

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re PARMALAT SECURITIES LITIGATION

This document relates to: [0405](#) Civ. 4015

DR. ENRICO BONDI,
Plaintiff,

v.

BANK OF AMERICA CORPORATION, *et al.*,
Defendants.

MASTER DOCKET

04 MD 1653 (LAK) ECF Case

AMENDED ORDER

WHEREAS, Dr. Enrico Bondi, as Extraordinary Commissioner on behalf of the sixteen Parmalat entities under Extraordinary Administration under the laws of Italy listed in Appendix A to this Order, and Parmalat S.p.A. (together, “Parmalat”), have entered into a settlement agreement with Bank of America Corporation (“BAC”), Bank of America, N.A. (“BANA”), Bank of America National Trust and Savings Association (“BoA NTSA”), Banc of America Securities LLC (“BAS LLC”), Banc of America Securities, Ltd. (“BASL”), and Banc of America International Ltd. (“BAIL”) (collectively, “Bank of America”) dated August 13, 2009, and effective July 28, 2009 (the “Agreement”); and

WHEREAS, in connection with the Agreement and as an integral part of the consideration therefor, BAC, BANA, BoA NTSA, BAS LLC, BASL, and BAIL have executed letter agreements dated August 13, 2009 with various Parmalat entities identified in the definition of “Parmalat Releasers” herein (each a “Letter Agreement” and collectively the “Letter Agreements” and, together with the Agreement, the “Settlements”); and

WHEREAS, Bank of America has filed a Motion for a Good Faith Determination, Bar Order and Final Judgment (the “Motion”) pursuant to Rule 54(b) of the Federal Rules of Civil Procedure; and

WHEREAS, any party in the action before this Court under the caption *Dr. Enrico Bondi v. Bank of America Corporation*, 04 Civ. 4015 (LAK) (S.D.N.Y) (the “Bondi Action”), any party in any action consolidated before this Court under the caption *In re Parmalat Securities Litigation*, 04 MDL 1653 (LAK) (S.D.N.Y.) (the “MDL Proceedings”), including the actions captioned *In re Parmalat Secs. Litig.*, No. 04 Civ. 0030 (LAK) (S.D.N.Y.), *Dr. Enrico Bondi v. Grant Thornton International*, 04 Civ. 9771 (LAK) (S.D.N.Y.), *Smith v. Bank of America*, No. 06 Civ. 0383 (LAK) (S.D.N.Y.), and *Pappas v. Bank of America*, No. 06 Civ. 3109 (LAK) (S.D.N.Y.), and any defendant in the action captioned *Dr. Enrico Bondi v. Citigroup, Inc., et al.*, L 10902-04 (N.J. Super. Ct. Law Div.) (the “Citigroup Action”), have been served with the Motion, along with any other person or entity that directly or through his, her or its counsel has been served with or otherwise received notice of the Motion, and all parties have been given an opportunity to be heard;

WHEREAS, notice of the Motion was published in the national editions of *The New York Times* and *The Wall Street Journal* as well as in *II Corriere della Sera*, *II Sole 24* and *La Repubblica*, which are newspapers distributed nationwide in Italy; and

WHEREAS, the Court has considered all arguments made and all papers filed in connection with the Motion; and

NOW, THEREFORE, it is hereby ordered that:

1. The Court finds and determines that the Settlements made, and the releases being exchanged pursuant to the Settlements (the “Releases”), were given and received in good faith.

2. The Bank of America Releasees, as defined in paragraph 5(a) below, are hereby discharged from any liability to any other person for contribution or indemnity (or any other claim where the injury to such other person is such other person's liability to the Parmalat Releasers, as defined in paragraph 5(b) below) that relates to, or is in any way based upon or arises from or is in any way connected with any Released Claim, as defined in paragraph 5(c) below.

3. All persons, including without limitation the Non-Settling Parties, as defined in paragraph 5(d) below, are hereby permanently barred, enjoined and restrained from commencing, prosecuting or asserting any claim for contribution or indemnity (or any other claim where the injury to such person is such person's liability to the Parmalat Releasers) against any Bank of America Releasee that arises out of a judgment or settlement obtained by any or all of the Parmalat Releasers (or anyone else to the extent that the claim on which it obtains a judgment or settlement was owned by any of the Parmalat Releasers on July 28, 2009) against such person that relates to, or is in any way based upon or arises from or is in any way connected with, any Released Claim.

4. The Bank of America Releasees are hereby permanently barred, enjoined and restrained from commencing, prosecuting, or asserting any claim for contribution or indemnity (or any other claim, where the injury to such Bank of America Releasee is such Bank of America Releasee's liability to the Parmalat Releasers) against any other person whose liability is not extinguished by the Settlements that arises out of a judgment or settlement

obtained by any or all of the Parmalat Releasers (or anyone else to the extent that the claim on which it obtains a judgment or settlement was owned by any of the Parmalat Releasers on July 28, 2009) against such Bank of America Releasee that relates to, or is in any way based upon or arises from or is in any way connected with any Released Claim.

5. For purposes of this Order:

(a) the term “Bank of America Releasees” refers to BAC, BANA, BoA NTSA, BAS LLC, BASL, and BAIL, and any and all direct or indirect parent companies, subsidiaries and affiliates listed in Appendix C, divisions, predecessors, successors, partners, directors, officers, managers, employees, legal counsel, administrators, trustees, trusts, shareholders, stockholders and owners (in their capacity as shareholders, stockholders and owners of Bank of America), agents, subrogees, insurers, representatives, and any such persons' administrators, personal representatives and legal representatives.

(b) the term “Parmalat Releasers” refers to Parmalat, its predecessors, successors, subrogees, insurers, representatives, personal representatives, legal representatives, transferees and assigns, and successors in interest of assigns, and any person, firm, trust, corporation, or entity in which Parmalat has a controlling interest as listed in Appendix B to this Order, and Parma AC, Parmatour, Deutsche Parmalat Gmbh, Parmalat Molkerei Gmbh, Parmalat Malta Holding Limited, Parmalat Trading Limited, Eliair S.r.l., Emmegi Agro Industriale S.r.l., Parmafood Corporation B.V., and Streglio S.p.A. but excluding Eurofood IFSC, Parmalat Capital Finance Limited (“PCFL”), Farmland Dairies LLC, Parmalat U.S.A. Corporation, Industria Lactea Venezolana C.A., Parmalat Venezuela C.A. and/or Parmalat Brazil.

(c) the term “Released Claims” refers to any and all claims (including claims for contribution and indemnification), actions, suits, debts and sums of money,

complaints, and demands, whatsoever, in law or equity, that the Parmalat Releasors ever had, now have, may have or may claim to have in the future against the Bank of America Releasees relating to any matter up to and including July 28, 2009, including without limitation any claims that relate to, or that are in any way based upon or arise from or are in any way connected with (1) any financial transactions or other dealings in any way involving the Bank of America Releasees relating in any way to Parmalat prior to July 28, 2009, (2) the claims Parmalat asserted in, or facts or claims for relief which could have been alleged or litigated by Parmalat against the Bank of America Releasees in, the Bondi Action, the MDL Proceedings, the Citigroup Action, Italian criminal proceedings, or in any other action or jurisdiction, including without limitation claims for contribution or indemnity, and/or (3) any matter up to and including July 28, 2009.

This Release is not intended to cover: (1) any claims of or against Eurofood IFSC (in Liquidation), Parmalat Capital Finance Limited, Parmalat U.S.A. Corporation, Farmland Dairies LLC, Industria Lactea Venezolana C.A., Parmalat Venezuela C.A. and/or Parmalat Brazil, or (2) any claims relating to the ordinary course of business transactions entered into on or after January 1, 2005 between Parmalat and the Bank of America affiliates listed in Appendix C.

(d) the term “Non-Settling Parties” refers to all persons (other than the Parmalat Releasors and the Bank of America Releasees) who are parties to any action in the MDL Proceedings, or the Citigroup Action, and all other persons and entities that directly or through their counsel have been served with or have otherwise received notice of the Order to Show Cause, and any of their past, present, and future direct or indirect parent companies, subsidiaries, divisions, affiliates, branch offices, predecessors, successors, partners, principals, members, directors, officers, managers, administrators, statutory auditors, trustees, trusts, employees, shareholders, stockholders, owners, agents, subrogees, insurers, representatives, and

any such persons' heirs, executors, administrators, personal representatives, legal representatives, transferees and assigns.

6. To the extent any person, including without limitation any of the Non-Settling Parties, is entitled to a settlement credit, it shall be calculated using a “capped proportionate share” formula, pursuant to which, for common damages, the credit given for the settlement will be the greater of the settlement amount or the proportionate share of the Bank of America Releasees' fault as proven at trial.

7. This Order does not bar or release the claims owned by Food Holdings Limited (“FHL”), Dairy Holdings Limited (“DHL”), PCFL, and their joint official liquidators, G. James Cleaver and Gordon I. MacRae; Gerald K. Smith, as the Litigation Trustee of the Farmland Dairies LLC Litigation Trust (“Farmland Dairies”); G. Peter Pappas, as the Plan Administrator of the Plan of Liquidation of Parmalat – USA Corporation (“Parmalat USA”); ~~and~~ [any claims owned by Allstate Life Insurance Company \(“Allstate”\), Monumental Life Insurance Company, Transamerica Occidental Life Insurance Company, and Transamerica Life Insurance Company \(collectively, “AEGON”\), John Hancock Life Insurance Company, John Hancock Variable Life Insurance Company, and John Hancock Insurance Company of Vermont \(collectively, “Hancock”\), Principal Global Investors, LLC, Principal Life Insurance Company, Aviva Life Insurance Company, and Scottish Re \(U.S.\), Inc. \(collectively, “Principal”\), The Prudential Insurance Company of America \(“Prudential”\), and Hartford Life Insurance Company \(“Hartford Life”\); and any claim owned by](#) current or former holders of bonds, shares or securities of Parmalat Finanziaria S.p.A., or its affiliates or subsidiaries (“the Securities Holders”) against the Bank of America Releasees, including but not limited to any and all claims they may own or hold that relate to, or that are in any way based upon or arise from or are in any

way connected with, any services provided by any Bank of America Releasee to any Parmalat Releasor prior to July 28, 2009 (other than any claims for contribution or indemnity (or any other claim, where the injury to such person is such person's liability to the Parmalat Releasors)). Nothing contained in the Settlements or the Proposed Order shall be determinative of whether FHL, DHL, PCFL, Farmland Dairies, Parmalat USA, [Allstate](#), [AEGON](#), [Hancock](#), [Principal](#), [Prudential](#), [Hartford Life](#) or the Securities Holders owns any or all of the claims that any of the foregoing (or their successors or assigns) assert or may assert against the Bank of America Releasees and all such issues, if any, shall be reserved for subsequent determination by a court of competent jurisdiction.

8. Notwithstanding the foregoing, nothing in paragraphs 1, 2, and 3 of this Order affects the contribution or indemnification rights, including without limitation against the Bank of America Releasees, that any person might have solely because of his, her or its liability on claims owned by the plaintiffs in the actions captioned *Smith v. Bank of America Corporation et al.*, 06 Civ. 0383 (S.D.N.Y.) (LAK), *Pappas v. Bank of America Corporation et al.*, 06 Civ. 3109 (S.D.N.Y.) (LAK), *Food Holdings Limited v. Bank of America Corporation et al.*, 05 Civ. 9934 (S.D.N.Y.) (LAK), and *Bank Hapoalim (Switzerland) Ltd. v. Banca Intesa S.p.A.*, Index No. 601430/04 (Sup. Ct. N.Y. County).

9. The Settlements and the papers filed and statements made by BAC, BANA, BoA NTSA, BAS LLC, BASL, and BAIL in connection with the Motion shall not be construed as or deemed to be evidence of an admission or concession on the part of any party with respect to any claim, any fault or liability, or any wrongdoing or damage whatsoever.

10. There is no just reason for delaying the entry in the Bondi Action of final judgment as to BAC, BANA, BoA NTSA, BAS LLC, BASL and BAIL, and the Court hereby

directs the clerk to enter in the Bondi Action ([05 Civ. 4015 \(LAK\)](#)) a final judgment ~~as to BAC, BANA, BoA NTSA, BAS LLC, BASL and BAIL~~ pursuant to Rule 54(b) of the Federal Rules of Civil Procedure [dismissing that action](#) promptly upon the filing of a stipulation and order dismissing the Bondi Action as against BAC, BANA, BoA NTSA, BAS LLC, BASL and BAIL. [The parties shall file that stipulation immediately upon satisfaction of the conditions set forth in ¶ 11.](#)

11. This order shall take effect upon payment by Bank of America to Parmalat of the Consideration set forth in Paragraph 3(a)(1) of the Agreement, and the assignment of rights and claims set forth in Paragraph 8(g) of the Agreement.

[12. This order terminates 04 MD 1653 DI #1764 and 05 Civ. 4015 DI #405.](#)

IT IS SO ORDERED.

Dated: New York, New York

_____, 2009

United States District Judge

[Appendices A, B & C have not changed]