

**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,

v.

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

**MEMORANDUM OF LAW IN
SUPPORT OF DEFENDANTS'
MOTION FOR LEAVE TO
FILE A RESPONSE TO
PLAINTIFFS' SUR-REPLY IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS THE
FOURTH AMENDED
CLASS ACTION COMPLAINT**

This Court granted Plaintiffs leave to file a sur-reply (the “Sur-Reply”) of no more than five (5) pages (ECF No. 463) so that Plaintiffs could address the Second Circuit’s decision in *Schwab Short-Term Bond Market Fund v. Lloyds Banking Group PLC*, 22 F.4th 103 (2d Cir. 2021) (“*Schwab I*”), which was decided after Plaintiffs filed their opposition to the undersigned Defendants’ motion to dismiss the Fourth Amended Class Action Complaint.¹ Plaintiffs’ Sur-Reply mischaracterizes *Schwab II* by claiming that the decision supports Plaintiffs’ positions that the Moon Plaintiffs are efficient enforcers of the antitrust laws and that the Moon Plaintiffs’ two alleged transactions with one defendant establish conspiracy jurisdiction over all Defendants. (Sur-Reply at 1-4.) Further, the Sur-Reply contains arguments about the timeliness of the Moon Plaintiffs’ claims that have nothing to do with *Schwab II* and are a belated and procedurally improper attempt to plug a glaring hole in Plaintiffs’ opposition to Defendants’ motion to dismiss. (Sur-Reply at 5.)

Defendants should be permitted to respond to these arguments, which were raised for the first time in the Sur-Reply. As movants, Defendants are “shouldered with the ultimate burden on the motion and [] therefore should be (for reasons of judicial efficiency and simple fairness) afforded the last word on the motion.” *Estate of Loveria v. Portadam, Inc.*, 2010 WL 11541909, at *2 (N.D.N.Y. June 9, 2010). Moreover, permitting Defendants to respond to Plaintiffs’ Sur-Reply would allow the Court to decide Defendants’ Motion to Dismiss with the benefit of a complete record that includes full briefing on *Schwab II*, which is an important decision on key issues of law. *Broadfoot v. Barrick Gold Corp.*, 2017 WL 3738444, at *1 (S.D.N.Y. Aug. 9, 2017) (granting permission to file a sur-sur-reply in order to “engage now in a fuller examination of” an issue before the court).

¹ Unless otherwise indicated, all capitalized terms have the same meaning ascribed to them in Defendants’ Memorandum of Law in Support of Defendants’ Joint Motion to Dismiss the Fourth Amended Class Action

Accordingly, Defendants respectfully request that the Court grant Defendants leave to file a brief in response to Plaintiffs' Sur-Reply of no more than five (5) pages that is substantially the same in form and substance as the proposed brief attached hereto as Exhibit A.

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February 4, 2022²

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Complaint (ECF No. 447) (the "Opening Brief" or "Br."). All internal quotation marks and citations are omitted.

² All electronic signatures ("/s/") are signed with consent of counsel pursuant to Rule 8.5 of this Court's Electronic Case Filing Rules & Instructions, as of February 1, 2021.

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