UNITED STATES DISTRICT COURT
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. 16-cv-5263 (AKH)

REPLY MEMORANDUM OF LAW OF FOREIGN NON-COUNTERPARTY DEFENDANTS AND SINGAPORE BANKS IN FURTHER SUPPORT OF MOTION TO DISMISS THE FOURTH AMENDED CLASS ACTION COMPLAINT FOR LACK OF PERSONAL JURISDICTION

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The Foreign Non-Counterparty Defendants submit this reply memorandum of law in further support of the motion to dismiss the FAC for lack of personal jurisdiction.[1]

PRELIMINARY STATEMENT

In their Opposition to Defendants' Motion to Dismiss (ECF No. 451) (the "Opposition" or "Opp."), the Moon Plaintiffs disclaim any contention that the Foreign Non-Counterparty Defendants aimed any suit-related conduct at the United States from abroad that could satisfy the "effects" test for personal jurisdiction, a test they deem "superfluous." (Opp. at 25.) Nor do the Moon Plaintiffs contend that the Foreign Non-Counterparty Defendants themselves engaged in any relevant conduct within the United States, or that the Moon Plaintiffs had any direct dealings with the Foreign Non-Counterparty Defendants that could support personal jurisdiction.

Rather, the Moon Plaintiffs' sole basis for asserting personal jurisdiction over the eleven Foreign Non-Counterparty Defendants is a theory of "conspiracy jurisdiction," and the sole alleged in-forum "acts in furtherance" of that purported conspiracy are two in-forum transactions that the Moon Plaintiffs conducted with a different defendant, UBS, in 2009. As explained in the Foreign Non-Counterparty Defendants' opening brief (ECF No. 456) (the "Opening Brief"),[2] and as confirmed by the Second Circuit's decision in *Charles Schwab Corp. v. Bank of Am. Corp. (Schwab I)*, 883 F.3d 68, 87 (2d Cir. 2018), and the recently issued *Schwab Short-Term Bond Mkt. Fund v. Lloyds Banking Grp. PLC (Schwab II)*, No. 17- 2381, --- F.4th ----, 2021 WL 6143556

[1] Unless otherwise indicated, capitalized terms have the same meaning as set forth in the Foreign Non-Counterparty Defendants' Opening Brief.

[2] The Singapore Banks filed a separate supplemental opening brief, but themselves constitute Foreign Non-Counterparty Defendants (Opening Br. at 1 n.1) and thus joined in the Foreign Non-Counterparty Defendants' arguments, which applied equally to the Singapore Banks (Singapore Banks. Mem. at 1 n.1). For convenience, the Foreign Non-Counterparty Defendants, including the Singapore Banks, have filed this single reply in support of their arguments on personal jurisdiction.

(2d Cir. Dec. 30, 2021), these paper-thin allegations in the FAC do not come close to establishing any of the elements of conspiracy jurisdiction.

Unlike the plaintiffs in the *Schwab* cases, the Moon Plaintiffs have failed to plausibly allege the existence of any conspiracy to manipulate the prices of SIBOR- or SOR-based instruments, or that the Foreign Non-Counterparty Defendants participated in any such conspiracy—the first two requirements of conspiracy jurisdiction under *Schwab I* and *II*. And even if they had sufficiently pleaded those elements of conspiracy jurisdiction, the Moon Plaintiffs have still failed to satisfy *Schwab I* because the third element of conspiracy jurisdiction is lacking: their alleged in-forum trades with UBS are not plausibly alleged to be overt acts in furtherance of the alleged conspiracy, but are instead merely two routine transactions in instruments that do not even incorporate the benchmarks at issue. What's more, even if those two FX transactions could be construed as in-forum acts in furtherance of such a conspiracy, there are no plausible allegations that any other Foreign Non-Counterparty Defendants could have reasonably foreseen those dealings, as *Schwab II* requires.

ARGUMENT

To sustain personal jurisdiction on a theory of "conspiracy jurisdiction" at the pleading stage, plaintiff must allege facts showing that "(1) a conspiracy existed; (2) the defendant participated in the conspiracy; and (3) a co-conspirator's overt acts in furtherance of the conspiracy had sufficient contacts with a state to subject that co-conspirator to jurisdiction in that state." *Schwab II*, 2021 WL 6143556, at *12 (internal quotations and citations omitted). Furthermore, to comport with the requirements of due process, those contacts with the forum state "must be of the sort that a defendant should reasonably anticipate being haled into court in the forum as a result of them." *Id.* at *14 (quotations and citations omitted). The Moon Plaintiffs' bare-bones pleading fails to satisfy *any* of these elements.

I. THE FAC FAILS TO ALLEGE THAT THE FOREIGN NON-COUNTERPARTY DEFENDANTS PARTICIPATED IN ANY CONSPIRACY RELEVANT TO THE MOON PLAINTIFFS' CLAIMS.

As a threshold matter and as demonstrated in the Opening Brief, the FAC plausibly alleges neither that any panel-wide conspiracies to manipulate SIBOR- or SOR-based instruments existed, nor that the Foreign Non-Counterparty Defendants participated in any such conspiracies. In Opposition, Plaintiffs merely repeat the FAC's impermissible group-pleading allegations, assert misguided inferences that are not supported by the findings of the Monetary Authority of Singapore ("MAS"), and mischaracterize the *SIBOR II* decision. (*See* Opp. at 16-17, 23-24.)

This Court has previously admonished Plaintiffs for their improper reliance on group-pleading allegations. *See* ECF No. 213 at 46:12-15, Oral Arg. on Defs.' Mot. to Dismiss First Am. Compl. ("THE COURT: It's a group pleading within a network of banks. It's a group pleading within a particular banking conglomerate. And it's a group pleading among the various conglomerates."). Yet in the FAC, Plaintiffs again fail to identify the instruments the Foreign Non-Counterparty Defendants traded, when they made such transactions, the location of such transactions, and which benchmark each Defendant allegedly manipulated. Because Plaintiffs' group-pleading allegations cannot plug these factual gaps, Plaintiffs have not adequately alleged a conspiracy to manipulate SIBOR or SOR, a necessary predicate for conspiracy jurisdiction. *See, e.g.*, *In re Int. Rate Swaps Antitrust Litig.*, 2018 WL 2332069, at *17 (S.D.N.Y. May 23, 2018) ("*IRS II*") (concluding that defendants' "parallel actions, motivations, perspectives, and intentions are largely pled generically and in undifferentiated fashion, with the [Complaint] not specifying a particular defendant or defendants" and that these "limited allegations" do not adequately plead a conspiracy).

Plaintiffs' Opposition pretends that the MAS findings justify generalized conspiracy allegations. (Opp. at 16-17.) But MAS neither found nor even alleged that *any* bank manipulated

any benchmark—let alone SIBOR or SOR—or that any bank participated in a conspiracy to manipulate any such benchmark. *See* FAC, Ex. E at 1. According to MAS's own statement, all that MAS uncovered were episodic "attempts" by traders "represent[ing] a small proportion of the trading community in Singapore" to "inappropriately influence financial benchmarks" generally, without attributing conduct to any specific bank or benchmark. *Id.* MAS ultimately concluded that unspecified "traders' conduct" may have "reflected a lack of professional ethics," but it went no further. *Id.* It said nothing even approximating Plaintiffs' unsupported allegation that any of the Defendants participated in panel-wide conspiracies to manipulate SIBOR or SOR.

Plaintiffs are also incorrect in contending that the Court's prior holdings regarding the conspiracy allegations in the Second Amended Class Action Complaint in *SIBOR II* help the Moon Plaintiffs' new claims. (*See* Opp. at 14-15, 23-24 (arguing that finding of conspiracy is "law of the case")). Even setting aside that a court is free to revisit any of its prior rulings prior to final judgment, *see Novick v. AXA Network, LLC*, 714 F. App'x 22, 24-25 (2d Cir. 2017) (law of the case doctrine "is discretionary and does not limit a court's power to reconsider its own decisions prior to final judgment") (internal quotations and citations omitted), the Court has made no findings as to the Moon Plaintiffs' claims. The Moon Plaintiffs' claims were not in this case until the FAC was filed on October 25, 2021, and long after the Court's decision in *SIBOR II*, which related to the earlier Second Amended Complaint. Thus, the Court has never considered the jurisdictional implications of the two alleged FX forward transactions between the Moon Plaintiffs and UBS that underlie this motion.

Consideration of those trades confirms that this action should be dismissed for lack of personal jurisdiction. The Moon Plaintiffs do not allege that any contractual term of their FX forwards referenced USD SIBOR or SOR. Further, as set forth in Defendants' Reply in Further

Support of Defendants' Joint Motion to Dismiss the FAC ("Merits Reply"), the application of the Moon Plaintiffs' purported pricing "formula" to their own FX forward transactions shows that those transactions were not priced using USD SIBOR and SOR. *See* Merits Reply at 18-22; *see also* Opening Brief (ECF No. 447) at 29-35. Accordingly, a supposed "trader-based conspiracy where Panel Members conspired to manipulate rates (in Singapore) with the purpose of profiting from trading [FX] derivatives (in the United States and elsewhere)" is implausible. *SIBOR II*, 2018 WL 4830087, at *8.[3]

II. PLAINTIFFS ALLEGE NOTHING TO SUPPORT AN INFERENCE THAT ANZ, CACIB, COMMERZBANK, AND RBS PLC BECAME CO-CONSPIRATORS AND SUBJECT TO CONSPIRACY JURISDICTION YEARS AFTER THE ALLEGED CONSPIRACY TOOK SHAPE.

It is undisputed that ANZ, CACIB, Commerzbank, and RBS plc were not members of either the SIBOR or SOR panel during the period when the Moon Plaintiffs allegedly traded a single FX forward with UBS, the sole contact between the purported conspiracy and the United States. Because the sole alleged contact between the alleged SIBOR or SOR conspiracies and the United States occurred long before ANZ, CACIB, and Commerzbank (the "Late-Arriving Defendants") joined either the SIBOR or SOR panel, and because RBS plc was *never* a panel member, these Defendants cannot possibly have had "conduct and connection with" the United States such that they could "reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). The exercise of personal jurisdiction over these Defendants solely by virtue of their later panel memberships (and without even that for RBS plc) would be inconsistent with due process. *See Schwab II*, 2021 WL 6143556, at *14. A

[3] UBS joins the arguments in Parts I and III of this brief insofar that jurisdiction over UBS cannot be premised on trades with the Moon Plaintiffs when no conspiracy has been adequately alleged, the Moon Plaintiffs' trades are not in furtherance of any purported conspiracy, and such trades create no substantial connection with the forum. *Accord* Mot. to Dismiss at 16 n.11.

conspiracy theory of personal jurisdiction cannot "get off the ground if a defendant [is] altogether blindsided by its co-conspirator's contacts with the forum." *Id.*

In the Opposition, Plaintiffs do not point to a single factual allegation in the FAC addressing whether or how these Late-Arriving Defendants joined any alleged conspiracy-in-progress, let alone ratified earlier actions of other SIBOR or SOR panel members. The reason for this is simple: the FAC is devoid of any allegation to support the inference that the Late-Arriving Defendants "affirmative[ly] embrac[ed] . . . the unlawful objective[]" of any purported SIBOR or SOR conspiracies, or that they held the requisite "intent to achieve th[at] objective[]," or even that the Late-Arriving Defendants could have foreseen the alleged prior derivatives transactions of other panel members in the United States. *United States v. Guillette*, 547 F.2d 743, 751 (2d Cir. 1976); *see also, e.g.*, *United States v. Zemlyansky*, 908 F.3d 1, 10 (2d Cir. 2018) (proving conspiracy requires a showing of "knowing engagement in the conspiracy with the specific intent that the object of the conspiracy be committed"). The FAC is simply silent as to how CACIB, Commerzbank, or ANZ knowingly joined, ratified, and participated in any alleged conspiracy, beyond their serving on either the SOR or SIBOR panels well after the relevant trades had occurred.[4]

Rather than point to specific factual allegations to support the inference that the Late-Arriving Defendants knowingly joined any purported SIBOR or SOR conspiracy and ratified the actions of UBS alleged in the FAC, Plaintiffs argue, in essence, that it is sufficient for purposes of conspiracy law and due process to merely state that these Defendants eventually joined the SOR or SIBOR panels. (*See* Opp. at 27–28.) According to Plaintiffs, the Late-Arriving Defendants and

[4] Plaintiffs also reiterate their erroneous assertion that MAS sanctioned the Late-Arriving Defendants and RBS plc "for engaging in the alleged conspiracy to manipulate SIBOR and SOR." (Opp. at 27.) As Defendants' Opening Brief explains, MAS did not make any findings as to the existence of any conspiracy whatsoever, let alone any conspiracy to manipulate either SIBOR or SOR. *See* Opening Brief at Part A.1.

RBS plc are subject to personal jurisdiction "for the same reasons as the other" Defendants who were already members of either the SIBOR or SOR panel. *Id.* at 28. Plaintiffs are wrong.

As an initial matter, a theory of conspiracy premised solely on the Late-Arriving Defendants' *eventual* panel membership constitutes impermissible group pleading: it takes no account of these Defendants' distinct positions, or the resultant requirement that Plaintiffs plead that these Defendants knowingly joined a conspiracy-in-progress. *See, e.g.*, *IRS II*, 2018 WL 2332069, at *15 ("[C]laims as to the motivations or actions of [defendants] as a general collective bloc" must be set aside "as impermissible group pleading."); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 565 n.10 (2007) (doubting that the notice pleading standard of Rule 8 was satisfied where "the pleadings mentioned no specific time, place, or person involved in the alleged conspiracies."). Because the FAC says nothing about when, how, or why any of these Defendants allegedly went from bystanders to conspirators, it insufficiently pleads conspiracy jurisdiction.[5]

[5] Plaintiffs' argument—devoid of support in the FAC—contravenes the requirement that Plaintiffs are required to allege, not merely argue in their briefs, a basis for treating the Late-Arriving Defendants and RBS plc as if they had been panel members all along. *See Fort Wayne Telsat v. Ent. & Sports Programming Network*, 753 F. Supp. 109, 113 n.4 (S.D.N.Y. 1990) ("It is a basic principle that a complaint may not be amended by the plaintiff's brief filed in opposition to a motion to dismiss.").

Plaintiffs also argue in a footnote that the Late-Arriving Defendants and RBS plc waived their personal jurisdiction argument by failing to raise it earlier. This argument is wrong both on the facts and the law. Defendants' prior briefing explicitly raised the same jurisdictional argument with respect to the previous complaint (the TAC), namely, that it should be dismissed for lack of personal jurisdiction against banks that never became panel members or became panel members long after FrontPoint traded SIBOR-based derivatives. Mem. of Law in Supp. of Defs.' Joint Mot. to Dismiss the TAC (ECF No. 319) at 30–32. The Court never addressed this argument, instead dismissing the TAC for lack of subject matter jurisdiction. Moreover, Defendants sought dismissal of each operative complaint in which they were named on the grounds that it did not allege facts sufficient to support the exercise of personal jurisdiction on a conspiracy theory. *See* Mem. of Law in Supp. of Mot. to Dismiss First Am. Compl. (ECF No. 145) at 27–35; Mem. of Law in Supp. of Mot. to Dismiss Second Am. Compl. (ECF No. 239) at 24–28; Mem. of Law in Supp. of Defs.' Joint Mot. to Dismiss the TAC (ECF No. 319) at 30–38. Defendants' consistent challenge to the application of conspiracy theory of personal jurisdiction, including on the same grounds as those advanced here, is more than sufficient to preserve the defense. *See Mattel, Inc. v. Barbie-Club.com*, 310 F.3d 293, 307 (2d Cir. 2002) (Sotomayor, J.) ("[T]o preserve the defense of lack of personal jurisdiction, a defendant need only state the defense in its first responsive filing and need not articulate the defense with any rigorous degree of specificity.").

Even if Plaintiffs were correct that the Late-Arriving Defendants and RBS plc never raised this argument before (and they are not), they overlook that the FAC added a new plaintiff, thus putting at issue new derivatives transactions that

Even setting aside these fundamental pleading errors, Plaintiffs are wrong on the law of conspiracy. Although "a defendant may be legally responsible for acts of coconspirators prior to that defendant's entry into the conspiracy," *United States v. Blackmon*, 839 F.2d 900, 908 (2d Cir. 1988), this is true only "to the extent those acts are reasonably foreseeable and within the scope of the defendant's agreement," *United States v. Omar Gonzalez*, 566 F. App'x 44, 48–49 (2d Cir. 2014) (quotations omitted); *see also, e.g.*, *United States v. Bengis*, 783 F.3d 407, 413–14 (2d Cir. 2015) (explaining that a late-joining defendant can be liable for restitution based on prior actions of a co-conspirator, provided that the late-joining defendant "knew or reasonably should have known the scope and impact of any or all of the past activities of the conspiracy he joined"); *Simon v. Philip Morris, Inc.*, 86 F. Supp. 2d 95, 132 (E.D.N.Y. 2000) (the exercise of personal jurisdiction was consistent with due process where the late-joining defendant "either knew or should have known that substantial acts in furtherance [of the alleged conspiracy] had already occurred in New York and that more were likely to take place"). Even in cases where a defendant's liability for the actions of a co-conspirator *during* the defendant's membership in a conspiracy is at issue, the defendant is liable only if it is shown that they "agreed to participate in the broader criminal conspiracy and the acts evincing participation were not outside of the scope of the illegal agreement." *United States v. Yannotti*, 541 F.3d 112, 122 (2d Cir. 2008).

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form the basis for their allegations of personal jurisdiction. *See Gilmore v. Shearson/Am. Exp. Inc.*, 811 F.2d 108, 113 (2d Cir. 1987) (amendment of the complaint permits assertion of waivable defenses not raised in original responsive filing where the new complaint "change[s] the scope or theory of [the plaintiff's] claims in a manner that is relevant to the issues presented by [the defendant]" or permits the defendant "to reassess its strategy"), *overruled on other grounds by McDonnell Douglas Fin. Corp. v. Penn. Power & Light Co.*, 849 F.2d 761 (2d Cir. 1988).

The sole case Plaintiffs cite for their waiver argument, *U.S. Bank Nat'l Ass'n v. Bank of Am. N.A.*, 916 F.3d 143 (2d Cir. 2019), is inapposite. *U.S. Bank* held that the defendant on appeal had forfeited a personal jurisdiction argument that it had never raised at any point during the litigation. Instead, the argument was raised for the first time, not by the defendant, but by a concurring judge on the panel hearing the case on appeal. *Id.* at 155.

Here, the FAC contains no allegation that the Late-Arriving Defendants or RBS plc knew or should reasonably have foreseen prior to joining either the SIBOR or SOR panel in Singapore that members of either panel had engaged in the alleged SIBOR- or SOR-based derivatives transactions in the United States, or that such trades would have any connection with any conspiracy to manipulate either SIBOR or SOR. Nor is there any allegation as to what these Defendants knew of the scope of any purported conspiratorial agreement or whether any derivatives transactions in the United States fell within this scope. *See In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 673 (2d Cir. 2013) ("[T]o survive a motion to dismiss for lack of personal jurisdiction, a plaintiff must make a prima facie showing that jurisdiction exists" based on an "averment of facts that, if credited . . . would suffice to establish jurisdiction over the defendant." (internal quotations citations omitted)).

As the Second Circuit recently emphasized, for personal jurisdiction to be proper under a conspiracy theory, "the conspiratorial contacts must be of the sort that a defendant should reasonably anticipate being haled into court in the forum as a result of them." *Schwab II*, 2021 WL 6143556, at *14 (quotations and citation omitted). Thus, if "the alleged overt acts taken by co-conspirators in the United States to advance the conspiracy" were not foreseeable to the late-arrivers to any conspiracy, due process prohibits the exercise of personal jurisdiction. *Id.* In the absence of factual allegations establishing that the Late-Arriving Defendants and RBS plc should reasonably have foreseen that certain panel members had engaged in the alleged SIBOR- or SOR-based derivatives transactions in the United States, or anticipated that these trades would have any connection with any conspiracy to manipulate SIBOR or SOR, the FAC cannot support the exercise of personal jurisdiction under a conspiracy theory.

The cases Plaintiffs rely on only undermine their own argument. Although Plaintiffs quote *Dixon v. Mack*, 507 F. Supp. 345, 350-51 (S.D.N.Y. 1980), for the proposition that "it is black letter conspiracy law that one who joins a conspiracy in progress ratifies all that has come before," *Dixon*'s analysis refutes Plaintiffs' assertion that merely joining an alleged conspiracy in progress is sufficient for the exercise of jurisdiction based on any prior act of a co-conspirator. *Dixon* held that the exercise of personal jurisdiction over an out-of-state defendant who joined a conspiracy in progress was consistent with due process, but only because he joined "the conspiracy with the knowledge that overt acts in furtherance of the conspiracy" preceding his membership "had taken place in New York," and thus had "purposely (availed himself) of the privilege of conducting activities within the forum state." *Id.* at 352 (quotations and citation omitted). These are precisely the types of allegations that are missing in the FAC.[6]

At bottom, Plaintiffs seek to hale into American courts foreign defendants whose alleged relevant conduct occurred entirely in Singapore, who did not transact with any Plaintiffs, and for whom there are no factual allegations in the FAC to support the inference that they knew or should have known that certain other panel members had previously engaged in the alleged SIBOR- or SOR-based derivatives transactions in the United States. Without more, Plaintiffs have not established that these defendants had "minimum contacts" with the United States "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice,"

[6] Plaintiffs also rely on *United States v. Shepard*, 500 F. App'x 20 (2d Cir. 2012), in which a criminal defendant appealed her conviction on the grounds that venue in the Southern District of New York was improper for a drug trafficking conspiracy based in Brooklyn and Queens, as she never traveled to Manhattan nor was such travel by a co-conspirator reasonably foreseeable to her. The Second Circuit held that venue was proper because her co-conspirators' in-forum acts in furtherance of the conspiracy (transporting drugs through Manhattan) were reasonably foreseeable to her in light of the "proximity of the conspiracy's Brooklyn–Queens base of operation to parts of the Southern District of New York, as well as the need to traverse that district in procuring marijuana from New Jersey." *Id.* at *3. By contrast, here, the alleged conspiracy had its focal point in Singapore, far from any borough of New York City, and the purported co-conspirators had no need to avail themselves of Manhattan to further the alleged conspiracy's goals.

Int'l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement, 326 U.S. 310, 316 (1945) (internal quotations omitted).[7]

III. THE FAC PLEADS NO OVERT ACT BY AN ALLEGED CONSPIRATOR OF THE FOREIGN NON-COUNTERPARTY DEFENDANTS, AND EXERCISING CONSPIRACY JURISDICTION WOULD THEREFORE NOT COMPORT WITH DUE PROCESS.

Even if Plaintiffs had sufficiently alleged both the existence of a conspiracy to manipulate either SIBOR or SOR and that the Foreign Non-Counterparty Defendants had participated in any such conspiracies (and they have not sufficiently alleged either), that would still fail to support conspiracy jurisdiction here. Due process further requires that (i) "a co-conspirator's overt acts in furtherance of the conspiracy had sufficient contacts with [the forum] to subject that co-conspirator to jurisdiction," and (ii) the overt acts were "foreseeable to" other alleged co-conspirators. *See Schwab II*, 2021 WL 6143556, at *12-14 (requiring "that a defendant purposefully availed itself of the forum through the overt acts of its co-conspirator"). Plaintiffs have not satisfied either of these requirements.

Most fundamentally, UBS's alleged "overt acts" were not "in furtherance of the [alleged] conspiracy." *See id.* Those alleged acts consist solely of two "SGD FX forward transaction[s]" between the Moon Plaintiffs and UBS, purportedly executed in the United States on a single day within the five-year class period. (FAC ¶¶ 87-88; *see also* Opp. at 25 (arguing that "any consideration of the effects test [is] superfluous" because "the conduct forming the basis for the

[7] In Opposition, Plaintiffs concede in a footnote that RBS plc was never a member of the SIBOR or SOR panels. *See* Opp. at 28 n.12. Nevertheless Plaintiffs try to save their argument that RBS plc is somehow subject to personal jurisdiction by asserting that "RBS PLC ignores that it absorbed RBS N.V.'s Singapore business before this lawsuit commenced," and provide a citation to RBS N.V.'s 2014 Annual Report. *Id.* RBS N.V.'s 2014 Annual Report says nothing more than that "[i]n the first half of 2012"—*i.e.*, approximately three years after the Moon Plaintiffs' alleged transactions with UBS—"assets and liabilities largely relating to businesses in Singapore, Hong Kong and Kazakhstan were transferred to RBS plc by a combination of local schemes of arrangement, novations and subsidiary share sales." *See* ECF No. 452-1 at 145. This provision in no way supports Plaintiffs' assertion that RBS plc somehow "absorbed" RBS N.V., and in any event, Plaintiffs have alleged nothing in the FAC supporting the idea that RBS plc is subject to "successor liability" for RBS N.V.'s panel membership. *See* Opp. at 28 n.12.

controversy" is UBS's sales of SIBOR- and SOR-based derivatives to the Moon Plaintiffs in the United States)). Yet the Moon Plaintiffs make no plausible allegations that these trades were overt acts in furtherance of the conspiracy they posit—*i.e.*, one to manipulate the SIBOR and SOR benchmarks for profit. Indeed, based on the Moon Plaintiffs' own allegations, their FX forward transactions had nothing whatsoever to do with the SGD SIBOR—they are not plausibly alleged to have been priced by reference to USD SIBOR or SOR. *See* Merits Reply at 18-22; *see also* Opening Brief (ECF No. 447) at 29-35. Thus, it is impossible to understand how these two transactions could have been acts in furtherance of some conspiracy to manipulate USD SIBOR or SOR that allegedly took place half the world away in Singapore.

Nor do the Moon Plaintiffs' two alleged transactions with UBS satisfy the *Schwab II* "foreseeability" standard. There is no allegation in the FAC that any of the Foreign Non-Counterparty Defendants that were purportedly involved in any overseas conduct were aware of or could have reasonably foreseen that UBS would enter into two FX transactions in February 2009 with a purported New York-based counterparty, who would assert that they are somehow impacted by some alleged conduct related to USD SIBOR and SOR.[8] Indeed, there is no allegation or suggestion that the Foreign Non-Counterparty Defendants could have reasonably foreseen *anything* about UBS's FX trading, given that FX trading had nothing to do with the Singapore benchmark conspiracy actually alleged. Absent a plausibly alleged in-forum act in furtherance of the conspiracy, conspiracy jurisdiction does not lie. *See Schwab II*, 2021 WL 6143556, at *12-13.

[8] Although Plaintiffs accuse Defendants of "conflat[ing] the standard governing the 'effects test' theory of personal jurisdiction . . . with the test for conspiracy jurisdiction," (Opp. at 25), they misinterpret Defendants' argument. Without any allegation to support the inference that the alleged conspiracy was aimed at the United States, there is no basis to think that the Foreign Non-Counterparty Defendants had any reason to anticipate the U.S. contacts of their alleged co-conspirators, thus falling short of the foreseeability requirement articulated in *Schwab II*. Put another way, "random, fortuitous" trades like the two transactions alleged here are insufficient to show that the Foreign Non-Counterparty Defendants purposefully availed themselves of the laws of the United States and thus should reasonably anticipate being haled into court there. *Dennis*, 343 F. Supp. 3d at 208.

The Moon Plaintiffs' FX forward transactions with UBS are also fundamentally different than the 24 swap transactions allegedly linked to SGD SIBOR that were addressed in *SIBOR II* between Former Plaintiff FrontPoint and Citibank and Deutsche Bank—a rate that is not relevant to the Moon Plaintiffs' claims regarding USD SIBOR and SOR. *See SIBOR II*, 2018 WL 4830087, at *5 (holding that FrontPoint lacked standing to assert claims regarding USD SIBOR and SOR because FrontPoint alleged its swaps were tied only to SGD SIBOR).[8] There was no dispute that at least one of those transactions was linked to SGD SIBOR, but there is no such clear link between the Moon Plaintiffs' alleged FX forwards transactions and USD SIBOR or SOR. Even putting that aside, precedent since *SIBOR II* confirms that conspiracy jurisdiction is lacking here, because UBS's two transactions with the Moon Plaintiffs are "too 'random, fortuitous, and attenuated' to be a basis for" jurisdiction. *See Dennis v. JPMorgan Chase & Co.*, 343 F. Supp. 3d 122, 206 (S.D.N.Y. 2018) (quoting *Waldman v. Palestine Liberation Org.*, 835 F.3d 317, 337 (2d Cir. 2016)). In *Dennis*, for example, the foreign bank-defendants were alleged to be subject to

[8] While the Moon Plaintiffs concede that the only purported in-forum conduct on which they premise their assertion of personal jurisdiction is the two transactions between the Moon Plaintiffs and UBS, (*see* Opp. at 24 n.7), they urge the Court in a footnote to consider FrontPoint's irrelevant SGD SIBOR swaps for purposes of the personal jurisdiction inquiry, citing *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021). The lack of any connection between the Moon Plaintiffs' claims and SGD SIBOR dooms Plaintiffs' argument. In *Ford*, specific jurisdiction was found in Montana and Minnesota even though the plaintiffs were not able to show that the two cars involved in the crash were designed, manufactured, or sold in Montana and Minnesota, because the Defendant Ford had "systematically" and "extensively promoted, sold, and serviced" the defective car models in those states. *Id.* at 1028-1033 (internal quotations, citations, and alterations omitted). Plaintiffs contend this decision supports the proposition that a court may consider any alleged contact with the forum by a defendant for purposes of the personal jurisdiction inquiry, even if the conduct does not actually give rise to the claims at issue. But *Ford* reiterated that specific personal jurisdiction requires a "strong relationship" between the forum and the claims and stressed that there are "real limits" to specific jurisdiction, and stands for the simple proposition that where a defendant "systematically serve[s] a market" in the forum for the "very vehicles" or products on which plaintiffs bring suit, specific jurisdiction accords with due process. *Id.* This sort of allegation was not and could not be made here. *Ford* thus focuses the personal jurisdiction analysis on the "very" products giving rise to the actual plaintiffs' claims—here, the Moon Plaintiffs' purchases of SGD FX forwards from UBS—and does not broadly license personal jurisdiction based on potential class members' transactions in *other* financial products. *See also Vasquez* v. *Hong Kong & Shanghai Banking Corp., Ltd.*, 477 F. Supp. 3d 241, 255 (S.D.N.Y. 2020) (explaining that in putative class actions, "personal jurisdiction is based on a defendant's contacts with the forum state and actions giving rise to the named plaintiffs' causes of action," not "[c]ontacts with unnamed class members" (quotations and citation omitted)).

conspiracy jurisdiction merely based on an allegation that they "market[ed] and s[old]" certain financial products in the United States. *Id.* at 203. But the court concluded those allegations were insufficient to plausibly show the contacts were in-forum overt acts in furtherance of the conspiracy: "There are no allegations that the Foreign Defendants expressly aimed their conduct at the forum – just that they expressly aimed their conduct at counterparties to [certain] transactions around the world, some of whom happened to be in the United States." *Id.* at 207. Those contacts were "too 'random, fortuitous, and attenuated'" to create conspiracy jurisdiction in *Dennis*, and the same is true here.

The Second Circuit's recent decisions in *Schwab I* and *Schwab II* make clear that the Moon Plaintiffs' transactions with UBS are not sufficient on their own to establish conspiracy jurisdiction. In *Schwab I*, the Second Circuit considered whether conspiracy jurisdiction existed over a group of "non-seller" defendant banks that, like the Foreign Non-Counterparty Defendants here, were not alleged to have transacted with the named plaintiff (Schwab) in the forum (California). *See* 883 F.3d at 86-87. And like the Foreign Non-Counterparty Defendants here, those *Schwab* non-seller defendants' sole connection to the forum was the alleged in-forum sale of LIBOR-based instruments to Schwab by co-conspirator defendants. *Id.* The Second Circuit found that conspiracy jurisdiction *did not exist* over the "non-seller" defendants because "the conspiracy to manipulate LIBOR had nothing to do with the California transactions, and there [was] thus no reason to impute the California contacts to the co-conspirators." *Id.* Likewise here, the alleged conspiracies to manipulate SIBOR or SOR had nothing to do with the Moon Plaintiffs' two FX forward transactions.

The Second Circuit's subsequent *Schwab II* decision confirms that the Moon Plaintiffs' two alleged transactions with UBS cannot support conspiracy jurisdiction over the Foreign Non-

Counterparty Defendants. The overarching conspiracy alleged in *Schwab II* was that the defendants conspired to artificially suppress USD LIBOR to purportedly "project[] financial soundness." *See Schwab II*, 2021 WL 6143556, at *2-3. In *Schwab II*, unlike in *Schwab I*, the plaintiffs alleged that the defendant banks committed a series of overt acts in the United States in furtherance of that effort to suppress USD LIBOR. *Id.* at *13-14. Specifically, the plaintiffs alleged, among other things, that a "senior UBS manager in Stamford, Connecticut issued [a] standing directive to 'submit low LIBOR contributions' for USD LIBOR, and to keep submissions in the 'middle of the pack of other banks' expected LIBOR submissions"; a "U.S.-based employee of Citibank urged the Bank's LIBOR submitter that "we should take a leadership [role] in bringing these LIBORS back to more sensible levels," "[e]xactly as we did 3–4 months back"; and that there were "emails between a senior JPMorgan Chase executive in New York and the Banks' LIBOR submitter discussing the importance of staying in 'the pack' and asking the submitter to 'err on the low side' when setting LIBOR. *Id.* (internal quotations and alterations in original). Crucially, according to the Second Circuit, the defendants did not dispute that these alleged in-forum "overt acts were foreseeable to them." *Id.* at *14.

By contrast, here, UBS's alleged in-forum conduct is not of the type that *Schwab II* deemed sufficient to plausibly constitute an overt act in furtherance of any persistent suppression conspiracy. The FAC alleges no overt in-forum act by UBS or any other Defendant to manipulate SIBOR or SOR conducted in the United States, let alone specific communications setting forth a series of alleged in-forum manipulative acts taken for the common purpose of a conspiracy as in *Schwab II*.[9] And Plaintiffs allege no facts that provide any basis to infer that any Defendant could

[9] Moreover, as the declarations submitted by the Foreign Non-Counterparty Defendants make clear, SIBOR and SOR were not determined or set in the United States, and any submissions to SIBOR or SOR by the Foreign Non-Counterparty Defendants were not made from offices in the United States. *See* ECF No. 449-8 ¶¶ 8, 14–15 (ANZ);

have foreseen that two FX forwards trades in the United States could conceivably be seen as overt acts in furtherance of any conspiracy to manipulate USD SIBOR or SOR. The exercise of conspiracy jurisdiction over the Foreign Non-Counterparty Defendants would not comport with due process.

IV. PLAINTIFFS HAVE FAILED TO MAKE A PRIMA FACIE SHOWING OF PERSONAL JURISDICTION OVER THE SINGAPORE BANKS.

Plaintiffs' primary response to the arguments raised in the Singapore Banks' Supplemental Memorandum is to ignore them. (Opp. at 29-30.) Plaintiffs do not identify any fact-specific allegations in their pleadings or the voluminous exhibits attached thereto regarding the Singapore Banks' forum-related conduct. Indeed, nowhere in over 400 pages of Plaintiffs' four-time amended pleadings, 350 pages of accompanying exhibits, or Plaintiffs' 42-page opposition papers to the instant motion is there a single fact-specific allegation that (1) the Singapore Banks engaged in any suit-related conduct in, or targeted at, the United States, (2) the Singapore Banks profited from any conduct in the United States, or (3) any of the Defendants took any actions to set the SIBOR or SOR benchmark rates in the United States or otherwise acted in furtherance of the conspiracy in the United States. Nor would the exercise of personal jurisdiction over the Singapore Banks comport with traditional notions of fair play and substantial justice.

A. Plaintiffs Have Not Pleaded That the Singapore Banks Had the Requisite Minimum Contacts with the United States Sufficient for This Court to Exercise Personal Jurisdiction Based on the Trading of Their Alleged Co-Conspirators.

As set forth in the Singapore Banks' Supplemental Memorandum, even assuming Plaintiffs have adequately pled the existence of a conspiracy, Plaintiffs do not allege sufficient facts

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ECF No. 449-9 ¶¶ 6–7, 9 (CACIB); ECF No. 449-10 ¶¶ 5-6 (DBS); ECF No. 449-11 ¶¶ 4-5, 8 (OCBC); ECF No. 44-12 ¶¶ 4-6 (UOB); ECF No. ECF No. 151 ¶¶ 3-9 (Commerzbank); ECF No. 322 ¶¶ 2-6 (MUFG); ECF No. 149 ¶¶ 2-7 (BNPP); ECF No. 166 ¶¶ 8-9 (RBS plc); ECF No. 147 ¶¶ 7-23 (Barclays); ECF No. 167 ¶¶ 3–5, ECF No. 328 ¶¶ 4-5 (Standard Chartered); ECF No. 170 ¶¶ 3, 5-6, 8-10 (UBS).

regarding the Singapore Banks' alleged participation in such conspiracy in the United States to satisfy the minimum contacts test. Taking the non-conclusory factual allegations of the FAC as true, together with the uncontroverted statements in the Singapore Banks' declarations, the pertinent jurisdictional facts are as follows:

- Each of the Singapore Banks has its principal place of business and is organized under the laws of Singapore. *See* FAC ¶¶ 118, 140, 143, ECF No. 437; ECF No. 449-10 ("DBS Decl.") ¶¶ 2, 3; ECF No. 449-11 ("OCBC Decl.") ¶ 2; ECF No. 449-12 ("UOB Decl.") ¶ 2.

- All employees involved in each of the Singapore Banks' SIBOR and SOR determinations and submissions were located in Singapore. DBS Decl. ¶ 6; OCBC Decl. ¶ 8; UOB Decl. ¶ 4. Plaintiffs do not allege that any of the employees involved in co-Defendants' SIBOR and SOR determinations and submissions were located in the United States. *See generally* FAC.

- None of the employees in DBS's U.S. representative office or OCBC's and UOB's U.S. agency 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. Plaintiffs do not allege that any of the employees in any of co-Defendants' offices were involved in the determination or submission of SIBOR or SOR components. *See generally* FAC.

- Plaintiffs do not make any fact-specific allegations that any of the Singapore Banks traded SIBOR or SGD-based derivatives or took any actions relating to the alleged conspiracy in the United States. *See generally* FAC; *see also* DBS Decl. ¶ 6; OCBC Decl. ¶ 8; UOB Decl. ¶¶ 4, 8.[10]

Plaintiffs do not address these pertinent jurisdictional facts or otherwise allege there are other facts outside the pleadings in their five complaints. Instead, Plaintiffs' only argument is that the Singapore Banks' alleged contacts—or lack thereof—with the United States are immaterial and that personal jurisdiction can be satisfied solely based on alleged co-conspirators' *trading* in the United States. (*See* Opp. at 29.) In doing so, Plaintiffs disregard the Second Circuit's rulings

[10] As set forth in the Singapore Banks' Supplemental Memorandum, Plaintiffs' conclusory allegation that OCBC and UOB "consented to personal jurisdiction … 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) is without basis under New York and federal law. *See* Singapore Banks' Mem. at 12-13 (citing *SIBOR I*, 2017 WL 3600425, at *14). Plaintiffs do not argue otherwise in their Omnibus Opposition.

in *Schwab I* and *II* that reinforce that the alleged forum contacts of one defendant are not imputed to each member of an alleged conspiracy unless the in-forum contacts of an alleged co-conspirator were "in furtherance of the conspiracy." *Schwab I*, 883 F.3d at 86 ("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."); *Schwab II*, 2021 WL 6143556, at *12-13.

Here, Plaintiffs' allegations of in-forum trading by alleged co-conspirators do not meet this standard because trades made by each defendant are made solely for their own benefit and not "in furtherance of" any alleged conspiracy. *See Schwab I*, 883 F.3d at 87 ("As alleged, the conspiracy to manipulate LIBOR had nothing to do with the California transactions, and there is thus no reason to impute the California contacts to the co-conspirators. . . . *[F]inancial self-interest is not the same as furthering a conspiracy through California directed sales* . . . .") (emphasis added).)

To the extent that Plaintiffs claim that they have alleged a conspiracy to profit by trading SIBOR- or SOR-based derivatives in the United States (and they have not), jurisdiction over the Singapore Banks still must fail because there are no allegations that the Singapore Banks engaged in any such trading—and therefore could have profited—in the United States. Where, as here, Plaintiffs have alleged that Defendants engaged in a conspiracy to manipulate foreign benchmark interest rates by submitting bids outside the United States and sought to assert personal jurisdiction over certain Defendants based solely on their allegations of co-defendants' trading in the United States, courts in this District have ruled that personal jurisdiction does not exist over defendants that did not trade in the benchmark-based derivatives in the United States. *See* Singapore Banks' Mem. at 8-11. Plaintiffs simply fail to address these cases in their Omnibus Opposition with respect to the Singapore Banks.

Plaintiffs rely on *Sonterra Capital Master Fund Ltd. v. Credit Suisse Group AG*, 277 F. Supp. 3d 521 (S.D.N.Y. 2017) ("*CHF LIBOR*") (Opp. at 26),[11] but *CHF LIBOR* directly contradicts Plaintiffs' assertion of personal jurisdiction over the Singapore Banks here. In *CHF LIBOR*, plaintiffs alleged that defendants manipulated LIBOR to profit from that manipulation through transactions in CHF LIBOR in the United States. In analyzing whether trading by some defendants in the United States was sufficient to establish personal jurisdiction at the pleading stage, the district court distinguished between those defendants alleged to have transacted in CHF LIBOR-based derivatives in the United States from those that were not alleged to have engaged in such transactions in the United States. *CHF LIBOR*, 277 F. Supp. 3d at 592-96; Singapore Banks' Mem. at 9. For the former, the court found that plaintiff adequately alleged that these "defendants committed their wrongful conduct abroad in part to profit from their activities within the forum." *Id*. at 594. That is, the court found that the specifically alleged purpose of profiting from operations *in the United States* "create[d] a substantial connection between defendants' alleged manipulation and their derivatives trading activity in the [U.S.] to establish specific personal jurisdiction." *Id.* at 593. By contrast, the court found that plaintiff failed to allege any such purpose—*i.e.*, profiting from in-forum trading—with respect to the foreign defendants that were not specifically alleged to have traded in CHF LIBOR-based derivatives in the United States. *Id.* at 596. Thus, the court concluded that it lacked personal jurisdiction over those defendants. *Id.*

In the FAC, there are no non-conclusory, specific allegations that the Singapore Banks transacted in SIBOR or SOR-based derivatives in the United States. Nor are there any specific factual allegations that any of the defendants submitted any bids or engaged in any conduct in the

[11] Similarly, Plaintiffs rely on *Allianz Global Investors GmbH v. Bank of America Corp.*, 463 F. Supp. 3d 409 (S.D.N.Y. 2020) with respect to their antitrust injury arguments (Opp. at 20), yet they ignore that court's analysis of each foreign defendant's alleged contacts in New York in concluding that it had personal jurisdiction over those defendants. *Id.* at 418.

United States in furtherance of the conspiracy. Thus, personal jurisdiction is lacking over the Singapore Banks. *See* Suppl. Mem. at 8-12; *CHF LIBOR*, 277 F. Supp. 3d at 596; *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, No. 13 CIV. 7789, 2016 WL 1268267, at *6-7 (S.D.N.Y. Mar. 31, 2016) (no jurisdiction over foreign defendant who had an affiliate in the United States that did not participate in FX trading); *In re N. Sea Brent Crude Oil Futures Litigation*, No. 13-md-2475, 2017 WL 2535731, at *8 (S.D.N.Y. June 8, 2017) (no personal jurisdiction over foreign defendant not alleged by plaintiff to have traded in manipulated derivatives in the United States);[12] *cf. Schwab II*, 2021 WL 6143556 at *12-13 (court found personal jurisdiction over foreign defendants where plaintiff alleged that co-conspirators made interest rate submissions and other communications regarding the benchmark rates from the United States). Accordingly, Plaintiffs fail to allege the requisite "minimum contacts" to exercise personal jurisdiction over the Singapore Banks.

B. The Exercise of Personal Jurisdiction over the Singapore Banks Would Not Be Reasonable.

Plaintiffs mischaracterize the Singapore Banks' position that the exercise of personal jurisdiction over them is unreasonable and inconsistent with notions of fair play and substantial justice as one of mere inconvenience. (Opp. at 30.) This is not the case. As noted above, Plaintiffs make no fact-specific allegations regarding the Singapore Banks' conduct in the United States.

[12] Those cases have also squarely rejected arguments that jurisdiction is appropriate under the "effects test" where a defendant lacks trading operations in the United States. *See, e.g.*, *In re N. Sea Brent Crude Oil Futures Litig.*, 2017 WL 2535731, at *8 (S.D.N.Y. June 8, 2017) ("[T]he Court declines to find that STASCO expressly aimed its conduct at the United States solely on the basis of other RDS-affiliated entities' trading in the United States."); *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, 2016 WL 1268267, at *5-7 (finding that without any trading activity in the United States attributable to defendant, the court lacked personal jurisdiction over such defendant notwithstanding the allegation that the defendants were "dominant" players in the relevant market, and "knew" the benchmark-based derivatives "were disseminated in the United States"); *cf. CHF LIBOR*, 277 F. Supp. 3d at 591 ("plaintiffs do not allege merely that dissemination of CHF LIBOR into the United States and its effects on CHF-LIBOR-based derivatives in the United States were *foreseeable*; they claim that those effects were the *purpose* of defendants' manipulation"). Plaintiffs do not and cannot allege that the Singapore Banks expressly aimed their conduct at the United States.

The Singapore Banks are all organized and located in Singapore, and each has only a small presence in the United States that was not involved in the determination of the SIBOR and SOR benchmarks or in trading derivatives based on those benchmarks. DBS Decl. ¶¶ 2-7; OCBC Decl. ¶¶ 2-8; UOB Decl. ¶¶ 2-7. Accordingly, none of the Singapore Banks' relevant witnesses or documents are located in the United States, and litigation here would result in substantial burden to the Singapore Banks. *See* Singapore Banks' Mem. at 11-12. The Supreme Court has emphasized that "[t]he unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." *Asahi Metal Indus. Co., Ltd. v. Superior Ct. of Cal., Solano Cnty.*, 480 U.S. 102, 114 (1987).

Even assuming Plaintiffs may have an interest in litigating in this forum, that alone does not suffice to impose jurisdiction over foreign banks here. Indeed, any exercise of jurisdiction could only be based on the purported in-forum trading of the Singapore Banks' alleged co-conspirators—conduct that by its nature would only reap profits *for such co-conspirator*—not the Singapore Banks.[13] And the FAC is devoid of any allegations that the Singapore Banks knew that any panel member was engaging in SIBOR- or SOR-based derivatives transactions in the United States. Not only are UBS's two transactions with the Moon Plaintiffs far "too 'random, fortuitous, and attenuated'" to be a basis for jurisdiction, but the exercise of jurisdiction based upon those trades would indeed be well beyond the outer limits of due process.

Citing *Linde v. Arab Bank, PLC*, 463 F. Supp. 2d 310, 314 (E.D.N.Y. 2006), for the proposition that courts are capable of addressing hypothetical concerns regarding bank secrecy

[13] Notably, the *Schwab II* court explicitly did not address traditional notions of fair play and substantial justice in its inquiry into due process and expressly "limit[ed its] analysis to the assessment of Defendants' minimum contacts." *Schwab II*, 2021 WL 6143556, at *11.

laws in discovery disputes, Plaintiffs characterize the Singapore Banks' position as speculative. (Opp. at 30.) But it is more than mere speculation. Singapore's bank secrecy laws prohibit the sharing of any "customer information" with anyone, save for a short list of exceptions that does not include U.S. courts or parties in U.S. litigation. Singapore Banking Act, pt. VII § 47(1). The term "customer information" is defined broadly, and it includes "any information relating to, or any particulars of, an account of a customer of the bank, whether the account is in respect of a loan, investment or any other type of transaction." *CE Int'l Res. Holdings v. S.A. Mins. Ltd. P'ship*, No. 12-CV-08087, 2013 WL 2661037, at *6 (S.D.N.Y. June 12, 2013) (quoting Singapore Banking Act § 40A). Individuals who violate the non-disclosure portion of the law "shall be guilty of an offense and will be liable for a fine of up to $125,000 [in Singapore dollars] or imprisoned for up to three years, or both. *Id.* (citing Singapore Banking Act § 47(6)). For violations by business entities, "a fine will be imposed of up to S $250,000." *Id.* Here, Plaintiffs allege the Defendants conspired to manipulate benchmark rates and ultimately used such manipulation to attempt to profit from customer transactions. *See* FAC ¶¶ 1, 5, 214. Customer information will inevitably be implicated during discovery—but its disclosure in discovery would violate Singapore's bank secrecy laws. *See* Singapore Banking Act, pt. VII § 47(1); *see also CE Int'l Res. Holdings*, 2013 WL 2661037, at *8 (denying motion to compel where disclosure would require bank to violate Singapore's bank secrecy laws). The potential conflict between discovery obligations and Singapore law is palpable, and Plaintiffs' promise of circumscribed discovery will not cure the problem. This weighs against exercising jurisdiction over the Singapore Banks.

Given the Singapore Banks' lack of any alleged case-specific conduct in the United States, minimal contacts with the United States overall, and the substantial, non-speculative risks that the litigation presents to the Singapore Banks, the exercise of personal jurisdiction over the Singapore

Banks would not be reasonable. *See* Suppl. Mem. at 12; *see also Walker v. Macy's*, 2016 WL 6089736, at *6 ("[P]rinciples of fairness also militate against exercising personal jurisdiction" over defendant company "whose witnesses and documents are all located thousands of miles away in Hong Kong or China," notwithstanding that plaintiff was a resident of the forum and plaintiff's injuries occurred in forum, because defendant "would likely incur heavy costs if made to defend itself within this forum"); *Faurecia Exhaust Sys., Inc. v. Walker*, 464 F. Supp. 2d 700, 708 (N.D. Ohio 2006) (notions of fair play and substantial justice violated where defendant did not live in the United States and where action was in its early stages, so judicial economy was not offended); *Ne. Power Co. v. Balcke-Durr, Inc.*, 49 F. Supp. 2d 783, 788-91 (E.D. Pa. 1999) (exercise of personal jurisdiction over German parent corporation in Pennsylvania utility's action alleging subsidiary's furnishing of faulty equipment for Pennsylvania facility would violate notions of fair play and substantial justice, in light of burden to parent to litigate dispute in Pennsylvania, and inconvenience and ineffectiveness of resolving dispute with parent's involvement); *Ritz Camera Ctrs., Inc. v. Wentling Camera Shops, Inc.*, 982 F. Supp. 350, 355 (D. Md. 1997) (plaintiff's "presence in Maryland does not provide sufficient constitutional support for the exercise of personal jurisdiction over" defendant and "any reasonable concept of 'fair play' would be grossly offended if this court were to exercise jurisdiction over" defendant where defendant's contacts with the forum were "fortuitous" and "attenuated").

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

CONCLUSION

For the foregoing reasons, the claims against the Foreign Non-Counterparty Defendants should be dismissed for lack of personal jurisdiction.

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