

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
:  
IN RE CITIGROUP BOND LITIGATION  
:  
:  
-----X

08 Civ. 9522 (SHS)  
ORDER

SIDNEY H. STEIN, U.S. District Judge.

On October 27, 2011, defendants in this putative class action arising under the Securities Act of 1933 moved pursuant to Federal Rule of Civil Procedure 12(c) for judgment on the pleadings. Defendants’ motion effectively seeks reconsideration of the Court’s opinion of July 12, 2010 that granted in part and denied in part their Rule 12(b)(6) motion to dismiss the consolidated amended class action complaint. Their theory is that certain claims sustained in that opinion are not adequately pled pursuant to the holding of a recent Second Circuit opinion, *Fait v. Regions Financial Corp.*, 655 F.3d 105 (2d Cir. 2011).


Pursuant to Rule 12(d), “[i]f, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56.” Plaintiffs have notified the Court of their intention to present in their opposition papers relevant portions of the extensive discovery that has already taken place. (Letter to Court from Stuart Singer dated Sep. 7, 2011 at 2 and exhibits.) They would be permitted to do so. *See Ideal Steel Supply Corp. v. Anza*, 652 F.3d 310, 325 (2d Cir. 2011). Therefore, pursuant to Rule 12(d), defendants’ motion “must be treated as one for summary judgment under Rule 56” and “[a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.”

However, it would be extremely inefficient to consider such a motion at this time. First, defendants' motion does not seek dismissal of all of the remaining claims in this action (*see* Defs.' Mem. in Supp. of J. on the Pleadings at 2) and thus would not resolve the litigation, even if successful. Second, the Revised Scheduling Order dated July 26, 2011 (Dkt. No. 121) permits an amended pleading to be filed at the close of fact discovery; any amendment at that time would obviate the need for a Rule 12(c) motion at this time. Most importantly, that same scheduling order contemplates a motion for summary judgment to be made on or before September 28, 2012 following the close of discovery. Requiring plaintiffs to respond to this summary judgment motion before a later one is filed is inefficient; there is no reason for two rounds of summary judgment briefing. The Court will address the arguments raised in the present motion as part of a single motion for summary judgment made at the end of discovery, to the extent such arguments are renewed in that motion.

Accordingly, it is hereby ordered that defendants' Rule 12(c) motion (Dkt. No. 139) is converted to a motion for summary judgment pursuant to Rule 12(d) and is dismissed with leave to renew in connection with the motion for summary judgment contemplated in the Revised Scheduling Order.

Dated: New York, New York  
November 23, 2011

SO ORDERED.



---

Sidney H. Stein, U.S.D.J.