UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE AMERICAN INTERNATIONAL GROUP, INC. 2008 SECURITIES LITIGATION	Master File No.: 08-CV-4772-LTS-DCF
This Document Relates To: All Actions	**ELECTRONICALLY FILED**

LEAD PLAINTIFF'S RESPONSE TO ORDER TO SHOW CAUSE

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Lead Plaintiff, the State Treasurer of Michigan, as custodian of the Michigan Public School Employees Retirement System, the State Employees' Retirement System, the Michigan State Police Retirement System, and the Michigan Judges Retirement System ("Lead Plaintiff"), respectfully submits this Response to the Court's Order To Show Cause of December 19, 2013 (Docket No. 434). This Court issued the Order in response to Defendants' request that this five-year old case be stayed pending a decision by the Supreme Court in *Halliburton Co. v. Erica P. John Fund, Inc.*, No. 13-317, 2013 WL 4858670 (U.S. Nov. 15, 2013) ("*Halliburton II*"), in which certiorari has been granted, and directed Plaintiffs to provide a written submission to show cause why Defendants' stay request should not be granted.[1] As discussed below, Defendants have failed to provide sufficient grounds for a stay of proceedings in this case.

First, Defendants' conjecture about the potential impact of *Halliburton II* falls well short of justifying the issuance of a stay pending appeal, even were that appeal of an order in this case rather than in an unrelated action such as *Halliburton II*. *See In re Yohannes*, No. 06 Civ. 461 (LTS), 2007 U.S. Dist. LEXIS 51083, at *14 (S.D.N.Y. July 17, 2007) (noting that a party requesting a stay pending appeal must demonstrate, among other things, irreparable injury if a stay is denied).

[1] In *Erica P. John Fund, Inc. v. Halliburton Co.*, __ U.S. __, 131 S. Ct. 2179 (2011) ("*Halliburton I*"), the Supreme Court held that a plaintiff need not prove loss causation at the class certification stage, and stated that it was not addressing any other question regarding *Basic Inc. v. Levinson*, 485 U.S. 224 (1988) ("*Basic*"), its presumption, or how and when it may be rebutted. *Halliburton I*, 131 S. Ct. at 2187. In *Halliburton II*, the two questions accepted by the Supreme Court for consideration are: (1) whether the Supreme Court should modify the holding of *Basic* to the extent that it recognizes a presumption of classwide reliance derived from the fraud-on-the-market theory; and (2) whether, in a case where the plaintiff invokes the presumption of reliance to seek class certification, the defendant may rebut the presumption and prevent class certification by introducing evidence that the alleged misrepresentations did not distort the market price of the security at issue.

Here, Defendants would not suffer irreparable injury if a stay is denied because, even if Lead Plaintiff's motion for class certification is reinstated and decided, Federal Rule of Civil Procedure 23(c)(1)(C) "allows the Court discretion in altering or amending its order granting class certification at any point before a final judgment." *Vengurlekar v. HSBC Bank*, No. 03 Civ. 243 (LTS) (DFE), 2007 U.S. Dist. LEXIS 37521, at *24 (S.D.N.Y. May 22, 2007). As such, the Court would be free to address the effect of the *Halliburton II* decision, if any, on any class certification ruling of this Court at the time *Halliburton II* is actually decided. For this reason alone, *i.e.*, that Defendants would not suffer irreparable harm by having their request for a stay denied, Defendants' request should be rejected.[2]

Second, following Defendants' argument to its logical conclusion, the asserted grounds for a stay would mandate that every securities class action that invokes the fraud-on-the-market presumption of reliance, likely a majority of all securities class actions, be stayed pending the Supreme Court's decision in *Halliburton II*. But, tellingly, Defendants' rationale for staying this case has been rejected by three courts presiding over other securities class actions that have considered the same issue: *Smilovits v. First Solar, Inc., et al.*, No. CV12-00555-PHX-DGC (D. Ariz.); *In re Merck & Co., Inc. Securities, Derivative, & ERISA Litigation*, Civil Action No. 05-cv-02367 (SRC) (CLW) (D.N.J.); and *Erica P. John Fund, Inc. v. Halliburton Co.*, Civil Action No. 3:02-cv-1152-M (N.D. Tex.) (district court case that is the subject of *Halliburton II*).

In rejecting a stay pending the Supreme Court's decision in *Halliburton II*, the court in *Smilovits v. First Solar* observed:

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[2] Because Defendants' request for a stay is premised on an appeal in an unrelated action, rather than an appeal of an order in this case, Defendants' burden to show irreparable injury should be heightened. But in any event, as noted below, the parties in the district court case that is the subject of *Halliburton II* are moving forward with discovery without a stay of that action, further supporting a rejection of Defendants' stay request here.

> The Court concludes that this case should not be stayed pending the Supreme Court's decision in the *Halliburton* case. That decision will not end this case. The substantial institutional investors in the plaintiff class are virtually certain to carry this case forward even if the class is decertified as a result of the Supreme Court's decision, and most of the merits discovery would be the same even if decertification occurred. This case has been pending for almost two years, and the Court concludes that it should move forward toward resolution.

Exhibit A hereto (Case Management Order Number 2 in *First Solar*, entered November 25, 2013), at 1.

Similarly, in a recent decision in *In re Merck & Co., Inc. Securities, Derivative, & ERISA Litigation*, the court rejected defendants' request for a stay, and highlighted the highly speculative nature of such a request:

> There is … no certainty that a decision in *Halliburton II* will be dispositive of a central issue in this case. Rather, a marked shift away from the presumption of reliance on market-based pricing might reallocate the burdens of proof - a significant shift in the law to be sure - but not one justifying an open-ended stay of a nearly decade-old case. While some Justices have expressed skepticism as to the economic theory at the core of *Basic*'s presumption, it is equally plausible that a decision in *Halliburton II* could result in the affirmance of those very principles, and of the presumption. The chance that in seven months to a year, or possibly more, the Supreme Court may issue a decision affecting the burdens of proof and presumptions in play in this case does not overcome the weight of the hardship to Plaintiffs in granting an open-ended stay and causing further delay.

Exhibit B hereto (Order On Informal Application To Stay in *Merck*, entered December 19, 2013), at 2 n.1.

Finally, the misguided nature of Defendants' stay request here is further exhibited by the fact that the parties are moving forward with discovery in *Erica P. John Fund, Inc. v. Halliburton Co.*, the district court case that is the subject of *Halliburton II*. *See* Exhibit C hereto (Davis, Jess, "Halliburton Securities Class OK'd To Continue Discovery," Law 360, Dec. 3, 2013). Notwithstanding that the courts in *First Solar*, *Merck* and *Halliburton II* had certified those cases as class action, whereas that is still an issue to be decided here, the reasons for not

staying those actions in light of the pendency of the appeal in *Halliburton II* apply with equal force here, and Defendants' request for a stay here should similarly be denied.

Third, Defendants' speculation about what impact the decision in *Halliburton II* may have on the class issues in this case does not support an indefinite stay of the entire case.[3] In fact, major portions of the class motion here would be unaffected by *any* decision that might be handed down in *Halliburton II*. For example, even a hypothetical decision in *Halliburton II* that overturns *Basic* and the fraud-on-the-market presumption of reliance would not result in outright dismissal of this case, or the inability of this Court to certify a class, because Lead Plaintiff has alleged in its claims brought pursuant to the Securities Exchange Act of 1934 ("Exchange Act") that Defendants made omissions of material fact, and as such Plaintiffs are entitled to a presumption of reliance under *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 153 (1972). *See* Memorandum in Support of Lead Plaintiff's Motion for Class Certification, filed March 30, 2012 (Docket No. 340), at 24 n.13 (citing *Affiliated Ute* and *In re Dynex Capital, Inc.*

[3] Apart from this Court's consideration of any reinstated class motion by Lead Plaintiff, there is at least one other issue that the Court and the parties can work to resolve to move the case forward on which the ruling in *Halliburton II* will have no effect. On April 17, 2012, Lead Plaintiff made an application to compel the production of documents relating to work that Deloitte Consulting ("Deloitte") did in assessing and making recommendations for AIG's risk management structures and practices. On May 21, 2012, Magistrate Judge Freeman granted Lead Plaintiff's application, finding that AIG could not claim any attorney work product protection with regard to Deloitte's report or other documents summarizing or reflecting its findings, observations and recommendations. AIG filed Objections to the Magistrate Judge's Order on June 4, 2012, to which Lead Plaintiff responded on June 11, 2012.

Were the Court to affirm the ruling of the Magistrate Judge, AIG, Deloitte and potentially PwC would be required to produce documents they previously withheld pertaining to the work that Deloitte performed. Further, Lead Plaintiff retained the right to continue certain depositions that were taken of AIG individuals, and to issue a subpoena for a deposition of a Deloitte representative, if the Deloitte documents are required to be produced. This is something that is entirely independent of any decision in *Halliburton II*, and Lead Plaintiff respectfully submits that a ruling on AIG's Objections to the Magistrate Judge's Order would be appropriate so that the parties can complete the remaining discovery on this matter, should the Court affirm the ruling of the Magistrate Judge. *See, e.g.*, *Quinn v. Altria Group, Inc.*, No. 07 Civ. 8783 (LTS)(RLE), 2008 U.S. Dist. LEXIS 62927, at *9 (S.D.N.Y. Aug. 1, 2008) (denying requests for a partial stay of discovery and certification of interlocutory appeal, and recognizing that a stay pending appeal would "delay the ultimate termination of the litigation").

Sec. Litig., Case No. 05 Civ. 1897 (HB), 2011 U.S. Dist. LEXIS 22484, at *19-21 (S.D.N.Y. Mar. 7, 2011)). Lead Plaintiff has alleged, among other things, that Defendants made numerous representations that were highly misleading because they failed to disclose the full set of risks associated with AIG's exposure to subprime debt. *See generally* Lead Plaintiff's Consolidated Class Action Complaint, ¶¶254-422; *In re American Int'l Group, Inc. 2008 Sec. Litig.*, 741 F. Supp.2d 511, 517, 530-31, 533-34 (S.D.N.Y. Sept. 27, 2010) (decision denying in large part motions to dismiss the Consolidated Class Action Complaint); *see also* Exhibit D hereto (Excerpts from Class Motion Hearing Transcript of May 1, 2013), at 494:13-20 (Lead Counsel noting that, prior to August 2007, Plaintiffs' claims are based primarily on Defendants' concealment of information). Thus, even if the Supreme Court were to eliminate the fraud-on-the-market presumption of reliance, which is far from a sure thing, many of the Exchange Act claims in this action could proceed on a class-wide basis under *Affiliated Ute*.

Further, as Lead Plaintiff noted in its class motion, Plaintiffs' Section 11 claims brought under the Securities Act of 1933 ("Securities Act") in this case do not require a showing of reliance. *See* Memorandum in Support of Lead Plaintiff's Motion, *supra*, at 24 n.12 & 56. Lead Counsel reiterated this point at the class certification hearing before this Court, as follows:

> One final point, your Honor. For the last three days we have been talking about market efficiency, but I think it should be made clear that that's irrelevant for our Section 11 claims. Our Section 11 claims for these bonds do not require a showing of reliance. So long as we meet the standards for class certification, which we undoubtedly have and established in our briefing, we are not required to show that AIG's securities traded in an efficient market for our Section 11 claims.

Exhibit D, at 509:24-510:7.[4] As such, *Halliburton II* has no relevance whatsoever to certification of Plaintiffs' Securities Act claims.

[4] If this Court were to deny Defendants' request for a stay and allow reinstatement of the class motion, Lead Plaintiff would seek to streamline the process by amending and modifying the class motion to exclude its request to certify a Class, for purposes of asserting claims under

Finally, even if the Supreme Court were to require a finding of not only general market efficiency, but also market efficiency with respect to the specific claims in securities cases under the second question presented in *Halliburton II*, Lead Plaintiff already made that showing in the papers submitted in support of the class motion and during the class certification hearing. *See*, *e.g.*, Exhibit D at 492:4-8 (Lead Counsel noting that Professor Feinstein's event studies showed that AIG stock moved promptly and significantly in response to new information "relevant to the claims in this case"), 492:13-24 (same), 494:13-20 (same), 507:4-10 (same).

For the reasons stated herein, Lead Plaintiff respectfully submits that this Court should deny Defendants' request for a stay of this action pending the Supreme Court's determination of *Halliburton II*, allow Lead Plaintiff to reinstate its motion for class certification (as discussed in n.4, *infra*), and allow this case to move forward.

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the Exchange Act, on behalf of purchasers of the other sixty-one securities issued by AIG during the Class Period. Rather, Lead Plaintiff would seek to certify, for purposes of asserting claims under the Exchange Act, purchasers during the Class Period of only AIG common stock, preferred stock, corporate units and the seven identified bonds for which Professor Feinstein conducted event studies. And, as in the existing motion, Lead Plaintiff would continue to seek to certify, for purposes of asserting claims under the Securities Act, purchasers of AIG common stock (limited to purchasers in the May 2008 offering, and not in the aftermarket) as well as purchasers of the corporate units, two series of preferred stock, six of the seven identified bonds, and the other sixty-one securities issued by AIG during the Class Period.

Dated: January 6, 2014

Respectfully submitted,

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