LOWEY DANNENBERG

October 21, 2019

BY ECF

The Honorable J. Paul Oetken
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 706
New York, New York 10007

Re: *In re Mexican Government Bonds Antitrust Litigation*, No. 18-cv-02830 (JPO)

Dear Judge Oetken:

Plaintiffs write pursuant to the Court's September 30, 2019 Opinion & Order to inform the Court that they intend to move for leave to amend the Consolidated Amended Class Action Complaint and request 45 days to file their motion. ECF No. 75 ("CAC"); *In re Mexican Government Bonds Antitrust Litig.*, No. 18-CV-2830 (JPO), 2019 WL 4805854, at *9 (S.D.N.Y. Sept. 30, 2019) ("*MGB I*").

Substantial developments have transpired since *MGB I* that support leave to amend:

First, Plaintiffs have reached agreements in principle with two Defendants to settle the claims against them in this action. In addition to monetary compensation, one or both of the settling Defendants have agreed to provide Plaintiffs with substantial cooperation, including: (a) chatroom transcripts of communications between Defendants; (b) a copy of COFECE's 600-page Statement of Objections summarizing the results of its investigation; and (c) transaction-level data reflecting their MGB trades.

Second, on October 14, 2019, COFECE disclosed that it found evidence implicating several banks in a conspiracy to manipulate MGB prices. Plaintiffs have since learned that COFECE has formally charged seven Defendants—BBVA Bancomer S.A., Sociedad Anónima, Institución de Banca Múltiple, Grupo Financiero BBVA Bancomer ("BBVA-Bancomer"), Bank of America México, S.A., Institución de Banca Múltiple ("Bank of America Mexico"), Barclays Bank México, S.A., Institución de Banca Múltiple, Grupo Financiero Barclays México ("Barclays Mexico"), Banco Nacional de México, S.A. Integrante del Grupo Financiero Banamex ("Citibanamex"), Deutsche Bank México, S.A., Institución de Banca Múltiple ("Deutsche Bank Mexico"), Banco J.P. Morgan, S.A., Institución de Banca Múltiple, J.P. Morgan Grupo Financiero ("JPMorgan Mexico"), and Banco Santander México, S.A., Institución de Banca Múltiple, Grupo Financiero Santander México ("Santander Mexico")—with engaging in anticompetitive conduct in the MGB market.

Finally, Plaintiffs are in the process of reviewing new transaction-level MGB data and conducting a granular analysis of each bank's MGB pricing behavior during the Class Period.

As explained below, Plaintiffs should be permitted to move for leave to amend because this new evidence and data will allow Plaintiffs to cure the pleading deficiencies identified in *MGB I*.

I. Plaintiffs Will Cure the Pleading Deficiencies Identified in *MGB I*.

A. Direct Evidence of the Alleged Conspiracy.

In *MGB I*, this Court dismissed Plaintiffs' antitrust and unjust enrichment claims because it found that the CAC failed to allege facts that "plausibly suggest that the *particular* defendants named in this suit were part of [the alleged] conspiracy." 2019 WL 4805854, at *7.

Plaintiffs will be able to cure this pleading deficiency by using direct evidence of conspiratorial activities by a number of Defendants in the MGB market. While Plaintiffs are still in the process of receiving cooperation from the settling Defendants, they understand that chatroom transcripts from one or both of the settling Defendants will show MGB traders from at least BBVA-Bancomer, Bank of America Mexico, Barclays Mexico, Citibanamex, Deutsche Bank Mexico, HSBC México, S.A., Institución De Banca Múltiple, Grupo Financiero HSBC ("HSBC Mexico"), JPMorgan Mexico, and Santander Mexico engaging in anticompetitive conduct in the MGB market.

Plaintiffs' preliminary review of chats received to date confirms that Defendants' traders engaged in misconduct that violates the antitrust laws, including sharing highly sensitive pricing information, engaging in coordinated trading, and restricting MGB supply. *See In re London Silver Fixing, Ltd., Antitrust Litig.*, 332 F. Supp. 3d 885, 904 (S.D.N.Y. 2018) ("[I]t is not rational for horizontal competitors to share current pricing information absent the existence of an anticompetitive agreement."). Courts in this District have consistently sustained antitrust complaints based on similar chatroom communications amongst competitors. *See, e.g., In re GSE Bonds Antitrust Litig.*, 2019 WL 4071070, at *5 (S.D.N.Y. Aug. 29, 2019) ("Here we have the rare smoking gun, at least as to the Chatroom Defendants. The chats unmistakably show traders, acting on behalf of those defendants, agreeing to fix prices at a specific level before bringing the bonds to the secondary market."); *In re London Silver Fixing, Ltd., Antitrust Litig.*, 332 F. Supp. 3d 885 at 901 ("The chat messages included in the TAC are direct evidence of an anticompetitive agreement to manipulate the silver market."); *Dennis v. JPMorgan Chase & Co.*, 343 F. Supp. 3d 122, 170-71 (S.D.N.Y. 2018) (finding conspiracy plausible based on chatroom evidence reflecting coordinated trading by horizontal competitors).

B. COFECE Confirms the Existence of a Conspiracy to Manipulate MGB Prices.

In *MGB I*, the Court found that Plaintiffs' allegations regarding COFECE's ongoing investigation did not sufficiently support the inference that the Defendants participated in the alleged conspiracy because "[n]one of [them] ha[d] been accused of wrongdoing." *Id.* at *8.

On October 14, 2019, Plaintiffs learned that COFECE has formally charged seven Defendants with engaging in "absolute monopolistic practices"[1] in the MGB market: BBVA-Bancomer, Bank of America Mexico, Barclays Mexico, Citibanamex, Deutsche Bank Mexico, JPMorgan Mexico, and Santander Mexico.[2] Sergio Lopez, the head of COFECE's investigative unit, disclosed that the agency found evidence of a conspiracy to manipulate prices and restrict supply in the MGB market from 2006 through 2016.[3] The agency intends to use this evidence to proceed to trial.[4]

The fact that COFECE has found evidence supporting formal charges against these specific Defendants for the same misconduct alleged in the CAC, during the same time period, provides strong support for the plausibility of the alleged conspiracy. *See Starr v. Sony BMG Music Entm't,* 592 F.3d 314, 325 (2d Cir. 2010) (finding that ongoing investigations into collusion and price-fixing against the defendants named in the complaint support a plausible inference of conspiracy).

C. Enhanced, Defendant-Specific Economic Analyses Will Plausibly Link Each Defendant to the Alleged Conspiracy.

In *MGB I*, the Court held that the CAC's statistical analyses, on their own, were insufficient to plausibly link the Defendants to the alleged conspiracy because the analyses relied on aggregated data. 2019 WL 4805854, at *7. Plaintiffs are in the process of addressing the Court's concerns by developing enhanced economic analyses using new, non-aggregated transaction-level MGB pricing data that will permit Plaintiffs to plausibly link each Defendant to the alleged conspiracy. *See In re London Silver Fixing, Ltd., Antitrust Litig.*, 213 F. Supp. 3d 530, 561 (S.D.N.Y. 2016) (crediting

---

[1] COFECE uses the term "absolute monopolistic practices" interchangeably with the Organisation for Economic Co-operation and Development's (OECD) definition of "hard-core cartels." *See Annual Report on Competition Policy in Mexico*, OECD, Jun. 6-8, 2018, at p. 8, § 3.3.1, ¶ 24. The OECD, in turn, defines "hard-core cartels" as those in which "firms agree not to compete with one another." *See Cartels and Anti-Competitive Agreements*, OECD, last visited Oct. 21, 2019, available at OECD.org/competition/cartels. Hard-core cartels include agreements among firms to fix prices, restrict output, allocate markets, and engage in bid rigging. *Id.*

[2] *See Mexico's Big Banks Unveiled in Bond Market Collusion Probe*, BLOOMBERG, Oct. 14, 2019. Significantly, this list may not include banks that chose to cooperate early with COFECE's investigation or who have chosen not to contest the charges.

[3] *Id.*

[4] *See id.* COFECE's enforcement actions have a strong record before Mexican courts. In 2017, 86.11% of COFECE's decisions were confirmed by Mexico's judiciary. *See Annual Report on Competition Policy in Mexico*, OECD, Jun. 6-8, 2018, at p. 6, § 3.2, ¶ 13.

statistical analysis where the complaint sufficiently alleged that the defendants were the likely cause of the observed market trends).

Judge Rakoff recently sustained antitrust claims against a group of 17 banks in another case alleging anticompetitive conduct by bond dealers based on similar allegations of direct chatroom evidence buttressed by statistical analysis of pricing data in the relevant bond market. *See In re GSE Bonds Antitrust Litig.*, No. 19-cv-01404, ECF No. 288 (S.D.N.Y. Oct. 15, 2019), attached as Appendix A.

II. Plaintiffs' Request of 45 Days to Move for Leave to Amend Should Be Granted.

Plaintiffs initially received a partial set of cooperation materials from the first settling Defendant on October 10, 2019, and a partial set of cooperation materials from a second settling Defendant on October 16, 2019. Additional cooperation materials are being produced on a rolling basis.

In addition to the significant volume of the materials, many of the cooperation materials are in Spanish, including the 600-page formal charging document, known as a Statement of Objections, that COFECE issued to each of the seven banks that it charged with misconduct. These cooperation materials are also subject to Mexican bank secrecy and data privacy laws and require additional time for one or more of the settling Defendants to apply the appropriate redactions to communications and to anonymize trade data consistent with Mexican law. Plaintiffs are procuring certified translations of cooperation materials on an expedited basis as they are produced by one or both of the settling Defendants.

While Plaintiffs have been working diligently to compile, translate, and organize the cooperation materials for incorporation into a proposed Second Amended Class Action Complaint, Plaintiffs believe that it will best serve the interests of judicial economy if they are allowed 45 days to file any motion for leave to amend.[5]

Respectfully,

/s/ Vincent Briganti
Vincent Briganti

[5] Defendants' position is that Plaintiffs' request for 45 days to move for leave to amend is premature and therefore they cannot consent to Plaintiffs' request. Defendants add that they would be willing to discuss a reasonable briefing schedule should the Court authorize Plaintiffs to file a motion for leave to amend.

Appendix A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE GSE BONDS ANTITRUST LITIGATION

19-cv-1704 (JSR)

MEMORANDUM ORDER

JED S. RAKOFF, U.S.D.J.

This putative class action alleges a conspiracy among several large banks to fix the secondary market prices of bonds issued by government-sponsored entities ("GSEs"). On September 3, 2019, the Court granted the motion of certain defendants (the "remaining defendants") to dismiss the Second Amended Complaint, without prejudice to plaintiffs' seeking to rejoin them through a third amended complaint. See Opinion and Order, ECF No. 253 ("MTD Order"). Thereafter, plaintiffs duly filed a Third Amended Complaint. Now before the Court is the remaining defendants' joint motion to dismiss the Third Amended Complaint. See Joint Renewed Motion to Dismiss, ECF No. 259; Mem. Supp. Joint Mot. Dismiss ("JRMD Mem."), ECF No. 260. For the reasons that follow, the motion to dismiss is denied.

I. Background and First Motion to Dismiss Opinion

The parties' familiarity with the facts, see MTD Order 1-9, and reasoning, see id. at 10-30, set forth in the Court's first motion to dismiss order is here presumed. In brief, defendants are

approved bond dealers who collectively traded 77.16% of all GSE bonds issued during the proposed class period, January 1, 2009 through January 1, 2016. Id. at 3. The named plaintiffs are investment and retirement funds that transacted with defendants during the class period. They bring this suit on behalf of a putative class of all persons and entities that transacted in unsecured GSE bonds with defendants during the class period, alleging that defendants engaged in a conspiracy to fix the prices of GSE bonds in the secondary market. Id. at 3-4.

On June 13, 2019, all defendants jointly moved to dismiss plaintiffs' Second Amended Complaint ("SAC"). See Joint Motion to Dismiss SAC, ECF. No. 220; Mem. Supp. Joint. Mot. Dismiss SAC, ECF, No. 221. In the SAC, plaintiffs offered both direct and indirect evidence of a conspiracy by defendants to fix the prices of GSE bonds in the secondary market. As direct evidence, plaintiffs offered what were alleged to be transcripts of chatroom conversations between dealers acting on behalf of several defendants. SAC ¶¶ 148-152. As indirect evidence, plaintiffs alleged that the nature of the GSE bonds market facilitated unlawful coordination, Id. ¶ 160-64, and set forth economic analysis that they contended corroborated the claim of conspiracy. Id. ¶ 179-221.

On September 3, 2019, the Court granted defendants' motion to dismiss in part and denied it in part. MTD Order 1. The Court

denied the motion as to those defendants who appeared in the chatroom transcripts, finding that the SAC adequately alleged the existence of a conspiracy to fix the prices of GSE Bonds. Id. at 9. Indeed, the chatroom transcripts, when construed most favorably to plaintiffs, constituted direct "smoking gun" evidence that "unmistakably show[ed] traders, acting on behalf of those defendants, agreeing to fix prices at a specific level before bringing the bonds to the secondary market." Id. at 11-12.

The Court, however, granted defendants' motion to dismiss as to the remaining defendants, who were not listed in the chatroom transcripts, i.e., Barclays Capital Inc.; Citigroup Global Markets Inc.; Credit Suisse Securities (USA) LL; First Tennessee Bank, N.A. and FTN Financial Securities Corp.; UBS Securities LLC; J.P. Morgan Securities LLC; HSBC Securities (USA) Inc.; Nomura Securities International, Inc.; TD Securities (USA) LLC; Cantor Fitzgerald & Co.; and SG Americas Securities, LLC. Although the Court found it was plausible that the conspiracy extended beyond the chatroom defendants, the SAC failed to allege evidence sufficient to tie the remaining defendants to the conspiracy. Id. at 17. Plaintiffs' statistical analysis and other indirect evidence, while of some value in supporting the allegation of a price-fixing conspiracy, was not enough to link any particular remaining defendant to the conspiracy. Id. at 21.

Nonetheless, the dismissal was without prejudice. Specifically, the Court granted plaintiffs leave to amend their complaint as to the remaining defendants because plaintiffs represented at oral argument that they could produce more chatroom transcripts implicating the remaining defendants. Id. at 29-30.

II. The Third Amended Complaint

In timely fashion, plaintiffs then filed a Third Amended Complaint ("TAC") seeking, inter alia, to rejoin the remaining defendants. ECF No. 254. The TAC is largely identical to the SAC except that it adds nineteen new purported chatroom transcripts implicating the remaining defendants. TAC at ¶¶ 156-179. Taken most favorably to plaintiffs, these new chatroom conversations, which are substantially similar in kind to those included in the SAC, show traders working on behalf of the remaining defendants apparently agreeing to fix FTT prices for newly issued GSE bonds. See Id.

The remaining defendants, with two exceptions,[1] then moved to dismiss the TAC for failure to state a claim. See Joint Renewed Motion to Dismiss, ECF No. 259; JRMD Mem., ECF No. 260. However,

[1] The moving parties are Barclays Capital Inc.; Cantor Fitzgerald & Co.; Citigroup Global Markets Inc.; Credit Suisse Securities (USA) LLC; HSBC Securities (USA) Inc.; J.P. Morgan Securities LLC; Nomura Securities International, Inc.; SG Americas Securities, LLC; TD Securities (USA) LLC; and UBS Securities LLC. First Tennessee Bank, N.A. and FTN Financial Securities Corp., do not renew their motion to dismiss at this time pursuant to a proposed settlement agreement with plaintiffs.

only one of the remaining defendants, Citigroup, claimed that the new allegations were insufficient to implicate it in any conspiracy to fix the price of GSE bonds in the secondary market.[2] The other remaining defendants argue only that the Court should narrow the scope of the conspiracy in two ways, detailed below. None of these arguments is persuasive.

III. Legal Analysis

A. Citigroup-Specific Arguments

As noted, Citigroup argues that the new chatroom evidence insufficiently alleges its involvement in any price-fixing conspiracy. JRMD Mem. 11. Although Citigroup acknowledges that one of its traders was identified in a chat, TAC ¶ 163, Citigroup argues that this single chat does not show that Citigroup participated in an agreement to fix prices.

The chat in question occurred on August 22, 2012, two days after First Tennessee, BNP Securities, Deutsche Bank, and Citigroup submitted the winning joint bid in a GSE bond auction. All banks were in the chatroom. The full chat transcript reads as follows:[3]

---

[2] The moving defendants contend in a footnote that on a more developed factual record they will be able to show that they have engaged in no wrongdoing. JRMD Mem. 11 n.4.

[3] The complaint included an abbreviated version of this chat. TAC ¶ 161. Because Citigroup argues that the larger context of the chat is necessary to evaluate their arguments, and because it does not change

12:05:19 Deutsch Bank Trader 1: morning

12:05:51 First Tennessee Trader 1: [First Tennessee Trader 2] HASN'T ARRIVED YET BUT WE WILL DO WHATEVER YOU DECIDE

12:05:55 Deutsche Bank Trader 1: think we were less 1.50 yest... either we can ftt or go less 0.50 here?

12:06:00 Deutsche Bank Trader 1: ok, tks [First Tennessee Trader 1]

12:06:56 First Tennessee Trader 1: FTT[4] 99.95?

12:07:01 BNP Securities Trader 2: I think ftt

12:07:08 Deutsch Bank Trader 1: sounds good

12:07:11 Deutsch Bank Trader 1: [Citigroup Trader 1] - you ok?

12:08:39 First Tennessee Trader 1: [exited chatroom]

12:12:43 Citigroup Trader 1: FTT is good. It has been a while since issuance date

12:12:58 DBSI Trader 1: cool. ftt

Plaintiffs argue that this conversation shows an implicit agreement among First Tennessee, BNP Securities, DBSI, and Citigroup to fix the FTT price at $99.95. Pls. Mem. of Law in

---

the outcome, the Court includes the full transcript here. Decl. of Andrew Weaver, Exh. 1, ECF No. 261.

[4] When GSE bond dealers declare a bond "FTT," or "Free to Trade," that bond is released to the secondary market for the first time. A declaration of FTT thus ends the syndication phase during which banks may work together to place bonds in a primary market and begins the phase during which dealers compete with each other in the secondary market. MTD Op. at 3.

Opposition to JRMD ("Pls. Opp. Mem.") at 13. Citigroup argues that its trader was not responding to the question "FTT 99.95?" posed by the First Tennessee trader, who had already left the chatroom, but was instead responding to the Deutsche Bank trader's earlier, permissible question about whether to declare the bond FTT or keep selling as a group but at a discount of 0.50% to par. See Oral Arg. Transcript 26-28, ECF No. 279. The conversation thus constituted "one syndicate member once mention[ing] a price without response by [Citigroup] or others," not an "agreement" under the Sherman Act. JRMD Mem. at 12.

While Citigroup offers a plausible interpretation of the August 22, 2012 chat, their argument fails because plaintiffs' interpretation is also plausible, and in fact more so. At the motion to dismiss stage, a plaintiff's burden has been met so long as its allegations are plausible; the Court may not "cho[ose] between two plausible inferences that may be drawn from factual allegations" at this stage. Gelboim v. Bank of America Corp., 823 F.3d 759, 781 (2d Cir. 2016) (quoting Anderson News, LLC v. Am. Media, Inc., 680 F.3d 162, 185 (2d Cir. 2012)).

It is more than plausible to read Citigroup's statement, "FTT is good," as an agreement to sell its bonds at the 99.95 FTT price proposed by First Tennessee. The very fact that a First Tennessee trader was sharing pricing information Citigroup suggests the two banks were colluding. In re London Silver Fixing, Ltd., Antitrust

Litig., 332 F. Supp. 3d 885, 904 (S.D.N.Y. 2018) ("[I]t is not rational for horizontal competitors to share current pricing information absent the existence of an anticompetitive agreement."). Plaintiff has thus offered direct evidence plausibly linking Citigroup, along with the other remaining defendants, to the established price-fixing conspiracy.

B. All Remaining Defendants' Arguments

Unlike Citigroup, no other defendant contests that the chatroom evidence is now sufficient to implicate it in a price-fixing conspiracy, at least for pleading purposes. Defendants instead attempt to narrow the scope of the conspiracy in two ways: first, by asking the Court to limit what conduct properly forms part of the alleged conspiracy, and second, by asking the Court to limit the duration of the alleged conspiracy.

1. The Scope of the Conspiracy Conduct

While plaintiffs argue that they have pled one overarching conspiracy, comprised of multiple related forms of misconduct, to fix the prices of GSE bonds in the secondary market, Pls. Opp. Mem. 6, defendants argue that plaintiffs instead allege three unrelated forms of misconduct: (1) inflating the price of newly issued GSE bonds at FTT; (2) inflating the prices of GSE bonds about to go off the market ("off-the-run" bonds); and, (3) quoting supracompetitive bid-ask spreads. JRMD Mem. 3. Defendants argue that the TAC pleads no facts sufficient to link any defendant to

the latter two forms of conduct, and that the conspiracy should thus be narrowed to include only the first form of conduct. Id. at 5-8. Plaintiffs respond that defendants invite the Court to "dissect, dismember, and compartmentalize the TAC," Pls. Memo of Law 6, in a manner barred by both the "law of the case" as well as general legal principles.

Plaintiffs' "law of the case" argument -- that the Court should reject defendants' attempts to parse and narrow the conspiracy because it already rejected such arguments in the first motion to dismiss opinion -- is not persuasive. It is true that, in its earlier opinion, the Court declined to parse the conspiracy in one sense, rejecting defendants' argument that plaintiffs had only properly alleged misconduct related to callable bonds because those were the only bonds discussed in the chatrooms. MTD Order at 16-17. The Court rejected this attempt to narrow the conspiracy because "[i]t is more than plausible that these kinds of conversations also happened about other types of bonds." Id. at 17. The Court did not, however, pass judgment on defendants' current argument that misconduct related to "off-the-run" bonds and bid-ask spreads should be excluded from the conspiracy. The Court now turns to these arguments.

Although it is true that the chats quoted in the TAC do not discuss either "off-the-run" bond prices or bid-ask spreads, plaintiffs, as noted, have adequately tied each defendant to a

conspiracy to fix the price of GSE bonds at FTT. It is implausible on its face that such an agreement would be limited to certain kinds of GSE bonds, and not to others.

More significantly, plaintiffs offer circumstantial evidence that the three forms of conduct are interrelated in important ways. For example, because "off-the-run" bonds provide a benchmark for newly issued GSE bond prices, manipulating their prices could be important to support inflated FTT prices. TAC ¶ 225-28. Moreover, plaintiffs' economic analyses purport to show that all three forms of misconduct began and ended at the same time. TAC ¶ 204-06. This plausibly suggests that these three forms of conduct were intertwined. MTD Op. 21 ("[W]hile defendants' objections to the reliability of plaintiffs' statistics have some weight, the statistics are not so unreliable as to be useless at this very early stage of the litigation in supporting the allegation of a price-fixing conspiracy.").

Taken together, and in the light most favorable to defendants, this evidence plausibly permits the inference that the conspiracy extended to all kinds of GSE bonds.

2. Duration of the Conspiracy

Defendants also attempt to narrow the scope of the conspiracy by arguing that the TAC fails to plead that the conspiracy continued after February 18, 2014, the date of the most recent chatroom that plaintiffs included in the complaint. JRMD Mem. 8-

10. As support, defendants point to a few cases where courts have narrowed the duration of conspiracies where plaintiffs have offered no evidence that a conspiracy continued beyond a certain time. Nypl. v. Morgan Chase & Co., No. 15-CV-9300 (LGS), 2018 WL 1276869, at *4 (S.D.N.Y. Mar. 12, 2018) (dismissing claims that a conspiracy extended beyond a certain point where defendants offered no evidence beyond conclusory statements and where some evidence on the record contradicted these allegations); Precision Assosc., Inc. v. Panalpina World Transp. (Holding) Ltd., No. 08 Civ. 42 JG VVP, 2015 WL 4987751, at *5 (E.D.N.Y. Aug. 19, 2015) ("Courts have dismissed claims that are outside part of a claimed class period where there are no specific facts establishing the existence of a conspiracy for the entire time period alleged.").

In this case, however, plaintiffs do offer some evidence, if indirect, to support their claim that the conspiracy continued until January 1, 2016. Specifically, the TAC alleges, inter alia, that "the price that Defendants charged for newly issued Notes on offer days were nine times higher before January 1, 2016, than after," id. at ¶ 213, and that bid-ask spread quotes narrowed significantly after January 1, 2016, id. at ¶ 245.

Defendants further argue that, even if this warrants an inference that the conspiracy continued to January 1, 2016, it does not show that any particular defendant engaged in conspiratorial conduct after February 18, 2014. This last

argument, however, ignores general principles of conspiracy law. It is well established that where it has been "shown that a conspiracy existed and that a given defendant was a member of it, [that defendant's] membership is presumed to continue until the last overt act by any of the coconspirators, unless the defendant proves that the conspiracy was terminated or that he took affirmative steps to withdraw." United States v. Carneglia, 403 Fed. Appx. 581, 583 (2d Cir. 2010) (quoting United States v. Flaharty, 295 F.3d 182, 192 (2d Cir. 2002) (collecting cases)). Courts have applied this principle in the antitrust conspiracy context. Drug Mart Pharmacy Corp. v. Am. Home Prod. Corp., 288 F. Supp. 2d 325, 328-29 (E.D.N.Y. 2003); Fears v. Wilhelmina Model Agency, Inc., No. 02 CIV. 4911(HB), 2004 WL 594396, at *14 n. 18 (S.D.N.Y. Mar. 23, 2004); In re Cathode Ray Tube (CRT) Antitrust Litig., No. C-07-5944 JST, 2016 WL 8669891, *2-3 (N.D. Cal. Aug. 22, 2016).

Plaintiffs have already provided direct evidence that each defendant participated in a price-fixing conspiracy and sufficient indirect evidence showing that the conspiracy continued until January 1, 2016. Absent evidence to the contrary, plaintiffs are thus entitled to the benefit of the presumption that all defendants were engaged in the conspiracy until that time.

IV. Conclusion

For the foregoing reasons, the Court finds, based on the new direct chatroom evidence of price-fixing activity, as supplemented by the statistical evidence, that the TAC has adequately pleaded an antitrust conspiracy against all remaining defendants. The Court further finds that it has adequately alleged that the conspiracy included all three forms of alleged misconduct regarding GSE bonds, namely, inflating newly issued GSE bond prices at FTT, inflating "off-the-run" GSE bond prices, and manipulating GSE bonds' bid-ask spreads. Further, the conspiracy has been properly alleged to have extended through January 1, 2016 as to all defendants. The renewed joint motion to dismiss is therefore denied in its entirety.

SO ORDERED.

Dated: New York, NY
October 15, 2019

JED S. RAKOFF, U.S.D.J.