EXHIBIT 2

BEFORE THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION OF THE
UNITED STATES

In re	§	
	§	
Multi-District Litigation with regard to	§	
Structured Trust Advantaged	§	
Repackaged Securities ("STARS")	§	M.D.L. Docket No.
Transactions	§	
	§	

UNITED STATES' MEMORANDUM IN SUPPORT OF THE MOTION TO TRANSFER

INTRODUCTION

The United States files this Motion to Transfer pursuant to 28 U.S.C. § 1407 seeking a transfer of one case that is pending in the United States District Court for the District of Minnesota to the United States District Court for the District of Massachusetts for consolidation and/or coordination of pretrial proceedings with a case that is pending in the latter district. The United States is aware of one potential tag-along action involving common questions of fact with the actions actively pending in the District of Massachusetts and the District of Minnesota.

PRELIMINARY STATEMENT

From 1999 through 2007, Barclays Bancorp, PLC and KPMG, LLP designed, developed, marketed and implemented a tax advantaged transaction known as STARS, an acronym for "Structured Trust Advantaged Repackaged Securities," which appears to have involved the law firm of Sidley, Austin, Brown and Wood, LLP as well as other legal and accounting firms,

including in some instances Ernst & Young, LLP. There were six known STARS transactions examined by the Internal Revenue Service ("IRS"). Barclays Bancorp, PLC served as the counter-party in each of these transactions, which involved six US financial institutions, including four commercial banks and two thrifts. The STARS tax shelter is one variation of a category of highly abusive transactions identified by the IRS as "foreign tax credit generators." The STARS transaction involves a complicated, prearranged, multi-step process requiring the formation of a number of different entities, including a Delaware trust and multiple LLC's, for the express purpose of creating artificial foreign tax credits and interest deductions as part of an overall tax avoidance scheme devoid of economic substance or business purpose.

The IRS identified foreign tax credit generators, including STARS, as a tax issue of the highest significance, known as a "Tier I issue," and upon audit disallowed the claimed tax benefits generated by each of the six known STARS transactions, including those entered into by *Sovereign Bancorp* and *Wells Fargo.* (*Santander Holdings USA, Inc.* is the successor in interest to *Sovereign Bancorp.*) There are presently two pending district court cases in which taxpayers are contesting the Commissioner's disallowance of the claimed tax benefits generated by the STARS transactions, *Santander Holdings USA, Inc. & Subsidiaries v. United States*, Case No. 1:09-cv-11043-GAO (D. Mass.) and *Wells Fargo & Company v. United States,* Case No. 0:09-cv-02764-JPS-AJB (D. Minn.).[1] A third STARS transaction is under consideration by the

[1]There are also cases pending before the United States Tax Court (*Bank of New York Mellon v. Commissioner* (Dkt. No. 26683-09)) and in the United States Court of Federal Claims (*Salem Financial, Inc., as Successor-in-Interest to Branch Investments LLC v. United States* (Case. No. 10-192T)) in which the taxpayers are similarly contesting the Commissioner's disallowance of the claimed tax benefits generated separate STARS transactions. The Tax Court

Appeals Division of the IRS in North Carolina where the taxpayer is being represented by the same counsel representing the plaintiff in *Wells Fargo*. This matter has the potential of becoming a tag-along action. Finally, there are two separate STARS transactions at issue in cases pending before the United States Tax Court and the United States Court of Federal Claims. The petitioner in the Tax Court case is being represented by the same counsel representing the plaintiff in *Wells Fargo*. The plaintiff in the Court of Federal Claims case is being represented by the same counsel representing the plaintiff in *Santander Holdings USA*.

On June 17, 2009, Santander Holdings USA filed a complaint under 26 U.S.C. § 7422, in the United States District Court for the District of Massachusetts, seeking to contest the Commissioner's adjustments with respect to a STARS transaction and seeking to recover an alleged overpayment in federal income tax, penalties and interest for the taxable years 2003, 2004 and 2005 in the amount of $235,155,212. *Santander Holdings USA, Inc. & Subsidiaries v. United States*, Case No. 09-CV-11043-GAO (D. Mass.), Complaint, Dkt. 1, copy attached as Ex. A. On October 5, 2009, Wells Fargo & Company filed a complaint under 26 U.S.C. § 7422 in the United States District Court for the District of Minnesota seeking to contest the Commissioner's adjustments with respect to a STARS transaction and other tax issues, and seeking to recover an alleged overpayment in federal income taxes and interest for the taxable year 2003 in the amount of $162,301,710. *Wells Fargo & Company v. United States,* Case No.

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case was filed on November 11, 2009. The Court of Federal Claims case was very recently filed on March 30, 2010. The United States will likely seek, by stipulation, to coordinate elements of third party discovery in these two cases with the pending district court cases. *See Wilk v. AMA*, 635 F2d.1295, 1297 n.4 (7th Cir. 1981).

0:09-cv-02764-JPS-AJB (D. Minn.), Complaints, Dkt. 1, copy attached as Ex. B.

In each of these cases, the taxpayers allege that Barclays Bank, PLC, a corporation organized under the laws of England and Wales, served as the counter-party to the STARS transaction entered into by the U.S. taxpayer. In each of these cases, the STARS transaction at issue was promoted by the accounting firm of KPMG, LLP. In each of these cases, the taxpayers allege that they received and relied on opinion letters issued by the law firm of Sidley, Austin, Brown and Wood, LLP as well as opinion letters issued by KPMG, LLP. Each of these cases involve a series of common questions of fact that are highly complex, including whether the subject STARS transactions, either in whole or in part, lack economic substance or business purpose with the result that the entire transaction or the trust component of the transaction should be disregarded for federal income tax purposes; whether the actual substance of the STARS transactions is consistent with their form as purported "financing transactions," or whether, when stripping away the multiple layers of highly-complex structure, the STARS transactions simply operates to allow a U.S. taxpayer to claim foreign tax credits for the payment of a foreign tax, a significant part of which is circuitously refunded to it; whether the step transaction doctrine applies to require the steps of the purported financing transactions to be collapsed to eliminate all economically unnecessary and contrived steps; and whether the entire trust arrangement simply amounted to a circular flow of funds which has non-tax economic or non-tax business purposes.

Each case will involve time-consuming discovery of identical factual matters from identical third parties, including requesting Barclays to produce relevant documents and make its employees or former employees available for evidential testimony regarding their role in the

design, development, marketing and implementation of the STARS transactions. If Barclays does not voluntarily produce the requested documents, and/or improperly asserts privilege with respect to the requested documents and/or declines to make all of the requested employees available for evidential testimony, it will be necessary to file motions in the United States District Courts for the issuance of Letters Rogatory compelling such production or testimony. If such motions are granted by the District Courts, these letter requests would then need to be filed in an enforcement proceeding in a United Kingdom Court. In that event, it is anticipated that Barclays would vigorously challenge the enforcement of some or all of these requests, adding considerably to the time, expense and burden of obtaining this relevant information and critical testimony. Moreover, the need to file multiple Letters Rogatory in the United States District Courts, Court of Federal Claims, and United States Tax Court and multiple enforcement actions in the United Kingdom would be highly inefficient, time consuming and quite expensive.

The United States also anticipates taking between thirty and forty potentially identical third party depositions and evidential testimony in this complex litigation. Much of the evidential testimony could be taken in the United Kingdom and some may last for multiple days.

Consolidation of these cases for purposes of third party discovery and foreign fact finding will serve the convenience of the parties and witnesses and will promote the just and efficient conduct of the actions. The United States District Court for the District of Massachusetts is the most desirable forum for the pretrial proceedings since discovery in *Santander Holdings USA* has been ongoing since November 30, 2009 while discovery in *Wells Fargo* was only recently commenced on February 23, 2010. More importantly, the District of Massachusetts would be

significantly more convenient with respect to more than a dozen potential third party deponents/witnesses employed or formerly employed by Barclays Bank, PLC or Barclays Capital (the counter-party to the transactions at issue) who may be required to travel to the United States from the United Kingdom. Traveling to Boston from the United Kingdom will be clearly less time-consuming for the UK deponents/witnesses and less expensive for the parties than travel to Minneapolis-St. Paul. In addition, approximately a dozen third party witnesses from KPMG, LLP, one of the promoters of the STARS transaction, are located predominantly in the northeastern portion of the United States – near Boston and New York. For these potential third party deponents/witnesses, travel to Boston would be significantly more convenient than travel to Minneapolis-St. Paul, and would result in reduced travel expenses for the parties. Further, virtually all of the party witnesses from Santander Holdings USA are located in either Boston or Philadelphia.

In a letter to Judge Schiltz dated March 10, 2010, counsel for Wells Fargo stressed that in determining the location of the transferee court, consideration should be given to the convenience of the parties and witnesses. Specifically, counsel for Wells Fargo stated: "While most of Wells Fargo's witnesses are located in Minnesota, some are located in California and Nevada, and discovery will involve documents and witnesses outside the United States." The United States agrees that most of the Wells Fargo corporate witnesses reside in Minnesota while only a handful reside in the western United States. However, most of the third party deponents/witnesses in *Wells Fargo* on the STARS transaction reside in either the northeastern portion of the United States or the United Kingdom. Taking into account the location of all

potential deponents/witnesses in both *Santander Holdings USA* and *Wells Fargo*, it is overwhelmingly clear that the convenience of the parties and witnesses would be best promoted by transferring the consolidated pretrial proceedings to the District of Massachusetts.

Santander Holdings USA is assigned to United States District Court Judge George A. O'Toole, Jr. (District of Massachusetts). *Wells Fargo* is assigned to United States District Court Judge Patrick J. Schiltz (District of Minnesota). Both Judge O'Toole and Judge Schiltz indicated that they would be unable to serve as the transferee judge should the Panel order consolidation of the pretrial proceedings in these two docketed cases. Counsel for Santander Holdings USA and Wells Fargo object to the granting of this motion.

ARGUMENT

28 U.S.C. § 1407 authorizes this Panel to temporarily transfer civil actions involving one or more common questions of fact pending in different districts to any district for coordinated or consolidated pretrial proceedings upon a determination that such transfers will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. The two pending district court cases will be developed for trial in two different districts, and will involve common questions of fact and common third party witnesses. Consolidated or coordinated pretrial proceedings will promote the just and efficient conduct of these cases and will afford convenience to the parties. In particular, the coordination or consolidation of pretrial discovery will allow the parties to save time and expense by avoiding duplicative discovery and will also minimize the burden on numerous non-parties who would otherwise be compelled to produce identical sets of voluminous documents and to testify on the same complex subject

matters in at least two different district court actions. Such duplicative discovery would be especially onerous on the parties in these cases because most of the non-party witnesses do not reside in the districts of litigation. Indeed, most of the non-party witnesses for Barclays Bank, PLC and Barclays Capital reside in the United Kingdom.

A. Common Questions of Fact

It is well established that "[t]he purpose of 28 U.S.C. § 1407(a) is to promote the just and efficient conduct of multidistrict actions, in part by eliminating the potential for conflicting contemporaneous rulings by coordinate district and appellate courts." *In re Crash off Long Island, NY, on July 17, 1996*, MDL No. 1161, 965 F. Supp. 5, 7 (S.D.N.Y. 1997) (internal quotation marks omitted). Moreover, centralization "is necessary in order to avoid duplication of discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary." *Id.* The two cases at issue involve the organization, promotion and/or sale of the STARS transaction by Barclays Bank, PLC and KPMG, LLP and the participation of the law firm of Sidley, Austin, Brown and Wood, LLP in the preparation of opinion letters. These cases involve common questions of fact. This Panel has consolidated and transferred matters for pretrial proceedings when it found that they involved the same allegedly abusive tax shelter. *See In re Tax Refund Litigation*, MDL No. 87-731, 723 F. Supp. 922, 924 (E.D.N.Y. 1989); *see also Transfer Order, In re COBRA Tax Shelters Litigation,* MDL No. 1727 (2005).

Whether STARS is in fact an abusive tax shelter lacking economic substance and business purpose, whether the actual substance of STARS is consistent with its form as a purported financing transaction, whether the steps of STARS should be collapsed for federal

income tax purposes or whether STARS simply represents a circular flow of funds with no real non-tax economic or business purpose, as the government contends, will depend upon an analysis of a set of complex facts which are essentially identical in the two docketed cases. The two matters will also certainly require an array of expert testimony on different financial, regulatory and foreign tax issues. Under circumstances such as these, this Panel has determined that transfer for consolidated pretrial proceedings is appropriate. *See In re Annoxicillin Patent and Antitrust Litigation*, Jud. Pan. Mult. Lit., 449 F. Supp. 601 (1978); *In re Transocean Tender Offer Securities Litigation*, Jud. Pan. Mult. Lit., 415 F. Supp. 382 (1976).

The STARS foreign tax credit generator schemes are nothing more than abusive tax shelters in which Barclays Bank, PLC provided kickbacks to accommodating U.S. financial institutions as payments for their willing participation in sham transactions devoid of economic substance and business purpose. Consolidation of discovery is particularly appropriate in tax shelter matters because pattern evidence showing that the same generic tax product was sold to other non-party investors is highly relevant to prove the existence of a sham transaction or that the transactions are all minutely choreographed in the same manner and share the same fundamental tax-driven steps. Indeed, one of the indicia of sham is the fact that a transaction had been structured identically for all participants. *Jade Trading, LLC v. United States*, 65 Fed.Cl. 188 (2005). Moreover, evidence of a promoters' dealings with participants other than the plaintiff is "admissible in order to determine whether the transactions with [plaintiffs were] bona fide." *Id.*.at 972 n.6. In analyzing whether the transactions at issue were shams, the Court noted that the contracts at issue operated identically for all other participants. *Id.* at 988.

Counsel for plaintiffs have indicated that they will oppose the government's efforts to introduce evidence of similar transactions by arguing that each STARS transaction was altogether unique and carefully developed to satisfy the particular needs of each client. Accordingly, they will argue that evidence regarding other STARS transactions has no relevance to their particular case. Nothing could be further from the truth. The STARS transactions in litigation were substantively identical even though they were designed with some very minor technical variations. Transferring the STARS cases to a single judicial district for pretrial proceedings would only highlight the clear similarities and common tax avoidance purpose behind these transactions.

B. Just and Efficient Conduct of the Actions and Convenience of Parties and Witnesses

It has been stated that "[i]n enacting Section 1407, Congress intended to provide centralized management of pretrial proceedings and to ensure their just and efficient conduct." *United States ex rel. Pogue v. Diabetes Treatment Centers*, 238 F.Supp.2d 270, 273 (D.D.C. 2002) (internal quotation marks omitted). Therefore, "[a] principal purpose of Section 1407 is to allow one judge to take control of complex proceedings, the better to avoid unnecessary duplication in discovery." *Matter of Orthopedic Bone Screw Products*, MDL No. 1014, 79 F.3d 46, 48 (7th Cir. 1996).

Since the two matters in question involve the same tax product/transaction and many of the same third parties, especially third parties employed or formerly employed by Barclays Bank, PLC and KPMG, LLP, a significant portion of the third party discovery will be on the same subject and directed to the same witnesses. As the transactions involved are highly complex, it

would be much more convenient for the parties and the third party witnesses if the same judge presided over all pretrial proceedings. There are also two other actions involving STARS transactions pending before the United States Tax Court and the United States Court of Federal Claims. The United States will seek, by stipulation, to coordinate elements of third party discovery in the Tax Court and Court of Federal Claims cases with the two district court refund cases.

The United States has made significant efforts to informally coordinate discovery relating to non-party witnesses with the plaintiffs' counsel in *Santander Holdings USA* and *Wells Fargo.* To date, these efforts to informally coordinate discovery have been unsuccessful. Negotiations are at a standstill and there is no indication that the situation will improve. Moreover, because the parties disagree fundamentally regarding the scope of permissive discovery in this complex litigation, it is likely that there will be numerous discovery disputes, not only initiated by the taxpayers' counsel for Santander Holdings USA and Wells Fargo, but also by counsel representing the professional firms promoting the STARS tax shelter, which include Barclays Bank, PLC, KPMG, LLP and Sidley, Austin, Brown & Wood, LLP. Failure to consolidate pretrial proceedings could thus result in a plethora of redundant pretrial judicial rulings, with the possibility of inconsistent or conflicting rulings, not to mention the obvious waste of judicial resources.

During conference calls and meetings with the United States, counsel for Wells Fargo expressed concerns that they would not be able to attend third party depositions taken by the

United States in *Santander Holdings USA*. Specifically, Wells Fargo's counsel raised concerns that they would be unable to conduct cross-examinations or raise timely objections with respect to third party deponents in *Santander Holdings USA* whose testimony regarding STARS may have relevance in the *Wells Fargo* action. Similarly, counsel for Santander Holdings USA expressed the same concerns with respect to third party depositions taken in the *Wells Fargo* matter. The United States believes that the procedural concerns expressed by both counsel for Santander Holdings USA and Wells Fargo would be addressed by the granting of this motion. The transfer of these cases to the same judge for the purpose of consolidating and coordinating depositions and other pretrial proceedings would alleviate the common procedural concerns expressed by plaintiffs' counsel in both docketed cases. As a result of consolidation, all cases would have the same MDL caption and plaintiffs' counsel would be entitled to participate fully in all third party discovery. In addition, consolidation would eliminate duplicative non-party depositions thereby making such depositions more efficient, more productive and substantially less expensive. The parties would only have to depose a non-party witness once.

The granting of the motion by this panel would not inconvenience either the parties or witnesses to these actions. Witnesses would not be required to travel to Massachusetts from Minnesota. The depositions of witnesses located in Minnesota would still largely take place in Minnesota. More importantly, transfer will minimize the burden on numerous non-party deponents who would otherwise be compelled to produce identical sets of voluminous documents and to testify on the same complex subject matters in each of these separate court actions. Such duplicative discovery would be especially onerous on the parties in these cases because most of

the non-party witnesses do not reside in the districts of litigation.

The United States acknowledges that the benefits derived by transferring these cases to a single judicial district will not streamline all docketed matters involving the STARS litigation since the cases pending before the United States Tax Court and the United States Court of Federal Claims cannot be consolidated with the Massachusetts and Minnesota cases under section 1407. The fact that the STARS cases pending before the United States Tax Court and the United States Court of Federal Claims cannot be transferred does not mean that the cases that do fall within the Panel's jurisdiction should not be transferred. Transfer and consolidation of the two pending District Court cases to a single judicial district will still result in tremendous judicial efficiencies, preventing inconsistent pretrial rulings and duplicative discovery. *See Murfam Farms, LLC et al. v. United States et al.,* Case. Nos. 06-245T, 06,246T, and 06-247T (where the Court of Federal Claims issued scheduling orders that were identical to those issued by a transferee judge in a multidistrict litigation proceeding for In re COBRA Tax Shelters Litigation, MDL No. 1727). In addition, upon the transfer of the Minnesota case to Massachusetts, both the United States Tax Court and the United States Court of Federal Claims may give consideration to the pretrial rulings of the transferee court assigned by the Panel to oversee the massive amount of third party discovery that will be undertaken in the District Court cases.

While it is hoped that Barclays will informally produce all relevant case documents and make all STARS-involved witnesses available for evidential testimony, it is far from clear that Barclays will be fully cooperative with our requests for documentary and testimonial evidence. Consequently, it is quite possible that the United States will ultimately be required to file separate

motions in one or more STARS cases requesting the issuance by U.S. courts of Letters Rogatory (known in England as "Letters of Request"). If such motions are granted, the United States would then need to seek to enforce such letter requests by obtaining orders from United Kingdom courts for evidentiary documents and evidentiary testimony relating to the design, development, marketing or implementation of STARS by Barclays Bank, PLC and Barclays Capital. This would require the parties to retain United Kingdom barristers in each STARS case for purposes of obtaining orders from the UK courts compelling Barclays to produce all relevant evidentiary documents and make available all knowledgeable witnesses for evidentiary testimony. Being required to file multiple Letters Rogatory motions in the U.S. courts and apply to the UK courts multiple times for their enforcement would be highly expensive, wasteful and inefficient for the courts (domestic and foreign), the parties and the witnesses. Consolidation of the STARS proceedings will avoid the need to file multiple Letters Rogatory actions in the U.S. and UK courts. One set of actions would be required resulting in substantially reduced costs to the parties.

Counsel for Wells Fargo has indicated that its may be disadvantaged by a transfer of the pretrial proceedings from the Minnesota District (Eighth Circuit) to the Massachusetts District (First Circuit). Specifically, counsel for Wells Fargo believes the decision in *IES v. United States*, 253 F. 3d 350 (8th Cir. 2001) involving the treatment of foreign tax credits in calculating pre-tax profit provides their client a favorable forum in which to litigate their case and that transferring pretrial proceedings outside of the Eighth Circuit would eliminate that perceived advantage in the event the parties file dispositive motions, for summary judgment or partial

summary judgment, while the case is pending in the transferee court. The United States disagrees that the *IES* case is either applicable or advantageous to Wells Fargo. However, *assuming arguendo* that the *IES* case affords some benefit to the plaintiff in the Eighth Circuit, Wells Fargo would not be deprived of that benefit merely due to the temporary transfer of the case to the First Circuit under section 1407. Case law under section 1407 clearly bears out that transferee courts typically apply the substantive law of transferor courts in diversity cases and even in federal questions cases. *See, e.g., Jane v. Royal Jordanian Airlines Corp.,* 502 F. Supp. 848, 851 (S.D.N.Y. 1980) (defendant's amenability to suit is governed by law of the transferor state in a diversity case); *Windbourne v. Eastern Airlines, Inc.,* 479 F. Supp. 1130, 1142-45 (E.D.N.Y. 1979) (where action was transferred from District Court in Louisiana, Louisiana law would govern capacity to sue), *rev'd on other grounds,* 632 F.2d 219 (2d Cir. 1980); *Stirling v. Chemical Bank,* 382 F. Supp. 1146, 1150-51 (S.D.N.Y. 1974); (§ 1407 court applied the law of the transferor forum as to who could maintain an action for damages under § 110(b) of the Securities Exchange Act of 1934 and the Securities Act of 1933), *aff'd. per curiam,* 516 F.2d 1396 (2d Cir. 1975); *In re Four Seasons Sec. Laws Litig.,* 370 F. Supp. 219, 236 (W.D. Okla. 1974) (transferee court applied the law of the transferor court as to what had to be proved to permit recovery under the federal securities laws). Accordingly, to the extent the Eighth Circuit affords any perceived advantages to Wells Fargo, the mere transfer of the case to the First Circuit under section 1407 would not prevent the plaintiff from receiving the same treatment merely because the transferee court is located outside the Eighth Circuit.

Further, the United States is willing to enter a stipulation with Wells Fargo in which the

parties agree to refrain from filing dispositive motions until the case is returned to the District of Minnesota following the conclusion of pretrial proceedings. Such a stipulation should allay any concerns that a transfer will disadvantage Wells Fargo.

The United States also anticipates that Wells Fargo will oppose the granting of the motion to transfer by arguing that the action filed in the District of Minnesota is not appropriate for consolidated discovery since the matter involves four separate claims unrelated to the STARS transaction. These four separate claims involve: (1) whether certain California Franchise tax payments are deductable in a particular tax year; (2) whether claimed deductions relating to sale-leaseback transactions are allowable; (3) whether the taxpayer may use a certain method of accounting with respect to certain loan fees; and (4) a computational issue relating to the netting of interest. The United States believes that these non-STARS issues will require minimal discovery and will likely be resolved without trial. However, the mere fact that some small amount of discovery may be required with respect to these separate non-STARS issues should not preclude the transfer and consolidation of these STARS cases.

There are clearly methods easily available to manage unique claims in multidistrict litigation. "The transferee judge, of course, has the authority to group the pretrial proceedings on different discovery tracks according to the common factual issues or according to each defendant if necessary for the just and efficient conduct of the litigation, and to schedule any discovery unique to particular parties, actions or claims to proceed in separate discovery tracks concurrently with the common discovery, thus enhancing the efficient processing of all aspects of the litigation." *In re Multi-Piece Rim Products Liability Litigation,* 464 F.Supp. 969, 974 (J.P.M.L.

1979). The non-STARS claims in *Wells Fargo* may proceed, if necessary, on separate discovery tracks concurrently with the common STARS-related discovery thereby enhancing the efficient processing of all aspects of the STARS litigation.

Finally, in anticipation of filing this motion, the parties contacted the respective judges assigned to *Santander Holdings USA* (Hon. George O'Toole) and *Wells Fargo* (Hon. Patrick J. Schiltz) to determine whether either would be available to serve as the transferee judge should this Panel grant the United States' Motion to Transfer. Both Judge O'Toole and Judge Schiltz have advised the respective parties that each will be unable to serve as the transferee judge should these proceedings be consolidated by the Panel. Accordingly, should this Panel grant the United States' Motion to Transfer, it will be required to assign a transferee judge other than one currently assigned responsibility for *Santander Holdings USA* and *Wells Fargo*.

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CONCLUSION

Based on the foregoing, the United States respectfully requests that this Panel grant its Motion to Transfer.

Respectfully submitted,

Dated: April 28, 2010

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