

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
EDWARD P. ZEMPRELLI, on Behalf of  
Himself and All Others Similarly  
Situating,

Plaintiff,

- against -

DEUTSCHE BANK AG, et al.,

Defendants.

-----X  
NORBERT G. KAESS and MARIA FARRUGGIO,  
On Behalf of Themselves and All Others  
Similarly Situated,

Plaintiff,

- against -

DEUTSCHE BANK AG, et al.,

Defendants.

-----X  
SHIRLEY BACHRACH, Individually and on  
Behalf of All Others Similarly  
Situating,

Plaintiff,

- against -

DEUTSCHE BANK AG, et al.,,

Defendants.

-----X  
GEORGE GERSON, Individually and on  
Behalf of All Others Similarly  
Situating,

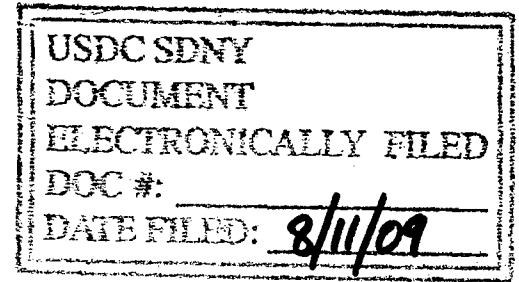
Plaintiff,

- against -

DEUTSCHE BANK AG, et al.,

Defendants.

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09 Civ. 1714 (DAB)  
ORDER

09 Civ. 2556 (DAB)  
ORDER

09 Civ. 3075 (DAB)  
ORDER

09 Civ. 3884 (DAB)  
ORDER

-----X  
SYLVIA LAITI, Individually and On  
Behalf of All Others Similarly  
Situated,

Plaintiff,

- against -

09 Civ. 3889 (DAB)  
ORDER

DEUTSCHE BANK AG, et al.,

Defendants.

-----X  
RIDGE OAK MANAGEMENT INC., On Behalf  
of Itself and All Others Similarly  
Situated,

Plaintiff,

- against -

09 Civ. 4270 (DAB)  
ORDER

DEUTSCHE BANK AG, et al.,

Defendants.

-----X

DEBORAH A. BATTS, United States District Judge.

Pending before this Court are the six above-captioned securities fraud class action lawsuits against Deutsche Bank AG and certain individual officers, subsidiaries, and underwriters of the Company. These actions allege claims under Sections 11, 12(a)(2), and 15 of the Securities Exchange Act of 1933 ("Exchange Act").

Putative class members Belmont Holdings Corporation ("Belmont Holdings"), as well as Norbert G. Kaess and Maria Farruggio ("Kaess and Farruggio"), have each moved the Court for appointment as lead plaintiff as well as their choice of lead counsel pursuant to section 21D(a)(3)(B) of the Exchange Act, as

amended by the Private Securities Litigation Reform Act ("PSLRA"). Belmont Holdings has also moved to consolidate the six class actions pursuant to Federal Rule of Civil Procedure 42(a), while Kaess and Farruggio seek to have the cases coordinated for discovery purposes, but not consolidated. For the reasons stated below, Belmont Holdings' motion to consolidate is GRANTED, while its motion for appointment as lead plaintiff and for appointment of lead counsel is DENIED. Kaess and Farruggio's motion for appointment as lead plaintiff and for appointment of lead counsel is GRANTED.

#### I. BACKGROUND

A Complaint was filed by Edward Zemprelli under Docket Number 09 Civ. 1714 on February 24, 2009, alleging that Defendant Deutsche Bank AG issued materially false and misleading registration statements and prospecti in connection with the October 2006 and November 2007 offerings of 6.375% and 7.35% Securities, respectively, in violation of Sections 11, 12(a)(2), and 15 of the Exchange Act. On February 24, 2009, notice of the class action in Zemprelli v. Deutsche Bank AG, et al., 09 cv. 1714, was published in Business Wire, a "national, business-oriented newswire service." (Alba Decl., at ¶2; Exhibit A.) That notice also advised members of the proposed Class of the April 27, 2009 deadline to move the Court to serve as Lead Plaintiff. (Id., at Exhibit A.)

A separate action was filed by Norbert G. Kaess and Maria Farruggio under Docket Number 09 Civ. 2556 on March 19, 2009,

alleging that Defendant Deutsche Bank AG issued materially false and misleading registration statements and prospecti in connection with the July 2007 and November 2007 offerings of 6.625% and 7.35% Securities, respectively, in violation of Sections 11, 12(a)(2), and 15 of the Exchange Act.

A third suit was filed by Shirley Bachrach under Docket Number 09 Civ. 3075 on March 30, 2009, alleging that Defendant Deutsche Bank AG issued a materially false and misleading registration statement and prospectus in connection with the February 2008 offering of 7.60% Securities, in violation of Sections 11, 12(a)(2), and 15 of the Exchange Act.

A fourth action was filed by George Gerson under Docket Number 09 Civ. 3884 on April 17, 2009, alleging that Defendant Deutsche Bank AG issued materially false and misleading registration statements and prospecti in connection with the October 2006, May 2007, July 2007, November 2007, February 2008, and May 2008 offering of 6.375%, 6.55%, 6.625%, 7.35%, 7.60%, and 8.05% Securities, respectively, in violation of Sections 11, 12(a)(2), and 15 of the Exchange Act.

A fifth action was filed by Sylvia Laiti under Docket Number 09 Civ. 3889 on March 17, 2009, alleging that Defendant Deutsche Bank AG issued a materially false and misleading registration statement and prospectus in connection with the February 2008 offering of 7.60% Securities, in violation of Sections 11, 12(a)(2), and 15 of the Exchange Act.

Finally, a sixth action was filed by Ridge Oak Management Inc. under Docket Number 09 Civ. 4270 on May 1, 2009, alleging

that Defendant Deutsche Bank AG issued a materially false and misleading registration statement and prospectus in connection with the February 2008 offering of 7.60% Securities, in violation of Sections 11, 12(a)(2), and 15 of the Exchange Act.

On April 27, 2009, Plaintiffs Norbert G. Kaess and Maria Farrugio filed a motion, along with supporting memoranda of law and declarations, to appoint the movant as lead plaintiff of the class, and to approve the movant's choice of lead counsel for the class. On April 28, 2009, Belmont Holdings filed a motion, along with supporting memoranda and declarations, for consolidation, to appoint the movant as lead plaintiff of the class, and to approve the movant's choice of lead counsel for the class. On May 14, 2009, both Belmont Holdings and Norbert G. Kaess and Maria Farrugio filed memoranda of law in opposition to the other's motions. No other class member has filed a motion for appointment as lead plaintiff.

## II. DISCUSSION

### A. Consolidation

Belmont Holdings moves to consolidate the six actions pursuant to Rule 42(a) of the Federal Rules of Civil Procedure. Rule 42(a) provides that "[i]f actions before the court involve a common question of law or fact, the court may... (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary costs or delay." Fed. R. Civ. P. 42. In such instances,

district courts have "broad discretion to determine whether consolidation is appropriate," and they "have taken the view that considerations of judicial economy favor consolidation." Johnson v. Celotex Corp., 899 F.2d 1281, 1285 (2d Cir. 1990). "[S]o long as any confusion or prejudice does not outweigh efficiency concerns, consolidation will generally be appropriate." Primavera Familienstiftung v. Askin, 173 F.R.D. 115, 129 (S.D.N.Y. 1997); Pinkowitz v. Elan Corp., PLC, No. 02 Civ. 865, 2002 WL 1822118, at \*2 (S.D.N.Y. July 29, 2002) (quoting Primavera).

All six actions share common questions of law and fact. All six Complaints assert claims under Sections 11, 12(a)(2) and 15 of the Exchange Act. In addition, each action is predicated upon many of the same alleged misrepresentations, particularly materially false and misleading statements and omissions contained in Deutsche Bank's 2005 and 2006 Annual Reports on Form 20-F and 2006 and 2007 financial results, incorporated into Deutsche Bank's Registration Statement and Prospectus. (See Zemprelli Compl. ¶¶ 3-4; Kaess & Farruggio Compl. ¶¶ 3-4; Bachrach Compl. ¶ 3; Gerson Compl. ¶¶ 60-63, 66, 68, 71, 77; Laiti Compl. ¶ 3; Ridge Oak Management Inc., Compl. ¶ 3). While "district courts have 'broad discretion' in determining the propriety of consolidation, this Court has recognized that consolidation is particularly appropriate in the context of securities class actions if the complaints are 'based on the same public statements and reports.'" Glauser v. EVCI Career Colleges Holding Corp., No. 05-cv-10240, 2006 WL 1302265, at \*1 (S.D.N.Y.

May 9, 2006).

Furthermore, it does not appear that any of the parties to these six actions would be prejudiced by consolidation. Accordingly, the Court finds that consolidation of the six actions is appropriate to promote judicial efficiency and to avoid unnecessary cost and delay. The consolidated class shall include all those who purchased or otherwise acquired Deutsche Bank AG's 6.375%, 6.55%, 6.625%, 7.35%, 7.60%, and 8.05% Securities, traceable to the Company's October 2006, May 2007, July 2007, November 2007, February 2008, and May 2008 Registration Statements and Prospecti, respectively.

#### B. Motion to Appoint Lead Plaintiff

The PSLRA requires plaintiffs filing a private securities class action complaint to publish notice of the pendency of the suit in a widely circulated business publication or wire service no later than twenty days after the complaint is filed. 15 U.S.C. § 78u-4(a)(3)(A)(i). No later than sixty days after the publication of notice, any member of the purported class may file a motion to serve as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(A)(i)(II). If a motion for consolidation has been made, the Court shall not appoint a lead plaintiff "until after the decision on the motion to consolidate is rendered." 15 U.S.C. § 78u-4(a)(3)(B)(ii).

In addition, the PSLRA provides that:

[T]he court . . . shall appoint as lead plaintiff the member or members of the

purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this paragraph referred to as the "most adequate plaintiff") . . . .

15 U.S.C. § 78u-4(a)(3)(B)(i).

A rebuttable presumption directs the court's inquiry when appointing lead plaintiff under the PSLRA. The PSLRA provides that the most adequate plaintiff is the person or group of persons which:

(aa) has either filed the complaint or made a motion in response to a notice . . . ;

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. § 78u-4(a)(3)(B)(iii)(I) (emphasis added).

This presumption, however, may be rebutted upon proof offered by another member of the purported class "that the presumptively most adequate plaintiff -- (aa) will not fairly and adequately protect the interests of the class; or (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

In the now consolidated matter, Plaintiffs Kaess and Farruggio have an outstanding motion for appointment as lead plaintiff that was filed on April 27, 2009, within 60 days of the February 24, 2009 notice published in Business Wire.

Furthermore, Kaess and Farruggio filed the Complaint in the action with Docket Number 09 Civ. 2556. Plaintiff Belmont Holdings, however, filed its Motion on April 28, 2009, outside the 60 day window prescribed by the PLSRA, and has not filed a Complaint. See 15 U.S.C. § 78u-4(a)(3)(A)(i)(II) (“[N]ot later than 60 days after the date on which the notice [to class members] is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.”); In re MicroStrategy Inc. Securities Litigation, 110 F.Supp.2d 427, 433 (E.D.Va. 2000) (“A motion filed after the sixty-day period by a person who has not filed a complaint, however, is untimely, and may not, except perhaps in rare circumstances, be considered by a court.”); In re Telxon Corp. Securities Litigation, 67 F.Supp.2d 803, 818 (N.D. Ohio 1999) (“The PSLRA is unequivocal and allows for no exceptions. All motions for lead plaintiff must be filed within sixty (60) days of the published notice for the first-filed action.”) (emphasis added). Because it has not met this statutory requirement, Belmont Holdings’ Motion for appointment as lead plaintiff is DENIED. Accordingly, the Court now considers the the Motion of Kaess and Farruggio for applicability of the presumption under § 78u-4(a)(3)(B)(iii)(I).

#### 1. Largest Financial Interest Requirement

Because they are the only Plaintiffs who have timely moved or submitted supporting documentation as to their financial interest in the relevant Deutsche Bank AG Securities, the Court need not compare Kaess and Farruggio’s financial interest to that

of other Plaintiffs. However, the Court notes that Kaess and Farruggio purchased 6.625% and 7.35% Deutsche Bank Securities and suffered damages alleged to be in the amount of \$289,830.00. (Hromadkova Declaration, Exhibit D.)

## 2. F.R.C.P. 23 Requirement

The Rule 23 inquiry under 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc) is less stringent than the inquiry the rule otherwise requires. See Weinberg v. Atlas Worldwide Holdings, Inc., 216 F.R.D. 248, 252 (S.D.N.Y. 2003) ("[a] wide-ranging analysis under Rule 23 is not appropriate at this initial stage of the litigation and should be left for consideration of a motion for class certification") (internal quotations and citations omitted); Pirelli Armstrong Tire Corp. v. Labranche & Co., Inc., No. 03 Civ. 8264, 2004 WL 1179311, at \*14 (S.D.N.Y. May 27, 2004) (same) (citing Weinberg). At this stage in the litigation, one need only make a "preliminary showing" that the Rule's typicality and adequacy requirements have been satisfied. Weinberg, 216 F.R.D. at 252; see also Weltz v. Lee, No. 00 Civ. 3863, 2001 WL 228412, at \*5 (S.D.N.Y. March 7, 2001). Any preliminary class certification findings of adequacy and typicality made at this time do not preclude a party from contesting the ultimate class certification. See Weltz, 2001 WL 228412, at \*5; see also Koppel v. 4987 Corp., Nos. 96 Civ. 7570, 97 Civ. 1754, 1999 WL 608783, at \*8 (S.D.N.Y. Aug. 9, 1999) (appointment as lead plaintiff "does not prejudice defendants' capacity to contest plaintiff's adequacy on a motion for class certification").

i. Typicality

The typicality requirement is satisfied when the claims of the proposed lead plaintiff "arise from the same conduct from which the other class members' claims and injuries arise." In re Oxford Health Plans, 182 F.R.D. 42, 50 (S.D.N.Y. 1998) (citing In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 291 (2d Cir. 1992)). This requirement "does not require that the factual background of [the lead plaintiff's] claim be identical to that of all class members; rather, it requires that the disputed issue of law or fact occupy essentially the same degree of centrality to the [lead plaintiff's] claim as to that of other members of the proposed class." Caridad v. Metro-North Commuter Railroad, 191 F.3d 283, 293 (2d Cir. 1999) (internal quotations and citations omitted).

Kaess and Farruggio's claims are typical of those of the proposed class. Like all other proposed class members, Kaess and Farruggio allegedly (1) acquired the Defendant's Securities pursuant and or traceable to the Company's false and misleading Registration Statement and Prospectus issued in connection with the Company's Securities Offerings; (2) purchased those shares at prices that included artificial inflation; (3) resulting in damages under the federal securities laws. The Kaess and Farruggio claims therefore arise from the same factual predicate as those in the other five Class Action Complaints. Accordingly, the Court finds that Kaess and Farruggio satisfy Rule 23's typicality requirement.

ii. Adequacy

The adequacy requirement is satisfied if (1) the interests of the class members are not antagonistic to one another; and (2) the class counsel is qualified, experienced, and generally able to conduct the litigation. In re Flag Telecom Holdings, Ltd. Securities Litigation, 245 F.R.D. 147, 160 (S.D.N.Y. 2007) (citing Baffa v. Donaldson, Lufkin & Jenrette Securities Corp. 222 F.3d 52, 60 (2d Cir. 2000)).

Kaess and Farruggio also satisfy the adequacy requirement. Exhibit E of the Hromadkova Declaration, filed in support of Kaess and Farruggio's motion, suggests to this Court that the firm of Murray, Frank & Sailer LLP, counsel for the Kaess and Farruggio, is generally able to conduct the litigation. This conclusion is supported by the firm's résumé. (See Hromadkova Decl. Exhibit E, at 1 (indicating that the firm has significant experience in prosecuting securities class actions)). Further, it does not appear that any antagonism exists among class members. Accordingly, the Court finds that Kaess and Farruggio are the most adequate Lead Plaintiff.

iii. Presumption of Adequacy Not Rebutted

The most adequate plaintiff presumption "may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff-- (aa) will not fairly and adequately protect the interests of the class; or (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). Here, although Belmont Holdings argues in its Opposition to Kaess and Farruggio's Motion that it rather

than Kaess and Farruggio should be appointed lead plaintiff, the sole basis of Belmont Holdings' opposition is not that Kaess and Farruggio are non-typical or inadequate, but rather that they have a smaller financial interest than Belmont Holdings.

(Belmont Holdings's Opposition, 7). However, as already noted, Belmont Holdings' motion was not timely filed. Thus, of the presumptive plaintiffs with motions for appointment as lead plaintiff, Kaess and Farruggio have the largest financial interest. Therefore, Belmont Holdings' has not rebutted the presumption established by the factors under § 78u-4(a)(3)(B)(iii)(I). Accordingly, Kaess and Farruggio are appointed Lead Plaintiff for the now consolidated Deutsche Bank AG class action currently pending before this Court.

#### C. Appointment of Lead Counsel

The PSLRA provides that the Lead Plaintiff "shall, subject to approval of the court, select and retain counsel to represent the class." 15 U.S.C. § 78u-4(a)(3)(B)(v).

Kaess and Farruggio have selected Murray, Frank & Sailer LLP to serve as Lead Counsel. As discussed above, the Court finds that Kaess and Farruggio's choice of counsel is qualified to prosecute this securities class action. Accordingly, this Court approves the selection of Murray, Frank & Sailer LLP as Lead Counsel.

### III. CONCLUSION

Having considered the consolidation of the Zemprelli, Kaess and Farruggio, Bachrach, Gerson, Laiti, and Ridge Oak Management actions pursuant to Federal Rule of Civil Procedure 42(a) and

the Motion for Appointment of Lead Plaintiff and Lead Counsel pursuant to the PSLRA, IT IS HEREBY ORDERED THAT:

1. The following six actions are hereby consolidated for all purposes, including pretrial proceedings, trial, and appeal, pursuant to F.R.C.P. 42(a):

Zemprelli v. Deutsche Bank, et al., 09 Civ. 1714 (DAB)

Kaess and Farruggio v. Deutsche Bank, Ltd., et al., 09 Civ. 2556 (DAB)

Bachrach v. Deutsche Bank, et al., 09 Civ. 3075 (DAB)

Gerson v. Deutsche Bank, et al., 09 Civ. 3884 (DAB)

Laiti v. Deutsche Bank, et al., 09 Civ. 3889 (DAB)

Ridge Oak Management, Inc. v. Deutsche Bank, et al., 09 Civ. 4270 (DAB)

2. The caption of these consolidated actions shall be "In re Deutsche Bank AG Securities Litigation" and the files of these consolidated actions shall be maintained in one file under Master File No. 09 Civ. 1714 (DAB). Any other actions now pending or later filed in this district which arise out of or are related to the same facts as alleged in the above-identified case shall be consolidated for all purposes, if and when they are brought to the Court's attention.

3. Every pleading filed in the consolidated actions or in any separate action included herein, shall bear the following caption:

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----X  
In re DEUTSCHE BANK AG : 09 Civ. 1714 (DAB)  
SECURITIES LITIGATION :  
-----X  
This Document Relates To: :  
: :  
-----X

4. When a pleading is intended to be applicable to all actions governed by this Order, the words "All Actions" shall appear immediately after the words "This Document Relates To:" in the caption set out above. When a pleading is intended to be applicable to only some, but not all of the consolidated actions, this Court's docket number for each individual action to which the pleading is intended to be applicable and the last name of the first-named plaintiff in said action shall appear immediately after the words "This Document Relates To:" in the caption described above.

5. When a pleading is filed and the caption shows that it is applicable to "All Actions," the clerk shall file such pleading in the Master File and note such filing on the Master Docket. No further copies need to be filed, and no other docket entries need be made.

6. When a pleading is filed and the caption shows that it is to be applicable to fewer than all of the consolidated actions, the Clerk will file such pleading in the Master File only, but shall docket such filing on the Master Docket and the docket of each applicable action.

7. The Court directs counsel to bring to the attention of the Clerk of Court the filing or transfer of any case that might be consolidated as part of In re Deutsche Bank AG Securities Litigation.

8. Kaess and Farruggio's Motion for Appointment as Lead Plaintiff is GRANTED.

9. The law firm of Murray, Frank & Sailer LLP is appointed Lead Counsel.

10. The Clerk of Court is hereby directed to terminate all other motions for consolidation, to appoint lead plaintiff or to

appoint lead counsel in actions 09 Civ. 1714, 09 Civ. 2556, 09 Civ. 3075, 09 Civ. 3884, 09 Civ. 3889, and 09 Civ. 4270.

11. Plaintiffs shall file a Consolidated Complaint within 30 days of the date of this Order.

12. The Defendants shall move or answer within 20 days after filing of the Consolidated Complaint.

SO ORDERED.

Dated: New York, New York

August 11, 2009

  
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DEBORAH A. BATTS  
United States District Judge