UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAYOR AND CITY COUNCIL OF BALTIMORE, MARYLAND, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

CITIGROUP, INC., ET. AL.,

Defendants.

08 Cv. 7746 (BSJ)
Order

RUSSELL MAYFIELD, PAUL WALTON, and JOHN ABBOTT, individually on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

CITIGROUP, INC., ET. AL.,

Defendants.

08 Cv. 7747 (BSJ)
Order

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

On September 4, 2008, Plaintiff Mayor and City of Baltimore filed a class action suit against Defendants Citigroup, Inc., Citigroup Global Markets, Inc., UBS AG, UBS Securities, LLC, UBS Financial Services, Inc., Merrill Lynch & Co., Inc., Morgan Staley, Lehman Brothers Holdings, Inc., Bank of America Corp., Wachovia Corp., Wachovia Securities, LLC, Wachovia Capital

Markets, LLC, The Goldman Sachs Group, Inc., JP Morgan Chase & Co., Royal Bank of Canada, and Deutsche Bank, AG. (collectively "Defendants") alleging antitrust violations on behalf of issuers of auction rate securities (collectively "Issuers"). On September 4, 2008, Plaintiffs Russell Mayfield, Paul Walton, and John Abbott filed a class action suit against Defendants alleging antitrust violations on behalf of investors in auction rate securities (collectively "Investors"). On January 15, 2009, Defendants filed a Motion to Dismiss both complaints under Fed. R. Civ. P. 12(b)(6). For the reasons stated below, Defendants Motion to Dismiss is GRANTED.[1]

Background[2]

In their Complaint, Plaintiff Mayor and City of Baltimore, an issuer of auction rate securities ("ARS"), bring a class action on behalf of all persons or entities that issued ARS underwritten by Defendants between May 12, 2003 and February 13, 2008. (Issuer Compl. ¶ 38.) In their Complaint, Plaintiffs Russell Mayfield, Paul Walton, and John Abbott, investors in ARS, bring a class action on behalf of all persons or entities who acquired ARS from Defendants or their co-conspirators and held those securities as of February 13, 2008. (Investor Compl.

[1] Defendants' Motion to Dismiss as well as Plaintiffs' submissions addressed both the Investor and Issuer Complaints. This order shall likewise address both pending matters.

[2] The following facts are taken from the allegations in Plaintiffs' Complaints and are assumed to be true for the purposes of this decision only.

¶ 39.) Both Complaints allege a single claim for violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

ARS are municipal bonds, corporate bonds and preferred stocks with interest rates or dividend yields that are periodically reset through auctions. (Investor Compl. ¶ 49; Issuer Compl. ¶ 47.) The terms of each ARS, such as the frequency of the auctions and the debt maturity dates, vary from security to security, and are set forth in a unique prospectus for each ARS. (See Investor Compl. ¶ 51; Issuer Compl. ¶ 49.) Auctions for each ARS were managed by one or more broker-dealers selected by the issuer of that particular ARS. (Investor Compl. ¶ 58; Issuer Compl. ¶ 57.) There were "at a minimum, thousands" of issuers and purchasers of ARS during the class period, and each issuer may have engaged in multiple ARS offerings, each with its own separate auctions. (Investor Compl. ¶ 40; Issuer Compl. ¶ 39.)

In an ARS auction, each broker-dealer managing that auction would receive bids from investors and could submit bids to purchase ARS for that broker-dealer's own account. (Investor Compl. ¶¶ 54, 59; Issuer Compl. ¶¶ 52, 58.) If sufficient bids were received (from investors or from the broker-dealer's own accounts) to purchase all ARS available for sale in that auction, a "clearing" interest rate payable to investors by the ARS issuer during the succeeding period would be set based on

the winning bids, and the ARS would be distributed to the winning bidders. (Investor Compl. ¶¶ 52-55, 60; Issuer Compl. ¶¶ 50-53, 59.) If insufficient bids were received to purchase all ARS offered in an auction, that auction would "fail" in whole or in part. The issuer then would pay a prospectus-defined interest rate (sometimes called the "maximum rate") on the ARS for the succeeding period, while the ARS holders would continue holding their ARS until the next auction. (Investor Compl. ¶¶ 56-57; Issuer Compl. ¶¶ 54-56.)

Investors were required to submit an order to the broker-dealer by a deadline set by the broker-dealer, which was usually set early enough for the broker-dealer to process and analyze the orders before the auction was finalized. This provided broker-dealers sufficient time to place orders from their own accounts and prevent auctions from failing where they otherwise would have failed due to insufficient demand. (Investor Compl. ¶ 59; Issuer Compl. ¶ 58.) Historically, broker-dealers placed orders to prevent auction failures and maintain liquidity in the ARS market. (See Investor Compl. ¶ 70; Issuer Compl. ¶ 69.)

In the summer of 2007, demand for ARS among corporate and institutional clients declined and Defendants began purchasing large numbers of ARS into their own inventories to prevent auction failures. (Investor Compl. ¶ 81; Issuer Compl. ¶ 80.) By fall and winter of 2007, demand continued to decline and

Defendants began limiting the amount of ARS inventory they would take on. (Investor Compl. ¶ 82; Issuer Compl. ¶ 81.)

On February 13, 2008, it was disclosed that Defendant UBS, the second largest underwriter of ARS would no longer support the auction market. Virtually every other major broker-dealer, including Defendants Goldman Sachs, Lehmann Brothers, Citigroup, and Merrill Lynch, adopted a similar policy. (Investor Compl. ¶ 95; Issuer Compl. ¶ 94.) Without broker-dealer support, 87% of all ARS auctions held that day failed. (Investor Compl. ¶ 94; Issuer Compl. ¶ 93.) As a result of this market failure, ARS became illiquid and the issuers of those securities were required to pay the prospectus-defined maximum interest rates. (Investor Compl. ¶ 94; Issuer Compl. ¶ 95.)

Plaintiffs allege that Defendants acted collectively to withdraw support for the ARS market, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. (Investor Compl. ¶ 110-113; Issuer Compl. ¶ 110-113.)

Legal Standard

When considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for "failure to state a claim upon which relief can be granted," a district court must accept the allegations contained in the complaint as true and draw all reasonable inferences in favor of the non-moving party. Burnette v. Carothers, 192 F.3d 52, 56 (2d Cir. 1999). Under

that standard, "once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1969 (2007) (citing Sanjuan v. American Bd. of Psychiatry and Neurology, Inc., 40 F.3d 247, 251 (7th Cir. 1994) (once a claim for relief has been stated, a plaintiff "receives the benefit of imagination, so long as the hypotheses are consistent with the complaint")). However, a court need not defer to sweeping and unsupported allegations and conclusions of law in evaluating the sufficiency of a complaint. See Hirsch v. Arthur Anderson & Co., 72 F.3d 1085, 1092 (2d Cir. 1996); First Nat'l Bank v. Gelt Funding Corp., 27 F.3d 763, 771-72 (2d Cir. 1994).

In deciding a 12(b)(6) motion, "[t]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Villager Pond, Inc. v. Town of Darien, 56 F.3d 375, 378 (2d Cir. 1995) (quoting Scheuer v. Rhodes, 416 U.S. 232, 235-36 (1974)). Thus, "the office of a motion to dismiss is merely to assess the legal feasibility of a complaint, not to assay the weight of the evidence which might be offered in support thereof." Eternity Global Master Fund Ltd. V. Morgan Guar. Trust Co. of N.Y., 375 F.3d 168, 176 (2d Cir. 2004) (quoting Geisler v. Petrocelli, 616 F.2d 636, 639 (2d Cir. 1980)).

Analysis

Defendants contend that "governing law makes plain that Plaintiffs' antitrust claim is precluded by the securities laws and must be dismissed." (Pl.'s Mem. At 2.) The Court agrees.

I. Credit Suisse Secs. (USA) LLC v. Billing

The United States Supreme Court addressed preclusion of securities antitrust lawsuits in Credit Suisse Secs. (USA) LLC v. Billing, 127 S. Ct. 2383 (2007). In Billing, a group of securities buyers ("Buyers") filed an antitrust lawsuit against underwriting firms ("Underwriters") that market and distribute newly-issued securities ("IPOs"). Buyers claimed that Underwriters unlawfully conspired to withhold shares of popular IPOs from Buyers unless Buyers agreed to purchase additional shares at escalating prices, pay Underwriters unusually high commissions on subsequent security purchases, and/or purchase other less desirable securities from underwriters, in violation of Section 1 of the Sherman Act, Section 2 (c) of the Clayton Act, and state antitrust laws. Underwriters moved to dismiss Buyers' antitrust claims, arguing that the federal securities laws implicitly precluded application of the antitrust laws to the Conduct at Issue.

According to Billing, "when a court decides whether securities law precludes antitrust law, it is deciding whether, given context and likely consequences, there is a 'clear

repugnancy' between the securities law and the antitrust complaint. . . [or] whether the two are 'clearly incompatible.'" Id. At 2392. Such clear repugnancy or incompatibility is determined if four critical factors exist:

> "(1) an area of conduct squarely within the heartland of securities regulations;
> (2) clear and adequate SEC authority to regulate;
> (3) active and ongoing agency regulation; and
> (4) a serious conflict between the antitrust and regulatory regimes."

Id. at 2397.

After applying these factors, the Billing Court concluded that the federal securities laws implicitly precluded application of the antitrust laws to the conduct at issue. Under the first factor, the Court found that Underwriters' efforts to promote and sell IPOs were "central to the proper functioning of a well-regulated capital market" and "lie at the very heart of the securities marketing enterprise." Id. at 2392. Under the second factor, the Court found that the securities laws granted the United States Securities and Exchange Commission (the "SEC") authority to supervise the conduct at issue, including the power to "forbid, permit, encourage, discourage, tolerate, limit, and otherwise regulate virtually every aspect of the practices in which underwriters engage." Id. at 2392-93 (citing 15 U.S.C. §§ 77b(a)(3), 77j, 77z-2, 78o(c)(2)(D), 78i(a)(6), and 78j (b)). Under the third factor,

the Court found that the SEC has continuously exercised its authority to regulate the IPO transaction process, such as regulating IPO communications and bringing actions against underwriters who violate IPO regulations.

The fourth factor was the pivotal consideration before the Court. The Court found that there was a serious conflict between the securities laws and antitrust laws citing: (1) the fine line separating the activity that the SEC permits from the activity that the SEC forbids (2) "the need for securities-related expertise"; (3) "the overlapping evidence from which reasonable but contradictory inferences may be drawn"; and (4) the risk of inconsistent court results in factually similar circumstances. Id. at 2394-96. The Court stated that "antitrust courts are likely to make unusually serious mistakes," and the threat of such mistakes may cause Underwriters to act in ways that will avoid "a wide range of joint conduct that the securities law permits or encourages (but which [Underwriters] fear could lead to an antitrust lawsuit and the risk of treble damages)." Id. at 2395-96.

Furthermore, the Court determined that "any enforcement-related need for an antitrust lawsuit is unusually small." Id. at 2396. First, the Court pointed to the ongoing SEC regulation of the IPO market outlined under the third factor, noting that the "SEC is itself required to take account of competitive

considerations when it creates securities-related policy and embodies it in rules and regulations." Id. (citing 15 U.S.C. § 77b(b) (instructing the SEC to consider, "in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation"); 15 U.S.C. § 78w(a)(2) (the SEC "shall consider among other matters the impact any such rule or regulation would have on competition")). Second, the Court found that Buyers had the opportunity to challenge Underwriter practices by bringing lawsuits under the securities law, which has distinct procedural requirements. "To permit an antitrust lawsuit risks circumventing these requirements by permitting plaintiffs to dress what is essentially a securities complaint in antitrust clothing." Id.

After determining that the four factors were satisfied, the Court concluded that, within the IPO context at issue, the securities laws were clearly incompatible with the application of the antitrust laws.

II. Implied immunity in the ARS market

In this case, Defendants argue that "Plaintiff's antitrust claim. . . is barred by this doctrine of implied immunity because it concerns alleged conduct. . . that has been closely monitored, investigated and regulated by the SEC for years, and the SEC's continuing regulation of ARS is 'clearly incompatible'

with the antitrust laws. . . . All four Billing factors are met here." (Pl. Mem. at 6-7.) The Court agrees.

A. Heartland of Securities Regulation

The auction rate securities market lies squarely within an area of market activity that the securities laws seek to regulate. ARS comprise $330 billion of debt securities involving a variety of financial market participants including individual, fund and corporate investors; municipal and corporate issuers; and broker-dealers. (See Investor Compl. ¶ 50; Issuer Compl. ¶ 48.) As with the IPO process at issue in Billing, ARS raise capital for municipalities and corporations and provide a means to spread ownership and diversify risk. See Billing, 127 S. Ct. at 2392. As the SEC stated in a recent no-action letter, the "mission of the Commission[] to protect investors, maintain fair and orderly securities markets, and facilitate capital formation. . . extends to the market for auction rate municipal securities." Municipal Auction Rate Securities, 2008 SEC No-Act. LEXIS 396, at *1.

B. Clear and adequate authority

There is "clear and adequate SEC authority to regulate" the ARS market, including the alleged practices challenged by the Plaintiffs. Plaintiffs concede that the SEC has the authority to regulate "registration, reporting and disclosures" of ARS. (Opp'n Mem. at 16.) The SEC also has authority "to prohibit the

full range of ingenious devices that might be used to manipulate securities prices." Santa Fe Indus. v. Green, 430 U.S. 462, 477 (U.S. 1977). Specifically, the SEC may prohibit broker-dealers from effecting a transaction in a security or attempting to induce the purchase or sale of a security "by means of any manipulative, deceptive, or other fraudulent device or contrivance" under 15 U.S.C. § 78o(c) and may prohibit manipulation in connection with the purchase or sale of any security under 15 U.S.C. § 78j(b). These provisions were also cited in Billing to establish the Second Factor. See Billing, 127 S. Ct. at 2393. As in Billing, "the SEC possesses considerable power to forbid, permit, encourage, discourage, tolerate, limit or otherwise regulate virtually every aspect" of the ARS market. Id. at 2392.

C. Exercise of SEC Authority

The SEC has actively exercised its authority to investigate and regulate the ARS market, including the alleged practices challenged by the Plaintiffs. Plaintiffs do not dispute that the SEC has actively regulated "registration, reporting, and disclosures" in the ARS market. In fact, in the Investor and Issuer Complaints, Plaintiffs describe a 2004 SEC investigation into the "practices by which broker-dealers could influence the auction markets." (Investor Compl. ¶ 73; Issuer Compl. ¶ 74.) As part of this investigation, the SEC also probed

prioritization of auction bids, internal broker-dealer bidding deadlines, compensation paid to investors, and communications between broker-dealers and investors. (Investor Compl. ¶ 74; Issuer Compl. ¶ 75.) This led to a May 31, 2006 administrative proceeding regarding auction practices and a consent decree directing broker-dealers, including most of the Defendants in this case, "to disclose certain practices and to cease engaging in other practices." The decree also indicated that the SEC had explored collective conduct related to preventing market failure and setting of artificial market rates. (Investor Compl. ¶ 73; Issuer Compl. ¶ 74.)

Furthermore, the SEC has undertaken an ongoing investigation into the specific events at issue in this case: the collapse of the ARS market in February 2008. On September 8, 2008, the SEC's Director of Enforcement Linda Thomsen testified before Congress regarding the SEC's "efforts in response to the freezing of the [ARS] market in mid-February 2008." Specifically, Ms. Thomsen explained that the SEC was investigating "the reasons why the firms stopped supporting the auctions in mid-February." Hearing Before the H. Comm. on Fin. Servs., 110th Cong., at 3 (Sept. 18, 2008) (Youngwood Decl., Ex. N.) As Billing explains, this investigation is statutorily required "to take account of competitive considerations," such

as the antitrust law violation alleged by Plaintiffs in this case. Billing, 127 S. Ct. at 2396.

The SEC subsequently proposed new rules for ARS broker-dealers and reached settlements requiring a number of broker-dealers to purchase ARS held by clients at par value, including a nearly $30 billion settlement with Defendants Citigroup and UBS described by SEC Chairman Christopher Cox as "the largest in SEC history, and represent[ing] the largest return of customer money in the agency's 75 years." SEC Press Release 2008-290 (Dec. 11, 2008) (announcing SEC settlement with Citigroup Global Markets, Inc. and UBS Financial Services, Inc.) (Youngwood Decl., Ex. U); Proposed Rule Change to MSRB Rule G-8, Exchange Act Release No. 34-59873 (May 6, 2009) (requiring broker-dealers to maintain certain records relating to ARS) (Youngwood Dec. 4, 2009 Letter, Ex. A).[3] The SEC also filed civil complaints against various broker-dealers alleging, among other charges, manipulative conduct under 15 U.S.C. § 78o(c) relating to the collapse of the ARS market in February 2008. See SEC v. Banc of America Securities LLC, No. 09 Civ. 5170 (S.D.N.Y. filed June 3, 2009); SEC v. RBC Capital Markets Corp., No. 09 Civ. 5172 (S.D.N.Y. filed June 3, 2009); SEC v. Deutsche Bank Securities Inc., No. 09 Civ. 5174 (S.D.N.Y. filed June 3, 2009); SEC v.

[3] See also SEC Press Release 2008-246 (Oct. 8, 2008) (announcing SEC settlement with RBC Capital Markets Corp.) (Youngwood Decl., Ex. S); SEC Press Release 2008-247 (Oct. 8, 2008) (announcing SEC settlement with Bank of America) (Youngwood Decl., Ex. T).

Morgan Keegan & Co. Inc, No. 09 Civ. 1965 (N.D. Ga. filed July 21, 2009).

Given such extensive SEC investigation and regulation, it is clear that the agency has actively exercised its authority in this area.

D. Conflict between securities and antitrust law

The securities laws are in serious conflict with the antitrust laws within the ARS context at issue in this case. In Billing, the antitrust claims were not allowed to proceed because "a fine, complex, detailed line separates activity that the SEC permits or encourages," which cannot be the subject of the antitrust suit, "from activity that the SEC must (and inevitably will) forbid." Billing, 127 S. Ct. at 2394. Such fine line-drawing exists in this case as well.

In the ARS market, the SEC has permitted or encouraged interactions amongst broker-dealers under certain circumstances. For example, the SEC has recognized that ARS issuers may retain multiple broker-dealers to jointly underwrite ARS offerings and jointly manage ARS auctions. See In re Bear, Stearns & Co. Inc., 2006 SEC LEXIS 1246, at *9 (Youngwood Decl., Ex. J) (SEC settlement acknowledging that issuers of ARS may select "one or more broker-dealers to underwrite the offering and/or manage the auction process"). Furthermore, the SEC has determined that a "broker-dealer may submit orders in auctions for its own

accounts," including jointly underwritten or managed auctions. Id. at *11. Such joint behavior would inherently require some level of communication amongst broker-dealers. By explicitly allowing this conduct, the SEC must have considered the possibility of prohibiting it as well. Yet, the SEC has allowed such interactions amongst broker-dealers to continue, subject to imposed disclosure requirements. Id. As Defendants suggest, in light of this permissible joint underwriting and management, it is reasonable to expect that the SEC may permit further collective action or joint bidding by broker-dealers to restore liquidity to the ARS market. (Def.'s Mem. At 18.) Therefore, joint behavior, which has antitrust implications, has been regulated by the SEC in the past and may be regulated further in the future.

A recent Second Circuit case, Elec. Trading Group, LLC v. Banc of Am. Sec. LLC, 588 F.3d 128 (2d Cir. 2009), is analogous. In that case, Plaintiffs alleged that brokers in the securities short-selling market communicated with one another to designate hard-to-borrow securities and to fix inflated borrowing fees for those securities. However, the SEC permitted brokers to communicate about the availability and price of securities. The Court determined that it would be nearly impossible for a broker to determine the level of communication allowed under securities law but prohibited under antitrust law. Id. Accordingly, the

Court held that antitrust claims must be precluded because "antitrust liability, with the prospect of treble damages, would be an incentive for the prime brokers to curb their permissible exchange of information and thereby harm the efficient functioning of the short-selling market." Id.

As in Electronic Trading Group, it is unreasonable to expect broker-dealers in the ARS market to determine the fine line between permissible communications under securities law and impermissible communications under antitrust law. In these cases, as in Billing, "evidence tending to show unlawful antitrust activity and evidence tending to show lawful securities marketing activity may overlap, or prove identical." Billing, 127 S. Ct. at 2395. Such overlapping evidence presented to "nonexpert judges" and "nonexpert juries" in different courts in antitrust actions across the country creates a distinct risk of inconsistent results. Id. At 2395-96. Faced with such uncertainty, broker-dealers would have an incentive to refrain from "a wide range of joint conduct that the securities law permits or encourages (but which [broker-dealers] fear could lead to an antitrust lawsuit and the risk of treble damages)." Id. Therefore, the required fine line-drawing is best left to the "securities-related expertise" of the SEC to implement in a more universal fashion.

Furthermore, there is an "unusually small" need for antitrust enforcement in the ARS market. First, as discussed above, the SEC has thoroughly exercised its authority to regulate the ARS market, including an ongoing investigation into the collapse of the market in February 2008. As Billing points out, the "SEC is itself required to take account of competitive considerations when it creates securities-related policy and embodies it in rules and regulations." Id. at 2396. Second, as Investors and Issuers "may bring lawsuits and obtain damages under the securities laws," there is a "diminished need for antitrust enforcement." Id. at 2396-2397. In fact, dozens of securities lawsuits regarding ARS broker-dealer conduct were filed against virtually all Defendants before these antitrust actions were filed.[4] These antitrust claims resemble the very

[4] See, e.g., Al-Thani v. Wells Fargo & Co., No. 4:08-1745 (N.D. Cal. Filed Apr. 1, 2008); Bondar v. Bank of America Corp., No. 3:08-2599 (N.D. Cal. filed May 22, 2008); Bonnist v. UBS AG, No. 1:08-4352 (S.D.N.Y. filed May 8, 2008); Brigham v. Royal Bank of Canada, No. 1:08-4431 (S.D.N.Y. filed May 12, 2008); Burton v. Merrill Lynch & Co., Inc., No. 1:08-3037 (S.D.N.Y. filed May 25, 2008); Ciplet v. JPMorgan Chase & Co., No. 1:08-4580 (S.D.N.Y. filed May 16, 2008); Defer LP v. Raymond James Financial, Inc., No. 1:08-3449 (S.D.N.Y. filed Apr. 8, 2008); Finn v. Citi Smith Barney, No. 1:08-2975 (S.D.N.Y. filed Mar. 21, 2008); Ghalayini v. Citigroup, Inc., No. 1:08-5016 (S.D.N.Y. filed May 30, 2008); Grossman v. Oppenheimer & Co., Inc., No. 1:08-3528 (S.D.N.Y. filed Apr. 11, 2008); Humphrys v. TD Ameritrade Holding Corp., No. 1:08-2912 (S.D.N.Y. filed Mar. 19, 2008); In re UBS Auction Rate Securities Litigation, No. 1:08-2967 (S.D.N.Y. filed Mar. 21, 2008); Jamail v. Morgan Stanley, No. 1:08-3178 (S.D.N.Y. filed Mar. 31, 2008); Kassover v. UBS AG, No. 1:08-2753 (S.D.N.Y. filed Mar. 14, 2008); Kraemer v. Deutsche Bank AG, No. 1:08-2788 (S.D.N.Y. filed Mar. 17, 2008); LHB Insurance Brokerage, Inc. v. Citigroup, Inc., No. 1:08-3095 (S.D.N.Y. filed Mar. 26, 2008); Miller v. Morgan Stanley & Co., Inc., No. 1:08-3012 (S.D.N.Y. filed Mar. 25, 2008); Oughtred v. E*Trade Financial Corp., No. 1:08-3295 (S.D.N.Y. filed Apr. 2, 2008); Sanchez v. UBS AG, No. 1:08-3082 (S.D.N.Y. filed Mar. 26, 2008); Silverstein v. TD Ameritrade Holding Corp., No. 1:08-5467 (S.D.N.Y. filed June 17, 2008); Stanton v. Merrill Lynch & Co., Inc., No. 1:08-3054 (S.D.N.Y. filed Mar. 26,

"securities complaint[s] in antitrust clothing" contemplated by the Supreme Court in Billing. As such, both complaints must be dismissed.

Conclusion

For the reasons set forth above, Defendants Motion to Dismiss both the Investor Complaint and the Issuer Complaint is GRANTED. Because no further issues remain to be decided, the Clerk of the Court is directed to close both of the above-captioned cases.

SO ORDERED:

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
January 26, 2010

2008); Stockhamer v. Citigroup, Inc., No. 1:08-3904 (S.D.N.Y. filed Apr. 25, 2008); Swanson v. Citigroup, Inc., No. 1:08-3139 (S.D.N.Y. filed Mar. 27, 2008); Van Dyke v. Wells Fargo & Co., No. 3:08-1962 (N.D. Cal. filed Apr. 14, 2008); Vining v. Oppenheimer Holdings, Inc., No. 1:08-4435 (S.D.N.Y. filed May 12, 2008); Waldman v. Wachovia Corp., No. 1:08-2913 (S.D.N.Y. filed Mar. 19, 2008); Wedgewood Tacoma LLC v. Citigroup, Inc., No. 1:08-4360 (S.D.N.Y. filed May 8, 2008); Zisholtz v. SunTrust Banks, Inc., No. 1:08-1287 (N.D. Ga. filed Apr. 2, 2008).