IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
MALLINCKRODT PLC, *et al.*,	:	Case No. 20-12522 (JTD)
Reorganized Debtors.	:	(Jointly Administered)
OPIOID MASTER DISBURSEMENT TRUST II,	:	Adversary Proceeding
Plaintiff,	:	No. 22-50435 (JTD)
v.	:	
ARGOS CAPITAL APPRECIATION MASTER FUND LP, *et al.*,	:	
Defendants.	:	

MOTION OF SG AMERICAS SECURITIES, LLC FOR SUMMARY JUDGMENT PURSUANT TO THE PROTOCOL ORDER RELATING TO CONDUITS, NON-TRANSFEREES, "STOCKBROKERS", "FINANCIAL INSTITUTIONS", "FINANCIAL PARTICIPANTS", AND DISSOLVED ENTITIES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

Pursuant to the *Protocol Order Relating to Conduits, Non-Transferees, "Stockbrokers", "Financial Institutions", "Financial Participants", and Dissolved Entities* entered on May 15, 2023 [D.I. 185-1] (the "Protocol Order")[1], Defendant SG Americas Securities, LLC ("SGAS") files this motion ("Motion") for summary judgment on the claims brought by the Opioid Master Disbursement Trust II (the "Trust") against SGAS in the above-captioned adversary proceeding (the "Adversary Proceeding").

PRELIMINARY STATEMENT

1. This is another straightforward motion for summary judgment pursuant to the Protocol Order and Section 546(e) of the Bankruptcy Code. The Trust seeks to recover alleged Share Repurchase proceeds from SGAS, just as it did from the defendants that were the subject of this Court's *Memorandum Opinion and Order* [D.I. 460] (the "Dismissal Order"). In the Dismissal Order, this Court held that the Share Repurchases are qualifying transactions for the purpose of Section 546(e). And the Trust concedes that SGAS is a "financial participant" and thus a "qualifying participant" for the purpose of the safe harbor. There is literally nothing new for this Court to decide.

2. Nevertheless, SGAS has no choice but to file this Motion because the Trust refuses to dismiss it—even pursuant to an agreed stipulation that would allow the Trust to rename SGAS if the Dismissal Order is reversed on appeal. The Trust's refusal is based solely on the same flawed argument that this Court already rejected in the Dismissal Order—that the Share Repurchases are not qualifying transactions because they are void under Irish law. That argument is just as wrong today as it was when the Court rejected it in the Dismissal Order, and the Trust's unwillingness to

[1] Unless otherwise defined, terms have the meanings provided in the Protocol Order. "Share Repurchases" mean "Share Repurchase Transactions" as defined in the Protocol Order.

agree to a dismissal stipulation that would preserve its rights if the Dismissal Order is reversed on appeal is baffling.

3. For these reasons, explained more fully below, the Court should grant the Motion and enter an order dismissing SGAS from this Adversary Proceeding with prejudice.

BACKGROUND

I. The Mallinckrodt Share Repurchases And The Protocol Order

4. SGAS incorporates by reference paragraphs 10 through 17 of the *Motion to Dismiss the Amended Complaint as to Defendants Citadel Securities LLC and Susquehanna Securities, LLC Pursuant to the Protocol Order Relating to Conduits, Non-Transferees, "Stockbrokers," "Financial Institutions," "Financial Participants," and Dissolved Entities*, (the "CS/SSLLC Motion") filed on December 8, 2023, as Docket No. 215 in the Adversary Proceeding.

II. SGAS's Protocol Submission

5. On November 18, 2024, SGAS made a submission to the Trust pursuant to the Protocol Order showing that it was a financial participant as defined in 11 U.S.C. § 101(22A)(A). *See* Decl. of Ross E. Firsenbaum in Support of Motion of SG Americas Securities, LLC for Summary Judgment Pursuant to the Protocol Order Relating to Conduits, Non-Transferees, "Stockbrokers", "Financial Institutions", "Financial Participants", and Dissolved Entities, dated February 18, 2025 (the "Firsenbaum Decl."), Ex. 1, filed contemporaneously herewith.

6. SGAS's submission included a sworn declaration from a Managing Director and the Chief Financial Officer at SGAS, which attached SGAS's *Statement of Financial Condition, December 31, 2019, with Report of Independent Registered Public Accounting Firm* (the "Audited Financial Statement") filed with the Securities and Exchange Commission ("SEC"). *Id.*, Ex. 2. The Audited Financial Statement showed that as of December 31, 2019, SGAS had, among other securities positions, outstanding exchange-traded equity options contracts with gross notional

amounts of $1,542,400,000 and outstanding futures contract positions with gross notional amounts of $5,509,900,000. *See* Firsenbaum Decl., Ex. 2 ¶ 5 & Ex. A at 25.[2] The declaration and Audited Financial Statement further confirmed that neither the exchanged-traded equity options contracts nor the futures contract positions disclosed were transactions with affiliates. *See id.*, Ex. 2 ¶ 5 & Ex. A at 20-22.

7. On December 17, 2024, the Trust informed SGAS by letter that it agreed that SGAS had satisfied its burden to establish that it was a financial participant for purposes of Section 546(e). *See* Firsenbaum Decl., Ex. 3 at 1. However, the Trust refused to dismiss SGAS, despite the Dismissal Order, issued 104 days earlier, on the basis that the Share Repurchases were void under Irish law and "therefore are not qualifying transactions protected under § 546(e) of the Bankruptcy Code." *See id.* at 2. That issue is, of course, the subject of the Trust's current appeal from the Dismissal Order.

8. On January 22, 2025, undersigned counsel for SGAS (and other defendants) wrote to the Trust proposing that the parties enter into a stipulation, to be approved by this Court, that would provide for the dismissal of defendants like SGAS without prejudice and that would provide, if the Dismissal Order were reversed on appeal, for the automatic reinstatement of the Trust's claims against such defendant. *See* Firsenbaum Decl., Ex. 5. Counsel for the Trust responded on January 25, 2025, stating that its client would not so agree. *See id.* Ex. 6. Accordingly, SGAS is filing this Motion.

[2] The declaration included a typographical error, inadvertently listing $5,509,000,000,000 instead of the correct $5,509,000,000 figure reflected in the Audited Financial Statement and accompanying cover letter. *See* Firsenbaum Decl., Ex. 1 at 3; *see also id.*, Ex. 2 at Ex. A at 25. Undersigned counsel identified the typographical error to the Trust, and the Trust re-confirmed that SGAS has shown that it is a financial participant. *See id.,* Ex. 4.

ARGUMENT

9. The Amended Complaint [D.I. 209] purports to assert intentional and constructive fraudulent transfer claims against SGAS pursuant to 11 U.S.C. § 544 of the Bankruptcy Code. Am. Compl. ¶¶ 351-84. Section 546(e) provides an absolute safe harbor against these claims:

> *Notwithstanding section[] 544* . . . of this title, the trustee may not avoid a transfer that is a . . . settlement payment . . . made by or to (or for the benefit of) a . . . financial institution, financial participant . . . or that is a transfer made by or to (or for the benefit of) a . . . financial institution, financial participant . . . in connection with a securities contract . . . that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

11 U.S.C. § 546(e) (emphasis added); Dismissal Order at 8.

10. The safe harbor applies where two requirements are met: (1) there is a qualifying transaction (*i.e.*, a settlement payment or transfer made in connection with a securities contract); and (2) there is a qualifying participant (*i.e.*, the transfer was made by or to (or for the benefit of), any of certain defined entities listed in the section, including a financial institution and financial participant). *See* Dismissal Order at 8; *see also* 11 U.S.C. § 546(e); *Golden v. Cmty. Health Sys., Inc. (In re Quorum Health Corp.)*, 2023 WL 2552399, at *5 (Bank. D. Del. Mar. 16, 2023). Both prongs are satisfied here.

I. The Share Repurchases Are Qualifying Transactions

11. As this Court has already held, the Share Repurchases were settlement payments and thus qualifying transactions for purposes of Section 546(e). *See* Dismissal Order at 9-13.

12. The Trust continues to maintain the position that the Share Repurchases were "void" under Irish law and, hence, not qualifying transactions. *See* Firsenbaum Decl., Ex. 3. But this Court rejected that argument in the Dismissal Order. *See* Dismissal Order at 10-13. This Court recognized that under controlling Third Circuit precedent, the term settlement payment is "extremely broad" and includes any "transfer of cash or securities made to complete a securities

transaction." *See* Dismissal Order at 9 (quoting *Lowenschuss v. Resorts Int'l, Inc. (In re Resorts Int'l, Inc.)*, 181 F.3d 505, 515 (3d Cir. 1999), *abrogated in part on other grounds by Merit Mgmt. Grp., LP v. FTI Consulting, Inc.*, 138 S. Ct. 883 (2018)). Applying that precedent, the Court held that the Share Repurchases, which involved the payment of cash for stock, are settlement payments and thus qualifying transactions for purposes of the Section 546(e) safe harbor. *See id.* at 9-13. The Court also declined to follow *Enron Corp. v. Bear, Stearns Int'l Ltd. (In re Enron Corp.)*, 323 B.R. 857 (Bankr. S.D.N.Y. 2005) ("*Enron I*"), because *Enron I* does not remain good law even in its own Circuit in light of the Second Circuit's subsequent decision in *Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V.*, 651 F.3d 329 (2d Cir. 2011) ("*Enron II*"), because *Enron I* is in any event contrary to the law of this Circuit, and because the transfers at issue in *Enron I* were factually distinguishable from the Share Repurchases. *See* Dismissal Order at 10-12.

13. The Dismissal Order is the law of the case, so it should apply here. *McDuffy v. Marsico*, 572 F. Supp. 2d 520, 524 (D. Del. 2008) ("[W]hen a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." (internal quotations omitted)).[3] It is, in any event, correct for the reasons noted.

II. SGAS Is A Financial Participant

14. The Bankruptcy Code defines "financial participant" as any entity that: (a) "at the time it enters into a securities contract," "at the time of the date of the filing of the petition," or "on any day during the 15-month period preceding the date of the filing of the petition" (b) "has one or more [securities contracts] . . . with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount

[3] SGAS incorporates by reference the alternative arguments set forth in Section I of the Argument Section of the CS/SSLLC Motion as to why the Share Repurchases are qualifying transactions and why the Trust waived the right to argue otherwise. *See* CS/SSLLC Motion ¶¶ 31-52.

outstanding (aggregated across counterparties)" or "has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties)," excluding agreements with affiliates. 11 U.S.C. § 101(22A)(A).

15. SGAS has demonstrated that it is a financial participant, and indeed the Trust agrees. *See* Firsenbaum Decl., Ex. 3 at 1. SGAS's Audited Financial Statement filed with the SEC shows that as of December 31, 2019, a date within 15 months of the petition date (October 12, 2020), SGAS had outstanding exchange-traded equity options contracts with gross notional amounts of $1,542,400,000 and outstanding futures contract positions with gross notional amounts of $5,509,900,000, *see supra* ¶ 6, amounts that far exceed the statutory threshold in two separate and independent ways.

CONCLUSION

16. For these reasons, SGAS respectfully requests that the Court enter the proposed order submitted herewith as **Exhibit A** granting the relief requested by the Motion and dismissing SGAS from this Adversary Proceeding with prejudice.

[*Signature Page Follows*]

Dated: February 18, 2025
Wilmington, Delaware

By: /s/ Gregory J. Flasser
Jeremy W. Ryan (No. 4057)
Gregory J. Flasser (No. 6154)
POTTER ANDERSON CORROON LLP
1313 N. Market Street, 6th Floor
Wilmington, Delaware 19801
Telephone: (302) 984-6000
Email: jryan@potteranderson.com
gflasser@potteranderson.com

-and-

Philip D. Anker *(admitted pro hac vice)*
Noah A. Levine *(admitted pro hac vice)*
Ross E. Firsenbaum *(admitted pro hac vice)*
Michael McGuinness *(admitted pro hac vice)*
Austin M. Chavez *(admitted pro hac vice)*
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, New York 10007
Telephone: (212) 230-8000
Email: philip.anker@wilmerhale.com
noah.levine@wilmerhale.com
ross.firsenbaum@wilmerhale.com
mike.mcguinness@wilmerhale.com
austin.chavez@wilmerhale.com

Counsel to Defendant SG Americas Securities, LLC