UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

MEXICAN GOVERNMENT BONDS ANTITRUST LITIGATION

This Document Relates To All Actions

1:18-cv-02830-JPO

ORAL ARGUMENT REQUESTED

MEMORANDUM OF LAW IN SUPPORT OF FOREIGN DEFENDANTS' MOTION TO DISMISS THE CONSOLIDATED AMENDED CLASS ACTION COMPLAINT FOR LACK OF PERSONAL JURISDICTION AND IMPROPER VENUE

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Foreign Defendants[1] respectfully submit this joint memorandum of law in support of their motion to dismiss the Consolidated Amended Class Action Complaint (Dkt. 75) (the "Complaint" or "CAC") for lack of personal jurisdiction and venue pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(3).

PRELIMINARY STATEMENT

As set forth in the Merits Brief,[2] Plaintiffs' claims alleging the manipulation of Mexican government bonds ("MGBs") suffer from multiple fatal flaws on standing and merits grounds, each of which compels dismissal. In addition, as addressed here, Plaintiffs fail to establish personal jurisdiction over any Foreign Defendant, and all claims against Foreign Defendants must therefore be dismissed.

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[1] Foreign Defendants are: Bank of America México, S.A., Institucion de Banca Múltiple; the BBVA Foreign Defendants (Banco Bilbao Vizcaya Argentaria, S.A.; BBVA Bancomer S.A., Institución de Banca Múltiple, Grupo Financiero BBVA Bancomer; BBVA Compass Bancshares, Inc.; Grupo Financiero BBVA Bancomer, S.A. de C.V.); the Barclays Foreign Defendants (Barclays Bank México, S.A., Institución de Banca Múltiple, Grupo Financiero Barclays México; Barclays Bank PLC; Barclays Capital Securities Limited; Barclays PLC; Grupo Financiero Barclays México, S.A. de C.V.); the Citi Foreign Defendants (Banco Nacional de México, S.A., Institución de Banca Múltiple, Grupo Financiero Banamex; Grupo Financiero Banamex, S.A. de C.V.); the Credit Suisse Foreign Defendants (Banco Credit Suisse (Mexico) S.A.; Credit Suisse AG; Credit Suisse Group AG; Grupo Financiero Credit Suisse (Mexico), S.A. de C.V.); the Deutsche Bank Foreign Defendants (Deutsche Bank AG; Deutsche Bank México, S.A., Institution de Banca Múltiple); the HSBC Foreign Defendants (HSBC Holdings PLC; HSBC Bank PLC; HSBC Latin America Holdings (UK) Limited; HSBC México, S.A., Institución de Banca Múltiple, Grupo Financiero HSBC); the ING Foreign Defendants (ING Bank N.V.; ING Groep N.V.); the J.P. Morgan Foreign Defendants (Banco J.P. Morgan, S.A., Institución de Banca Múltiple, J.P. Morgan Grupo Financiero; J.P. Morgan Securities plc); and the Santander Foreign Defendants (Banco Santander (México), S.A., Institución de Banca Múltiple, Grupo Financiero Santander México ("Banco Santander Mexico"); Banco Santander, S.A.; Santander Investment Bolsa, Sociedad de Valores, S.A.U.). While Plaintiffs have not served Banco Barclays S.A. with the summons or Complaint, Plaintiffs have agreed to voluntarily dismiss Banco Barclays S.A. as a Defendant, and a submission to the Court memorializing that agreement will be made in due course. The Complaint names Credit Suisse Financiero Credit Suisse (Mexico), S.A. de C.V. as a Defendant; the entity's name is Grupo Financiero Credit Suisse (Mexico), S.A. de C.V. The Complaint also names Bank of America México, S.A., Institucion de Banca Múltiple, Grupo Financiero Bank of America as a defendant; the entity's name is Bank of America México, S.A., Institucion de Banca Múltiple ("Bank of America México"). Grupo Financiero Bank of America merged into Bank of America México and ceased to exist on November 1, 2010. The Complaint appears to refer to Grupo Financiero Banamex, S.A. de C.V. as Citibank Mexico, S.A. There is no separate entity named Citibank Mexico, S.A. All Foreign Defendants also join in the separate Motion to Dismiss the Consolidated Amended Class Action Complaint for Lack of Subject Matter Jurisdiction and Failure to State a Claim. Unless otherwise noted, all internal citations and quotation marks are omitted. For convenience, Defendants submit as Appendix 1 hereto a chart summarizing the arguments applicable to Foreign Defendants.

[2] Defendants' Memorandum of Law in Support of Their Joint Motion to Dismiss for Failure to State a Claim.

Plaintiffs fail to allege a single "comprehensive scheme" to manipulate MGBs but rather attempt to allege two separate conspiracies: (1) a conspiracy to manipulate the Mexican Government's auction of MGBs and then re-selling the auctioned MGBs at inflated prices, and (2) a conspiracy to manipulate the secondary market for MGBs by fixing the bid-ask spreads of the MGBs they buy and sell. CAC ¶ 6. Because Plaintiffs have failed to allege that either conspiracy occurred in or was specifically directed at the United States, Plaintiffs have failed to establish jurisdiction over any Foreign Defendant.

As to the MGB auction manipulation claims, the alleged manipulation occurred entirely in Mexico, and the entities purportedly involved are all alleged to have been located outside the United States. Plaintiffs attempt to connect these foreign activities to the United States by claiming that some Foreign Defendants — but not others — traded MGBs in the United States. As to the Foreign Defendants that are not alleged to have traded MGBs with any United States counterparties, including most of the Market Maker entities that purportedly manipulated the MGB auction process, they plainly lack a connection to the United States and should be dismissed. As to the remaining Foreign Defendants, Plaintiffs fail to allege any facts to support a connection, let alone the requisite substantial connection, between the alleged manipulation of the MGB auction process in *Mexico* and any purported trading activities in the *United States*.

For similar reasons, Plaintiffs also fail to establish personal jurisdiction over their bid-ask spread manipulation claims. While Plaintiffs attempt to plead that every Foreign Defendant manipulated every MGB it bought or sold anywhere in the world for more than eleven years, the existence of a conspiracy of such breadth without any fact-based allegations to support it is simply not plausible. Regardless, Plaintiffs have failed to allege any facts to support this

conclusory assertion, and thus necessarily fail to allege facts connecting the conspiracy to the United States.

Plaintiffs' remaining arguments for jurisdiction lack merit. *First*, Plaintiffs cannot impute the jurisdictional contacts of Foreign Defendants' United States affiliates or subsidiaries to Foreign Defendants because they fail to allege that Foreign Defendants had the requisite direction and control over their affiliates' alleged misconduct. *Second*, Plaintiffs cannot establish "conspiracy jurisdiction" because they have failed to state a *prima facie* case for it and, even if they could, their conspiracy allegations fail to comport with either due process or the relevant jurisdictional statutes. *Third*, Plaintiffs cannot rely on the Clayton Act as an alternative basis for jurisdiction because their use of nationwide contacts to secure jurisdiction would violate due process and, as to Venue Defendants, *see infra* n.27, the Clayton Act's venue provision. *Fourth*, to the extent Plaintiffs contend that Foreign Defendants are subject to general jurisdiction either because they are "at home" in New York or consent to jurisdiction here, those contentions are wholly insufficient, as other courts in this district have repeatedly held. *Finally*, any assertion of jurisdiction over Foreign Defendants, based on allegations of misconduct abroad with no nexus to the United States, would be unreasonable and threaten international comity.

Earlier this year in *Charles Schwab Corp.* v. *Bank of America Corp.*, 883 F.3d 68 (2d Cir. 2018), the Second Circuit, applying established Supreme Court and Second Circuit precedent, rejected many of the jurisdictional bases that Plaintiffs assert here. In doing so, the Second Circuit confirmed the decisions of numerous courts in this District that have refused to assert personal jurisdiction over foreign defendants (including foreign entities associated with United States banks, like many of the Foreign Defendants) even where the purported manipulation had a foreseeable effect on transactions in the United States. *See, e.g.*, *In re Platinum & Palladium*

Antitrust Litig., 2017 WL 1169626, at *42, *44 (S.D.N.Y. Mar. 28, 2017) (Woods, J.); *Sullivan* v. *Barclays PLC*, 2017 WL 685570, at *43-45 (S.D.N.Y. Feb. 21, 2017) (Castel, J.); *In re LIBOR-Based Fin. Instruments Antitrust Litig.* ("*LIBOR IV*"), 2015 WL 6243526, at *20 (S.D.N.Y. Oct. 20, 2015) (Buchwald, J.); *7 W. 57th St. Realty Co.* v. *Citigroup, Inc. LLC*, 2015 WL 1514539, at *10-11 (S.D.N.Y. Mar. 31, 2015) (Gardephe, J.); *Laydon* v. *Mizuho Bank, Ltd.* ("*Laydon V*"), 2015 WL 1515358, at *5-6 (S.D.N.Y. Mar. 31, 2015) (Daniels, J.). This Court should do the same and dismiss Plaintiffs' claims against Foreign Defendants.

BACKGROUND[3]

A. Plaintiffs

Plaintiffs are eight pension funds that purport to have transacted in MGBs,[4] including Federal Treasury Certificates ("Cetes"), Mexican Federal Government Development Bonds ("Bonos"), and Federal Government Development Bonds ("Udibonos") with certain Defendants. CAC ¶¶ 65-72. Plaintiffs also identify a fourth type of MGB — Federal Government Development Bonds ("Bondes D") — but do not allege that they traded these instruments. *See id.* The Complaint purports to allege a conspiracy among ten designated market-makers (the "Market Makers")[5] of Mexican government securities to manipulate the market for MGBs by

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[3] A more comprehensive summary of Plaintiffs' factual allegations is set forth in the Background section of Defendants' Merits Brief.

[4] The Complaint defines MGB as "a debt security (like a U.S. Treasury bond) that is issued by the Mexican government during regularly scheduled auctions." CAC ¶ 1.

[5] The ten alleged Market Makers are: (i) Bank of America México, S.A.; (ii) Banco J.P. Morgan, S.A., Institución de Banca Múltiple, J.P. Morgan Grupo Financiero; (iii) Banco Nacional de México, S.A., Institución de Banca Múltiple, Grupo Financiero Banamex; (iv) Banco Santander (Mexico); (v) HSBC México, S.A., Institución de Banca Múltiple, Grupo Financiero HSBC; (vi) Barclays Bank México, S.A., Institución de Banca Múltiple, Grupo Financiero Barclays México; (vii) Deutsche Bank México, S.A., Institution de Banca Múltiple; (viii) Banco Credit Suisse (Mexico) S.A.; (ix) ING Bank México S.A.; and (x) BBVA Bancomer S.A., Institución de Banca Múltiple, Grupo Financiero BBVA Bancomer. ING Bank México S.A. was dissolved in 2013, and has not been served in this action. Decl. of Gary Prince ¶ 5 (ING Bank, N.V.). Prior to dissolution, it ceased to be a market maker in MGBs in 2012 and did not participate in auctions for MGBs thereafter. *Id.* Banco Credit Suisse (Mexico) S.A. was a market maker only from March 1, 2007 to February 29, 2008. Decl. of Karla Vaquero ¶ 7 (Banco Credit Suisse (Mexico)

rigging bids at MGB auctions held by the Mexican government and then selling those bonds to unknown investors at artificial prices immediately following the auctions. *Id.* ¶ 6. Plaintiffs never allege, however, that *they* ever participated in MGB auctions or that their MGBs were purchased immediately after the auctions. The Complaint also purports to allege that Defendants agreed to fix the bid-ask spread for every MGB they traded in the secondary market anywhere in the world (again for more than eleven years) and, as a result, either overcharged or underpaid investors in unspecified MGB transactions. *Id.*

B. Foreign Defendants

There is no dispute that each Foreign Defendant is headquartered in and organized under the laws of a foreign country or a state other than New York.[6] *See* CAC ¶¶ 73-242. Certain Foreign Defendants have no offices or employees anywhere in the United States,[7] and do not

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S.A.). Deutsche Bank México, S.A., Institution de Banca Múltiple ceased to be a market maker in MGBs on March 1, 2016. Decl. of Allison Cambria ¶ 19 (Deutsche Bank México, S.A., Institution de Banca Múltiple).

[6] In support of this motion, Foreign Defendants submit the declarations of: Decl. of Salvador del Valle ¶ 3 (Bank of America México); Decl. of Hannah Ellwood ¶ 5 (Barclays PLC); Decl. of Jason Wright ¶¶ 4-5 (Barclays Bank PLC); Decl. of Judith Elise Simone Wansink ¶¶ 4-6 (Barclays Bank México, S.A., Institución de Banca Múltiple, Grupo Financiero Barclays México); Decl. of Judith Elise Simone Wansink ¶¶ 4-5 (Grupo Financiero Barclays México, S.A. de C.V.); Decl. of Jason Wright ¶¶ 4-5 (Barclays Capital Securities Limited); Decl. of Jorge E. Rodriguez Arellano ¶¶ 3-4 (Banco J.P. Morgan, S.A. Institución de Banca Múltiple, J.P. Morgan Grupo Financiero); Decl. of Rebecca K. Smith ¶¶ 3-4 (J.P. Morgan Securities plc); Decl. of C. Blokbergen and B.M. Stoelinga ¶ 2 (ING Groep N.V.); Decl. of Gary Prince ¶ 2 (ING Bank, N.V.); Decl. of Jaime Calvo Alfonsin ¶ 2 (Banco Santander, S.A.); Decl. of Fernando Borja Mujica ¶ 2 (Banco Santander (Mexico)); Decl. of Monica Anaya Tapia ¶ 2 (Santander Investment Bolsa, Sociedad de Valores, S.A.U.); Decl. of Brian R. Herrick ¶ 3 (BBVA Compass Bancshares, Inc.); Decl. of Karen Pisarczyk ¶ 3 (HSBC Holdings plc); Decl. of Loren Wulfsohn ¶ 3 (HSBC Bank PLC); Decl. of Karen Pisarczyk ¶ 3 (HSBC Latin America Holdings (UK) Limited); Decl. of Herbert Perez ¶ 1 (HSBC México, S.A., Institución de Banca Múltiple, Grupo Financiero HSBC); Decl. of Alejandro de Iturbide ¶ 2 (Grupo Financiero Banamex, S.A. de C.V.); Decl. of Alejandro de Iturbide ¶ 2 (Banco Nacional de México, S.A., Institución de Banca Múltiple, Grupo Financiero Banamex); Decl. of Raymundo Carrillo de Albornoz de la Mora ¶ 3 (BBVA Bancomer, S.A., Institucion de Banca Múltiple, Grupo Financiero BBVA Bancomer); Decl. of Raymundo Carrillo de Albornoz de la Mora (Grupo Financiero BBVA Bancomer, S.A. de C.V.); Decl. of Allison Cambria ¶¶ 2-4 (Deutsche Bank AG); ¶¶ 14-15 (Deutsche Bank México, S.A., Institution de Banca Múltiple); Decl. of Jose Antonio Ordás Porras ¶ 3 (Banco Bilbao Vizcaya Argentaria, S.A.); Decl. of Daniel Kläy ¶ 6 (Credit Suisse AG); Decl. of Daniel Kläy ¶ 2(Credit Suisse Group AG); Decl. of Karla Vaquero ¶2 (Grupo Financiero Credit Suisse (Mexico), S.A. de C.V.); Decl. of Karla Vaquero ¶ 2 (Banco Credit Suisse (Mexico)).

[7] Bank of America México; Barclays PLC; Barclays Bank México, S.A., Institución de Banca Múltiple, Grupo Financiero Barclays México; Grupo Financiero Barclays México, S.A. de C.V.; Barclays Capital Securities Limited; Banco J.P. Morgan, S.A. Institución de Banca Múltiple, J.P. Morgan Grupo Financiero; J.P. Morgan Securities plc;

conduct even minimal regular business in the United States[8] (some are foreign holding companies that conduct no bank or trading operations in the United States or elsewhere).[9] For other Foreign Defendants, any purported contacts they had with the United States or New York reflects only a limited portion of their global operations.[10] Those that are organized under the laws of a state in the United States have no offices in the State of New York and conduct no business in New York.[11] Each Foreign Defendant seeks dismissal of all claims on the basis of lack of personal jurisdiction, and each Venue Defendant challenges venue in New York insofar as Plaintiffs rely on Section 12 of the Clayton Act.

C. Jurisdictional Allegations

Plaintiffs attempt to allege two distinct conspiracies relating to MGBs: (i) Foreign Defendants allegedly manipulated the MGB auction process and then resold the MGBs at inflated prices, and (ii) Foreign Defendants allegedly agreed to artificially widen the MGB bid-

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ING Groep N.V.; Santander Investment Bolsa, Sociedad de Valores, S.A.U.; Banco Santander (Mexico); Deutsche Bank México, S.A., Institution de Banca Múltiple; Grupo Financiero BBVA Bancomer, S.A. de C.V.; HSBC Holdings plc; HSBC Bank PLC; HSBC Latin America Holdings (UK) Limited; HSBC México, S.A., Institución de Banca Múltiple, Grupo Financiero HSBC; Grupo Financiero Banamex, S.A. de C.V.; Credit Suisse Group AG; Banco Credit Suisse (Mexico) S.A.; Grupo Financiero Credit Suisse (Mexico), S.A. de C.V.

[8] Bank of America México; Barclays PLC; Barclays Bank México, S.A., Institución de Banca Múltiple, Grupo Financiero Barclays México; Grupo Financiero Barclays México, S.A. de C.V.; ING Groep N.V.; Banco Santander (Mexico); Santander Investment Bolsa, Sociedad de Valores, S.A.U.; Grupo Financiero BBVA Bancomer, S.A. de C.V.; HSBC Holdings plc; HSBC Bank PLC; HSBC Latin America Holdings (UK) Limited); HSBC México, S.A., Institución de Banca Múltiple, Grupo Financiero HSBC; Grupo Financiero Banamex, S.A. de C.V.; Banco Nacional de México, S.A., Institución de Banca Múltiple, Grupo Financiero Banamex; Grupo Financiero Credit Suisse (Mexico), S.A. de C.V.; Credit Suisse Group AG; Banco Credit Suisse (Mexico) S.A.; Deutsche Bank México, S.A., Institution de Banca Múltiple.

[9] These foreign holding companies are: Credit Suisse Group AG, Grupo Financiero Credit Suisse (Mexico), S.A. de C.V.; ING Groep N.V.; HSBC Holdings plc; HSBC Latin America Holdings (UK) Limited; Grupo Financiero Banamex, S.A. de C.V.; Grupo Financiero BBVA Bancomer, S.A. de C.V.; and BBVA Compass Bancshares, Inc.

[10] *See, e.g.*, Decl. of Gary Prince ¶¶ 3-4 (ING Bank, N.V.); Decl. of Raymundo Carrillo de Albornoz de la Mora ¶¶ 4-6 (BBVA Bancomer, S.A., Institucion de Banca Múltiple, Grupo Financiero BBVA Bancomer); Decl. of Jason Wright ¶¶ 11-13 (Barclays Bank PLC); Decl. of Allison Cambria ¶¶ 9-11 (Deutsche Bank AG); Decl. of Jaime Calvo Alfonsin ¶ 6 (Banco Santander, S.A.); Decl. of Jose Antonio Ordás Porras ¶¶ 4-6 (Banco Bilbao Vizcaya Argentaria, S.A.); Decl. of Daniel Kläy ¶ 6 (Credit Suisse AG); Decl. of Daniel Kläy ¶ 4(Credit Suisse Group AG).

[11] Decl. of Brian R. Herrick ¶¶ 5-6 (BBVA Compass Bancshares, Inc.).

ask spread. CAC ¶ 6. Plaintiffs claim that Foreign Defendants are subject to personal jurisdiction because they "transacted MGBs at artificial prices . . . throughout the United States and with counterparties located in the United States," and "implemented" both alleged conspiracies in the United States by "marketing price-fixed MGBs to U.S. investors"; "selling MGBs purchased during government-run auctions at artificially higher prices in the United States"; and "quoting fixed, agreed upon bid and ask prices for MGBs to investors in the United States." *See, e.g.*, *id.* ¶¶ 12-13. But Plaintiffs do not specifically allege that each Foreign Defendant traded MGBs in the United States. *See infra* at nn.13-15. Instead, Plaintiffs make general claims that these Foreign Defendants are subject to personal jurisdiction because of the contacts of their affiliates and alleged co-conspirators. And to the extent Plaintiffs allege a small number of secondary market MGB transactions by certain Foreign Defendants in the United States, they allege no facts suggesting those transactions were impacted by the alleged conspiracy. Plaintiffs also allege that certain Foreign Defendants registered with the New York State Department of Financial Services ("NYSDFS") and/or the Federal Reserve Board. *Id.* ¶¶ 15-16. These allegations are insufficient to support the exercise of personal jurisdiction over Foreign Defendants or to establish proper venue as to Venue Defendants.

LEGAL STANDARDS

"A plaintiff bears the burden of demonstrating personal jurisdiction over a person or entity against whom it seeks to bring suit." *Penguin Group (USA) Inc.* v. *American Buddha*, 609 F.3d 30, 34 (2d Cir. 2010). To survive a motion to dismiss for lack of personal jurisdiction a "plaintiff must make a *prima facie* showing that jurisdiction exists." *Id.* at 34-35. In determining whether a plaintiff has met its burden of demonstrating personal jurisdiction, a court need not "accept as true a legal conclusion couched as factual allegation," or "draw argumentative inferences in the plaintiff's favor." *In re Terrorist Attacks on September 11,*

2001, 714 F.3d 659, 673 (2d Cir. 2013). For purposes of a 12(b)(2) motion, the Court may "look beyond the pleadings to affidavits and supporting materials submitted by the parties." *In re Aluminum Warehousing Antitrust Litig.*, 2015 WL 6472656, at *2 (S.D.N.Y. Oct. 23, 2015).

Personal jurisdiction may be general (all-purpose) or specific (conduct-linked). *In re Terrorist Attacks*, 714 F.3d at 673-74. In either case, it is a defendant-specific inquiry, *see Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13 (1984); *Rush* v. *Savchuk*, 444 U.S. 320, 331-32 (1980), that focuses on the contacts the defendant has to the forum, *Daimler AG* v. *Bauman*, 134 S. Ct. 746, 754 (2014); *Walden* v. *Fiore*, 134 S. Ct. 1115, 1121-22 (2014). This inquiry must be assessed on a claim-by-claim basis. *See Sunward Elecs., Inc.* v. *McDonald*, 362 F.3d 17, 24 (2d Cir. 2004) ("[P]laintiff must establish the court's jurisdiction with respect to each claim asserted."). In considering "each defendant's contacts . . . individually," *Keeton,* 465 U.S. at 781 n.13, the court should disregard a complaint's group pleading allegations, as well as bald allegations that "[e]ach defendant" took various actions. *See Schwab*, 883 F.3d at 84. Here, Plaintiffs do not meet their burden on either general or specific jurisdiction with respect to any Foreign Defendant.

ARGUMENT

I. PLAINTIFFS FAIL TO ALLEGE SPECIFIC JURISDICTION OVER THEIR MGB AUCTION CLAIMS

Plaintiffs fail to establish specific jurisdiction over any Foreign Defendant because there is no connection whatsoever between Foreign Defendants' contacts with the forum (if any) and the conduct at issue: alleged manipulation of the MGB auction process. The Complaint fails to allege that the supposed manipulation of MGB auctions was substantially connected to the United States, either because the supposed manipulation occurred in the United States or was expressly aimed at the United States. The minimum contacts inquiry to confer specific

jurisdiction over a defendant "focuses on the relationship among the defendant, the forum, and the litigation." *Walden*, 134 S. Ct. at 1121. To establish specific jurisdiction, a defendant's "suit-related conduct must create a substantial connection with the forum State," which "must arise out of contacts that the defendant *himself* creates with the forum State," and "not . . . with persons who reside there." *Id.* at 1121-22. In analyzing a defendant's contacts with the forum state, courts may only look at the "very activity" out of which the "cause of action arises," *Keeton*, 465 U.S. at 780, and must consider only those contacts giving rise to the injuries claimed by the class representatives, not those that may have hypothetically injured any absent class members, *Beach* v. *Citigroup Alternative Investments, LLC*, 2014 WL 904650, at *6 (S.D.N.Y. Mar. 7, 2014). Moreover, the forum must be the "focal point" or "nucleus" of Plaintiffs' underlying claim. *Waldman* v. *Palestine Liberation Org.*, 835 F.3d 317, 340 (2d Cir. 2016).

Where the alleged misconduct occurs entirely outside the forum, as is the case here, a plaintiff must allege that defendants "took intentional, and allegedly tortious, actions . . . expressly aimed at the forum," and that their claims arise from those actions. *In re Terrorist Attacks*, 714 F.3d at 674; *see also Schwab*, 883 F.3d at 84. Moreover, the Second Circuit requires, at a minimum, a "'but for' connection between the defendant's forum-directed activities and the claim," *LIBOR IV*, 2015 WL 6243526, at *28, and, when the defendant has only limited contacts with the forum, that the plaintiff's injury was proximately caused by the defendant's suit-related contacts, *Chew* v. *Dietrich*, 143 F.3d 24, 29 (2d Cir. 1998). Because Plaintiffs' jurisdictional allegations relating to the MGB auction claims fail to satisfy these standards, the claims must be dismissed against each Foreign Defendant.

A. The Alleged Manipulation of the MGB Auctions Occurred Outside the United States by Mexican Entities

The Complaint alleges that, at all relevant times, the MGB auction process (which is administered and regulated by the Mexican Government) took place entirely in Mexico and the only Defendant entities involved with the auction process were incorporated in Mexico. *See* CAC ¶¶ 197, 249-51. Plaintiffs do not claim that at any point during the relevant time period any aspect of the auction process occurred in the United States. Nor do they allege that Foreign Defendants' United States-based desks or employees participated in MGB auctions. Indeed, Foreign Defendants' sworn affidavits confirm that Plaintiffs cannot allege this.[12] Because the alleged manipulation of the MGB auction process occurs entirely outside the U.S., it cannot serve as a basis for specific jurisdiction over Foreign Defendants. *See Sullivan*, 2017 WL 685570, at *45 (finding no jurisdiction where plaintiffs fail to plausibly "link communications, planning or enactment of the [alleged manipulation] scheme to any [defendant] office, executive or employee in the United States" and do not "allege that [defendants] made communications with any United States person in furtherance of a conspiracy"). Here, Plaintiffs fail to allege any

[12] Decl. of Hannah Ellwood ¶ 12 (Barclays PLC); Decl. of Jason Wright ¶ 21 (Barclays Bank PLC); Decl. of Judith Elise Simone Wansink ¶¶ 14-15 (Barclays Bank México, S.A., Institución de Banca Múltiple, Grupo Financiero Barclays México); Decl. of Judith Elise Simone Wansink ¶ 13 (Grupo Financiero Barclays México, S.A. de C.V.); Decl. of Jason Wright ¶ 13 (Barclays Capital Securities Limited); Decl. of Gary Prince ¶ 6 (ING Bank, N.V.); Decl. of Salvador del Valle ¶ 11 (Bank of America México); Decl. of Jorge E. Rodriguez Arellano ¶ 5 (Banco J.P. Morgan, S.A. Institución de Banca Múltiple, J.P. Morgan Grupo Financiero); Decl. of Rebecca K. Smith ¶ 5 (J.P. Morgan Securities plc); Decl. of Karen Pisarczyk ¶ 6 (HSBC Holdings plc); Decl. of Loren Wulfsohn ¶ 5 (HSBC Bank PLC); Decl. of Karen Pisarczyk ¶¶ 5-6 (HSBC Latin America Holdings (UK) Limited); Decl. of Herbert Perez ¶¶ 4-5 (HSBC México, S.A., Institución de Banca Múltiple, Grupo Financiero HSBC); Decl. of Alejandro de Iturbide ¶ 6 (Grupo Financiero Banamex, S.A. de C.V.); Decl. of Alejandro de Iturbide ¶ 6 (Banco Nacional de México, S.A., Institución de Banca Múltiple, Grupo Financiero Banamex); Decl. of Raymundo Carrillo de Albornoz de la Mora ¶ 4 (BBVA Bancomer, S.A., Institucion de Banca Múltiple, Grupo Financiero BBVA Bancomer); Decl. of Raymundo Carrillo de Albornoz de la Mora ¶ 4 (Grupo Financiero BBVA Bancomer, S.A. de C.V.); Decl. of Allison Cambria ¶13 (Deutsche Bank AG); ¶¶ 17-18 (Deutsche Bank México, S.A., Institution de Banca Múltiple); Decl. of Jose Antonio Ordás Porras ¶ 4 (Banco Bilbao Vizcaya Argentaria, S.A.); Decl. of Brian R. Herrick ¶ 4 (BBVA Compass Bancshares, Inc.); Decl. of Daniel Kläy ¶ 8 (Credit Suisse AG); Decl. of Daniel Kläy ¶ 5 (Credit Suisse Group AG); Decl. of Karla Vaquero ¶ 7 (Banco Credit Suisse (Mexico) S.A.); Decl. of Karla Vaquero ¶ 3 (Grupo Financiero Credit Suisse (Mexico), S.A. de C.V.).

wrongful conduct in the forum, and thus have not alleged a basis for the Court to exercise personal jurisdiction over Foreign Defendants.

For certain Market Maker Defendants, Plaintiffs also fail to specifically allege that these Market Makers traded MGBs with any United States-based counterparties.[13] Besides alleging that these entities participated in the MGB auction process in Mexico, the only other potentially relevant allegation is that they were part of a larger organizational structure that reported into the United States. *See, e.g.*, CAC ¶ 49. That adds nothing to the jurisdictional analysis, and these Market Maker Defendants should therefore be dismissed. *See infra* Part III; *In re LIBOR-Based Fin. Instruments Antitrust Litig.* ("*LIBOR V*"), 2015 WL 6696407, at *21 (S.D.N.Y. Nov. 3, 2015).

B. Plaintiffs Do Not Allege a Substantial Connection Between the Alleged Manipulation of MGB Auctions and the Forum

Unable to identify any relevant in-forum, suit-related contacts that form the basis of their MGB auction manipulation claims, Plaintiffs instead attempt to connect their Mexico-based claims to this forum based on certain Foreign Defendants' alleged United States-based trading activities. But these contacts cannot support jurisdiction because they are not "suit-related." Nor do Plaintiffs allege that the manipulation of the MGB auction process was expressly aimed at the United States. As a result, their claims against Foreign Defendants must be dismissed.

1. Plaintiffs' Allegations Concerning MGB Auctions Do Not Establish Purposeful Availment or the Causal Nexus Necessary to Support Personal Jurisdiction

[13] Bank of America México, S.A.; Banco J.P. Morgan, S.A., Institución de Banca Múltiple, J.P. Morgan Grupo Financiero; Banco Nacional de México, S.A., Institución de Banca Múltiple, Grupo Financiero Banamex; Banco Santander (Mexico); HSBC México, S.A., Institución De Banca Múltiple, Grupo Financiero HSBC; Barclays Bank México, S.A., Institución de Banca Múltiple, Grupo Financiero Barclays México; Deutsche Bank México, S.A., Institution de Banca Múltiple; Banco Credit Suisse (Mexico) S.A.; and ING Bank Mexico S.A.

Plaintiffs claim that jurisdiction exists over Foreign Defendants' alleged manipulation of the MGB auction process because some Foreign Defendants — but not others — sold "MGBs purchased during government-run auctions at artificially higher prices in the United States" and "market[ed] price-fixed MGBs to U.S. investors," thereby purposefully availing themselves of the forum. CAC ¶ 13. This theory fails to establish personal jurisdiction for three reasons.

First, many Foreign Defendants, including most of the Market Makers as noted above, are not even alleged to have traded MGBs with any United States counterparties *at all*, including Plaintiffs. Foreign Defendants that did not trade MGBs in the United States plainly lack a suit-related connection to the United States and should be dismissed on that basis alone.[14] *See Schwab*, 883 F.3d at 86-87 (affirming dismissal of "non-seller Defendants"); *FrontPoint Asian Event Driven Fund, L.P.* v. *Citibank, N.A.*, 2017 WL 3600425, at *6-7 (S.D.N.Y. Aug. 18, 2017) (no jurisdiction where plaintiffs failed to allege "specific facts that plausibly suggest that the

[14] The allegations concerning trading activities of Foreign Defendants in the United States or with U.S. counterparties are contained in paragraphs 12-13, 381, and 403 of the Complaint. CAC ¶¶ 12-13, 381, 403. As noted above, Plaintiffs never allege that most of the Market Makers ever traded MGBs in the United States. *See supra* n.13. In addition to those Market Makers identified above, the Complaint does not specifically allege that the following Foreign Defendants engaged in any MGB transactions with customers in the United States during the class period: BBVA Compass Bancshares, Inc.; Grupo Financiero BBVA Bancomer, S.A. de C.V.; HSBC Holdings plc; HSBC Latin America Holdings (UK) Limited; Barclays PLC; Grupo Financiero Barclays México, S.A. de C.V.; Credit Suisse AG; Credit Suisse Group AG; Grupo Financiero Credit Suisse (Mexico), S.A. de C.V.; ING Groep N.V.; ING Bank, N.V.; Grupo Financiero Banamex, S.A. de C.V.; and Santander Investment Bolsa, Sociedad de Valores, S.A.U. In fact, the declarations show that these Foreign Defendants did not engage in any MGB transactions with customers in the United States: Decl. of Judith Elise Simone Wansink ¶ 13 (Grupo Financiero Barclays México, S.A. de C.V.); Decl. of Hannah Ellwood ¶12 (Barclays PLC); Decl. of C. Blokbergen and B.M. Stoelinga ¶ 6 (ING Groep N.V.); Decl. of Gary Prince ¶ 7 (ING Bank, N.V.); Decl. of Brian R. Herrick ¶ 4 (BBVA Compass Bancshares, Inc.); Decl. of Karen Pisarczyk ¶ 6 (HSBC Holdings plc); Decl. of Karen Pisarczyk ¶ 6 (HSBC Latin America Holdings (UK) Limited); Decl. of Alejandro de Iturbide ¶ 4 (Grupo Financiero Banamex, S.A. de C.V.); Decl. of Raymundo Carrillo de Albornoz de la Mora ¶ 4 (Grupo Financiero BBVA Bancomer, S.A. de C.V.); Decl. of Monica Anaya Tapia ¶ 9 (Santander Investment Bolsa, Sociedad de Valores, S.A.U.); Decl. of Daniel Kläy ¶ 8 (Credit Suisse AG); Decl. of Daniel Kläy ¶ 5 (Credit Suisse Group AG); Decl. of Karla Vaquero ¶ 3 (Grupo Financiero Credit Suisse (Mexico), S.A. de C.V.). Named Plaintiffs erroneously allege a transaction with Banco Bilbao Vizcaya Argentaria, S.A.; it did not in fact transact in MGBs with any U.S. customer during the class period. Decl. of Jose Antonio Ordás Porras ¶ 4 (Banco Bilbao Vizcaya Argentaria, S.A.).

Foreign Defendants entered into SIBOR- and SOR-based transactions with counterparties in the United States").

As to other Foreign Defendants who are alleged to have traded MGBs with U.S. counterparties, Plaintiffs only allege trades with unnamed class members, and do not allege any specific connection between Plaintiffs' transactions and the alleged conspiracy.[15] But these hypothetical transactions with unspecified absent class members are not jurisdictionally relevant and cannot establish jurisdiction. *See, e.g.*, *Famular* v. *Whirlpool Corp.*, 2017 WL 2470844, at *2 (S.D.N.Y. June 7, 2017) ("When the action is brought as a purported class action, personal jurisdiction over each defendant is assessed with respect to the named plaintiffs' causes of action."); *Beach*, 2014 WL 904650, at *6 ("Contacts with unnamed class members may not be used as a jurisdictional basis[.]"); *see also Bristol-Myers Squibb Co.* v. *Superior Court of California, San Francisco County*, 137 S. Ct. 1773, 1781 (2017) ("The mere fact that other plaintiffs were prescribed, obtained, and ingested [drug] in California—and allegedly sustained the same injuries as did the nonresidents—does not allow the State to assert specific jurisdiction over the nonresidents' claims.").

Second, there is no allegation that any Foreign Defendant (other than the Market Maker Defendants) participated in the MGB auction process at all.[16] Thus, even if the Complaint

[15] Named Plaintiffs allege no transactions with Credit Suisse Group AG; Credit Suisse AG; Grupo Financiero Credit Suisse (Mexico), S.A. de C.V.; Banco Credit Suisse (Mexico) S.A.; Banco Santander (Mexico); BBVA Compass Bancshares, Inc.; Grupo Financiero BBVA Bancomer, S.A. de C.V.; Banco J.P. Morgan, S.A., Institución de Banca Múltiple, J.P. Morgan Grupo Financiero; HSBC Holdings PLC; HSBC Latin America Holdings (UK) Limited; HSBC México, S.A., Institución de Banca Múltiple, Grupo Financiero HSBC; Barclays PLC; Barclays Bank México, S.A, Institución de Banca Múltiple, Grupo Financiero Barclays México; Grupo Financiero Barclays México, S.A. de C.V.; Banco Nacional de México, S.A., Institución de Banca Múltiple, Grupo Financiero Banamex; Grupo Financiero Banamex, S.A. de C.V.; Bank of America México; Deutsche Bank México, S.A., Institution de Banca Múltiple; ING Groep N.V.; or ING Bank, N.V. *See* CAC ¶¶ 65-72, 403. Named Plaintiffs erroneously allege a transaction with Banco Bilbao Vizcaya Argentaria, S.A.; it did not in fact transact in MGBs with any Named Plaintiff. Decl. of Jose Antonio Ordás Porras ¶ 4 (Banco Bilbao Vizcaya Argentaria, S.A.).

[16] The following Foreign Defendants are not alleged to have participated in the MGB auction process at all: Banco

pleaded that those Foreign Defendants traded MGBs with Plaintiffs, those contacts would not be suit-related and therefore could not establish jurisdiction. Indeed, because Plaintiffs cannot allege any direct connection between these Foreign Defendants and the alleged manipulation of the MGB auction process, they instead claim that these Foreign Defendants acted as the purported agents or co-conspirators of the entities that manipulated the MGB auction process. But these agency and conspiracy allegations also fail to establish jurisdiction. *See infra* Part III.

Third, even if Plaintiffs had plausibly alleged that a Foreign Defendant manipulated the MGB auction process *and* traded some allegedly manipulated MGB instruments directly with Plaintiffs, which they have not, they nonetheless fail to establish the requisite substantial connection between the suit-related conduct (*i.e.*, the manipulation of the MGB auction process) and Foreign Defendants' alleged United States trading activities. Plaintiffs allege that certain Foreign Defendants[17] (i) traded large volumes of MGBs with investors in the United States; (ii) published and distributed marketing materials to United States investors that discussed MGBs;[18] and (iii) established Latin America-focused trading divisions that transacted in MGBs, among

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Santander, S.A.; Santander Investment Bolsa, Sociedad de Valores, S.A.U.; Banco Bilbao Vizcaya Argentaria, S.A.; BBVA Compass Bancshares, Inc.; Grupo Financiero BBVA Bancomer, S.A. de C.V.; HSBC Holdings PLC; HSBC Bank PLC; HSBC Latin America Holdings (UK) Limited; Barclays PLC; Barclays Bank PLC; Grupo Financiero Barclays México, S.A. de C.V.; Barclays Capital Securities Limited; Grupo Financiero Banamex, S.A. de C.V.; Deutsche Bank AG; Credit Suisse Group AG; Credit Suisse AG; Grupo Financiero Credit Suisse (Mexico), S.A. de C.V.; J.P. Morgan Securities plc; ING Groep N.V.; and ING Bank, N.V. *See* CAC ¶ 197.

[17] Plaintiffs do not make these allegations against the Market Maker defendants as discussed in footnote 13. *See* CAC ¶¶ 20-26.

[18] Plaintiffs' claims that these marketing materials were solicitations are contradicted by the documents' plain language, which expressly disclaim that they are solicitations. *See, e.g.*, Octavio Gutiérrez-Engelmann, *Handbook of Mexican Financial Instruments*, 83 (June 15, 2011) (https://www.bbvaresearch.com/KETD/fbin/mult/100921_HandbookMexico_tcm348-233218.pdf) ("This document and its contents to do not constitute an offer, invitation or solicitation to purchase or subscribe to any securities or other instruments, or to undertake or divest investments."); Nicolas Kohn et al., *Fixed Income & Economics Daily*, Santander 1, 5 (Dec. 6, 2016) (https://www.santander.com.br/csdlv/ContentServer?c=SANDocument_C&pagename=WCSBRPublicaLte%2FSANDocument_C%2FSANDocumentPreview&cid=1396029523652) ("This document must not be considered as an offer to sell or a solicitation of an offer to buy any . . . securities mentioned herein[.]").

other products. *See* CAC ¶¶ 20-26. But Plaintiffs fail to explain how these otherwise ordinary business activities (which are these Foreign Defendants' only alleged contacts with the United States that are potentially relevant to Plaintiffs' claims) have anything to do with the alleged manipulation of MGB auctions. *See Schwab*, 883 F.3d at 83-84 (dismissing direct seller claims because the sales in the United States had no connection to the claims asserted).

Specifically, Plaintiffs have not pled sufficient details to connect the auction process in *Mexico* to these unrelated trading activities in the *United States* and elsewhere. While Plaintiffs generally assert that MGBs were traded in the United States and that they purchased MGBs from certain Defendants, they do not plausibly allege that any Foreign Defendants manipulated a MGB auction and directly traded with any United States-based investors, let alone to Plaintiffs themselves. Plaintiffs do not even specify whether their investments were made in connection with a post-auction offering or on the secondary market. *See* CAC App'x D; Merits Br. Ex. B.

Moreover, even if Plaintiffs could correct those deficiencies, their theory of jurisdiction is fatally flawed because Plaintiffs do not allege a causal relationship between the trading activities of certain Foreign Defendants in the United States and those Foreign Defendants' auction activities. For example, as alleged, the supposed manipulation of the MGB auction process would have *lowered* prices, and thus harmed only the Mexican government, not downstream investors. Merits Br. at Part I.A. Specific jurisdiction cannot be premised on contacts, like certain Foreign Defendants' alleged United States trading activities, that have no relationship to the alleged misconduct giving rise to Plaintiffs' auction-related claims. *See Bristol-Myers*, 137 S. Ct. at 1781 (holding that regularly occurring sales of a pharmaceutical drug in the forum did not support jurisdiction over claims unrelated to those sales); *Sullivan*, 2017 WL 685570, at *44-46 (allegations of defendants entering into transactions with counterparties in the United States,

including plaintiffs, are insufficient for jurisdiction where alleged acts of manipulation of benchmark occurred entirely outside the United States). As the Second Circuit in *Waldman* held, for conduct to be suit-related it must give "rise to the episode-in-suit." *Waldman*, 835 F.3d at 331, 341; *see also Sullivan*, 2017 WL 685570, at *43.

Earlier this year, the Second Circuit in *Schwab* confirmed that these types of bare allegations of ordinary business activity, without any causal relationship to the alleged misconduct, do not satisfy this standard. In considering the plaintiffs' claims, the Second Circuit found that defendants' sales of financial instruments in the forum could not confer jurisdiction because those sales were not "causally connected" to the alleged overseas conspiracy. *Schwab*, 883 F.3d at 84 (transactions in California did not establish specific jurisdiction over defendants where they "did not cause Defendants' false LIBOR submissions to the BBA in London, nor did the transactions in some other way give rise to claims seeking to hold Defendants liable for those submissions."). Here, as in *Schwab*, Plaintiffs fail to set forth any plausible, non-conclusory allegations linking Foreign Defendants' ordinary business activity in the United States (to the extent such activities even exist) with alleged manipulation of auction prices in Mexico conducted by different Defendants. And, as in *Schwab*, the fact that Plaintiffs assert their claims collectively and indiscriminately against all Defendants — regardless of whether they actually traded in the United States or with United States counterparties — "only bolsters [the] conclusion" that the alleged trading and marketing activity in the United States is unrelated to the alleged conspiracy to manipulate auctions of MGBs. *See Schwab*, 883 F.3d at 84.[19]

[19] While *Schwab* upheld jurisdiction over certain defendants who had made "direct sales" to plaintiffs in the forum, the Second Circuit did so only with respect to claims "for fraud relating to omissions by Defendants in the course of selling . . . financial products . . . to [plaintiffs] in [the forum]." *Schwab*, 883 F.3d at 82-84. The Second Circuit made clear that such "direct sales" could not establish jurisdiction for claims "premised solely on Defendants' false LIBOR submissions in London" even though it supposedly affected "billions of dollars' worth" of instruments sold

Furthermore, to comport with due process, Plaintiffs must allege that Foreign Defendants intentionally manipulated their bids in auctions of MGBs in Mexico as part of a scheme intending to manipulate the price of MGBs traded in the United States. They have not done that. Instead, the Complaint, like other complaints rejected by judges in this District for almost identical theories of personal jurisdiction, offers only generic and legally insufficient allegations of foreign misconduct, which, even when taken as true, at best allege unspecified and sporadic injury around the globe.[20] Such allegations cannot support specific jurisdiction.

2. Plaintiffs Fail to Allege that Foreign Defendants' Purported Manipulation of MGB Auctions Was Expressly Aimed at the United States

For similar reasons, Plaintiffs have also failed to allege jurisdiction through the so-called "causal effects" test. Plaintiffs seem to claim that Foreign Defendants are subject to jurisdiction because when allegedly manipulating the MGB auction process, they knew that the instruments affected by that manipulation would be traded around the globe, including in the United States. *See* CAC ¶¶ 12-13, 27-30. Such allegations cannot establish jurisdiction. As an initial matter,

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by defendants in the forum. *Id*. Here, unlike the claims that were upheld in *Schwab*, Plaintiffs fail to allege that Defendants' misconduct had anything to do with Plaintiffs' MGB transactions. Indeed, they only cite "Transactions Entered into by Plaintiffs on Days Impacted by Defendants' Manipulative Conduct" (Appendix D), without explaining how or in what way Plaintiffs were harmed. Like the claims the Second Circuit in *Schwab* rejected, all of Plaintiffs' claims are premised on alleged manipulation that occurred overseas and, at most, may have indirectly affected certain MGBs traded in the United States.

[20] *See, e.g.*, *In re Platinum & Palladium Antitrust Litig*., 2017 WL 1169626, at *44 ("That Defendants' alleged manipulation . . . had harmful effects on U.S.-based exchanges is insufficient . . . . for the purpose of establishing specific personal jurisdiction."); *Sullivan*, 2017 WL 685570, at *44 ("Some of UBS's counterparties were located in the United States, including [plaintiffs]. . . . But the presence of U.S. victims alone does not make out jurisdiction . . . ."); *Laydon* v. *Bank of Tokyo-Mitsubishi UFH, Ltd.* ("*Laydon IV*"), 2017 WL 1113080, at *5 (S.D.N.Y. Mar. 10, 2017) ("The fact that some of Lloyds' counterparties in derivatives transactions . . . were located in the United States is insufficient to establish minimum contacts with the United States."); *In re LIBOR-Based Fin. Instruments Antitrust Litig.* ("*LIBOR VI*"), 2016 WL 7378980, at *11 (S.D.N.Y. Dec. 20, 2016) ("[I]t is black-letter law that harm experienced in a forum is not sufficient to establish specific personal jurisdiction . . . ."); *LIBOR IV*, 2015 WL 6243526, at *32 ("[I]t does not stand to reason[] that foreign defendants aimed their [allegedly] manipulative conduct at the United States or any particular forum state."); *7 W. 57th St. Realty Co.*, 2015 WL 1514539, at *9 ("It is not sufficient that conduct incidentally had an effect in the forum . . . ."). *Sonterra Capital Master Fund Ltd.* v. *Credit Suisse Group AG* is not to the contrary because the Court there found that, unlike here, plaintiffs had alleged substantial, specific facts connecting defendants to the forum. 277 F. Supp. 3d 521, 540 (S.D.N.Y. 2017).

Plaintiffs fail to allege that most Foreign Defendants traded MGBs in the United States or even participated in the alleged manipulation of the auction process. *See supra* Parts I.A, I.B.1. Further, allegations of Foreign Defendants' global trading activities are not sufficient to confer jurisdiction on this Court because they fail to demonstrate that Foreign Defendants expressly aimed their conduct at the United States.

Courts apply the "causal effects" test where, as here, "the conduct that forms the basis for the controversy occurs entirely out-of-forum, and the only relevant jurisdictional contacts with the forum are therefore in-forum effects harmful to the plaintiff." *Schwab*, 883 F.3d at 87. But for the exercise of jurisdiction under this theory to comport with due process, the defendant must have "expressly aimed its conduct at the forum"; allegations that defendants knew or reasonably should have known that the brunt of the injury of their misconduct would be felt in the forum are not sufficient. *Id.*; *see also Walden*, 134 S. Ct. at 1125 ("The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way.").

Plaintiffs cannot meaningfully connect any Foreign Defendant's alleged wrongful conduct in connection with auctions of MGBs to the forum based solely on the fact that MGBs are traded globally, including in the United States.[21] As the Second Circuit held in *Schwab*, Defendants' participation in *billions* of dollars' worth of transactions in the forum that were supposedly affected by an allegedly manipulative scheme cannot establish that foreign defendants "expressly aimed" their conduct at the forum. *See Schwab*, 883 F.3d at 87-88 ("That

[21] Indeed, Plaintiffs only claim that the MGBs sold immediately after the auctions were supposedly sold at artificially higher prices. *See* CAC ¶¶ 317-18. Even if some Foreign Defendants did trade MGBs in the United States, Plaintiffs do not allege that the MGBs supposedly inflated by manipulation of the MGB auction process made their way into the United States.

the effects of LIBOR manipulation were likely to reach an economy as large as California's does not mean that Defendants' conduct in London was 'expressly aimed' at the state."); *see also Waldman*, 835 F.3d at 337-40 (no jurisdiction even where the alleged misconduct "continuously hit Americans," where plaintiffs failed to allege that "the United States [was] the focal point of the torts alleged").

Nor can allegations of plaintiff-focused contacts — including that certain Named Plaintiffs chose to transact in MGBs with Foreign Defendants' affiliates (*see, e.g.*, CAC ¶ 8) — support jurisdiction. *See Walden*, 134 S. Ct. at 1122 ("[P]laintiff[s] cannot be the only link between the defendant and the forum."); *Waldman*, 835 F.3d at 338 ("[D]efendant's mere knowledge that a plaintiff resides in a specific jurisdiction would be insufficient to subject a defendant to specific jurisdiction in that jurisdiction *if the defendant does nothing in connection with the tort in that jurisdiction*.") (emphasis added). For these reasons, judges in this district have repeatedly rejected attempts to establish jurisdiction on similar allegations of foreseeable effects of overseas price manipulation. *See, e.g.*, *7 W. 57th St. Realty Co.*, 2015 WL 1514539, at *11 ("[T]he fact that harm [from alleged USD LIBOR manipulation] in [New York] is foreseeable . . . . is insufficient for the purpose of establishing specific personal jurisdiction over a defendant."); *LIBOR IV*, 2015 WL 6243526, at *20 ("[M]ere foreseeability does not confer personal jurisdiction."); *Laydon V*, 2015 WL 1515358, at *2 ("'[F]oreseeability' alone has never been a sufficient benchmark for personal jurisdiction[.]").

Plaintiffs appear to imply that Foreign Defendants expressly aimed their conduct at the United States because: (i) in the context of global trading activities, the United States was allegedly a significant market for MGBs (CAC ¶¶ 28-30); and (ii) certain Foreign Defendants allegedly marketed and sold MGBs to United States-based investors (*id.* ¶¶ 12-14). Despite

Plaintiffs' attempts to paint the United States as a dominant market for MGBs, Plaintiffs' allegations do not support their claim. For example, Plaintiffs assert that in 2014, 62% of Cetes holders and 56% of Bonos holders were located outside of Mexico. *Id.* ¶ 28. But Plaintiffs never specify what percentage of those non-Mexican based investors were located in the United States as opposed to other countries, such as China, Spain, the United Kingdom, or Brazil. Nor do Plaintiffs provide data about the number of Mexican versus foreign transactions earlier in their alleged class period. And where they do provide data regarding the size of the U.S. market for MGBs specifically, the data demonstrates that that market was very small during substantial portions of the Class Period. For example, in 2009 the entire United States market for short term Mexican Debt securities (which include not only MGBs, but also corporate bonds) was allegedly only $38 million.[22] *Id.* ¶ 30.

Even if Plaintiffs could allege that the United States was a dominant market for MGBs, such allegations would still not be sufficient to plausibly plead that Foreign Defendants targeted the United States. As discussed in Part I.A, *supra*, the Complaint lacks sufficient details connecting the auctions of MGBs that were supposedly manipulated by the Market Makers to the MGBs that certain Foreign Defendants' affiliates supposedly traded with United States-based counterparties, let alone any details showing that Plaintiffs themselves invested in the supposedly manipulated MGBs. Nor have Plaintiffs pled that Foreign Defendants' supposed United States-based trading activities were causally connected to the alleged manipulation of the MGB auctions.

[22] Although the U.S. market for short-term Mexican Debt securities expanded, ultimately peaking at $9.725 billion in 2013, it rapidly shrank to $1.792 billion by 2016. *See* CAC ¶ 30. Given that Plaintiffs have alleged an eleven year conspiracy beginning in 2006 and ending in 2017, the fluctuations in U.S. investors' holdings of short term Mexican Debt securities suggests that the alleged conduct was not aimed at the United States.

Plaintiffs thus fail to establish specific jurisdiction over their MGB auction claims.

II. PLAINTIFFS FAIL TO ALLEGE SPECIFIC JURISDICTION OVER THEIR BID-ASK SPREAD CLAIMS

For the same reasons, Plaintiffs also fail to allege specific jurisdiction over their claims arising from the manipulation of the bid-ask spreads for MGBs in the secondary market.[23] Relying on threadbare allegations based on scant statistical data, Plaintiffs claim that every Defendant manipulated the bid-ask spread of every MGB it bought or sold on the secondary market anywhere in the world for more than eleven years. *See, e.g.*, CAC ¶¶ 6, 302, 325-31. For the reasons stated in the Merits Brief, such nebulous and far-reaching claims are not plausible. Merits Br. at Part I.B.

Setting aside the fatal deficiencies in their bid-ask spread conspiracy claims, Plaintiffs have also failed to establish personal jurisdiction over any Foreign Defendant with respect to these claims. As a threshold matter, and as previously noted, certain Foreign Defendants, including most of the MGB Market Makers, are not alleged to have traded in MGBs in the United States generally or with Plaintiffs specifically. *See supra* nn.13-15 and accompanying text; *see also FrontPoint*, 2017 WL 3600425, at *6. Dismissal of these Foreign Defendants is mandated by *Schwab*. *See Schwab*, 883 F.3d at 86-87 (affirming dismissal of any claim where defendant did not transact with the plaintiff). And to the extent that Plaintiffs have identified specific transactions with certain Foreign Defendants, they have failed to allege with any specificity that those transactions were affected by the alleged conspiracy. Merits Br. at Part

[23] Plaintiffs fail to plausibly allege that the MGB auction conduct and the bid-ask spread conduct were part of a single "comprehensive scheme." CAC ¶ 6. Because Plaintiffs "must establish the court's jurisdiction with respect to each claim asserted," *Schwab*, 883 F.3d at 83, jurisdiction over claims arising from each alleged pattern of conduct must be assessed separately. *See Sonterra*, 277 F. Supp. 3d at 546 n.11 (plaintiffs failed to plausibly allege "that the two conspiracies were part of one interwoven plot, as opposed to two separate sets of misconduct"). In any event, regardless of whether the claims are assessed separately or together, Plaintiffs fail to allege jurisdiction over either claim for the reasons set forth herein.

III.A.3. Plaintiffs plead no facts whatsoever to show that spreads for Udibonos or Bondes Ds were artificially wide, and Plaintiffs' charts regarding Cetes and Bonos (CAC ¶¶ 329, 331) fail to show that any of their transactions in such bonds were ever impacted by the alleged conspiracy. Merits Br. at Part III.A.3. Absent such allegations, there is no connection, let alone the requisite "substantial connection," between these Foreign Defendants and the forum, and therefore these claims must be dismissed as to them. *Schwab*, 883 F.3d at 83-84.

Moreover, as to all Foreign Defendants, Plaintiffs also fail to plausibly allege any connection between the supposed bid-ask spread conspiracy and the United States. Although Plaintiffs identify certain purported transactions with certain Foreign Defendants, the Complaint is devoid of the requisite detail necessary to connect those transactions, or any United States-based transactions, to the supposed bid-ask spread conspiracy. Plaintiffs do not include the identity and location of the entities, desks, or employees that were supposedly involved in manipulating the bid-ask spread of MGBs, and whether these were the same entities, desks, and employees with which they transacted. And Plaintiffs include no allegations at all regarding the bid-ask spreads on any of their transactions with any Foreign Defendants, let alone allegations plausibly suggesting that those bid-ask spreads were artificial. As to the bid-ask spread conspiracy, Plaintiffs thus fail to demonstrate the specific facts necessary to establish jurisdiction over any Foreign Defendant.

III. PLAINTIFFS MAY NOT IMPUTE OTHER DEFENDANTS' JURISDICTIONAL CONTACTS TO FOREIGN DEFENDANTS

Having failed to allege that any Foreign Defendant's independent purported conduct can subject it to the jurisdiction of this Court, Plaintiffs attempt to impute the contacts of Foreign Defendants' affiliates and alleged co-conspirators to establish personal jurisdiction. The effort fails, however, because Plaintiffs do not sufficiently allege an agency relationship between

Foreign Defendants and those entities. As the Supreme Court emphasized in *Walden*, personal jurisdiction must be based upon "contacts that the defendant *himself* creates with the forum State," and cannot be based merely on "contacts he makes by interacting with other persons affiliated with the State." 134 S. Ct. at 1122-23 (emphasis in original); *see also Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 417 (1984) ("[U]nilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction."); *Rush* v. *Savchuk*, 444 U.S. 320, 332 (1980) ("The requirements of *International Shoe*, however, must be met as to each defendant over whom a state court exercises jurisdiction."). As a result, Plaintiffs' attempt to establish jurisdiction over Foreign Defendants based on the contacts of their corporate affiliates and their alleged co-conspirators fails.

A. Plaintiffs' Allegations Regarding the Contacts of Affiliates Fail to Confer Jurisdiction over Foreign Defendants

Plaintiffs' attempts to premise specific jurisdiction (or general jurisdiction) on the contacts of Foreign Defendants' affiliates fail. Courts have repeatedly held that jurisdictional allegations concerning a corporate subsidiary cannot be conflated with those of the parent company based on generalized allegations of an agency relationship. *See In re Aluminum Warehousing Antitrust Litig.*, 90 F. Supp. 3d 219, 227 (S.D.N.Y. 2015) ("*Daimler* has foreclosed the establishment of jurisdiction [through agency] based only on generalized facts[.]"). The Second Circuit in *Schwab* confirmed this, dismissing "bare allegation[s]" of an agency relationship — specifically, "sparse" claims that certain foreign defendants "controlled or otherwise directed or materially participated in the operations of" their United States-based affiliates and "reaped proceeds or other financial benefits" from the instruments they sold — as an insufficient basis for jurisdiction. 883 F.3d at 86. Rather, plaintiffs must plead that the parent

"directed the specific activities that allegedly violated [the] law." *LIBOR V*, 2015 WL 6696407, at *21.

The facts that Plaintiffs do allege are insufficient to show that any Foreign Defendant exercised the requisite level of control over their affiliates' supposed misconduct. For example, Plaintiffs claim that certain Foreign Defendants acted through their United States-based affiliates[24] and that in each instance "the corporate parents benefitted from, knew of, and exercised control over the conduct of their dealer-subsidiaries." CAC ¶ 198. Plaintiffs additionally allege control over corporate subsidiaries because of shared business strategies (*id.* ¶ 226), management agreements (*id.* ¶ 245), and board members (*id.* ¶ 231). They also generally allege that Foreign Defendants oversaw their Mexican-based affiliates, who served as Market Makers for MGBs. *Id.* ¶ 228. These allegations merely establish that the entities at issue were part of the same corporate family, a showing that courts have repeatedly rejected as insufficient to establish an agency relationship. *See Jazini*, 148 F.3d at 185 (allegations of some overlap between directors and officers were insufficient); *Stutts* v. *De Dietrich Grp.*, 465 F. Supp. 2d 156, 167-68 (E.D.N.Y. 2006) (allegations that defendant "direct[ed] the selection and assignment of its subsidiaries' executive personnel, and exercise[d] control over the marketing and operational policies of its subsidiaries" were insufficient).

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[24] The allegations concerning contacts with U.S.-based affiliates are contained in paragraphs 198 to 247 of the Complaint. CAC ¶¶ 198–247. The following Foreign Defendants are not reflected in these allegations: Bank of America México; Grupo Financiero Banamex, S.A. de C.V.; Banco Nacional de México, S.A., Institución de Banca Múltiple, Grupo Financiero Banamex; BBVA Compass Bancshares, Inc.; Grupo Financiero BBVA Bancomer, S.A. de C.V.; Credit Suisse Group AG; Credit Suisse AG; Banco Credit Suisse (Mexico) S.A.; Grupo Financiero Credit Suisse (Mexico), S.A. de C.V.; HSBC Bank PLC; HSBC Latin America Holdings (UK) Limited; Banco J.P. Morgan, S.A., Institución de Banca Múltiple, J.P. Morgan Grupo Financiero; J.P. Morgan Securities plc; Banco Santander (Mexico); Barclays Capital Securities Limited; Grupo Financiero Barclays Mexico, S.A. de C.V. *See id.* To the extent that the allegations in paragraph 198 in the Complaint are intended to allege that Bank of America México specifically "acted through its U.S.-based subsidiaries to transact MGBs at fixed, artificial prices," Bank of America México does not have any U.S.-based subsidiaries. *See* Decl. of Salvador del Valle ¶ 8 (Bank of America México).

Separately, Plaintiffs allege that certain Foreign Defendants' actions concerning MGBs were "directed and controlled" from the United States. *See, e.g.*, CAC ¶¶ 33-64. For example, Plaintiffs allege that the trading personnel of Bank of America México "report to senior executives based in the United States" (*id.* ¶ 48), and belong to a division where an executive in New York is "responsible for developing and implementing strategy" (*id.* ¶ 49). But these allegations are insufficient to establish an agency relationship. *See LIBOR V*, 2015 WL 6696407, at *21 (rejecting as insufficient allegations that the foreign defendant was "generally managed," "shares revenue with," and "adheres to . . . employment policies" of a domestic defendant).

None of Plaintiffs' allegations plausibly establishes that any Foreign Defendant "exert[ed] pervasive control" over the alleged misconduct — manipulation of MGB auction prices or MGB bid-ask spreads — that is at issue in this case. *Wilder* v. *News Corp.*, 2015 WL 5853763, at *6 (S.D.N.Y. Oct. 7, 2015). Plaintiffs accordingly cannot impute to Foreign Defendants the conduct of their affiliates for purposes of establishing personal jurisdiction.

B. Plaintiffs' Conspiracy Allegations Fail to Establish Jurisdiction Over Foreign Defendants

Plaintiffs' conspiracy allegations are also insufficient to establish conspiracy jurisdiction. To state a *prima facie* case of conspiracy jurisdiction, Plaintiffs must allege "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*, 883 F.3d at 87. Even if Plaintiffs could state a *prima facie* case, which they cannot, that is not enough to establish jurisdiction. Plaintiffs' allegations must also comport with due process, *Leasco* v. *Data Processing Equipment Corp.* v. *Maxwell*, 468 F.2d 1326, 1341 n.11 (2d Cir. 1972) (*abrogated on other grounds by Morrison* v.

Nat'l Australia Bank Ltd., 561 U.S. 247 (2010)), and the applicable jurisdictional statutes and rules. *Marvel Characters, Inc.* v. *Kirby*, 726 F.3d 119, 128 (2d Cir. 2013). Because Plaintiffs fail to state a *prima facie* case for conspiracy jurisdiction — *i.e.*, they fail to adequately allege either a conspiracy (Merits Br. at Part I) or an overt act in furtherance of the conspiracy with a substantial connection to the forum (*see supra* Parts I-II) — there is no need for this Court to consider the due process and jurisdictional statute questions. However, if the Court were to reach those issues, Plaintiffs' conspiracy allegations fail to comport with both due process and the applicable jurisdictional statutes.

1. Plaintiffs' Conspiracy Allegations Fail to Comport with Due Process

Since the Supreme Court's decision in *Walden*, courts have rejected standalone conspiracy-based jurisdiction as inconsistent with due process. *See In re Aluminum Warehousing Antitrust Litig.*, 90 F. Supp. 3d at 227 ("The rules and doctrines applicable to personal jurisdiction are sufficient without the extension of the law to a separate and certainly nebulous 'conspiracy jurisdiction' doctrine"). Conspiracy-based jurisdiction does not comport with due process because jurisdiction must be based upon "contacts that the 'defendant himself' creates with the forum State," not third-party contacts. *Walden*, 134 S. Ct. at 1122 (citation omitted). For this reason, "a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction." *Id*. at 1123; *Keeton*, 465 U.S. at 781 n.13 (jurisdiction must be based upon "[e]ach defendant's contacts with the forum State" which "must be assessed individually").

For more than forty years, the Second Circuit has required that, for a co-conspirator's conduct to be imputed to a defendant for jurisdictional purposes, a plaintiff must allege that, consistent with traditional agency principles, the defendant directed and controlled the agent's in-forum tortious conduct, knew of those contacts, and benefitted from them. *Leasco*, 486 F.2d

at 1341 n.11, 1343; *see also In re Shulman Transport Enterprises, Inc.*, 744 F.2d 293, 295 (2d Cir. 1984).[25] Without this direction and control, the alleged agent's actions are the mere "unilateral activity of . . . a third person," insufficient to confer personal jurisdiction over the defendant. *Helicopteros*, 466 U.S. at 417.

Here, there are no allegations that any Foreign Defendant directed or controlled the allegedly tortious conduct of an alleged co-conspirator. Nor do Plaintiffs allege that any Foreign Defendant knew of and benefitted from any such contacts. Without sufficient allegations of control, imputing another Defendant's in-forum contacts to Foreign Defendants would violate due process.

2. Plaintiffs' Conspiracy Allegations Fail to Comport with the Relevant Jurisdictional Statutes

Plaintiffs' conspiracy allegations also fail to allege facts sufficient to invoke a statutory basis for imputing co-Defendants' contacts to Foreign Defendants. Any attempt to rely on New York's long-arm statute under Federal Rules of Civil Procedure 4(k)(1)(A) or to rely on Federal Rules of Civil Procedure 4(k)(1)(C) or 4(k)(2) is unavailing.

New York Long-Arm Statute: Plaintiffs' conspiracy allegations fail to satisfy the New York long-arm statute. The statute requires plaintiffs to "make a *prima facie* showing of conspiracy, allege specific facts warranting the inference that the defendant was a member of the conspiracy, and show that the defendant's co-conspirator committed a tort in New York." *In re Terrorist Attacks on Sept. 11, 2001*, 349 F. Supp. 2d 765, 805 (S.D.N.Y. 2005). It also requires

[25] The Second Circuit's decision in *Schwab* does not change this. *Schwab* (like the Fourth Circuit decision it relied on) had no occasion to reach the due process question because it found that the plaintiffs had failed to state a *prima facie* case for conspiracy jurisdiction by failing to allege an act in furtherance of the conspiracy in the forum. *See Schwab*, 883 F.3d at 87. There is no suggestion in *Schwab* that the Court rejected these agency principles. To do so would have required the Court to overrule decades of Second Circuit precedent, including *Leasco* (which the Court cited favorably elsewhere in its opinion), which is generally prohibited. *See Union of Needletrades, Indus. and Textile Emps., AFL-CIO, CLC* v. *U.S. I.N.S.*, 336 F.3d 200, 210 (2d Cir. 2003).

plausible allegations that a defendant exercised direction and control over the co-conspirator as to impute the co-conspirator's contacts. *Id.*; *7 W. 57th St. Realty Co.*, 2015 WL 1514539, at *12. Plaintiffs' allegations fail under the statute because they do not sufficiently allege: (i) the existence of a conspiracy; (ii) that an overt act in furtherance of the conspiracy occurred in New York; or (iii) that any defendant exercised direction and control over an alleged co-conspirator.

Rules 4(k)(1)(C) or 4(k)(2): Plaintiffs' conspiracy allegations also fail under Federal Rules of Civil Procedure 4(k)(1)(C) (establishing personal jurisdiction when authorized by federal statute) and 4(k)(2) (establishing personal jurisdiction where defendant not subject to general jurisdiction of any state court) for three reasons. *First*, courts in this district have recognized that under either of these Rules, allegations of conspiracy alone, without allegations that the co-conspirator operated as the defendant's agent, are insufficient. *See, e.g.*, *In re Aluminum Warehousing Antitrust Litig.*, 90 F. Supp. 3d at 227 (refusing to "find that the assertion of participation in a conspiracy generally can provide a standalone basis for jurisdiction subject only to the constraints of due process"). *Second*, as to Venue Defendants, Rule 4(k)(1)(C) is also unavailable because it requires Plaintiffs to satisfy the Clayton Act, the relevant federal statute, which they cannot do because they fail to allege venue under the Clayton Act. *See infra* Part IV; *see also Bankers Life & Cas. Co.* v. *Holland*, 346 U.S. 379, 384 (1953) (rejecting the theory that a Clayton Act defendant may be sued in any venue in which an alleged co-conspirator is subject to venue). *Third*, Plaintiffs also cannot rely on Rule 4(k)(2) because they must certify that Foreign Defendants are not subject to jurisdiction in any particular state forum, *see, e.g.*, *7 W. 57th St. Realty Co.,* 2015 WL 1514539, at *13, and they have made no such certification here.

IV. PLAINTIFFS CANNOT RELY ON A NATIONWIDE CONTACTS ANALYSIS

To the extent that the Complaint can be read to attempt to establish personal jurisdiction over Foreign Defendants based on their "nationwide contacts" with the United States as a whole, rather than with New York specifically, this fails as well. CAC ¶ 13. As an initial matter, there is no need for this Court to resolve whether Plaintiffs can rely on a nationwide contacts analysis to establish jurisdiction because Plaintiffs have failed to identify any contacts with the United States (or New York) sufficient to establish personal jurisdiction over any Foreign Defendant. *See supra* Parts I-II. But if the Court were to reach this issue, Plaintiffs cannot rely on it for two reasons.[26]

First, while the Second Circuit has yet to rule on whether a nationwide service of process provision, like the Clayton Act's, allows plaintiffs to establish jurisdiction using a nationwide contacts analysis consistent with due process, *see Gucci America, Inc.* v. *Weizing Li*, 768 F.3d 122, 142 n.21 (2d Cir. 2014), *Daimler* forecloses the application of a nationwide contacts analysis. The Supreme Court's focus in *Daimler* on due process as a matter of fundamental fairness and reasonableness to the defendant compels the rejection of the nationwide contacts approach as inconsistent with due process. 134 S. Ct. at 761-62 (such "exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit."). A nationwide service of process provision, by itself, cannot provide a basis for applying a nationwide contacts analysis consistent with due process.

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[26] If the Court were to apply a nationwide contacts analysis, it would only apply to Plaintiffs' antitrust claim and not their unjust enrichment claim, which is not subject to the Clayton Act's nationwide service of process provision. *Sunward Electronics, Inc.* v. *McDonald*, 362 F.3d 17, 24 (2d Cir. 2004) ("A plaintiff must establish the court's jurisdiction with respect to *each* claim asserted.").

Second, as to Venue Defendants,[27] the statute's nationwide service of process provision is unavailable because Plaintiffs fail to allege venue within the meaning of the Clayton Act. As the Second Circuit has confirmed, to successfully assert personal jurisdiction over a defendant based on the Clayton Act's nationwide service provision, 15 U.S.C. § 22, a plaintiff must also satisfy the Act's venue requirements. *Daniel* v. *American Bd. of Emergency Medicine*, 428 F.3d 408, 423-25 (2d Cir. 2005). For venue to be proper in a district where a defendant is not "an inhabitant,"[28] the defendant must "be found or transact[] business" there. 15 U.S.C. § 22. The phrase "transacts business" refers to "business of any substantial character," which requires "some amount of business continuity and certainly more than a few isolated and peripheral contacts."[29] *Gates* v. *Wilkinson*, 2003 WL 21297296, at *1 (S.D.N.Y. June 4, 2003); *see also Pincione* v. *D' Alfonso*, 506 F. App'x 22, 24 (2d Cir. 2012). Only contacts with the specific district in which suit was brought are relevant. *Daniel*, 428 F.3d at 430. Plaintiffs fail to allege that Venue Defendants are "found" or "transact[] business" in the Southern District of New York. Therefore, Plaintiffs also fail to establish personal jurisdiction over Venue Defendants. *See Daniel*, 428 F.3d at 423.

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[27] The Venue Defendants challenging venue in New York are: Bank of America México; Barclays PLC; Barclays Bank México, S.A., Institución de Banca Múltiple, Grupo Financiero Barclays México; Grupo Financiero Barclays México, S.A. de C.V.; Barclays Capital Securities Limited; ING Groep N.V.; BBVA Compass Banchsares, Inc.; Grupo Financiero BBVA Bancomer, S.A. de C.V.; Banco J.P. Morgan, S.A., Institución de Banca Múltiple, J.P. Morgan Grupo Financiero; J.P. Morgan Securities plc; HSBC Bank PLC; HSBC Latin America Holdings (UK) Limited; and HSBC México, S.A., Institución de Banca Múltiple, Grupo Financiero HSBC; Banco Credit Suisse (Mexico) S.A.; Credit Suisse Group AG; Grupo Financiero Credit Suisse (Mexico), S.A. de C.V.; Deutsche Bank México, S.A., Institution de Banca Múltiple; Banco Santander (Mexico); Santander Investment Bolsa, Sociedad Valores, S.A.U.; Banco Nacional de México, S.A., Institución de Banca Múltiple, Grupo Financiero Banamex; and Grupo Financiero Banamex, S.A. de C.V.

[28] For a corporation, "inhabitant" means its place of incorporation. *See, e.g., Expoconsul Int'l, Inc.* v. *A/E Systems, Inc.*, 711 F. Supp. 730, 732-33 (S.D.N.Y. 1989).

[29] To "be found" in a district requires more than "transact[ing] business" there. *United States* v. *Watchmakers of Switzerland Info. Ctr.*, 133 F. Supp. 40, 42 (S.D.N.Y. 1955) ("'Found' requires something more than 'transacting business.'"). Because Plaintiffs fail to allege that Venue Defendants transact business in this district, they likewise fail to allege that Venue Defendants are found here.

V. FOREIGN DEFENDANTS ARE NOT SUBJECT TO GENERAL JURISDICTION

The Complaint does not state directly whether it asserts general jurisdiction on the theory that each Foreign Defendant is "at home" in New York or on the theory that certain Foreign Defendants consented to general jurisdiction by registering with the NYSDFS. CAC ¶ 15. Regardless, both theories have been universally rejected by numerous judges in this District. This Court should do the same.

A. Foreign Defendants Are Not "At Home" in New York

This Court may not exercise general jurisdiction over any Foreign Defendants because no Foreign Defendant is "at home" in New York. The Supreme Court held in *Daimler* that a defendant is subject to general jurisdiction in a forum "only when the corporation's affiliations with the State in which suit is brought are so constant and pervasive as to render [it] essentially at home in the forum State." 134 S. Ct. at 751. "[E]xcept in a truly 'exceptional' case, a corporate defendant may be treated as 'essentially at home' only where it is incorporated or maintains its principal place of business — the 'paradigm' cases." *Brown* v. *Lockheed Martin Corp.*, 814 F.3d 619, 627 (2d Cir. 2016). As Plaintiffs effectively concede (*see* CAC ¶¶ 73-242), and as each of the declarations submitted in support of this motion confirms, no Foreign Defendant has its place of incorporation or principal place of business in New York. Nor do Plaintiffs come close to alleging that any Foreign Defendant presents an "exceptional case." *See Daimler*, 134 S. Ct. at 761 n.19 (identifying as an example the complete relocation of a Philippine corporation's nerve center during World War II in *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952)); *see also Waldman*, 835 F.3d at 333 (corporations are subject to general personal jurisdiction only "where the entities [are] centered" and not where they engage in a "substantial, continuous, and systematic course of business"). Plaintiffs fail to demonstrate, as they must, that any Foreign Defendant's contacts with New York would "shift the company's primary place of

business (or place of incorporation) away from" its home country.[30] *Sonera Holding B.V.* v. *Cukurova Holding A.S.*, 750 F.3d 221, 226 (2d Cir. 2014); *see also Brown*, 814 F.3d at 629. Repeated decisions in this district have refused to find general jurisdiction in New York as to global bank defendants, including many Foreign Defendants here. *See, e.g.*, *LIBOR IV*, 2015 WL 6243526, at *27 (finding no general jurisdiction over Barclays Bank PLC, Credit Suisse AG, and Deutsche Bank AG); *Lopez* v. *Shopify, Inc.*, 2017 WL 2229868, at *7 (S.D.N.Y. May 23, 2017); *United States Bank Nat'l Ass'n* v. *Bank of America, N.A.*, 2016 WL 5118298, at *9 (S.D.N.Y. Sept. 20, 2016). As in those cases, Plaintiffs here have failed to allege that any Foreign Defendant is "at home" in New York.

B. Foreign Defendants Are Not Subject to General Jurisdiction by Registering Their New York Branches

Plaintiffs also do not establish general jurisdiction on the theory that certain Foreign Defendants consented to general jurisdiction by registering their New York branches with the NYSDFS. CAC ¶ 15. As the Second Circuit held, "registration and the accompanying appointment of an in-state agent — without an express consent to general jurisdiction" — is insufficient to consider general jurisdiction and would result in "*Daimler's* ruling [being] robbed of meaning by a back-door thief." *Brown*, 814 F.3d at 640. Under *Brown*, registering under N.Y. Banking Law § 200 does not amount to consent to general jurisdiction and to find otherwise would violate the Constitution.[31]

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[30] The fact that certain Foreign Defendants are members of the Federal Reserve Board of Governors' Large Institution Supervision Coordinating Committee does not "shift the company's primary place of business" (CAC ¶ 16) to New York.

[31] Any interpretation of the N.Y. Banking Law that would confer general jurisdiction over Foreign Defendants violates the unconstitutional conditions doctrine by requiring Defendants to surrender their constitutional rights guaranteed under *Daimler* and *Gucci*, in order to receive a government benefit (*i.e.*, the privilege of registering a bank branch in New York). *See Koontz* v. *St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594 (2013). Furthermore, such an interpretation would violate the Dormant Commerce Clause because a statute that "compels

N.Y. Banking Law § 200(3) requires that a foreign bank operating in New York appoint a representative for service of process "on a cause of action *arising out of a transaction with its New York agency or agencies or branch or branches*." N.Y. Banking Law § 200(3) (emphasis added). This statute does not require registrants to consent to general jurisdiction, but rather limits consent to those suits "arising out of a transaction" with the foreign bank's New York agency or branch.[32] *Id*. Numerous judges in this District have reached the same conclusion. *See, e.g.*, *Sullivan*, 2017 WL 685570, at *39 (Section 200(3) "does not establish a consent to jurisdiction by the branch's foreign parent, and courts in this district have uniformly rejected plaintiffs' argument"); *FrontPoint*, 2017 WL 3600425, at *4 (registration under section 200(3) is "relevant only to specific jurisdiction, not general jurisdiction"); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 2016 WL 1558504, at *7 (S.D.N.Y. Apr. 15, 2016) (same); *7 W. 57th St. Realty Co.*, 2015 WL 1514539, at *11 (same).

Plaintiffs also cannot rely on N.Y. Banking Law §200-b to establish jurisdiction because § 200-b merely provides a basis for subject matter jurisdiction, not personal jurisdiction. *Indosuez Int'l Fin. B.V.* v. *Nat'l Reserve Bank*, 98 N.Y.2d 238, 248 (2002) (Section 200-b confers subject matter jurisdiction); *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, 2016 WL 1268267, at *2 (Mar. 31, 2016) ("*Forex*") ("New York Court of Appeals has interpreted §

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every foreign interstate carrier to submit to suit there as a condition of maintaining a soliciting agent within the state" would "impose[] upon interstate commerce a serious and unreasonable burden." *Davis* v. *Farmers' Co-op. Equity Co.*, 262 U.S. 312, 315 (1923); *see also In re Syngenta AG MIR 162 Corn Litig.*, 2016 WL 2866166, at *6 (D. Kan. May 17, 2016) (consent-based registration statute was unconstitutional violation of Dormant Commerce Clause). Even if Plaintiffs' reading of the relevant statutory provisions were reasonable, which it is not, those provisions should be construed so as to "avoid[] the constitutional issue." *Legal Servs. Corp.* v. *Velazquez*, 531 U.S. 533, 545 (2001).

[32] Because Plaintiffs claims do not arise out of the activities of Foreign Defendant's New York branches (*see infra* Parts I-II), they cannot demonstrate that Foreign Defendants have consented to specific jurisdiction in this case.

200-b to confer subject matter jurisdiction and not personal jurisdiction."); *see also King County* v. *IKB Deutsche Industriebank AG*, 712 F. Supp. 2d 104, 111-12 (S.D.N.Y. 2010) (finding that Court had subject matter jurisdiction under § 200-b). Moreover, foreign banks register and appoint service agents under § 200, not § 200-b, and, therefore, have taken no action from which consent to jurisdiction might be implied. *See Forex*, 2016 WL 1268267, at *2. As a result, Foreign Defendants did not consent to general jurisdiction by registering with the NYSDFS.

VI. CONSIDERATIONS OF FAIR PLAY, SUBSTANTIAL JUSTICE, AND INTERNATIONAL COMITY SUPPORT DISMISSAL

In analyzing both general and specific jurisdiction, the Court must also determine whether exercising jurisdiction "would comport with fair play and substantial justice." *Gucci*, 768 F.3d at 137; *see also Lopez* v. *Shopify, Inc.*, 2017 WL 2229868, at *8 (S.D.N.Y. May 23, 2017). Relevant factors at this step of the analysis include: "(1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; [and] (3) plaintiffs' interest in obtaining convenient and effective relief[.]" *Licci ex rel. Licci* v. *Lebanese Canadian Bank, SAL*, 732 F. 3d 161, 170 (2d Cir. 2013); *see also Chloe* v. *Queen Bee, LLC*, 616 F. 3d 158, 164 (2d Cir. 2010). Also relevant is whether exercising jurisdiction threatens "international rapport." *See Daimler*, 134 S. Ct. at 763.

Plaintiffs overstep these limits in attempting to establish jurisdiction over Foreign Defendants in New York based on an alleged conspiracy to manipulate the MGB auction process through conduct that is alleged to have occurred exclusively in Mexico and that was not aimed at the United States. *See Brown*, 814 F.3d at 625 ("[C]onstitutional due process principles generally restrict the power of a state to endow its courts with personal jurisdiction over foreign corporate parties . . . with regard to matters not arising within the state."); *Madison Capital Markets, LLC* v. *Starneth Europe B.V.*, 2016 WL 4484251, at *11 (S.D.N.Y. Aug. 23, 2016)

(stating that the exercise of personal jurisdiction would not "comport with fair play and substantial justice," despite foreign defendant's office in the forum, because plaintiff failed to allege sufficient suit-related contacts between defendant and the forum). The same is true for the bid-ask spread claims, which are based on conduct that is not plausibly alleged to be substantially connected to the United States.

Even if Plaintiffs could allege that one or more co-conspirators committed an overt act in New York or the United States, exercising jurisdiction over a Foreign Defendant through conspiracy jurisdiction, without allegations that the Foreign Defendant directed or controlled the alleged co-conspirator's overt act in the forum, would be similarly unreasonable and threaten due process. *See Laydon V*, 2015 WL 1515358, at *6 ("personal jurisdiction . . . would not comport with notions of fair play and substantial justice" in Euroyen TIBOR conspiracy case when foreign defendants' TIBOR submitters were located outside the United States). Subjecting Foreign Defendants to jurisdiction based on such attenuated contacts would not "merely be inconvenient," it "would violate our basic sense of fair play and substantial justice — and deprive the defendants of the due process guaranteed by the Constitution." *Metro. Life Ins. Co.* v. *Robertson-Ceco Corp.*, 84 F. 3d 560, 575 (2d Cir. 1996).

CONCLUSION

As against Foreign Defendants, the Complaint should be dismissed with prejudice.

Dated: September 17, 2018
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