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.*,	**Re: Adv. D.I. 288, 315, 332, 438, 445, 479 & 480**
Defendants.	

REPLY MEMORANDUM IN SUPPORT OF MOTIONS TO DISMISS THE AMENDED COMPLAINT AS TO DEFENDANTS BARCLAYS CAPITAL INC., JANE STREET CAPITAL, LLC, AND VIRTU AMERICAS LLC PURSUANT TO THE PROTOCOL ORDER RELATING TO CONDUITS, NON-TRANSFEREES, "STOCKBROKERS," "FINANCIAL INSTITUTIONS," "FINANCIAL PARTICIPANTS," AND DISSOLVED ENTITIES

Dated: October 31, 2024

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1. Defendants BCI[1], Jane Street, and VAL (collectively the "Defendants") submit this reply memorandum in further support of their pending motions for dismissal from the Adversary Proceeding, and in response to *Plaintiff's Omnibus Opposition to Motions to Dismiss the Amended Complaint as to Defendants Barclays Capital Inc., Jane Street Capital, LLC, and Virtu Americas LLC* filed by the Trust on October 15, 2024 [D.I. 479, 480] (the "Opposition" or "Opp'n").

2. The Court should summarily grant the Motions because they do not present any novel issues for this Court to decide. The Trust concedes that each Defendant is a "qualifying participant" for purposes of the Section 546(e) safe harbor. Opp'n at 2 n.4. And while the Trust re-hashes the same arguments as to why it believes that the Share Repurchases are not "qualifying transactions"—arguments that this Court rejected in its September 5, 2024 *Memorandum Opinion and Order* [D.I. 460] (the "Dismissal Order")—it readily concedes that it is doing so merely "for purposes of making its record and preserving the qualifying-transaction issue for appeal." *Id.* at 2.

3. For all intents and purposes, the Opposition is a motion for reconsideration. Although it is not labeled as such, it asks the Court to reverse its Judgment [D.I. 461] and its ruling in the Dismissal Order that the Share Repurchases are "settlement payments" and therefore "qualifying transactions." Dismissal Order at 8-13.

4. The Court should decline to reconsider its prior (correct) ruling, as the Opposition falls well short of meeting the "stringent" standard for reconsideration under Rule 59(e). *See*

[1] Unless otherwise defined here, capitalized terms shall have the same meanings as set forth in the *Motion to Dismiss the Amended Complaint as to Barclays Capital Inc. Pursuant to the Protocol Order Relating to Conduits, Non-Transferees, "Stockbrokers", Financial Institutions," "Financial Participants," and " Dissolved Entities* [D.I. 288] (the "BCI Motion"), the *Motion to Dismiss the Amended Complaint as to Jane Street Capital, LLC Pursuant to the Protocol Order Relating to Conduits, Non-Transferees, "Stockbrokers", "Financial Institutions," "Financial Participants," and Dissolved Entities* [D.I. 315] (the "Jane Street Motion"), and *Defendant Virtu Americas LLC's Motion to Dismiss Pursuant to the Protocol Order Relating to Conduits, Non-Transferees, "Stockbrokers," "Financial Institutions," "Financial Participants," and Dissolved Entities* [D.I. 438 & 445] (the "VAL Motion", collectively with the BCI Motion and Jane Street Motion, the "Motions").

Chesapeake Appalachia, L.L.C. v. Scout Petroleum, LLC, 73 F. Supp. 3d 488, 491 (M.D. Pa. 2014), *aff'd*, 809 F.3d 746 (3d Cir. 2016). "The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." *Lazaridis v. Wehmer*, 591 F.3d 666, 669 (3d Cir. 2010) (internal quotations omitted). Such a motion is granted only (1) if there is "an intervening change in controlling law," (2) if there is newly available evidence, or (3) if there is a "need to correct clear error of law or prevent manifest injustice." *Id.* A "mere disagreement with the court does not translate into a clear error of law." *Scout*, 73 F. Supp. 3d at 491 (quoting *Mpala v. Smith*, 2007 WL 136750, at *2 (M.D. Pa. Jan. 16, 2007)).

5. The Opposition comes nowhere close to meeting this "stringent" standard. It identifies no new (or any) controlling authority the Court overlooked in the Dismissal Order, points to no new evidence that was unavailable to the Court at the time of the Dismissal Order, and identifies no "clear error of law" or "manifest injustice" caused by the Dismissal Order. It advances the same arguments that this Court rejected in its Dismissal Order. *Compare, e.g.*, *Plaintiff's Opp'n to Motion to Dismiss Citadel Securities and Susquehanna Securities from Amended Complaint*, D.I. 269 (the "CS/SSLLC Opp'n") ¶¶ 21-36 (arguing that under the "internal affairs doctrine," Irish law governs, and that the Share Repurchases were "void" under Irish law) *with* Opp'n ¶¶ 30-40 (arguing the same point); CS/SSLLC Opp'n ¶¶ 21, 41-45 (arguing that *Enron Corp. v. Bear, Stearns Int'l Ltd. (In re Enron Corp.)*, 323 B.R. 857 (Bankr. S.D.N.Y. 2005) ("*Enron I*"), controls and remains good law, despite being overruled by the Second Circuit in *Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V.*, 651 F.3d 329 (2d Cir. 2011) ("*Enron II*")) *with* Opp'n ¶¶ 28-29, 42-46 (arguing the same point); CS/SSLLC Opp'n ¶¶ 37-39 (arguing that because the Share Repurchases were void under Irish law, they do not qualify as transfers made

"in connection with a securities contract") *with* Opp'n ¶¶ 41 (arguing the same point). Reargument of the same points is "not a proper basis for reconsideration." *Lazaridis*, 591 F.3d at 669.[2]

6. The Court should also decline to revisit its prior ruling because it is the law of the case. "[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." *McDuffy v. Marisco*, 572 F. Supp. 2d 520, 524 (D. Del. 2008) (internal quotations omitted). A court should not revisit its prior decisions absent "extraordinary circumstances," which the Third Circuit has viewed as encompassing the three grounds for reconsideration under Rule 59(e). *Burtch v. Masiz (In re Vaso Active Pharms., Inc.)*, 500 B.R. 384, 398-99 (Bank. D. Del. 2013), *aff'd*, 537 B.R. 182 (D. Del. 2015). Since the Opposition falls well short of making that showing, no "extraordinary circumstances" are present here. *See id.* at 399 (denying request to reconsider prior ruling that was the subject of an appeal to the district court on the basis that prior ruling was law of the case).

7. Regardless, the Motions should be granted because the Court's Dismissal Order was correct. The Court accurately recognized that under binding Third Circuit precedent, the statutory term "settlement payment" is "extremely broad" and includes any "transfer of cash or securities made to complete a securities transaction." Dismissal Order at 9-13 (citing *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.*, 583 U.S. 366 (2018)). Applying that precedent, the Court held that the Share Repurchases, which involved the payment of cash for stock, were settlement payments and thus qualifying transactions for purposes of the

[2] While Plaintiffs seek to revisit this Court's ruling in its Judgment [D.I. 461] dismissing Citadel Securities, LLC, *et al.*, the same conclusion would follow under the framework for reconsideration under Rule 54(b). As district courts in this Circuit recognize, "[a] reconsideration motion should not be used to try to get a second bite at the apple or to raise new arguments or evidence that could have been proffered prior to the issuance of the order in question." *Pagan v. Dent*, 2024 WL 643264, at *2 (M.D. Pa. Feb. 15, 2024) (quoting *Qazizadeh v. Pinnacle Health Sys.*, 214 F. Supp. 3d 292, 295-96 (M.D. Pa. 2016)) (internal quotations omitted).

safe harbor. *See id.* The Court also correctly declined to follow *Enron I*, because *Enron I* is not good law even in its own Circuit in light of the Second Circuit's subsequent decision in *Enron II*, and because the transfers at issue in *Enron I* were factually distinguishable from the Share Repurchases.[3] *See* Dismissal Order at 10-12.

8. To the extent that the Trust expands somewhat on its "no preemption" argument (Opp'n ¶ 54), that point cannot serve as a basis for reconsideration. The Trust raised preemption during oral argument on May 14, 2024, *see* May 14, 2024 Hr'g Tr., D.I. 416 at 44:16-46:23, so the Court presumably considered—and rejected—the argument when it issued the Dismissal Order. *Lazaridis*, 591 F.3d at 669 (rejecting motion for reconsideration that "advanced the same arguments" because it was "not a proper basis for reconsideration"). It, like the rest of the Opposition, relies on no new controlling law, newly discovered evidence, or an intervening decision that warrants reconsideration.

9. The argument fails on the merits in any event. To begin, the Trust did not plead any claim that the Share Repurchases are *void ab initio* under Irish law. Rather, it asserted avoidance claims pursuant to U.S. federal and state law—so there is no Irish law to "preempt."

10. Moreover, application of the Section 546(e) safe harbor to the avoidance claims brought by the Trust against the Defendants would not preempt state (or for that matter foreign) law claims. Congress chose to protect certain institutions from avoidance actions brought in connection with bankruptcy proceedings in federal court by enacting Section 546(e), and that safe

[3] This Court correctly concluded that *Enron I* is inapplicable. Dismissal Order at 9-13. Notably, however, the Trust has also failed to even make the showing necessary under *Enron I* to avoid application of the safe harbor; its purported Irish law expert, Anne Harkin, did not opine that the Share Repurchases were void *ab initio*. *See* Opp'n, Ex. 1 ¶ 21. In fact, she specifically ***declined*** to render any such opinion. *Id.* ¶ 2 ("This declaration … does not (i) opine on whether any or all of the Companies Act requirements in respect of share redemptions by public companies were satisfied by Mallinckrodt in respect of the redemption of its ordinary shares during the Relevant Period or (ii) address the consequences of any such share redemptions being void under Irish law."). Even under the logic of *Enron I*, the Trust cannot avoid application of the Safe Harbor.

harbor has no impact on state (or foreign) fraudulent transfer actions filed when the debtor has not sought protection under federal bankruptcy law. Whether the Share Repurchases are settlement payments or transfers in connection with a securities contract is a question of statutory interpretation that turns on the plain language of the Bankruptcy Code applicable to federal bankruptcy proceedings. *See Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000). If Congress had wanted to carve out from the protections of Section 546(e) settlement payments or transfers made in connection with securities contracts that were supposedly "void" under the law of incorporation of the debtor, it would have done so. It chose not to, and it would be improper to read such a limitation into the statute. *See* 11 U.S.C. § 546(e); *see also id.* § 741(8); Dismissal Order at 15 ("If Congress meant to restrict the definition of financial [institution] [to 'a securities contract to which the transferee is a party'], it easily could have included such a modifier. That it chose not to do so is significant." (citing *Lomax v. Ortiz-Marquez*, 590 U.S. 595, 600 (2020)).

11. For these reasons, the Court should grant the Motions.

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