Marshall R. King, Esq., Attorney Gibson, Dunn & Crutcher LLP 200 Park Avenue

			New York, NY 10166
90.	17-3057	UBS (Luxembourg) SA	Gabriel Herrmann, Esq., Gibson, Dunn & Crutcher LLP 200 Park Avenue New York, NY 10166 Marshall R. King, Esq., Attorney Gibson, Dunn & Crutcher LLP 200 Park Avenue New York, NY 10166
91.	17-3057	UBS Fund Services (Luxembourg) S.A.	Gabriel Herrmann, Esq. Marshall R. King, Esq., Attorney
92.	17-3057	UBS Third Party Management Company S.A.	Gabriel Herrmann, Esq. Marshall R. King, Esq., Attorney
93.	17-3057	Access International Advisors Ltd.	Brian Lee Muldrew, Esq., Direct: 212-940-6581 Katten Muchin Rosenman LLP Suite 1422 575 Madison Avenue New York, NY 10022 Anthony L. Paccione, Esq., Katten Muchin Rosenman LLP 575 Madison Avenue New York, NY 10022
94.	17-3057	Access Management Luxembourg SA, FKA Access International Advisors Luxembourg SA, as represented by its Liquidator Maitre Ferdinand Entringer	Brian Lee Muldrew, Esq. Anthony L. Paccione, Esq.
95.	17-3057	Access Partners SA, as represented by its Liqudator Maitre Ferdinand Entringer	Brian Lee Muldrew, Esq. Anthony L. Paccione, Esq.
96.	17-3057	Patrick Littaye	Anthony L. Paccione, Esq.

			Brian Lee Muldrew, Esq.
97.	17-3057	Pierre Delandmeter	Scott Berman, Direct: 212-833-1100 Friedman Kaplan Seiler & Adelman LLP 7 Times Square New York, NY 10036
98.	17-3058	Banque Internationale à Luxembourg S.A., individually and as successor in interest to Dexia Nordic Private Bank S.A., FKA Dexia Banque Internationale a Luxembourg S.A.	Jeff Edward Butler, Esq., Clifford Chance US LLP 31 West 52nd Street New York, NY 10019
99.	17-3058	RBC Dexia Investor Services Bank S.A.	Mark Thomas Ciani, Esq., Direct: 212-940-8800 Katten Muchin Rosenman LLP 575 Madison Avenue New York, NY 10022 Anthony L. Paccione, Esq., Katten Muchin Rosenman LLP 575 Madison Avenue New York, NY 10022
100.	17-3058	RBC Dexia Investor Services Espana S.A.	Mark Thomas Ciani, Esq. Anthony L. Paccione, Esq.
101.	17-3058	Banque Internationale a Luxembourg (Suisse) S.A., FKA Dexia Private Bank (Switzerland) Ltd.	Jeff Edward Butler, Esq.
102.	17-3059	Abu Dhabi Investment Authority	Marc Greenwald, Direct: 212-849-7140 Quinn Emanuel Urquhart & Sullivan, LLP 22nd Floor 51 Madison Avenue New York, NY 10010 Eric Mark Kay, Esq., Direct: 212-849-7273 Quinn Emanuel Urquhart & Sullivan, LLP 22nd Floor

			51 Madison Avenue New York, NY 10010
103.	17-3060	Dakota Global Investments, Ltd.	Jeff Edward Butler, Esq., Clifford Chance US LLP 31 West 52nd Street New York, NY 10019
104.	17-3062	HSBC Bank plc	Thomas J. Moloney, Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006
105.	17-3062	HSBC Securities Services (Luxembourg) SA (also sued as HSBC Fund Services (Luxembourg) S.A.)	Thomas J. Moloney
106.	17-3062	HSBC Bank Bermuda Limited	Thomas J. Moloney
107.	17-3062	HSBC Private Bank (Suisse) S.A.	Thomas J. Moloney
108.	17-3062	HSBC Private Banking Holdings (Suisse) S.A.	Thomas J. Moloney
109.	17-3062	HSBC Cayman Services Limited (sued as HSBC Bank (Cayman) Limited)	Thomas J. Moloney
110.	17-3062	HSBC Securities Services (Bermuda) Limited	Thomas J. Moloney
111.	17-3062	HSBC Bank USA, N.A.	Thomas J. Moloney
112.	17-3062	HSBC Institutional Trust Services (Bermuda) Limited	Thomas J. Moloney
113.	17-3062	HSBC Securities Services (Ireland) Designated Activity Company (sued as HSBC Security Services (Ireland) Limited)	Thomas J. Moloney
114.	17-3062	HSBC France, Dublin Branch (sued as HSBC Institutional Trust Services (Ireland) Limited)	Thomas J. Moloney
115.	17-3062	HSBC Holdings plc	Thomas J. Moloney
116.	17-3062	BA Worldwide Fund Management Limited	Franklin B. Velie, Esq., Direct: 212-484-9866 Pierce Bainbridge Beck Price & Hecht LLP 277 Park Ave, 45th Floor

			New York, NY 10172 Jonathan G. Kortmansky, Esq., Direct: 212-484-9866 Pierce Bainbridge Beck Price & Hecht LLP 277 Park Ave, 45th Floor New York, NY 10172
117.	17-3064	SICO Limited	Thomas J. Moloney, Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006
118.	17-3065	ABN AMRO Retained Nominees (IOM) Limited	Christopher R. Harris, Esq. Latham & Watkins LLP Direct: 212-906-1200 885 3rd Avenue New York, NY 10022 Thomas Giblin, Esq., Latham & Watkins LLP Direct: 212-906-1200 885 3rd Avenue New York, NY 10022
119.	17-3065	Platinum All Weather Fund Limited	Scott Schreiber, Esq., Rosa J. Evergreen, Esq. Direct: 202-942-5000 Arnold & Porter Kaye Scholer LLP 601 Massachusetts Avenue, NW Washington, DC 20001
120.	17-3065	Odyssey	Ralph A. Siciliano, Esq., Direct: 212-508-6718 Tannenbaum Helpern Syracuse & Hirschtritt LLP 900 3rd Avenue New York, NY 10022
121.	17-3066	Fairfield Investment Fund Limited	William A. Maher, Esq. Wollmuth Maher & Deutsch LLP

			500 5th Avenue New York, NY 10110 Fletcher W. Strong, Esq. Wollmuth Maher & Deutsch LLP 500 5th Avenue New York, NY 10110
122.	17-3066	Fairfield Greenwich Limited	Peter E. Kazanoff, Esq., Direct: 212-455-3525 Simpson Thacher & Bartlett LLP 425 Lexington Avenue New York, NY 10017
123.	17-3066	Fairfield Greenwich (Bermuda) Limited	Peter E. Kazanoff, Esq.
124.	17-3066	Fairfield Greenwich Advisors LLC	Peter E. Kazanoff, Esq.
125.	17-3066	Fairfield International Managers, Inc.	Peter E. Kazanoff, Esq.
126.	17-3066	Walter Noel	Andrew Hammond, Direct: 212-819-8297 White & Case LLP 1221 Avenue of the Americas New York, NY 10020
127.	17-3066	Jeffrey Tucker	Daniel Jeffrey Fetterman, Esq., Direct: 212-506-1700 Kasowitz Benson Torres LLP 1633 Broadway New York, NY 10019 David Mark, Attorney Direct: 212-506-1700 Kasowitz Benson Torres LLP 1633 Broadway New York, NY 10019
128.	17-3066	Andres Piedrahita	Andrew Joshua Levander, Esq., Direct: 212-698-3683 Dechert LLP 1095 Avenue of the Americas New York, NY 10036

			Neil A. Steiner, Esq., Direct: 212-698-3671 Dechert LLP 27th Floor Mailroom 1095 Avenue of the Americas New York, NY 10036
129.	17-3066	Amit Vijayvergiya	Peter E. Kazanoff, Esq.
130.	17-3066	Philip Toub	Peter E. Kazanoff, Esq.
131.	17-3066	Corina Noel Piedrahita	Peter E. Kazanoff, Esq.
132.	17-3067	Falcon Private Bank Ltd., FKA AIG Privat Bank AG	Eric Xinis Fishman, Esq., Direct: 212-858-1745 Pillsbury Winthrop Shaw Pittman LLP 31 West 52nd Street New York, NY 10019-6131
133.	17-3068	Bank Vontobel AG, FKA Bank J. Vontobel & Co. AG	Gregory F. Hauser, Esq., Direct: 212-509-4717 Wuersch & Gering LLP 10th Floor 100 Wall Street New York, NY 10005
134.	17-3068	Vontobel Asset Management Inc.	Gregory F. Hauser, Esq.
135.	17-3069	BNP Paribas Arbitrage SNC	Breon S. Peace, Esq., Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006 Ari D. MacKinnon, Esq., Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006 Thomas S. Kessler, Esq. Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006

136.	17-3070	SafeHand Investments	Carl H. Loewenson, Jr., Esq., Direct: 212-468-8128 Morrison & Foerster LLP 250 West 55th Street New York, NY 10019 Gerardo Gomez Galvis, Esq., Direct: 212-336-4051 Morrison & Foerster LLP 250 West 55th Street New York, NY 10019
137.	17-3070	Strongback Holdings Corporation	Carl H. Loewenson, Jr., Esq. Gerardo Gomez Galvis, Esq.
138.	17-3070	PF Trustees Limited, in its capacity as trustee of RD Trust	Carl H. Loewenson, Jr., Esq. Gerardo Gomez Galvis, Esq.
139.	17-3071	Meritz Fire & Marine Insurance Co., Ltd.	Michael T. Driscoll, Esq., Direct: 212-653-8700 Sheppard, Mullin, Richter & Hampton LLP 30 Rockefeller Plaza New York, NY 10112 Seong Hwan Kim, Esq., Direct: 310-228-3700 Sheppard, Mullin, Richter & Hampton LLP 16th Floor 1901 Avenue of the Stars Los Angeles, CA 90067
140.	17-3072	Bank Hapoalim B.M.	Scott Balber, Esq., Direct: 917-542-7810 Herbert Smith Freehills New York, LLP 14th Floor 450 Lexington Avenue New York, NY 10017 Jonathan C. Cross, Esq., Direct: 917-542-7600 Herbert Smith Freehills New York, LLP

			14th Floor 450 Lexington Avenue New York, NY 10017
141.	17-3072	Bank Hapoalim (Switzerland) Ltd.	Scott Balber, Esq. Jonathan C. Cross, Esq.
142.	17-3073	UKFP (Asia) Nominees Limited	Michael Evan Rayfield, Esq., Direct: 212-506-2560 Mayer Brown LLP 1221 Avenue of the Americas New York, NY 10020 Brian Trust, Esq., Direct: 212-506-2500 Mayer Brown LLP 1221 Avenue of the Americas New York, NY 10020
143.	17-3074	Multi-Strategy Fund Limited	Robert Joel Lack, Direct: 212-833-1108 Friedman Kaplan Seiler & Adelman LLP 7 Times Square New York, NY 10036
144.	17-3074	CDP Capital Tactical Alternative Investments	Robert Joel Lack
145.	17-3075	ZCM Asset Holding Company (Bermuda) LLC	Jack G. Stern, Esq., Direct: 212-446-2340 Boies Schiller Flexner LLP 575 Lexington Avenue New York, NY 10022 Alan B. Vickery, Esq., Partner Direct: 212-446-2300 Boies Schiller Flexner LLP 7th Floor 575 Lexington Avenue New York, NY 10022
146.	17-3076	Citibank (Switzerland) AG	E. Pascale Bibi, Esq., Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006

			Carmine D. Boccuzzi, Jr., Esq., Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006 Lauren M. Irwin, Esq. Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006
147.	17-3077	Federico M. Ceretti	Anthony Antonelli, Esq., Direct: 212-318-6730 Paul Hastings LLP 200 Park Avenue New York, NY 10166 Jodi Aileen Kleinick, Esq., Direct: 212-318-6751 Paul Hastings LLP 200 Park Avenue New York, NY 10166 Barry Gordon Sher, Esq. Direct: 212-318-6085 Paul Hastings LLP 200 Park Avenue New York, NY 10166
148.	17-3077	Carlo Grosso	Anthony Antonelli, Esq. Jodi Aileen Kleinick, Esq. Barry Gordon Sher, Esq.
149.	17-3077	FIM Advisers LLP	Anthony Antonelli, Esq. Jodi Aileen Kleinick, Esq. Barry Gordon Sher, Esq.
150.	17-3077	FIM Limited	Anthony Antonelli, Esq. Jodi Aileen Kleinick, Esq.

			Barry Gordon Sher, Esq.
151.	17-3077	Citi Hedge Fund Services Limited	E. Pascale Bibi, Esq., Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006 Carmine D. Boccuzzi, Jr., Esq., Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006 Lauren M. Irwin, Esq. Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006
152.	17-3077	First Peninsula Trustees Limited, Individually and as Trustee of the Ashby Trust	Timothy P. Harkness, Esq., Direct: 212-277-4000 Freshfields Bruckhaus Deringer US LLP 31st Floor 601 Lexington Avenue New York, NY 10022
153.	17-3077	The Ashby Trust	Timothy P. Harkness, Esq.
154.	17-3077	Ashby Investment Services Limited	Timothy P. Harkness, Esq.
155.	17-3077	Alpine Trustees Limited, Individually and as Trustees of the El Prela Trust	Timothy P. Harkness, Esq.
156.	17-3077	Port of Hercules Trustees Limited, Individually and as Trustee of the El Prela Trust	Timothy P. Harkness, Esq.
157.	17-3077	El Prela Trust	Timothy P. Harkness, Esq.
158.	17-3077	El Prela Group Holding Services Limited	Timothy P. Harkness, Esq.
159.	17-3077	Ashby Holding Services Limited	Timothy P. Harkness, Esq.

160.	17-3077	El Prela Trading Investments Limited	Timothy P. Harkness, Esq.
161.	17-3077	HSBC Bank Bermuda Limited	Thomas J. Moloney, Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006
162.	17-3077	Kingate Management Limited	Peter R. Chaffetz, Esq. Direct: 212-257-6960 Chaffetz Lindsey LLP 33rd Floor 1700 Broadway New York, NY 10019 Erin Valentine, Esq., Direct: 212-257-6960 Chaffetz Lindsey LLP 33rd Floor 1700 Broadway New York, NY 10019
163.	17-3078	Banque SYZ SA	Richard B. Levin, Esq., Jenner & Block LLP 919 3rd Avenue New York, NY 10022 Carl Nicholas Wedoff, Esq., Direct: 212-891-1653 Jenner & Block LLP 919 3rd Avenue New York, NY 10022
164.	17-3080	Credit Suisse AG	William J. Sushon, Esq., O'Melveny & Myers LLP Times Square Tower 7 Times Square New York, NY 10036
165.	17-3080	Credit Suisse AG, Nassau Branch	William J. Sushon, Esq.
166.	17-3080	Credit Suisse AG, Nassau Branch Wealth Management	William J. Sushon, Esq.
167.	17-3080	Credit Suisse AG, Nassau Branch LATAM Investment Banking	William J. Sushon, Esq.
168.	17-3080	Credit Suisse Wealth Management Limited	William J. Sushon, Esq.

169.	17-3080	Credit Suisse (Luxembourg) SA	William J. Sushon, Esq.
170.	17-3080	Credit Suisse International Limited	William J. Sushon, Esq.
171.	17-3080	Credit Suisse Nominees (Guernsey) Limited	William J. Sushon, Esq.
172.	17-3080	Credit Suisse London Nominees Limited	William J. Sushon, Esq.
173.	17-3080	Credit Suisse (UK) Limited	William J. Sushon, Esq.
174.	17-3080	Credit Suisse Securities (USA) LLC	William J. Sushon, Esq.
175.	17-3083	Standard Chartered Financial Services (Luxembourg) S.A., FKA American Express Financial Services (Luxembourg) S.A., FKA American Express Bank (Luxembourg) S.A., as represented by its Liquidator Hanspeter Kramer, Hanspeter Kramer, in his capacities as liquidator and representative of Standard Chartered Financial Services (Luxembourg) S.A	Diane Lee McGimsey, Esq., Direct: 310-712-6644 Sullivan & Cromwell LLP Suite 2100 1888 Century Park East Los Angeles, CA 90067 Sharon Nelles, Esq., Direct: 212-558-4976 Sullivan & Cromwell LLP 125 Broad Street New York, NY 10004
176.	17-3083	Standard Chartered Bank International (Americas) Limited, FKA American Express Bank International	Diane Lee McGimsey, Esq. Sharon Nelles, Esq.
177.	17-3083	Standard Chartered International (USA) Ltd., FKA American Express Bank, Ltd.	Diane Lee McGimsey, Esq. Sharon Nelles, Esq.
178.	17-3084	Fullerton Capital PTE Ltd.	Daniel R. Bernstein, Esq., Direct: 212-836-7120 Arnold & Porter Kaye Scholer LLP 250 West 55th Street New York, NY 10019 Kent A. Yalowitz, Direct: 212-836-8344 Arnold & Porter Kaye Scholer LLP 250 West 55th Street New York, NY 10019

179.	17-3086	Banque Privee Espirito Santo S.A., FKA Compagnie Bancaire Espirito Santo S.A.	John F. Zulack, Esq., Allegaert Berger & Vogel LLP 111 Broadway, 20th Floor New York, New York 10006
180.	17-3087	Naidot & Co.	Heather Kafele, Esq., Winston & Strawn LLP 1700 K Street, NW Washington, DC 20006 Keith Palfin, Esq., Winston & Strawn LLP 1700 K Street, NW Washington, DC 20006
181.	17-3088	BNP Paribas S.A.	Breon S. Peace, Esq., Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006 Ari D. MacKinnon, Esq., Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006 Thomas S. Kessler, Esq. Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006
182.	17-3088	BNP Paribas (Suisse) SA, Individually and as Successor in Interest to United European Bank	Breon S. Peace, Esq., Ari D. MacKinnon, Esq., Thomas S. Kessler, Esq.
183.	17-3088	BNP Paribas Arbitrage SNC	Breon S. Peace, Esq., Ari D. MacKinnon, Esq., Thomas S. Kessler, Esq.
184.	17-3088	BNP Paribas Bank & Trust Cayman Limited	Breon S. Peace, Esq.,

			Ari D. MacKinnon, Esq., Thomas S. Kessler, Esq.
185.	17-3088	BNP Paribas Securities Services - Succusale De Luxembourg	Breon S. Peace, Esq., Ari D. MacKinnon, Esq., Thomas S. Kessler, Esq.
186.	17-3088	BNP Paribas Securities Services S.A.	Breon S. Peace, Esq., Ari D. MacKinnon, Esq., Thomas S. Kessler, Esq.
187.	17-3088	BGL BNP Paribas Luxembourg S.A., as Successor in Interest to BNP Paribas Luxembourg S.A.	Breon S. Peace, Esq., Ari D. MacKinnon, Esq., Thomas S. Kessler, Esq.
188.	17-3091	Credit Suisse AG, as successor in interest to Clariden Leu AG and Bank Leu AG	William J. Sushon, Esq., O'Melveny & Myers LLP Times Square Tower 7 Times Square New York, NY 10036
189.	17-3100	UBS Deutschland AG, as successor in interest to Dresdner Bank LateinAmerika AG	Gabriel Herrmann, Esq., Gibson, Dunn & Crutcher LLP 200 Park Avenue New York, NY 10166 Marshall R. King, Esq., Attorney Gibson, Dunn & Crutcher LLP 200 Park Avenue New York, NY 10166
190.	17-3100	LGT Bank (Switzerland) LTD., as successor in interest to Dresdner Bank (Schweiz) AG	Alexander B. Lees, Esq., Milbank LLP 55 Hudson Yards New York, NY 10001
191.	17-3101	Banca Carige S.P.A.	David Mark, Attorney Direct: 212-506-1700 Kasowitz Benson Torres LLP

			1633 Broadway New York, NY 10019
192.	17-3102	Somers Dublin Designated Activity Company	Thomas J. Moloney, Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006
193.	17-3102	Somers Nominees (Far East) Limited	Thomas J. Moloney
194.	17-3106	Lion Global Investors Limited	Russell T. Gorkin, Esq., Proskauer Rose LLP 11 Times Square New York, NY 10036 Gregg M. Mashberg, Esq., Partner Proskauer Rose LLP 11 Times Square New York, NY 10036
195.	17-3109	Public Institution for Social Security	Joseph P. Davis III Direct: 617-370-6204 Greenberg Traurig, LLP One International Place Suite 2000 Boston, Massachusetts 02110 Nathan Haynes Direct: 212-801-2137 Greenberg Traurig, LLP Metlife Building 200 Park Avenue New York, NY 10166
196.	17-3112	Bordier & Cie	John F. Zulack, Esq., Allegaert Berger & Vogel LLP 111 Broadway, 20th Floor New York, New York 10006
197.	17-3113	Fairfield Greenwich Capital Partners	Peter E. Kazanoff, Esq., Direct: 212-455-3525 Simpson Thacher & Bartlett LLP 425 Lexington Avenue

			New York, NY 10017
198.	17-3113	Share Management LLC	Peter E. Kazanoff, Esq.
199.	17-3115	EFG Bank S.A., FKA EFG Private Bank S.A.	Adam Lavine, Esq., Direct: 212-488-1279 Kobre & Kim LLP 6th Floor 800 3rd Avenue New York, NY 10022 David Farrington Yates, Esq., Direct: 212-488-1211 Kobre & Kim LLP 6th Floor 800 3rd Avenue New York, NY 10022
200.	17-3115	EFG BANK (MONACO) S.A.M., FKA EFG Eurofinancire dInvestissements S.A.M.	Adam Lavine, Esq. David Farrington Yates, Esq.
201.	17-3115	EFG BANK & TRUST (BAHAMAS) LIMITED, as successor-in-interest to Banco Atlantico (Bahamas) Bank & Trust Limited	Adam Lavine, Esq. David Farrington Yates, Esq.
202.	17-3117	ABN AMRO Retained Custodial Services (Ireland) Limited	Christopher R. Harris, Esq. Latham & Watkins LLP Direct: 212-906-1200 885 3rd Avenue New York, NY 10022 Thomas Giblin, Esq., Latham & Watkins LLP Direct: 212-906-1200 885 3rd Avenue New York, NY 10022
203.	17-3117	ABN AMRO Custodial Services (Ireland) Ltd., FKA Fortis Prime Fund Solutions Custodial Services (Ireland) Ltd.	Christopher R. Harris, Esq. Thomas Giblin, Esq.
204.	17-3122	Banco Bilbao Vizcaya Argentaria, S.A.	Heather Kafele, Esq., Winston & Strawn LLP 1700 K Street, NW

			Washington, DC 20006 Keith Palfin, Esq., Winston & Strawn LLP 1700 K Street, NW Washington, DC 20006
205.	17-3126	LGT Bank in Liechtenstein Ltd.	Alexander B. Lees, Esq., Milbank LLP 55 Hudson Yards New York, NY 10001
206.	17-3129	Nomura International plc	Brian H. Polovoy, Esq., Shearman & Sterling LLP 599 Lexington Avenue New York, NY 10022 Randall L. Martin, Esq., Shearman & Sterling LLP 599 Lexington Avenue New York, NY 10022
207.	17-3132	Lighthouse Investment Partners, LLC, DBA Lighthouse Partners, LLC	Eugene R. Licker, Direct: 646-346-8074 Ballard Spahr LLP 19th Floor 1675 Broadway New York, NY 10019-5820
208.	17-3132	Lighthouse Supercash Fund Limited	Eugene R. Licker
209.	17-3132	Lighthouse Diversified Fund Limited	Eugene R. Licker
210.	17-3134	Merrill Lynch International	Pamela A. Miller, Esq., Direct: 212-326-2088 O'Melveny & Myers LLP Times Square Tower 7 Times Square New York, NY 10036
211.	17-3136	Inteligo Bank Ltd. Panama Branch, FKA Blubank Ltd Panama Branch	Heather Kafele, Esq. Winston & Strawn LLP 1700 K Street, NW Washington, DC 20006 Keith Palfin, Esq.,

			Winston & Strawn LLP 1700 K Street, NW Washington, DC 20006
212.	17-3139	Citigroup Global Markets Limited	E. Pascale Bibi, Esq., Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006 Carmine D. Boccuzzi, Jr., Esq., Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006 Lauren M. Irwin, Esq. Cleary Gottlieb Steen & Hamilton LLP 1 Liberty Plaza New York, NY 10006
213.	17-3140	KBC Investments Limited	Andrew P. Propps, Esq., Direct: 212-839-5300 Sidley Austin LLP 787 7th Avenue New York, NY 10019 Alan M. Unger, Esq., Direct: 212-839-5300 Sidley Austin LLP 787 7th Avenue New York, NY 10019
214.	17-3141	UBS AG	Gabriel Herrmann, Esq., Gibson, Dunn & Crutcher LLP 200 Park Avenue New York, NY 10166 Marshall R. King, Esq., Attorney Gibson, Dunn & Crutcher LLP 200 Park Avenue New York, NY 10166
215.	17-3141	UBS (Luxembourg) SA	Gabriel Herrmann, Esq.

			Marshall R. King, Esq., Attorney
216.	17-3141	UBS Fund Services (Luxembourg) S.A.	Gabriel Herrmann, Esq. Marshall R. King, Esq., Attorney
217.	17-3141	UBS Third Party Management Company S.A.	Gabriel Herrmann, Esq. Marshall R. King, Esq., Attorney
218.	17-3141	M&B Capital Advisers, S.A. f/k/a M&B Capital Advisers Sociedad De Valores, S.A.	Richard B. Levin, Esq., Jenner & Block LLP 919 3rd Avenue New York, NY 10022 Carl Nicholas Wedoff, Esq., Direct: 212-891-1653 Jenner & Block LLP 919 3rd Avenue New York, NY 10022
219.	17-3143	Inter Investissements S.A., FKA Inter Conseil S.A.	Andrew Ehrlich, Direct: 212-373-3166 Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, NY 10019 Martin Flumenbaum, Direct: 212-373-3000 Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, NY 10019
220.	17-3144	Banco General, S.A.	Joshua E. Abraham, Counsel BUTZEL LONG a professional corporation 477 Madison Avenue, Suite 1230 New York, NY 10022

221.	17-3144	BG Valores, S.A., FKA Wall Street Securities, S.A.	Joshua E. Abraham
222.	17-3862	ABN AMRO Bank N.V., presently known as The Royal Bank of Scotland, N.V.	Rachel Nechama Agress, Esq., Direct: 212-756-1122 Allen & Overy LLP 1221 Avenue of the Americas New York, NY 10020 Faraj Abdussalam Bader, Esq., Direct: 212-610-6300 Allen & Overy LLP 1221 Avenue of the Americas New York, NY 10020 Michael Feldberg, Esq., Direct: 212-610-6360 Allen & Overy LLP 1221 Avenue of the Americas New York, NY 10020 Derek Jackson, Esq., Direct: 212-610-6300 Allen & Overy LLP 1221 Avenue of the Americas New York, NY 10020