Attachment 2 - Second Supplemental Declaration of Sanjay Unni

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE CREDIT DEFAULT SWAPS ANTITRUST LITIGATION	:	13 Md. 2476 (DLC)
This Document Relates To: All Actions	:	

SECOND SUPPLEMENTAL DECLARATION OF SANJAY UNNI IN SUPPORT OF THE PLAN OF DISTRIBUTION

I. INTRODUCTION

1. My name is Sanjay Unni, and I have previously submitted two declarations in this matter. In the first declaration, I explained the economic rationale for the Plan of Distribution ("the Plan") developed to distribute the settlement amount received by plaintiffs among the members of the class.[1] In the second declaration, I further evaluated objections to the Plan raised by Silver Point Capital L.P., MF Global Capital LLC, and Saba Capital Management L.P. and in supporting declarations filed by Austin Saypol, Julia Numair, James Parascandola and Kyle Cecchini.[2]

2. In a letter to class counsel dated April 18, 2016, Silver Point contends that, for 1,415 of its 6,493 CDS transactions, the Trade Date recorded in the DTCC data does not represent the date "on which the trade was agreed."[3] For each of these transactions, Silver Point presents an alternative date as the date on which the transaction was purportedly agreed upon (labeled the "SP Trade Date"). Silver Point claims that this purported "agreed on" date should, in certain circumstances, be utilized as the date of the trade and that if this supposed inaccuracy is pervasive in the DTCC data, the Settlement Distribution Model ("the Model") may be missing a large number of index rolls and unfairly weighting distributions against class members who did engage in index rolls proportionally less than other class members.[4]

3. In this declaration, I evaluate Silver Point's claims. As I discuss below, I find that:

a. The transactions whose trade dates are challenged by Silver Point consist almost entirely of assignments. Inaccuracies (if any) in the trade dates of assignments do

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[1] Declaration of Sanjay Unni in Support of the Plan of Distribution, Dated April 1, 2016 (my "First Declaration").

[2] Supplemental Declaration of Sanjay Unni in Support of the Plan of Distribution, Dated April 14, 2016.

[3] Letter from Reid Collins Tsai to Quinn Emanuel Urquhart and Sullivan, LLP, Dated April 18, 2016. While this letter states that 1,422 transactions were impacted, the 1,422 figure appears to be based on an erroneous formula applied to the underlying data provided by Counsel for Silver Point in a Microsoft Excel file. The 1,415 figure, as well as other figures relating to Silver Point's data in this declaration, reflects my correction of these summation formulas.

[4] Letter from Reid Collins Tsai to Quinn Emanuel Urquhart and Sullivan, LLP, Dated April 18, 2016.

not affect the identification of index rolls under the Plan of Distribution because the conservative method used to identify such rolls did not, for the reasons set forth below, include assignment transactions.

b. Even if the methodology for identifying index rolls were to be expanded to include assignment transactions, and the trade dates for assignments were modified as suggested by Silver Point, the pro rata share of the settlement attributable to each class member would remain substantially unchanged for the vast majority of all funds, including Silver Point. Specifically, Silver Point's spread inflation decreases marginally from $20,239,837 to $20,175,817 and it's pro-rata percentage share of the settlement remains unchanged to the second decimal point.

II. The Challenged Trade Dates, Index Rolls, and Pro Rata Settlement Amounts

4. Virtually all these instances of claimed date inaccuracy by Silver Point (98 percent of the total claimed inaccuracies) involve assignments, in which Silver Point either transfers an existing position in a CDS contract to another party or assumes the existing position of another party. For assignment transactions, the Model uses the date on which the assignment becomes effective as its Trade Date. This date is labeled "POST-EFFV-DT" in the DTCC data. Silver Point claims that the date on which counterparties agreed to these assignments often preceded the date on which the assignments became effective. To illustrate this claim, Silver Point cites to an assignment transaction whose effective date occurred over the weekend. However, only about 17% of the challenged transactions became effective on a weekend.

5. Silver Point claims that if the purported inaccuracy in trade dates for assignment transactions is pervasive, the Model may miss a large number of index rolls, resulting in distributions of the settlement amount that under-compensate class members who engaged in

index rolls proportionately less than other class members.[5] Silver Point's concern is unfounded.

6. First, in its letter to class counsel, Silver Point does not provide a basis for concluding that the alternative trade date it proposes for most of the challenged trades represents the date when counterparties "agreed" to conduct the trade or that this alternative date is superior to the effective date utilized by the Model.[6]

7. Second, as I noted in my First Declaration, the Plan of Distribution adopted a conservative methodology for identifying index rolls that involves the matching of trades and terminations with a dealer, not assignments to a new dealer.[7] We devised this conservative methodology to minimize the possibility of "false positives" in identifying index rolls. If a class member executes a trade in a later series of an index CDS on the same date as it terminates a contract in an earlier series of the same index, conducting both legs through the same dealer, a reasonably strong inference can be made that the class member executed a "roll" of an existing index position.

8. Based on discussions with an industry expert retained by class counsel, it is our understanding that it is very uncommon for index rolls to be conducted through assignment, *i.e.*, by assigning a position in the older series and entering into a position in the later series. As I note below, our analysis of the DTCC data confirms this understanding. The infrequency of such transactions in actual trading practice raises the risk of "false positives" if we include assignment transactions as possible legs of an index roll.

9. For these reasons, we did not include assignment transactions within our conservative index roll methodology. Accordingly, any inaccuracy in the dates of assignments does not affect the identification of index rolls in the Model.

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[5] Letter from Reid Collins Tsai to Quinn Emanuel Urquhart and Sullivan, LLP, Dated April 18, 2016.

[6] Silver Point provides screenshots from the DTCC (MarkitServ) website for eight of its most recent trades identified in the portal data provided by the Settlement Administrator.

[7] Declaration of Sanjay Unni in Support of the Plan of Distribution, Dated April 1, 2016, paragraph 27.

10. Nevertheless, in order to evaluate Silver Point's concerns regarding the trade dates for assignments more fully, we have analyzed an expanded definition of index rolls that incorporates assignment trades. Specifically, we examined any pair of transactions in which a class member assigns its existing position in a certain series of an index to a dealer and enters into an opposite-direction trade in a newer series of the same index with the same dealer on the same day. Consistent with the Model's treatment of index rolls, we then calculated the effect of excluding the notional volume associated with one leg of this transaction from our computations of spread inflation.

11. With respect to its own transactions, Silver Point has proposed an alternative trade date as the date on which the transaction was purportedly agreed upon. For 98 percent of the challenged transactions, this date is only one day prior to the Trade Date used in the Model. Therefore, even if Silver Point's alternative trade date is taken to be correct, the bid-ask spread associated with the challenged trades—and therefore the spread inflation for these trades—is unlikely to be materially different from the inflation computed under the Model. For purposes of our alternative analysis, we adopt the alternative trade dates claimed by Silver Point.

12. With respect to the assignment transactions of all other class members, Silver Point suggests two alternative methods to correct the purported inaccuracy in their trade dates. The first method is to use the earliest of three alternative dates—the "Novation Submission Date", the "Novation Confirmation Date", or the "Novation Date". In the alternative, Silverpoint suggests that for all assignment transactions, each respective trade date in the Model should be rolled back by one day.[8] We adopt the latter approach.

13. We recomputed the spread inflation of all class members, including Silver Point, under the expanded definition of index rolls that includes assignments, adjusting the Trade Dates as described above. The effect is minimal. Adding assignments to the definition of index rolls (with the trade date adjustment recommended by Silver Point) reduces the total spread inflation across all class members only by approximately 0.05%. As Exhibit 1 shows,

[8] To my knowledge, no other Objector, including Silver Point, has previously suggested that these DTCC Date fields should be used in place of the Model's current Trade date fields for assignments.

across the three Silver Point funds, the total spread inflation remains virtually unchanged under the alternative trade dates proposed by Silver Point, decreasing marginally from $20,239,837 to $20,175,817 (or a decrease of -0.32%). Silver Point's pro rata percentage share of total spread inflation remains unchanged.[9]

14. I also examined whether the expansion of the Model's identification of index rolls to include assignments suggested would have a meaningful impact on the pro rata shares of spread inflation attributable to other funds in the class. For each fund, I recomputed spread inflation using the expanded definition of index rolls and computed each fund's pro rata share of the total spread inflation across all funds in the class. Applying this pro rata share to the settlement amount, I estimated the dollar amount of the settlement attributable to this fund. I then compared this amount to the settlement amount attributable to the fund under the original implementation of the Model. Across all funds, I then compared the degree to which the modifications for assignments affected anticipated settlement amounts.

15. Exhibit 2 presents the results of this analysis. Panel A of this exhibit summarizes the range of percentage changes in anticipated settlement amounts observed across all funds in the DTCC data. The median fund (at the 50th percentile) would see a change of only 0.11% in anticipated settlement amount as a result of this proposed modifications. Ninety percent of all funds (those that lie between the 5th and the 95th percentile) would see changes of 2.48% or less in their settlement amounts (in either direction) as a result of these modifications. Expressed in dollar terms, the same ninety percent of funds would see changes of $622.85 or less in their settlement amounts as a result of these modifications (Panel B).

16. Therefore, incorporating assignments into the definition of index rolls and adjusting the trade date of assignments as suggested by Silver Point would have only a negligible impact on settlement amounts for the vast majority of class members, including Silver Point. The insignificant impact of these adjustments stem from two factors; first, the limited aggregate impact they have on spread inflation and, second, that these adjustments affect the notional volumes and spread inflations of most funds in a similar direction, leaving

[9] Specifically, Silver Point's percentage pro-rata share remains the same up to two decimal points.

their *pro rata* shares of the settlement substantially unchanged. Accordingly, I see no reason to apply this expanded definition of index rolls to the Model.

17. Finally, to the extent there are concerns by any Claimant about the impact of a potentially incorrect Trade Date on any transaction, I understand the claims submission process provides a mechanism to address this inaccuracy. Through the claims challenge process, Claimants can provide information to the claims administrator regarding the suitability of an alternative trade date. With appropriate support, I understand the trade date (or other inaccurate details) of the transactions can be adjusted and the measurement of spread inflation correspondingly adjusted.

Sanjay C. Unni

Sanjay Unni
April 22, 2016

Exhibit 1: Silver Point's Spread Inflation and Pro Rate Share Allocation Under the Original Trade Date and Alternative Trade Dates Suggested by Silver Point

DTCC ID	Fund Name	Covered Transactions	Original Spread Inflation	Alternative Spread Inflation [1, 2]	% Change Spread Inflation
0000P118	SILVER POINT CAPITAL OFFSHORE FUND LTD	2,157	$ 8,407,745	$ 8,379,941	-0.33%
0000P119	SILVER POINT CAPITAL FUND LP	3,248	$ 7,077,932	$ 7,066,075	-0.17%
00009D20	Silver Point Capital Offshore Master Fund, L.P.	1,088	$ 4,754,160	$ 4,729,801	-0.51%
	Total- Silver Point Funds	**6,493**	**$ 20,239,837**	**$ 20,175,817**	**-0.32%**

Notes:

[1] Where a date was populated in the "SP Trade Date" field of the spreadsheet provided by Silver Point, BRG used this value to identify Markit bid-ask spreads in the alternative spread inflation model

[2] For all Assignment transactions where "SP Trade Date" field was not populated or the fund was not a Silver Point Capital fund, BRG constructed the alternative trade date by moving the Trade Date

Exhibit 2: Distribution of Changes to Fund Pro Rata Share as a Result of Changes Suggested by Silver Point

Panel A Distribution of Percent Change in Pro Rata Share		Panel B Distribution of Dollar Change in Pro Rata Share	
Percentile	**Percentage Change**	**Percentile**	**Dollar Change**
5%	-2.27%	5%	$ (425.68)
10%	-1.15%	10%	$ (123.18)
20%	-0.38%	20%	$ (16.35)
30%	-0.04%	30%	$ (0.61)
40%	0.11%	40%	$ 0.14
50%	0.11%	50%	$ 0.73
60%	0.11%	60%	$ 2.67
70%	0.15%	70%	$ 8.90
80%	0.49%	80%	$ 33.43
90%	1.28%	90%	$ 171.08
95%	2.48%	95%	$ 622.85