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*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BETTINA M. WHYTE,  
as Trustee of the SemGroup Litigation Trust,

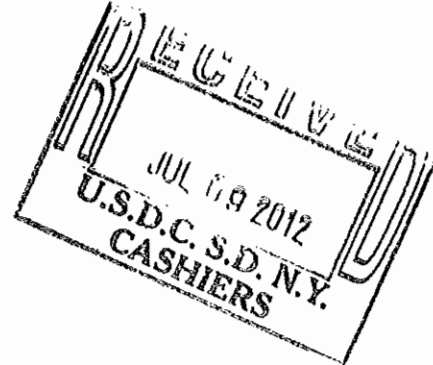
*Plaintiff,*

v.

BARCLAYS BANK PLC, and BARCLAYS  
CAPITAL, INC.,

*Defendants.*

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Civ. No. \_\_\_\_\_

ECF Case

**COMPLAINT**

This action is brought by Bettina M. Whyte (the "Trustee"), in her capacity as Trustee for the SemGroup Litigation Trust (the "Litigation Trust"). Pursuant to the Fourth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code (the "Plan") of the bankruptcy estates of SemGroup, L.P. (individually or collectively, "SemGroup") and related SemGroup Entities,<sup>1</sup> the Litigation Trust is the court-approved holder and assignee of all claims

<sup>1</sup> The "SemGroup Entities" include: SemCrude, L.P., Chemical Petroleum Exchange, Incorporated, Eaglwing, L.P., Grayson Pipeline, L.L.C., Greyhawk Gas Storage Company, L.L.C., K.C. Asphalt L.L.C., SemCanada II, L.P., (footnote continued)

and causes of action against Barclays Bank PLC (“Barclays Bank”) and Barclays Capital, Inc. (“Barclays Capital,” and together with Barclays Bank, “Barclays” or “Defendants”).

### NATURE OF THE ACTION

1. Once described by Forbes magazine as the fifth-largest privately-held company in the United States, SemGroup was a successful Oklahoma energy transport and storage company. SemGroup’s bankruptcy in July 2008 caused massive losses to its shareholders, creditors, employees, producers, and other stakeholders, and was the result of SemGroup’s commodities trading activities.

2. SemGroup’s founder and CEO, Thomas Kivisto (“Kivisto”), an experienced and well-known trader, was responsible for directing SemGroup’s oil and commodities trading, which ultimately resulted in trading losses of approximately \$2.4 billion.

3. In addition to managing SemGroup’s trading book, Kivisto directed that SemGroup funds be used to bankroll the trading activities of a company called Westback Purchasing Company, L.L.C. (“Westback”), a limited liability trading partnership he owned with his wife. By the time SemGroup filed for bankruptcy, Westback owed SemGroup approximately \$290 million.

4. As oil prices climbed to historic levels throughout the latter part of 2007 and the first half of 2008, SemGroup’s trading strategy was based on the assumption that prices would return to prior levels. In pursuit of this strategy, SemGroup amassed a huge portfolio of short and other positions that were not backed by SemGroup’s physical inventory. Eventually, SemGroup’s

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SemCanada L.P., SemCrude Pipeline, L.L.C., SemFuel Transport LLC, SemFuel, L.P., SemGas Gathering LLC, SemGas Storage, L.L.C., SemGas, L.P., SemGroup Asia, L.L.C., SemGroup Finance Corp. (now known as SemGroup Corp.), SemGroup, L.P., SemKan, L.L.C., SemManagement, L.L.C., SemMaterials Vietnam, L.L.C., SemMaterials, L.P., SemOperating G.P., L.L.C., SemStream, L.P., SemTrucking, L.P., Steuben Development Company, L.L.C., SemCap, L.L.C., SemGroup Holdings, L.P.

positions amounted to the equivalent of 20% of the nation's crude oil inventories. But as the price of oil continued to rise, and the market for oil remained volatile, the value of SemGroup's trading positions fell further and further, generating huge daily margin calls that consumed SemGroup's cash and exhausted its credit lines.

5. By the summer of 2008, SemGroup had funded more than \$2.5 billion in margin calls, draining its cash reserves and maxing out its credit lines. The resulting liquidity problems threw the company into a financial crisis. By May of 2008, the company was scrambling in an unsuccessful effort to increase its existing credit lines. By mid-July, faced with the continuing pressure of enormous margin calls, Kivisto looked for an opportunity to offload SemGroup's trading book.

6. Kivisto met with representatives of Barclays for breakfast on July 11, 2008. He revealed SemGroup's liquidity issues and proposed transferring SemGroup's trading book on the New York Mercantile Exchange ("NYMEX") to Barclays by means of a novation. Barclays responded favorably to the proposal and, within hours, SemGroup provided Barclays with information about its NYMEX trading book. Barclays assembled a team and immediately set about the task of analyzing SemGroup's massive number of positions.

7. All the while, Barclays gloated internally at the realization that it could impose unreasonable and nearly extortionate terms upon SemGroup, which Barclays knew was in dire financial straits. The information that SemGroup provided to Barclays about its financial condition only confirmed and highlighted its perilous condition and current, or imminent, insolvency. Moreover, because SemGroup had assured Barclays that it was not talking to anyone else about this potential deal, Barclays knew that so long as the oil market remained volatile, with

prices above historical norms, the pressure on SemGroup would be immense to do a deal with Barclays at virtually any terms Barclays demanded.

8. Later in the day on July 11, 2008, West Texas Intermediate crude traded at an all-time high price of \$147 per barrel. Thus, even as the deal between SemGroup and Barclays was being negotiated, volatility and price in the oil market continued to rise, intensifying the financial pressure on SemGroup.

9. The “negotiation” between Barclays and SemGroup was largely concluded by July 13th or 14th. Putting on its self-described “greedy hat,” and fully appreciating the extent to which it had negotiating leverage against a company that was in what Barclays internally characterized as “do or die” mode, Barclays rejected all of SemGroup’s proposals for deal terms that would have provided economic benefits to SemGroup and its creditors. Instead, Barclays extracted a huge and unjustified \$143 million novation fee from SemGroup, which would return no benefit to SemGroup or its creditors. Under the circumstances, the size of the fee was unconscionable and SemGroup did not receive reasonably equivalent value.

10. The “Purchase and Sale Agreement” was signed on July 15, 2008. It provided for the novation of SemGroup’s NYMEX book to Barclays. As Barclays knew from the information its teams of sophisticated bankers and analysts reviewed, the novation of SemGroup’s NYMEX book would not, by itself, stave off SemGroup’s bankruptcy. In fact, the novation of SemGroup’s NYMEX book crystallized the company’s unrealized losses from its trading activity. As a consequence of the novation, SemGroup realized more than \$2 billion in losses.

11. SemGroup filed for bankruptcy on July 22, 2008, after having used a substantial portion of its last remaining liquidity to pay Barclays \$143 million. The payment of the

exorbitant and excessive fee meant that SemGroup had even less money available to satisfy its creditors.

12. Notably, some portion of the \$143 million fee that Barclays exacted was supposedly derived by reference to the risk associated with the Westback positions. As such, some portion of the \$143 million that SemGroup paid Barclays was paid at the expense of SemGroup's creditors and for the benefit of Westback. Likewise, SemGroup's transfer to Barclays of cash posted as margin for the Westback positions was made at the expense of SemGroup's creditors for the benefit of Westback and Barclays.

13. At the time of the novation, SemGroup's NYMEX book was comprised of hundreds of trading positions which were out of the money by more than \$2 billion and generating daily margin calls in the tens of millions of dollars. By the end of 2008, after Barclays had been in control of SemGroup's old positions for fewer than six months, the price of oil had fallen to \$40 a barrel and volatility in the market had decreased. Upon information and belief, Barclays ultimately earned hundreds of millions, or even billions, of dollars of profit on the novated positions.

14. Plaintiff brings this action on behalf of the Litigation Trust to enforce SemGroup's creditors' rights under state and common law, and requests that all value transferred to Barclays in the novation of SemGroup's NYMEX book, including SemGroup's payment of the \$143 million novation fee, and all transfers of value for the benefit of Westback, be avoided as fraudulent transfers, and that all moneys generated from the novation by which Barclays was unjustly enriched be paid to the Litigation Trust so that they may be distributed consistent with the SemGroup Litigation Trust Agreement (the "Litigation Trust Agreement"), as described below.

## PARTIES

15. Bettina M. Whyte is the court-approved Trustee for the Litigation Trust, which was established under the laws of Delaware in connection with the Plan, confirmed on October 28, 2009 by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) in the Chapter 11 cases and proceedings (the “Bankruptcy Proceedings”) of SemGroup and certain of its subsidiaries and affiliates (collectively, the “Debtors”). The Trustee is a resident of Wyoming, with an address at 545 West Sagebrush Drive, Jackson, Wyoming 83001. On November 30, 2009, both the Plan and the Litigation Trust Agreement establishing the Litigation Trust, executed between the Debtors, Reorganized Debtors (as defined in the Plan), Trustee, and the Official Committee of Unsecured Creditors of SemCrude, L.P., *et al.* became effective. As part of the Plan, certain creditors of SemGroup (the “Contributing Lenders”),<sup>2</sup> assigned and transferred all of their rights, title and interests in the Contributing Lenders’ Claims<sup>3</sup> to the Litigation Trust, wholly separate and apart from any claims on behalf of the bankruptcy estates.<sup>4</sup> The Plan further provides that, upon direction by the Trust Board, the Trustee has the absolute right to assert, bring, institute, commence, or participate in any claim or causes of action transferred to the Litigation Trust, including any state law causes of action available to the Contributing Lenders, separate and apart from any claims arising under the Bankruptcy Code. The Trustee accordingly brings these state law claims on behalf of the

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<sup>2</sup> As defined by the Plan, “Contributing Lenders” include: holders of Secured Lender Claims or Lender Deficiency Claims who vote to approve the Plan or who execute a Contributing Lender Assignment and Bank of America, as Prepetition Administrative Agent.

<sup>3</sup> “Contributing Lenders’ Claims” are defined by the Plan as “any and all causes of action held by the Contributing Lenders . . . against . . . (v) all Entities that provided services to or conducted transactions with any Debtor or non-Debtor affiliate. . . .”

<sup>4</sup> Certain of the Contributing Lenders filed proofs of claim against SemGroup in the Bankruptcy Proceedings. In part due to the fraudulent transfers and other illegal payments made to Barclays, the Debtors’ estates did not have sufficient funds to satisfy such claims. As such, the Contributing Lenders were have not recovered the balance of what they were owed prior to initiation of the Bankruptcy Proceedings.

Litigation Trust to redress the injuries suffered as a result of the illegal and fraudulent transfers to Barclays, as described herein.

16. Defendant Barclays Bank is a public limited company registered in England and Wales. Barclays Capital, the investment banking subsidiary of Barclays Bank, is also based in England, but operates one of its largest branches in New York. Representatives of Barclays Bank participated in the negotiation of the novation of SemGroup's NYMEX book and Barclays Bank executed the Purchase and Sale Agreement consummating the transaction. Representatives of Barclays Capital also participated in the negotiations that led to the novation of SemGroup's NYMEX book. In addition, the SemGroup NYMEX trades that were novated were transferred to the Barclays Capital NYMEX account.

#### **JURISDICTION AND VENUE**

17. This Court has jurisdiction over this action pursuant to 28 USC § 1332 because the amount in controversy exceeds \$75,000 and because there is complete diversity of citizenship between the Plaintiff and the Defendants.

18. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.

#### **STATEMENT OF FACTS**

##### **A. SemGroup's Business and Trading History**

19. Founded in 2000, SemGroup expanded from a small midstream oil company to one of the largest privately-held companies in the country. During this time, the company significantly expanded its ordinary operations, which involved providing transportation, storage, and distribution services to crude oil producers and refiners in North America's energy corridor.

20. SemGroup was also involved in the marketing and terminalling of refined commodities, such as heating oil and gasoline, natural gas, and natural gas liquids. A commodity is a physical good, such as grains or metals, that is interchangeable with another good of the same type, and which investors buy or sell, often through futures contracts. The prices of commodities are subject to supply and demand.

21. Because SemGroup's core business was originally comprised of storing, transporting and selling oil, gas, and related commodities, SemGroup was subject to risks from fluctuating prices for these commodities. To reduce the risk of fluctuations in the price of the oil and gas products that SemGroup stored and transported, SemGroup traded commodities on a physical and financial basis using a variety of derivative instruments, including futures, forwards, and options. SemGroup also engaged in commodities trading to manage liquidity and to increase its profit margin.

**B. Derivative Trading on the NYMEX**

22. A derivative is a contract whose value is based on the performance of an underlying financial asset, index, or other investment. The value of a derivative is determined by fluctuations in the value of the underlying asset. Many derivatives are characterized by high leverage, such that a small movement in the value of the underlying asset can cause a large difference in the value of the derivative.<sup>5</sup> For example, an option on a futures contract is a type of

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<sup>5</sup> Commodities trading, when done on margin, involves the use of leverage. This use of leverage creates greater risk for an investor. For example, for an initial margin of \$5,000, an investor could enter into a futures contract for 1,000 barrels of oil valued at \$50,000. This means that, with only \$5,000, an investor could control \$50,000 worth of oil. Given this large amount of leverage, even a very small move in the price of a commodity adverse to the holder's position could result in large gains or losses compared to the amount posted as initial margin to purchase the contract.



derivative where “the option value varies with the value of the futures contract which, in turn, varies with the value of an underlying commodity or security.”<sup>6</sup>

23. Derivatives can be traded in a variety of ways, but the most common is through regulated exchanges such as NYMEX, or directly between parties in an over-the-counter (“OTC”) transaction. OTC derivatives “are negotiated privately between the two parties and then booked directly with each other.”<sup>7</sup>

24. SemGroup became a NYMEX member firm in 2007. NYMEX is the world’s largest commodity futures exchange. NYMEX handles the exchange of billions of dollars worth of energy products, like crude oil and gasoline, as well as other commodities. The prices quoted for transactions on NYMEX are the basis for the prices paid throughout the world for the various commodities traded on the exchange.

25. Kivisto engaged brokers to execute the trading strategy he chose for SemGroup. SemGroup’s exchange trading was often carried out through futures commission merchants (“FCM”). An FCM is able to take and fill futures contracts orders, as well as to extend credit to customers wishing to enter into positions.

#### **1. Margin Posting Requirements and Mark-to-Market Pricing of Futures Contracts**

26. “Initial margin” refers to the amount of money an investor has to put up to control a futures contract. In the case of futures contracts that are traded on an exchange, the exchange sets the rate of “initial margin” required for each type of contract. Generally, for futures contracts, the exchange minimum initial margin is set between 5% and 15% of the contract value.

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<sup>6</sup> Barron’s Financial Guides, *DICTIONARY OF FINANCE AND INVESTMENT TERMS*, 136 (4th ed. 1995).

<sup>7</sup> See [www.isda.org/educat/faqs.html#1](http://www.isda.org/educat/faqs.html#1), last accessed July 3, 2012. SemGroup traded on the NYMEX and OTC

27. Thus, to purchase a futures contract through an FCM, a customer must deposit (or “post”) the initial margin required for that particular futures contract.

28. “Maintenance margin” is also set by the exchange. Maintenance margin is an amount of money that is less than the “initial margin” for a futures contract. If the amount of money in an account drops below the amount of maintenance margin that is required, a “margin call” to the investor is made, which requires the investor to deposit additional margin. Thus, maintenance margin is the amount of money where a decrease in the value of an open futures position will require a customer to deposit additional margin to meet its margin call. (In the alternative, a customer can generally respond to a margin call by closing out open positions, which will also have the effect of reducing the total amount of margin the customer is required to post.)

29. While exchanges establish the minimum initial margin and maintenance margin requirements for each type of futures contract traded on that exchange, FCMs can require their customers to post excess margin, meaning more than the minimum amount specified by the exchange.

30. In actively-traded markets, the net present value of the cashflow from a given futures or options trading contract is reflected in the underlying market value of that trade, known as the mark-to-market value (“MtM”). Exchange-traded derivatives, such as futures contracts, are generally marked-to-market either on a daily basis or every few days. The MtM of a futures contract is used by exchanges to set the initial margin and maintenance margin that is required for each type of futures contract. As such, changes in the MtM value of a futures contract can result in margin calls to customers who have open positions in those contracts.

**C. As Oil Prices Continued to Rise, SemGroup's Financial Condition Went from Bad to Worse**

31. As oil prices continued to rise throughout 2007 and 2008, and volatility in the market remained high, the persistent margin calls generated by the decreasing MtM values of the positions in SemGroup's NYMEX trading book became increasingly difficult for SemGroup to meet.

32. In an effort to meet the increasing demands for cash created by margin calls, Kivisto had his traders enter into a large number of risky options contracts. These types of option contracts can generate immediate cash under some circumstances, because purchasers may pay a premium to get them, but they can also increase future cash demands because they may also generate large margin requirements.

33. Kivisto effectively did not allow SemGroup to realize losses on its option trading. Rather, Kivisto constantly tried to recoup paper trading losses by "rolling forward" the option positions that would otherwise expire at a loss. Instead of permitting an option to expire at a loss – which would have caused SemGroup to recognize the loss – Kivisto chose to write new options, which had the effect of delaying the recognition of a loss, but increased the ultimate size of the loss if the rolled forward option expired at a loss. In effect, Kivisto called "double or nothing" when an option was going to expire at a loss. And, as he continued to roll forward SemGroup's losing positions, the company's unrealized trading losses grew and grew.

34. Struggling to come up with the cash to meet its seemingly endless margin calls, Kivisto needed to find a source of additional cash for SemGroup. SemGroup tried to increase its existing credit lines without success.

35. With no means of obtaining access to additional cash, SemGroup's financial situation slid from bad to irreparable between May and July of 2008. As of July 11, 2008, when

Kivisto showed up for his breakfast meeting with representatives of Barclays, SemGroup had a net negative MtM balance of more than \$2 billion and little remaining liquidity.

**D. Westback Used SemGroup Funds For Its Trading**

36. A portion of SemGroup's NYMEX book was made up of trades on behalf of a company called Westback. Kivisto and his wife, Julie, each owned 50% of Westback. Kivisto established Westback to trade oil and other energy commodities, as well as derivative instruments relating to the price of these commodities, for his own account and for his own personal benefit. Westback was wholly-controlled by Kivisto, who was its President and Chief Executive Officer.

37. Kivisto caused Eaglwing L.P. ("Eaglwing"), a company owned by SemGroup, to enter into and to execute trading contracts as an agent on Westback's behalf. For instance, a subaccount in the name of "Eaglwing 2," that was related to an account SemGroup maintained at Merrill Lynch, was used exclusively for Westback trades.

38. Eaglwing purchased derivatives on the NYMEX and posted margin for Westback's trading using SemGroup funds. As such, SemGroup – via Eaglwing – effectively extended an interest-free, unsecured line of credit to Westback in amounts that exceeded Westback's (and the Kivistos') assets and ability to repay. Eaglwing and SemGroup received no pecuniary or other benefit as a result of this relationship.

39. According to SemGroup's financial statements, at the beginning of 2006, the amount Westback owed to SemGroup for its trading activities (the "Westback Receivable") was \$19.8 million. The Westback Receivable grew to \$136.3 million as of December 31, 2006, and then to \$323.8 million as of December 31, 2007.

40. Because the MtM adjustments for the Westback trading transactions were carried in SemGroup's derivative liability account, and Westback's trading margins were posted with

SemGroup's trading margins, SemGroup was exposed to Westback's margin requirements and losses. As Kivisto continued to direct that losses on trading be rolled forward rather than realized, and the daily margin requirements grew, so did the amounts Kivisto caused SemGroup to post on Westback's behalf since SemGroup money was being used to meet margin calls on Westback's trading positions.

**E. Long Before Any Discussions About A Novation, Barclays Had Taken A Look At SemGroup's Business**

41. Long before any talk of a novation, Barclays and SemGroup had explored the possibility of some form of business relationship. As far back as 2007, Kivisto invited Barclays to join SemGroup's banking consortium. At that time, after Barclays reviewed financial and other information about SemGroup, it declined the invitation.

42. In or around late April 2008, Barclays again considered a business relationship with SemGroup. On information and belief, Barclays' renewed interest arose from the fact that Matt Leone ("Leone"), who had previously worked in commodities trading at Goldman Sachs ("Goldman"), joined Barclays in March of 2008. Leone had worked with SemGroup while he was at Goldman and he attempted to reestablish the relationship after he joined Barclays.

43. In May 2008, Barclays gave written marketing material to SemGroup, pitching its wide array of investment banking and other financial capabilities, and outlining the potential for an OTC arrangement. As part of those discussions, SemGroup shared financial information with Barclays. However, no deal came to fruition at that time, either.

44. Both of these episodes provided Barclays with information about SemGroup, though, including insights into its trading book. Thus, when Kivisto approached Barclays about a novation of SemGroup's NYMEX trading book in July of 2008, that was the third time the two companies had discussed a business transaction in the prior two years. As such, not only did

Barclays already have some information and insights into SemGroup's business, it also had some perspective on the issue of the company's worsening financial performance and liquidity crisis.

**F. The Novation of SemGroup's NYMEX Trading Book**

**1. After an Initial Breakfast Meeting on July 11th, SemGroup Provides Barclays With Information About its NYMEX Trading Book**

45. On July 10, 2008, representatives of SemGroup approached Barclays to schedule an urgent meeting between Kivisto and Barclays. During a breakfast meeting at the Peninsula Hotel in New York City on July 11, 2008, under the guise of developing a "creative" and "exotic" financing relationship, Kivisto asked Barclays to take SemGroup's entire NYMEX trading book via a novation.

46. A "novation" is an agreement to substitute one party to an agreement with a new party, transferring both the rights and duties of the existing party under the agreement to the new party. In novating its NYMEX book, SemGroup would transfer its ownership of its NYMEX derivatives positions to Barclays, such that Barclays would assume all risk from the positions, but also reap any and all potential benefit.

47. SemGroup's NYMEX trading book included the Westback positions held in various subaccounts in the name of Eaglwing. Those trades were never carved out of the novation, and were ultimately included in the final deal.

48. In his initial pitch to Barclays on July 11th, Kivisto explained that SemGroup had a revolving credit facility that it was having trouble renewing. Kivisto indicated that SemGroup could not continue to meet its margin calls. Given the rising price of oil at the time, Barclays indicated that SemGroup's liquidity issues were not surprising.

49. Barclays responded favorably to Kivisto's overture and, on July 11, 2008, Barclays and SemGroup entered into a confidentiality agreement to facilitate negotiations about a novation.

50. After Kivisto's initial meeting with Barclays, he believed that he had found his solution, commenting that Barclays "lov[ed] our book strategy," and that they "want[ed] a tankage, physical supply and profit sharing deal."

## **2. Barclays Smells Desperation and Sees Dollar Signs**

51. Unlike SemGroup, Barclays had the capital strength to manage SemGroup's trading book until oil prices fell from their mid-2008 historic highs and volatility in the market decreased. Indeed, as one of the world's largest banks, Barclays was well-positioned to manage SemGroup's trading book until it could return a profit. Furthermore, as a participant in the oil and gas markets, Barclays had an incentive to avoid a scenario where a huge portfolio of positions was dumped on the market and liquidated all at once, which could hurt Barclays' own trading positions by increasing volatility in an already volatile market. Thus, the novation presented Barclays with a significant potential upside. It is not surprising that Barclays described the potential deal internally as a "very large transaction for our business" in an email on the evening of July 11, 2008, and as an "important transaction" in another email the following morning.

52. It was immediately clear to Barclays that Kivisto was desperate and would agree to almost any terms Barclays dictated. Barclays knew that SemGroup's revolver was maxed out and that Kivisto wanted "out completely because [SemGroup is] drawing down partners capital." Internally, Barclays emphasized that SemGroup was "highly motivated." Given these facts, and the other financial information Barclays had about SemGroup – such as a 25-page Credit Risk Analysis presentation, SemGroup's position books, audited consolidated financial statements, and a Fitch credit review of SemGroup, among other documents and correspondence – the

sophisticated bankers and analysts at Barclays understood that SemGroup was either already insolvent or would cross that threshold very shortly.

53. With knowledge of SemGroup's dire financial straits, Barclays pulled on what it called its "greedy hat," and embarked on a plan to take financial advantage of the weakened and desperate company.

**3. With the Rising Price of Oil and SemGroup's Financial Duress Working in Barclays' Favor, Barclays Imposes Unreasonable and Extortionate Deal Terms on SemGroup**

54. On July 11, 2008, after the close of the trading day, SemGroup communicated proposed terms to Barclays. Under Kivisto's original proposal, the deal would "be a novation with Barclays assuming any and all liabilities related to all positions in SemGroup's NYMEX book." In consideration for assuming the NYMEX book, Kivisto proposed that Barclays would receive the "marked to market value of SemGroup's NYMEX book plus three (3) times vega exposure as shown." Kivisto further proposed, "[a]ll initial margin to be returned to SemGroup." Finally, Kivisto proposed that Barclays would "provide OTC Credit of \$100 million based on credit approval."

55. Capitalizing on Kivisto's desperation, and SemGroup's obviously dire financial condition, Barclays turned the negotiation into an opportunity to strip all possible remaining liquidity from SemGroup. Because Kivisto had "stressed to [Barclays] the need to react/respond quickly," according to a Barclays memo of the July 11th breakfast meeting, Barclays knew that SemGroup's need to move quickly gave Barclays additional negotiating leverage.

56. Between July 11 and 13, 2008, a team of thirty or forty Barclays employees performed due diligence and analysis on SemGroup's NYMEX book. Following its due diligence, Barclays presented a counter proposal to Kivisto on July 13th, rejecting Kivisto's



proposal of paying Barclays a fee calculated using a three times vega exposure of approximately \$29.6 million, for a total fee of approximately \$90 million.<sup>8</sup> Barclays insisted that it had priced the transaction at between six and seven volatility points, with a vega of \$23 million, for a novation fee of approximately \$147 million.

57. Despite the fact that Barclays demanded a fee that was at least \$57 million greater than what he had initially proposed and did not include any OTC credit, Kivisto put up little fight. The parties ultimately agreed to a novation fee of \$143 million, after Barclays agreed to reduce its unconscionable fee demand by a mere \$4 million.

58. Based on Barclays' description of how it came up with its demand for \$147 million, some portion of the ultimate \$143 million fee was calculated with reference to the Westback positions. However, neither SemGroup nor its creditors received a benefit from paying a multimillion-dollar fee to Barclays to novate the Westback positions.

59. Barclays also rejected Kivisto's request that cash posted as initial margin be returned to SemGroup. Barclays insisted that SemGroup had to transfer any cash posted as initial margin to Barclays as partial payment of its \$143 million fee. Moreover, because the cash SemGroup had posted as initial margin was not sufficient to pay the entire \$143 million fee, Barclays insisted that SemGroup draw upon letters of credit it had posted with certain of the six FCMs that carried SemGroup's NYMEX positions (the "NYMEX Brokers") to pay the balance of the fee.

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<sup>8</sup> Vega is "[t]he measurement of an option's sensitivity to changes in the volatility of the underlying asset. Vega represents the amount that an option contract's price changes in reaction to a 1% change in the volatility of the underlying asset. Volatility measures the amount and speed at which price moves up and down and is often based on changes in recent, historical prices in a trading instrument. Vega changes when there are large price movements (increased volatility) in the underlying asset, and falls as the option approaches expiration." See <http://www.investopedia.com/terms/v/vega.asp#ixzz1zVZnqFuN>, last accessed July 2, 2012.

60. Although Kivisto agreed to this term, and NYMEX reluctantly approved it, when the time came to execute the transaction, some of the NYMEX Brokers balked at the idea that SemGroup would draw upon letters of credit under these circumstances and for this purpose. SemGroup and Barclays had to spend multiple days convincing the NYMEX Brokers to implement this deal term.

61. Barclays knew that SemGroup was in the midst of a deep liquidity crisis. It knew the company was in “do or die” mode. Barclays also knew that SemGroup had maxed out on its revolver and been refused for an extension on its bank facility. Under these circumstances, it was bad faith for Barclays to use its bargaining power, and SemGroup’s financial desperation, to force SemGroup to increase its indebtedness by drawing down on its letters of credit to pay Barclays an unreasonable and unnecessary fee.

62. Furthermore, to the extent that some of the posted cash margin that was transferred to Barclays had been posted by SemGroup for Westback trades, neither SemGroup nor its creditors derived a benefit from those transfers.

63. Throughout the brief and one-sided negotiations, Barclays and Kivisto failed to acknowledge the fact that no fee of any kind was even necessary or should have been paid. SemGroup’s NYMEX positions consisted of exchange-traded contracts and, therefore, its credit exposure to the trades was minimal. The MtM value of a contract, in theory, should account for all future cashflow and volatility associated with that contract, based on the information the market had available to it at that time. Because SemGroup’s positions were up-to-date on maintenance margin requirements, Barclays was effectively covered for the future risk associated with SemGroup’s trading book.

64. As was later noted in the course of SemGroup's subsequent bankruptcy proceedings, "[i]f SemGroup had filed for bankruptcy prior to the novation, NYMEX would have sold off the positions and the result with respect to the open positions would have been virtually the same."<sup>9</sup>

65. The Purchase and Sale Agreement was signed by Kivisto on behalf of SemGroup, and Joe Gold on behalf of Barclays, on July 15, 2008, just five days after Kivisto first posed the idea to Barclays, and seven days before SemGroup filed for bankruptcy.

#### **4. Kivisto and Barclays Lobbied NYMEX to Obtain Approval**

66. SemGroup was required to obtain the approval of NYMEX before it could novate its NYMEX book. In an email to NYMEX on July 15, 2008, SemGroup conceded that the proposed novation was "an extremely unusual event." Certainly, the novation was not an ordinary course NYMEX event, where such transactions are generally limited to entities that are exiting the trading business altogether.

67. After lobbying by representatives of both SemGroup and Barclays, NYMEX granted SemGroup approval on July 15, 2008, under a Rule 6.20 exemption for a one-time, ex-pit transfer of the trade book to Barclays.<sup>10</sup> Upon information and belief, the novation of SemGroup's NYMEX book to Barclays was among the largest such transactions ever approved by NYMEX.

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<sup>9</sup> *In re SemCrude, L.P., et al.*, Case No. 08-11525 (BLS) (Bankr. D. Del.), Final Report of Louis J. Freeh, filed April 15, 2009, at p. 148 [hereinafter "Freeh Report"].

<sup>10</sup> An "ex pit transfer" refers broadly to transactions that exchange rules permit to be executed non-competitively outside of the central market.

## 5. Execution of the Novation

68. The novation consisted of the transfer of over 900 NYMEX positions from SemGroup's FCM accounts with its NYMEX Brokers to Barclays. The NYMEX Brokers consisted of NewEdge Financial, Inc. ("NewEdge," f/k/a Calyon), MF Global, Inc. ("MF Global," f/k/a Man Financial), Merrill Lynch Commodities, Inc. ("Merrill Lynch"), Mizuho Securities USA, Inc. ("Mizuho"), Prudential Bache Commodities, LLC ("PBC"), and J.P. Morgan Futures, Inc. ("JP Morgan"). Approximately 90% of the positions related to crude oil trades, but the novated positions also included Reformulated Blendstock for Oxygenate Blending gasoline, natural gas and heating oil-related trades.<sup>11</sup> Upon information and belief, the positions novated by SemGroup amounted to the equivalent of 20% of the nation's crude oil inventories.

69. In assuming SemGroup's NYMEX positions, Barclays received a positive amount of cash equal to the negative MtM value of the transferred positions, covering Barclays for the risk associated with those positions. This aggregate cash amount was held by SemGroup's various NYMEX Brokers as posted cash margin. Each of SemGroup's NYMEX Brokers transferred these margin amounts to Barclays. A significant portion of the amounts transferred related to margin posted by SemGroup for Westback trades.

70. SemGroup paid the \$143 million novation fee to Barclays by means of transfers by each of SemGroup's NYMEX Brokers of the initial margin posted by SemGroup. To the extent SemGroup's initial margin was posted as cash, it was transferred to Barclays with the cash posted as SemGroup's variable margin (*i.e.*, the amounts SemGroup had been forced to post in

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<sup>11</sup> Although described as a novation of SemGroup's "entire NYMEX book," SemGroup retained a limited amount of NYMEX positions in an effort to satisfy certain loan covenants under its Credit Agreement.

response to margin calls as the MtM value of contracts declined and SemGroup’s margin fell below the maintenance margin requirement).

71. SemGroup had also posted initial margin in the form of letters of credit issued by Bank of America. To pay the balance of Barclays’ fee, Barclays demanded that SemGroup draw upon the letters of credit and transfer those funds to Barclays, as set forth in the chart below:

NYMEX Broker	Amounts SemGroup Drew on L/Cs And Transferred to Barclays
NewEdge (f/k/a Calyon)	\$15,000,000
JP Morgan	7,000,000
MF Global	22,000,000
Merrill Lynch	35,000,000
Mizuho	20,000,000
PBC	11,000,000
<b>Totals</b>	<b>\$110,000,000</b>

72. Drawing on letters of credit under these circumstances was “an extremely unusual event,” in the words of SemGroup’s Senior Vice President of Finance, Terry Ronan (“Ronan”), in the July 15, 2008 email he sent to NYMEX seeking permission to draw upon the letters of credit SemGroup had posted jointly with the NYMEX Brokers and NYMEX. Ronan explained, “we make this request due to the company’s very weak liquidity position.” Ronan’s email was forwarded to Barclays personnel, who already knew that the transaction they had railroaded

SemGroup into approving was “extremely unusual,” and that SemGroup had a “very weak liquidity position.”

73. SemGroup’s NYMEX Brokers were not easily convinced to go along with this plan; they agreed that this was an “extremely unusual” use of letters of credit that had been posted for the purpose of satisfying initial margin. Upon information and belief, the NYMEX Brokers were led to believe that the initial margin was being transferred to Barclays as collateral for SemGroup’s trading positions, rather than as payment of a \$143 million fee to Barclays.

74. In a July 15, 2008 email from NewEdge to SemGroup, NewEdge required that SemGroup issue a letter on official letterhead explaining why NewEdge should draw down the letter of credit despite “the fact that [SemGroup’s] accounts are not on margin call, or in default of any kind at the moment.” NewEdge also wanted to know why SemGroup would not simply be “canceling the [letter of credit] with Bank of America and demanding payment.”

75. It is a reflection of how unusual the terms of the deal were that it took several days of negotiations involving both Barclays and Kivisto to convince all of the NYMEX Brokers to cooperate. Only three of SemGroup’s six NYMEX Brokers began moving their positions to Barclays on the morning of July 15, 2008, as requested, and those brokers moved only half of SemGroup’s positions prior to the market’s close, with the remainder following later in the day. It took two more days to complete the transfers from the other NYMEX Brokers.

**6. Barclays Effectively Admits it was Grossly Overpaid for the Novation**

76. Due to the qualms of the NYMEX Brokers, only 25% of SemGroup’s trading book had been transferred to Barclays by close of business on July 15, 2008. Because Barclays only managed 25% of SemGroup’s NYMEX book as of the close of business on July 15th, Barclays paid only \$10 million of SemGroup’s margin calls and asked SemGroup to cover the remaining \$30 million due for that day. SemGroup refused.

77. After having dictated terms to SemGroup throughout, Barclays suddenly decided that \$30 million was not worth a fight. Notwithstanding that Barclays believed it had the right under the Purchase and Sale Agreement to terminate the novation over the issue, Barclays tellingly dropped the matter.<sup>12</sup>

78. This episode underscores the fact that Barclays understood that it had already been overcompensated for the novation. Barclays was correct.

**G. At the time of the Novation, Barclays Knew SemGroup Was Under Extreme Financial Distress and Either Insolvent or About to Become Insolvent**

79. From the first meeting with SemGroup about a novation on July 11th, Barclays knew SemGroup was in what it internally referred to as a “do or die” position. Yet, since Barclays insisted that its \$143 million fee be paid by means of transfers of initial margin and drawdowns on letters of credit, it is plain that Barclays knew that it was siphoning off most of SemGroup’s last major source of liquidity: the cash posted by SemGroup as initial margin.

80. Barclays used its knowledge to take unconscionable advantage of SemGroup and extract unfair terms from the novation. Barclays saw Kivisto’s and SemGroup’s vulnerability as leverage. In an internal Barclays email, dated July 12, 2008, Joe Gold, managing director of Barclays Bank, noted that “this may be do or die. That is a reason to be happy and a reason to be worried. Keep your controls hat on and think through any angles. I am sure that the greedy hat is fully deployed.”

81. Barclays also knew that SemGroup had been turned down in its efforts to extend its existing bank and credit facilities.

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<sup>12</sup> Freeh Report at p. 148.

82. Moreover, even while Barclays was still working on reconciling the transfer of SemGroup's positions and cash from the NYMEX Brokers to Barclays, SemGroup announced on July 17, 2008, "that they are in liquidity trouble and are considering raising capital or filing chapter 11."

83. Barclays went forward with this transaction with SemGroup, at a time when many of SemGroup's other business relationships were being terminated, because of the enormous benefit Barclays was able to extract to the detriment of SemGroup's creditors. Barclays obtained a NYMEX book with over 900 positions, with more than \$3 billion in cash posted to cover any MtM losses, a significant portion of which had been posted by SemGroup to cover margin on Westback positions.

84. Furthermore, the novation presented other possibilities, both proper and improper, for Barclays to profit. For example, knowing that it was about to absorb a huge trading book, and having advance information about the composition of SemGroup's trading book, Barclays could have taken positions in the market in the days before the novation was completed in contemplation of the novation. As demonstrated by the recent announcement that Barclays will pay a fine of \$453 million to U.S. and British authorities to settle allegations that it manipulated key interest rates, Barclays and its traders are not strangers to the possibility of manipulating prices or markets for profit.<sup>13</sup>

#### **H. SemGroup Files for Bankruptcy Days after the Novation**

85. On July 17, 2008, as the transfers of money and positions from SemGroup to Barclays were continuing, SemGroup and its lenders held a call with a representative of the

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<sup>13</sup> See, e.g., "Barclays Fined By U.K., U.S. For Falsifying Libor Rates," <http://www.bloomberg.com/news/2012-06-27/barclays-said-to-be-nearing-libor-settlement-with-fsa-cftc.html> (last accessed June 29, 2012).



Blackstone Group. Among other things, the Blackstone advisor said that Kivisto had used SemGroup's money for side trading in a Westback trading book for his own benefit. The Blackstone advisor said that Kivisto and Westback owed SemGroup approximately \$300 million.

86. SemGroup filed for bankruptcy on July 22, 2008.

87. Upon information and belief, only thirty days after the novation, Barclays was sitting on a \$1 billion profit, as oil fell from its high of \$147 a barrel on July 11th to \$114 a barrel and volatility decreased. By December of 2008, the price of West Texas Intermediate crude had fallen all the way to \$40 a barrel.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

##### **(New York Debtor and Creditor Law § 273)**

88. Paragraphs 1 through 87 are hereby incorporated by reference.

89. The SemGroup NYMEX trading book that Kivisto transferred to Barclays, along with the margin posted on account of the open positions in SemGroup's trading book, was property in which SemGroup had an interest.

90. The \$143 million that SemGroup transferred to Barclays in the form of a fee was property in which SemGroup had an interest.

91. SemGroup was insolvent at the time of, or was rendered insolvent by, the conveyance of its NYMEX trading book to Barclays, with its associated posted margin, plus a \$143 million fee to Barclays.

92. The conveyance by Kivisto to Barclays of SemGroup's NYMEX trading book and the cash margin associated with the positions in the trading book was made without fair consideration.

93. The conveyance by SemGroup of \$143 million to Barclays was made without fair consideration.

94. SemGroup did not receive fairly equivalent value for the conveyances set forth above because, among other reasons, the transfer of SemGroup's NYMEX trading book to Barclays did not require the payment of an exorbitant \$143 million fee by SemGroup to Barclays. Barclays knew that it had the capital strength to manage the trading positions being transferred and expected to profit handsomely on them. Upon information and belief, Barclays ultimately received hundreds of millions of dollars, if not billions of dollars, in profits on the novated positions. The transfer of money posted by SemGroup with its NYMEX Brokers as maintenance margin sufficiently accounted for any risk Barclays was assuming with the novated positions because the MtM value of the NYMEX positions reflected the expected future cash flow and volatility associated with those positions.

95. Barclays did not receive the conveyances set forth above in good faith. Barclays intended to, and did, take unconscionable advantage of SemGroup. Barclays knew that SemGroup could not continue to fund the continuing margin requirements of its NYMEX trading book; had maxed out its credit lines; and could not extend its bank facility. Barclays also knew that the cash posted as margin with SemGroup's NYMEX Brokers represented the last substantial source of capital available to the company, as demonstrated by the fact that Barclays insisted that SemGroup use that precise source of capital to pay a portion of its unreasonable and unnecessary fee. In sum, Barclays knew, or deliberately ignored, that SemGroup's conveyance of a \$143 million fee to Barclays would hinder, delay, or defraud SemGroup's creditors.

96. All of the foregoing transfers and payments should be avoided pursuant to New York Debtor and Creditor Law §§ 273 and 278.

## COUNT TWO

### (New York Debtor and Creditor Law § 273)

97. Paragraphs 1 through 87 are hereby incorporated by reference.

98. The SemGroup NYMEX trading book that Kivisto transferred to Barclays, along with the margin posted on account of the open positions in SemGroup's trading book, was property in which SemGroup had an interest.

99. The \$143 million that SemGroup transferred to Barclays in the form of a fee was property in which SemGroup had an interest.

100. A significant percentage of the total positions novated to Barclays were Westback/Eaglwing positions. Despite the fact that no fee of any kind was necessary for the novation, Barclays claimed to have derived its \$143 million fee from an analysis of the positions to be novated. It is therefore fair to assume that Barclays considered the Westback/Eaglwing positions in determining its \$143 million fee demand.

101. SemGroup was insolvent at the time of, or was rendered insolvent by, the conveyance to Barclays of the Westback/Eaglwing positions, along with the associated cash margin on the positions, and the \$143 million fee, some portion of which was attributed by Barclays to the Westback/Eaglwing positions.

102. The conveyances described above were made without fair consideration.

103. SemGroup did not receive fairly equivalent value for the conveyances set forth above for the reasons set forth in Count 1, above, in paragraph 94. In addition, SemGroup did not receive fair consideration because it did not benefit from paying a fee to transfer positions that ultimately inured to the benefit or detriment of Westback. SemGroup's creditors were harmed by any portion of SemGroup's last remaining pool of cash being used for the benefit of Westback/Eaglwing.

104. Barclays did not receive the conveyances set forth above in good faith for the reasons set forth in Count I, above, in paragraph 95.

105. All transfers and payments to Barclays relating to the Westback/Eaglwing positions should be avoided pursuant to New York Debtor and Creditor Law §§ 273 and 278.

### **COUNT THREE**

#### **(New York Debtor and Creditor Law § 274)**

106. Paragraphs I through 87 are hereby incorporated by reference.

107. The SemGroup NYMEX trading book that Kivisto transferred to Barclays, along with the margin posted on account of the open positions in SemGroup's trading book, was property in which SemGroup had an interest.

108. The \$143 million that SemGroup transferred to Barclays in the form of a fee was property in which SemGroup had an interest.

109. Kivisto conveyed the SemGroup NYMEX trading book, and the associated cash margin on the positions, and the \$143 million fee to Barclays at a time when SemGroup was engaged or was about to engage in a business or transaction for which the property remaining in its hands after the conveyances was an unreasonably small capital.

110. The SemGroup NYMEX trading book that Kivisto transferred to Barclays, along with the margin posted on account of the open positions in SemGroup's trading book, was property in which SemGroup had an interest.

111. The \$143 million that SemGroup transferred to Barclays in the form of a fee was property in which SemGroup had an interest.

112. The conveyance by Kivisto to Barclays of the SemGroup NYMEX trading book and the cash margin associated with the positions in the trading book was made without fair consideration.

113. The conveyance by SemGroup of \$143 million to Barclays was made without fair consideration.

114. SemGroup did not receive fairly equivalent value for the conveyances set forth above for the reasons set forth in Count I, above, in paragraph 94.

115. Barclays did not receive the conveyances set forth above in good faith for the reasons set forth in Count I, above, in paragraph 95.

116. All transfers and payments to Barclays should be avoided pursuant to New York Debtor and Creditor Law §§ 274 and 278.

#### **COUNT FOUR**

##### **(New York Debtor and Creditor Law § 274)**

117. Paragraphs 1 through 87 are hereby incorporated by reference.

118. The SemGroup NYMEX trading book that Kivisto transferred to Barclays, along with the margin posted on account of the open positions in SemGroup's trading book, was property in which SemGroup had an interest.

119. The \$143 million that SemGroup transferred to Barclays in the form of a fee was property in which SemGroup had an interest.

120. Kivisto conveyed the SemGroup NYMEX trading book, and the associated cash margin posted for the positions, and the \$143 million fee to Barclays at a time when SemGroup was engaged or was about to engage in a business or transaction for which the property remaining in its hands after the conveyances was an unreasonably small capital.

121. A significant percentage of the total positions novated to Barclays were Westback/Eaglwing positions. Despite the fact that no fee of any kind was necessary for the novation, Barclays claimed to have derived its \$143 million fee from an analysis of the positions

to be novated. It is therefore fair to assume that Barclays considered the Westback/Eaglwing positions in determining its \$143 million fee demand.

122. The conveyances described above were made without fair consideration.

123. SemGroup did not receive fairly equivalent value for the conveyances set forth above for the reasons set forth in Count I, above, in paragraph 94. In addition, SemGroup did not receive fair consideration because it did not benefit from paying a fee to transfer positions that ultimately inured to the benefit or detriment of Westback. SemGroup's creditors were harmed by any portion of SemGroup's last remaining pool of cash being used for the benefit of Westback/Eaglwing.

124. Barclays did not receive the conveyances set forth above in good faith for the reasons set forth in Count I, above, in paragraph 95.

125. All transfers and payments to Barclays relating to the Westback/Eaglwing positions should be avoided pursuant to New York Debtor and Creditor Law §§ 274 and 278.

#### **COUNT FIVE**

##### **(New York Debtor and Creditor Law § 275)**

126. Paragraphs 1 through 87 are hereby incorporated by reference.

127. The SemGroup NYMEX trading book that Kivisto transferred to Barclays, along with the margin posted on account of the open positions in SemGroup's trading book, was property in which SemGroup had an interest.

128. The \$143 million that SemGroup transferred to Barclays in the form of a fee was property in which SemGroup had an interest.

129. Kivisto conveyed the SemGroup NYMEX trading book, and the associated cash margin posted for those positions, and the \$143 million fee to Barclays at a time when Kivisto intended or believed that SemGroup would incur debts beyond its ability to pay as they matured.

130. The SemGroup NYMEX trading book that Kivisto transferred to Barclays, along with the margin posted on account of the open positions in SemGroup's trading book, was property in which SemGroup had an interest.

131. The \$143 million that SemGroup transferred to Barclays in the form of a fee was property in which SemGroup had an interest.

132. The conveyance to Barclays of SemGroup's NYMEX trading book and the cash margin associated with the positions in the trading book was made without fair consideration.

133. The conveyance by SemGroup of \$143 million to Barclays was made without fair consideration.

134. SemGroup did not receive fairly equivalent value for the conveyances set forth above for the reasons set forth in Count I, above, in paragraph 94.

135. Barclays did not receive the conveyances set forth above in good faith for the reasons set forth in Count I, above, in paragraph 95.

136. All transfers and payments, including the \$143 million fee, made to Barclays as a result of the novation, therefore, should be avoided pursuant to New York Debtor and Creditor Law §§ 275 and 278.

## **COUNT SIX**

### **(New York Debtor and Creditor Law § 275)**

137. Paragraphs 1 through 87 are hereby incorporated by reference.

138. The SemGroup NYMEX trading book that Kivisto transferred to Barclays, along with the margin posted on account of the open positions in SemGroup's trading book, was property in which SemGroup had an interest.

139. The \$143 million that SemGroup transferred to Barclays in the form of a fee was property in which SemGroup had an interest.

140. Kivisto conveyed the SemGroup NYMEX trading book, and the associated cash margin posted for those positions, and the \$143 million fee to Barclays at a time when Kivisto intended or believed that SemGroup would incur debts beyond its ability to pay as they matured.

141. A significant percentage of the total positions novated to Barclays were Westback/Eaglwing positions. Despite the fact that no fee of any kind was necessary for the novation, Barclays claimed to have derived its \$143 million fee from an analysis of the positions to be novated. It is therefore fair to assume that Barclays considered the Westback/Eaglwing positions in determining its \$143 million fee demand.

142. The conveyances described above were made without fair consideration.

143. SemGroup did not receive fairly equivalent value for the conveyances set forth above for the reasons set forth in Count I, above, in paragraph 94. In addition, SemGroup did not receive fair consideration because it did not benefit from paying a fee to transfer positions that ultimately inured to the benefit or detriment of Westback. SemGroup's creditors were harmed by any portion of SemGroup's last remaining pool of cash being used for the benefit of Westback/Eaglwing.

144. Barclays did not receive the conveyances set forth above in good faith for the reasons set forth in Count I, above, in paragraph 95.

145. All transfers and payments to Barclays relating to the Westback/Eaglwing positions should be avoided pursuant to New York Debtor and Creditor Law §§ 275 and 278.

### **COUNT SEVEN**

#### **(Unjust Enrichment)**

146. Paragraphs 1 through 87 are hereby incorporated by reference.



147. Barclays was unjustly enriched at the expense of SemGroup's creditors by its receipt of nearly \$3 billion in margin payments and a fee of \$143 million, in addition to a trading book of NYMEX positions upon which Barclays ultimately reaped stratospheric profits.

148. For Barclays to retain those funds at the expense of SemGroup's creditors is contrary to the principles of equity and good conscience, and such funds should be returned for the benefit of the Litigation Trust and the lenders it represents.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment granting the following relief:

1. declaring that the payment of \$143 million dollars by SemGroup to Barclays be voided, including, but not limited to, any portion of the \$143 million payment that related to Westback positions;
2. declaring that all transfers from SemGroup to Barclays of cash margin be voided, including but not limited to all cash margin that was posted by SemGroup on behalf of Westback;
3. awarding Plaintiff judgment in the amount by which Defendants were unjustly enriched;
4. awarding Plaintiff reasonable costs and expenses incurred in connection with this action, including attorneys' fees and expert fees; and
5. granting Plaintiff such other and further relief as to the Court may seem just and proper.

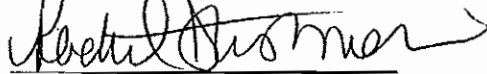
**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: July 9, 2012

Respectfully submitted,

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