UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FUND LIQUIDATION HOLDINGS LLC, as assignee and successor-in-interest to FrontPoint Asian Event Driven Fund L.P., MOON CAPITAL PARTNERS MASTER FUND LTD., and MOON CAPITAL MASTER FUND LTD., on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

CITIBANK, N.A., BANK OF AMERICA, N.A., JPMORGAN CHASE BANK, N.A., THE ROYAL BANK OF SCOTLAND PLC, UBS AG, BNP PARIBAS, S.A., OVERSEA-CHINESE BANKING CORPORATION LTD., BARCLAYS BANK PLC, DEUTSCHE BANK AG, CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, CREDIT SUISSE AG, STANDARD CHARTERED BANK, DBS BANK, LTD., ING BANK, N.V., UNITED OVERSEAS BANK LIMITED, AUSTRALIA AND NEW ZEALAND BANKING GROUP, LTD., THE BANK OF TOKYO-MITSUBISHI UFJ, LTD., THE HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED, COMMERZBANK AG, AND JOHN DOES NOS. 1-50,

Defendants.

Docket No. 1:16-cv-05263-AKH

THE SINGAPORE BANKS' SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO DISMISS THE FOURTH AMENDED CLASS ACTION COMPLAINT FOR LACK OF PERSONAL JURISDICTION

ORAL ARGUMENT REQUESTED

Table of Contents

PRELIMINARY STATEMENT 1

BACKGROUND 2

I. The Singapore Banks are citizens of Singapore with a minimal U.S. presence........ 2

II. The Singapore Banks have continuously asserted their lack-of-personal jurisdiction defense. 3

STANDARD OF REVIEW 5

ARGUMENT 6

I. The Singapore Banks Lack the Requisite Minimum Contacts with the United States. 6

A. Plaintiffs Fail to Allege that the Singapore Banks Engaged in Any Suit-Related Conduct in or Targeting the United States. 6

B. Benchmark Cases Consistently Dismiss Defendants Not Alleged to Engage in Suit-Related Conduct or Trading in the United States. 8

II. Personal Jurisdiction Over the Singapore Banks Would Not Be Reasonable Under the Circumstances. 11

III. The Singapore Banks Did Not Consent to Jurisdiction. 12

CONCLUSION 13

TABLE OF AUTHORITIES

Page(s)

Cases

Allianz Glob. Invs. GmbH v. Bank of Am. Corp.,
457 F. Supp. 3d 401 (S.D.N.Y. 2020)....................10

Asahi Medal Indus. Co. v. Superior Ct. of Cal., Solano Cnty.,
480 U.S. 102 (1987)....................12

Bristol-Myers Squibb Co. v. Superior Ct. of Cal., S.F. Cnty.,
137 S. Ct. 1773 (2017)....................6

CE Int'l Res. Holdings v. S.A. Mins. Ltd. P'ship,
2013 WL 2661037 (S.D.N.Y. June 12, 2013)....................12

Charles Schwab Corp. v. Bank of Am. Corp.,
883 F.3d 68 (2d Cir. 2018)....................7

Daimler AG v. Bauman,
571 U.S. 117 (2014)....................6, 12

Daventree Ltd. v. Republic of Azerbaijan,
349 F. Supp. 2d 736 (S.D.N.Y. 2004)....................7

Dennis v. JPMorgan Chase & Co.,
345 F. Supp. 3d 122 (S.D.N.Y. 2018)....................13

DiStefano v. Carozzi N. Am., Inc.,
286 F.3d 81 (2d Cir. 2001)....................5, 6

Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.,
141 S. Ct. 1017 (2021)....................6

In re Foreign Exch. Benchmark Rates Antitrust Litig.,
No. 13 CIV. 7789 (LGS), 2016 WL 1268267 (S.D.N.Y. Mar. 31, 2016)....................8, 9

FrontPoint Asian Event Driven Fund, L.P. v. Citibank, N.A.,
399 F. Supp. 3d 94 (S.D.N.Y. 2019)....................5

FrontPoint Asian Event Driven Fund, L.P. v. Citibank, N.A.,
No. 16-cv-5263 (AKH), 2017 WL 3600425 (S.D.N.Y. Aug. 18, 2017)....................3, 8, 12, 13

FrontPoint Asian Event Driven Fund, L.P. v. Citibank, N.A.,
No. 16-cv-5263 (AKH), 2018 WL 4830087 (S.D.N.Y. Oct. 4, 2018).................... *passim*

Fund Liquidation Holdings LLC v. Bank of Am. Corp.,
991 F.3d 370 (2d Cir. 2021)....................5

Fund Liquidation Holdings LLC v. UBS AG,
No. 15-cv-5844 (GBD), 2021 WL 4482826 (S.D.N.Y. Sept. 30, 2021) 10

Jazini v. Nissan Motor Co.,
148 F.3d 181 (2d Cir. 1998)....................5, 7

Licci ex rel. Licci v. Lebanese Canadian Bank, SAL,
732 F. 3d 161 (2d Cir. 2013)....................6

In re N. Sea Brent Crude Oil Futures Litig.,
No. 13-md-2475, 2017 WL 2535731 (S.D.N.Y. June 8, 2017)....................8, 9, 10

Penguin Grp. (USA) Inc., v. Am. Buddha,
609 F.3d 30 (2d Cir. 2010)....................5

Sonterra Cap. Master Fund Ltd. v. Credit Suisse Grp. AG,
277 F. Supp. 3d 521 (S.D.N.Y. 2017)....................8, 9

U.S. Bank Nat'l Assoc. v. Bank of Am. N.A.,
916 F.3d 143 (2d Cir. 2019)....................7

Waldman v. Palestine Liberation Org.,
835. F.3d 317, 331 (2d Cir. 2016)....................6, 7

World-Wide Volkswagen Corp. v. Woodson,
444 U.S. 286 (1980)....................7

Statutes and Rules

Singapore Banking Act, pt. VII § 47(1)....................12

Defendants DBS Bank, Ltd. ("DBS"), Oversea-Chinese Banking Corporation Limited ("OCBC"), and United Overseas Bank Limited ("UOB") (collectively, the "Singapore Banks"), by and through their undersigned counsel, respectfully submit this joint supplemental memorandum in support of their motion to dismiss the Fourth Amended Class Action Complaint (the "FAC") for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2).[1]

PRELIMINARY STATEMENT

The Singapore Banks are foreign entities, headquartered abroad, who are neither alleged to have traded in SIBOR- or SOR-based derivatives in the United States during the class period nor alleged to have engaged in any suit-related conspiratorial conduct in or aimed at the United States. The Singapore Banks did not engage in the determination or submission of SIBOR- or SOR-component benchmarks in the United States, nor are they specifically alleged to have taken any action in or directed at the United States in furtherance of the alleged conspiracy, or specifically alleged to have profited from any conspiracy-related conduct in the United States. Simply put, the Singapore Banks lack requisite minimum suit-related contacts with the United States to exercise personal jurisdiction over them. Based on their minimal presence in the United States, exercising personal jurisdiction over the Singapore Banks would be incompatible with constitutional due process.

Second Circuit precedent and this District's benchmark-related cases make clear that personal jurisdiction cannot be asserted over defendants not specifically alleged to have (i) taken suit-related actions in or specifically directed at the United States, or (ii) engaged in trading

---

[1] In addition to signing the Non-Settling Defendants' memorandum in support of the motion to dismiss, the Singapore Banks incorporate by reference and join in full in the personal-jurisdiction arguments submitted in the separate memorandum filed by the Foreign Non-Counterparty Defendants, including Argument sections A and C.

benchmark-based derivatives in the United States. Now in their fifth iteration of the complaint, Plaintiffs still cannot make these allegations as to the Singapore Banks.

Plaintiffs have had several opportunities to cure the fatal jurisdictional defects in their complaint, but even now in the FAC, necessary jurisdictional allegations are still absent. The Singapore Banks, meanwhile, have preserved their personal jurisdiction arguments at every step. The claims against the Singapore Banks should be dismissed with prejudice.

BACKGROUND

I. The Singapore Banks are citizens of Singapore with a minimal U.S. presence.

Each of the Singapore Banks is a financial institution with its principal place of business in Singapore, organized under the laws of Singapore. *See* FAC ¶¶ 118, 140, 143, ECF No. 437; Decl. of Debbie Lam Thuan Meng ("DBS Decl.") ¶¶ 2, 3, Nov. 24, 2021; Decl. of Frederick Chong Shen ("OCBC Decl.") ¶ 2, Nov. 24, 2021; Decl. of Beh Ean Lim ("UOB Decl.") ¶ 2, Nov. 24, 2021. Plaintiffs do not allege that the Singapore Banks engaged in any suit-related conduct in the United States. All employees involved in each of the Singapore Banks' determination and submissions for SIBOR and SOR were based in Singapore. DBS Decl. ¶ 6; OCBC Decl. ¶ 8; UOB Decl. ¶ 4. While each of the Singapore Banks maintains a small U.S. presence,[2] none of the employees in the Singapore Banks' U.S. offices were involved in the determination or submission of SIBOR or SOR components or the trading of SIBOR- or SOR-based derivatives, DBS Decl. ¶¶ 6, 7; OCBC Decl. ¶ 8; UOB Decl. ¶ 7, or are specifically alleged to have taken any actions relating to the alleged conspiracy, *see generally* FAC.

[2] DBS maintains one small office in Los Angeles, California, where 42 of its approximately 21,800 employees work. DBS Decl. ¶¶ 3, 4. OCBC maintains an office in New York and an office in California, where together 32 of its approximately 29,000 employees work. OCBC Decl. ¶ 4. OCBC also owns a corporate resident apartment in New York. OCBC Decl. ¶ 3. UOB similarly maintains an office in New York and an office in California, where together 52 of its approximately 25,000 employees work. UOB Decl. ¶ 5.

II. The Singapore Banks have continuously asserted their lack-of-personal-jurisdiction defense.

Plaintiffs filed their initial complaint in July 2016. That complaint was deficient in numerous respects, including because it contained "no plausible allegations that any conduct related to the conspiracy to manipulate SIBOR and SOR occurred within the United States." *See FrontPoint Asian Event Driven Fund, L.P. v. Citibank, N.A.*, No. 16-cv-5263 (AKH), 2017 WL 3600425, at *5 (S.D.N.Y. Aug. 18, 2017) ("*SIBOR I*") (ECF No. 225). The Court granted the Singapore Banks' motion to dismiss for lack of personal jurisdiction because the "relevant conduct giving rise to plaintiffs' alleged injury occurred elsewhere: Singapore," and "[t]he fact that defendants may have engaged in *non-suit related activity* in the United States does not change this result." *Id.* at *6 (emphasis added).[3]

The Court granted Plaintiffs leave to amend, and they filed a Second Amended Complaint ("SAC"). The SAC again contained no allegations tying the Singapore Banks to any suit-related conduct in the United States. The Singapore Banks again moved to dismiss the claims against them on personal jurisdiction grounds. In its second decision, the Court held that allegations of trading of SIBOR- and SOR-based derivatives in the United States by just two defendants—Deutsche Bank and Citibank—were sufficient to establish personal jurisdiction over 13 unaffiliated foreign competitors based on allegations that those 13 defendants conspired with Deutsche Bank and Citibank in Singapore with respect to a Singapore dollar-based reference rate. *FrontPoint Asian Event Driven Fund, L.P. v. Citibank, N.A.*, No. 16-cv-5263 (AKH), 2018 WL 4830087, at *6 (S.D.N.Y. Oct. 4, 2018) ("*SIBOR II*") (ECF No. 302).

[3] The Court explained: "Plaintiffs must do more than infer that the Foreign Defendants likely were participants in the U.S. derivatives market. They must allege specific facts that plausibly suggest that the Foreign Defendants entered into SIBOR- and SOR-based transactions with counterparties based in the United States, and that those transactions had a nexus to the benchmark interest rate manipulation at issue in this suit." *SIBOR I*, 2017 WL 3600425, at *7.

On October 18, 2018, the Singapore Banks joined Defendant Hongkong and Shanghai Banking Corporation Limited in moving for reconsideration of the Court's *SIBOR II* decision. ECF Nos. 304, 306. The Singapore Banks' motion argued that the decision did not address salient dispositive—and undisputed—facts, in particular that the Singapore Banks are foreign entities, headquartered abroad, that were neither involved in the determination or submission of SIBOR- or SOR-component benchmarks in the United States, nor engaged in trading of SIBOR- or SOR-based derivatives from within the United States during the relevant time period. ECF No. 306 at 1–2. That is, the "U.S. based trading" that the Court reasoned "support[ed] the exercise of personal jurisdiction" was *entirely absent* from the complaint as to the Singapore Banks. *See* Op. & Order Granting in Part & Denying in Part Defs.' Mots. to Dismiss 18, Oct. 4, 2018, ECF No. 302.

After the motions for reconsideration were filed, but before they were decided, Plaintiffs filed a Third Amended Complaint ("TAC"). ECF No. 308. The TAC was again devoid of allegations of suit-related conduct by the Singapore Banks in the United States. Defendants—including the Singapore Banks—moved to dismiss that complaint on several grounds, including lack of personal jurisdiction over the foreign banks. ECF No. 319.[4] On April 29, 2019, the Court issued a minute order denying the motions for reconsideration as "academic" because the personal jurisdiction defense was set to be adjudicated in the new motion to dismiss the TAC. ECF Nos. 385, 386. The minute order did not address the merits of the Singapore Banks' motion for reconsideration.

---

[4] On February 20, 2019, the Court issued an order adjourning oral argument on pending motions to April 29, 2019, and confirming that the parties could present argument on all four motions then-pending before the Court, including the Singapore Banks' motion for reconsideration and the Defendants' motion to dismiss the Third Amended Complaint. ECF No. 372.

On May 2, 2019, the Parties presented oral argument on the motions to dismiss the TAC. The Court stated with regard to the arguments on personal jurisdiction, "it's not necessary to argue again. I will reserve." Tr. of Proceedings re May 2, 2019 Conf. 3:2–3, ECF No. 389. In *SIBOR III*, the Court granted the Defendants' motion to dismiss, but, because the Court's holding was that it lacked subject-matter jurisdiction over the case, the Court did not address the Singapore Banks' personal jurisdiction argument. *FrontPoint Asian Event Driven Fund, L.P. v. Citibank, N.A.*, 399 F. Supp. 3d 94, 105 (S.D.N.Y. 2019) ("*SIBOR III*").

Plaintiffs then appealed the *SIBOR III* decision, resulting in a remand back to this Court. Because *SIBOR III* did not address the personal jurisdiction defense, the issue was not before the Second Circuit and was not addressed in that court's decision or its mandate. *See Fund Liquidation Holdings LLC v. Bank of Am. Corp.*, 991 F.3d 370 (2d Cir. 2021); Mandate of the U.S. Ct. of Appeals for the Second Cir., May 24, 2021, ECF No. 416.

STANDARD OF REVIEW

On a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, a plaintiff "bears the burden of demonstrating personal jurisdiction over *each* defendant." *Vista Food Exchange, Inc. v. Champion Foodservice, LLC*, 124 F. Supp. 3d 301, 307 (S.D.N.Y. 2015) (emphasis added) (citing *Troma Entm't, Inc. v. Centennial Pictures Inc.,* 729 F.3d 215, 217 (2d Cir.2013)). "Such a showing entails making legally sufficient allegations of jurisdiction, including an averment of facts that, if credited, would suffice to establish jurisdiction over the defendant." *Penguin Grp. (USA) Inc., v. Am. Buddha*, 609 F.3d 30, 35 (2d Cir. 2010). The allegations of activity constituting the basis of jurisdiction must be non-conclusory and fact-specific. *Jazini v. Nissan Motor Co.*, 148 F.3d 181, 185 (2d Cir. 1998). In deciding a motion to dismiss for lack of

personal jurisdiction, a court may rely on "pleadings and affidavits." *DiStefano v. Carozzi N. Am., Inc.*, 286 F.3d 81, 84 (2d Cir. 2001).

ARGUMENT

In order for the Court to exercise personal jurisdiction over a defendant, doing so must "comport with constitutional principles of due process." *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161, 167 (2d Cir. 2013). To satisfy due process, a court must determine: (I) "whether a defendant has sufficient minimum contacts with the forum to justify the court's exercise of personal jurisdiction over the defendant" (the "minimum contacts" inquiry), and (II) "whether the assertion of personal jurisdiction over the defendant comports with 'traditional notions of fair play and substantial justice'" (the "reasonableness" inquiry). *Waldman v. Palestine Liberation Org.*, 835. F.3d 317, 331 (2d Cir. 2016) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 126 (2014)). Plaintiffs cannot allege or establish either as to the Singapore Banks.

I. The Singapore Banks Lack the Requisite Minimum Contacts with the United States.

A. Plaintiffs Fail to Allege that the Singapore Banks Engaged in Any Suit-Related Conduct in or Targeting the United States.

For a defendant to have minimum contacts with the forum in a case, a plaintiff's claims must either arise out of or relate to the defendant's contacts with the forum. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1026 (2021) (quoting *Bristol-Myers Squibb Co. v. Superior Ct. of Cal., S.F. Cnty.*, 137 S. Ct. 1773, 1786 (2017)). This requires that "there must be 'an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.'" *Id.* at 1025. In all events, due process requires that a defendant's conduct and connection with the forum must be "such that [the defendant] should reasonably anticipate being haled into court

there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980); *accord U.S. Bank Nat'l Assoc. v. Bank of Am. N.A.*, 916 F.3d 143, 150 (2d Cir. 2019). In this case, Plaintiffs' claims do not arise out of, or relate to, the Singapore Banks' alleged U.S. conduct, and the Singapore Banks could not reasonably anticipate being haled into this Court.

First, not a single allegation in the FAC suggests that the Singapore Banks engaged in any suit-related conduct in the United States. Nor could it. All Singapore Bank employees involved in the determination and submissions for SIBOR and SOR were based in Singapore. DBS Decl. ¶¶ 6, 7; OCBC Decl. ¶ 8; UOB Decl. ¶ 4. And none of the Singapore Banks' U.S. offices engaged in trading of SIBOR- or SOR-based derivatives in the United States during the relevant time period. DBS Decl. ¶¶ 6, 7; OCBC Decl. ¶ 6; UOB Decl. ¶ 7. Indeed, the FAC is devoid of any fact-specific or non-conclusory allegations concerning personal jurisdiction vis-à-vis the Singapore Banks. *See Jazini*, 148 F.3d at 185 (rejecting personal jurisdiction where the related allegations "lack the factual specificity necessary to confer jurisdiction").

Second, Plaintiffs do not specifically allege any suit-related contacts with, or conduct targeting, the United States by the Singapore Banks. *See Waldman*, 835. F.3d 317. There is also no allegation that any alleged co-conspirator acted at any of the Singapore Banks' behest within the United States in furtherance of the conspiracy. And Second Circuit case law is explicit that the forum contacts of alleged co-conspirators are not necessarily imputed to co-conspirators, especially where a co-conspirator's contacts with the forum "had nothing to do with the [disputed] transactions." *Charles Schwab Corp. v. Bank of Am. Corp.*, 883 F.3d 68, 87 (2d Cir. 2018) ("That Schwab plausibly allege[d] a conspiracy to manipulate LIBOR . . . does not mean that the forum contacts of the seller Defendants are necessarily imputed to the co-conspirators . . . . [T]he mere existence of a conspiracy is not enough."); *see also Daventree Ltd.*

v. Republic of Azerbaijan, 349 F. Supp. 2d 736, 763 (S.D.N.Y. 2004) (rejecting conspiracy-based personal jurisdiction in the absence of "any specific allegation as to [the defendants'] knowledge of, or consent to, the conduct [within the forum] by [co-conspirators]").[5]

Third, Plaintiffs do not specifically allege that the Singapore Banks profited from any conduct in the United States. This Court previously explained that in the absence of alleged manipulative conduct by a defendant in the United States, Plaintiffs must allege that the "conspirators in Singapore intended to profit by their conspiracy and manipulation in derivative contracts made in New York." Tr. of Proceedings re Apr. 27, 2017 Conference 20:20–24, ECF No. 213. But apart from generalized group pleading, the FAC does not allege that the Singapore Banks joined a conspiracy to benefit SIBOR- or SOR-related derivatives trading in the United States. This is crucial. As explained below, the benchmark cases in this District dismiss routinely defendants who are not specifically alleged to have traded in benchmark-related derivatives in the United States.[6]

B. Benchmark Cases Consistently Dismiss Defendants Not Alleged to Engage in Suit-Related Conduct or Trading in the United States.

The interest-rate manipulation precedents in this District, including all cases cited by the Court in *SIBOR II*, confirm that the Singapore Banks are not subject to personal jurisdiction in the United States under any jurisdictional theory, including conspiracy jurisdiction. These cases, and controlling Second Circuit precedent, require the Singapore Banks' dismissal.

---

[5] Although the FAC includes references to Defendants DBS Group Holdings Ltd. and DBS Vickers Securities (USA) Inc., *see* FAC ¶¶ 140–42, as well as Defendant UOB Global Capital, LLC, *id.* ¶ 144, those affiliates have been dismissed from this case with prejudice, *SIBOR I*, 2017 WL 3600425, at *16. Nonetheless, as with DBS Bank Ltd. and United Overseas Bank Limited, the FAC does not allege any suit-related conduct by these affiliates.

[6] *See, e.g.*, *Sonterra Cap. Master Fund Ltd. v. Credit Suisse Grp. AG*, 277 F. Supp. 3d 521 (S.D.N.Y. 2017); *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, No. 13 CIV. 7789 (LGS), 2016 WL 1268267, at *6–7 (S.D.N.Y. Mar. 31, 2016); *In re N. Sea Brent Crude Oil Futures Litig.*, No. 13-md-2475, 2017 WL 2535731 (S.D.N.Y. June 8, 2017).

Sonterra. In *Sonterra Capital Master Fund Ltd. v. Credit Suisse Group AG*, 277 F. Supp. 3d 521 (S.D.N.Y. 2017), the court concluded that conspiracy jurisdiction allowed the court to exercise jurisdiction over some—but not all—defendants alleged to have engaged in the manipulation of CHF LIBOR abroad. Specifically, the court concluded it had jurisdiction over certain defendants specifically alleged to have transacted in CHF LIBOR-based derivatives from within the United States, but not those that were not alleged to have traded CHF LIBOR-based derivatives in the United States. *Id*. at 592–96. Where trading within the United States was not alleged, personal jurisdiction was lacking.

Foreign Exchange. The *Foreign Exchange Benchmark Rates* case cited in *SIBOR II* is in accord. The court there concluded that personal jurisdiction existed over two foreign defendants specifically alleged to have "extensive U.S.-based [foreign exchange] operations." *In re Foreign Exch. Benchmark Rates Antitrust Litig*., No. 13 CIV. 7789 (LGS), 2016 WL 1268267, at *6 (S.D.N.Y. Mar. 31, 2016). By contrast, there was not personal jurisdiction over a foreign defendant who had an affiliate in the United States that "does not participate in the trading of FX instruments." *Id.* at *6–7.

North Sea Brent Crude Oil. This was also the case in *In re North Sea Brent Crude Oil Futures Litigation*, 2017 WL 2535731. That court determined it had jurisdiction over a foreign defendant alleged to have participated in manipulation where the plaintiffs alleged that defendant's "employees directed futures and derivative trading on NYMEX [in New York] that could have benefited from the alleged manipulative activity," *id.* at *7, *11; *see also id.* at *11 (noting the foreign defendant's "employees executed trades" at "NYMEX"), but also concluded personal jurisdiction was lacking over a separate foreign defendant that plaintiffs did *not* allege traded the allegedly manipulated derivatives in the United States, *id.* at *8 ("Plaintiffs have failed

to adduce any facts . . . showing that STASCO traded Brent crude oil derivatives or futures in the United States.").

***Allianz Global**.* In *Allianz Global*, the court concluded there was personal jurisdiction over foreign defendants that had participated in conspiratorial conduct with other conspirators located in New York, but based entirely on their U.S. conduct. The complaint contained specific and detailed allegations that (i) certain defendants' plea agreements had admitted that their traders in New York had manipulated the FX market; (ii) a New York Department of Financial Services ("NYDFS") consent order described a defendant's trader who coordinated trades in furtherance of the conspiracy with Citigroup's New York office; and (iii) transcripts of chats showed defendants' traders communicated with New York-based traders in furtherance of the conspiracy. *Allianz Glob. Invs. GmbH v. Bank of Am. Corp.*, 457 F. Supp. 3d 401, 410 (S.D.N.Y. 2020).

FLH Holdings. Last, just months ago, the court in *Fund Liquidation Holdings LLC v. UBS AG*, No. 15-cv-5844 (GBD), 2021 WL 4482826 (S.D.N.Y. Sept. 30, 2021), ruled that there was personal jurisdiction over certain foreign defendants for claims related to the alleged manipulation of Yen-LIBOR-based derivatives where those banks were specifically alleged to have traded the relevant "product with . . . U.S. parties," and had "U.S. trading desks or offices/branches where traders arrange and execute Yen-LIBOR-based derivatives." *Id.* at *14.

* * *

Irrespective of whether these cases correctly found that personal jurisdiction existed as to certain defendants under the facts alleged, the unmistakable, consistent thread is that there is no specific personal jurisdiction over foreign defendants alleged to have conspired to manipulate benchmark rates without specific allegations of U.S.-based trading in relevant products or

conspiratorial action in the United States by such defendants. Even in their fifth complaint, Plaintiffs cannot allege that the Singapore Banks (1) traded in SIBOR and SOR-based derivatives themselves in the United States, or (2) conspired directly with any person located in the United States regarding the alleged manipulation of SIBOR or SOR. Plaintiffs thus fail to allege the requisite "minimum contacts" to exercise jurisdiction over the Singapore Banks.

II. Personal Jurisdiction Over the Singapore Banks Would Not Be Reasonable Under the Circumstances.

Even if minimum contacts could be established as to the Singapore Banks without any U.S. trades or conspiracy-related conduct in the United States, it still would be unreasonable under such circumstances to exercise personal jurisdiction over the Singapore Banks. Defending in this forum would be immensely burdensome and prejudicial to the Singapore Banks.

First, none of the Singapore Banks' relevant witnesses and documents are located here. Indeed, none of the Singapore Banks' relevant actions are alleged to have occurred in New York or the United States. Instead, all of the Singapore Banks' witnesses and evidence are located in Singapore. There would be substantial burden in terms of cost, time, inconvenience, and disruption to company operations, to require the Singapore Banks to participate in discovery on the opposite side of the globe. In its *SIBOR II* opinion, the Court noted foreign defendants' "substantial presence" in the United States as a basis for the exercise of jurisdiction, but none of the Singapore Banks in fact has substantial presence in the United States. *SIBOR II*, 2018 WL 4830087, at *9. The Singapore Banks are all citizens of Singapore with only small agency offices in the United States.

Second, the burdens of litigating in the United States would be exacerbated by the fact that the Singapore Banks' discovery obligations may conflict with Singapore law. Singapore bank secrecy legislation is extremely restrictive and violation thereof is subject to criminal

penalties in Singapore.[7] But if a U.S. court ordered the Singapore Banks to produce documents subject to these protections, the Singapore Banks would be placed in an untenable situation of being subject to competing legal requirements here and in Singapore.

Finally, when evaluating personal jurisdiction over foreign defendants, courts must pay special attention to "the risks to international comity," *Daimler*, 134 S. Ct. 762–63, and "[t]he unique burdens placed upon one who must defend oneself in a foreign legal system," *Asahi Medal Indus. Co. v. Super. Ct. of Cal., Solano Cnty.*, 480 U.S. 102, 115 (1987). Here, international comity would be threatened if a foreign defendant could be brought before a U.S. court based merely on generalized allegations of participation in a conspiracy, despite taking no relevant actions in the United States.

III. <u>The Singapore Banks Did Not Consent to Jurisdiction.</u>

Plaintiffs allege that OCBC and UOB "consented to personal jurisdiction, or otherwise purposely availed themselves of this forum, by registering their New York branches and/or representative or agency offices with the NYSDFS under New York Banking Law § 200-b." (FAC at ¶ 80.) (Plaintiffs make no similar argument regarding DBS.) This Court has already rejected that argument. *SIBOR I*, 2017 WL 3600425, at *14. The express terms of New York Banking Law § 200(3) limit a foreign bank's consent to suits "arising out of a transaction with its New York agency or agencies or branch or branches," which is not the case here, and cannot establish consent to jurisdiction by the branch's foreign parent. *Id*. at *3, *4. Nor can Plaintiffs rely on New York Banking Law § 200-b, which relates to subject-matter jurisdiction, not

[7] Singapore Banking Act, pt. VII § 47(1) ("Customer information shall not, in any way, be disclosed by a bank in Singapore or any of its officers to any other person except as expressly provided in this Act."); *see CE Int'l Res. Holdings v. S.A. Mins. Ltd. P'ship*, 2013 WL 2661037, at *8 (S.D.N.Y. June 12, 2013) (denying motion to compel Deutsche Bank to comply with subpoena as it would require Deutsche Bank to violate Singapore's bank secrecy laws).

personal jurisdiction. *Dennis v. JPMorgan Chase & Co.*, 343 F. Supp. 3d 122, 209 n.488 (S.D.N.Y. 2018).

CONCLUSION

For the foregoing reasons, the claims against the Singapore Defendants should be dismissed under Rule 12(b)(2) without leave to amend and with prejudice.

Dated: New York, New York
November 24, 2021

/s/ Erica S. Weisgerber

Erica S. Weisgerber
Matthew D. Forbes
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022
Telephone: (212) 909-6000
Fax: (212) 909-6836
eweisgerber@debevoise.com

Attorneys for Defendant DBS Bank Ltd.

/s/ Dale C. Christensen, Jr.

Dale C. Christensen, Jr.
Michael G. Considine
SEWARD & KISSEL LLP
One Battery Park Plaza
New York, New York 10004
Telephone: (212) 574-1200
Fax: (212) 480-8421
christensen@sewkis.com

Attorneys for Defendant United Overseas Bank Limited

/s/ C. Fairley Spillman

C. Fairley Spillman
AKIN GUMP STRAUSS HAUER & FELD LLP
2001 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 887-4000
fspillman@akingump.com

Attorney for Defendant Oversea-Chinese Banking Corporation Limited