UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re SOCIÉTÉ GÉNÉRALE SECURITIES LITIGATION	:	No. 08-CIV-02495 (GEL)
	:	CLASS ACTION

PLAINTIFFS' CONSOLIDATED MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

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I. PRELIMINARY STATEMENT

In response to an extremely detailed and specific Complaint,[1] Defendants respond with two Fed. R. Civ. P. 12(b)(6) motions steeped in boilerplate arguments that ignore the facts alleged and misconstrue others. Indeed, Defendants' motions simply skate by the Complaint's many detailed allegations, critiquing investors who choose to play a risky game and then complain when they lose by crying "fraud." The Complaint is not a hindsight gripe about dice that came up craps, in which the relevant risks were fairly presented so the market could properly value Société Générale ("SocGen or the "Company") stock. Instead, Plaintiffs here allege that the dice were loaded, and that the game was far different and riskier than represented. *See Basic Inc. v. Levinson*, 485 U.S. 224, 246-47 (1988) ("Who would knowingly roll the dice in a crooked crap game?"). The alleged facts are not that SocGen failed to predict the future, but that it fraudulently described the present.

Defendants committed two separate but related frauds, both of which concern SocGen's undisclosed risks. One concerns Jerome Kerviel who, despite numerous internal warnings and alerts, was allowed to risk, and ultimately lose, billions of euros, placing unhedged, directional bets on various derivatives exchanges. By January 2008, Kerviel's bets had risen to €50 billion ($65 billion), which SocGen was forced to unwind, leaving it with a ***€4.9 billion loss***. The second fraud involved the collapse of the U.S. residential real estate market and the securities SocGen held that were backed by U.S. residential mortgages, particularly those issued to subprime lenders. In 2006, under its TGV Initiative, SocGen's New York office formed a CDO Group whose task it was to place unhedged bets on residential mortgage-backed securities ("RMBS") and collateralized debt obligations ("CDOs"). The Complaint identifies seven confidential, percipient witnesses who

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[1] "Complaint" refers to the First Amended and Consolidated Complaint for Violation of the Federal Securities Laws, filed October 17, 2008.

explain how SocGen abandoned its valuation method for its subprime assets in early 2007 – ignoring the ABX Index, the industry's primary tool for valuing these assets – as the market for mortgage-backed securities and related assets plunged and had become illiquid. When Defendants could no longer conceal the market collapse, SocGen was forced to write off ***€2.05 billion*** in subprime-related exposure, which amount was later increased to €2.6 billion, just days after assuring investors that its exposure to such assets was "low." When SocGen revealed both these frauds to the market on January 24, 2008, with combined losses of over €7 billion, ***€1.42 billion*** in SocGen's market capitalization was immediately wiped out. SocGen later announced that these losses rendered much of its 2007 financial results false and misleading and that it would have to ***restate*** those results.

The Individual Defendants, however, fared quite well. With the benefit of inside information and a €1.1 billion stock repurchase program, the Individual Defendants combined sold off ***2.3 million shares*** (the majority of their personal holdings), before the massive write-downs and losses were announced. Incredibly, Defendant Day managed to unload approximately 1.5 million of his SocGen shares and that of his foundation between January 9 and 18, 2008, ***just days before the Company's January 24, 2008 announcement***. Defendants' fraudulent conduct and obscene insider selling is the subject of numerous governmental investigations, including investigations by the U.S. Securities and Exchange Commission ("SEC") and U.S. Attorney's office.

Defendants' motion misapplies relevant Rule 12(b)(6) standards beginning with *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 127 S. Ct. 2499 (2007). While "the court must take into account plausible opposing inferences," it must be an "***opposing inference one could draw from the facts alleged***." *Id.* at 2509-10.[2] Defendants aim at inferences drawn from a different, false

[2] Emphasis is added and citations are omitted throughout unless otherwise noted.

target: a fictional "fraud by hindsight" inference that has nothing to do with the facts alleged here. Defendants are certainly not entitled to an opposing inference that they attempt to draw from facts outside of the Complaint, including a patchwork of newspaper and magazine articles.

For example, the Complaint alleges that Defendants ignored or recklessly disregarded the sharp declines in the ABX Index in valuing SocGen's subprime-related assets. ¶¶209-210, 312, 317.[3] These allegations are supported by facts from confidential witnesses. Instead of responding, as *Tellabs* requires, by analyzing the inferences that can be drawn from the facts alleged, Defendants responded by changing the facts alleged. Instead of explaining how they justifiably might have disregarded declines in the ABX Index, Defendants argue that (i) there were no sharp declines related to investments they held, (ii) the ABX Index is not useful for valuation purposes, and (iii) accounting rules did not require that they use the ABX Index. All three of these points are false, but more importantly, they do not present inferences that may be drawn from alleged facts that warrant dismissal of the Complaint.

A debate about whether the relevant ABX Indices declined at the relevant times cannot be resolved by referring to a magazine article that cites a rough estimate of the value of one version of the ABX Index on two dates.[4] The alleged facts are that Defendants ignored the ABX Index generally, not merely that they ignored one version of the Index on October 1 or 30, 2007.

Likewise, Defendants' assertion (again based on two magazine articles from outside the Complaint) that the appropriate inference is that the Index should be ignored, is belied by the facts

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[3] Paragraph references ("¶__") or ("¶¶__") are to the Complaint.

[4] Defendants assume that by citing newspaper and magazine articles they can create a reasonable inference under *Tellabs*. But even their epic efforts to cite ***17 different newspaper and magazine sources*** cannot avoid the central message of *Tellabs*, which directed parties to focus on the facts ***alleged***, not on outside reportage.

alleged. For instance, the American Institute of Certified Public Accountants' Center for Audit Quality has said that the pricing indicated by the ABX Index is an input to the valuation of a security backed by subprime mortgage loans. ¶315. Even if Defendants are correct that the ABX Index does not precisely match the risk profile of certain of its investments one-for-one, the allegation remains that Defendants ***ignored*** the ABX Index declines. How well the ABX Index matched any particular investment is a question of fact likely decided by expert opinion. It cannot be resolved now.

Nor is the reliance on articles outside the Complaint particularly helpful for Defendants. For example, Defendants suggest with respect to the Kerviel Fraud that they are entitled to an opposing inference that they knew nothing. Defs.' Mem. at 7, 37-39.[5] Only days ago, the following article pointed out the absurdity of the argument that Defendants were somehow unaware of Kerviel's actions in "one of the biggest rogue trading scandals in history":

> Alleged rogue trader Jerome Kerviel, accused of losing his bank 4.9 billion euros (7.1 billion dollars), has blamed his bosses in an emotional radio interview aired ahead of his trial.
>
> Speaking publicly for the first time since the end of the investigation into the Societe Generale scandal, Kerviel insisted that he could not have gambled away so much without his superiors' knowledge.
>
> "***Everything was visible. I took my positions in front of everyone, in front of managers. I wanted to earn money for my bank, all my operations were seen, monitored and controlled***," he told RTL radio.
>
> "***Do you honestly believe a 15 billion euro operation could go unnoticed and that the bank would ask no questions? For my part, I wasn't hiding myself. I was at the middle of the desk and everyone could see me work***."

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[5] "Defs.' Mem." refers to the Memorandum of Law in Support of the Motion of Defendants Société Générale, Daniel Bouton, Philippe Citerne and Didier Alix to Dismiss the Consolidated Amended Class Action Complaint.

Declaration of Ryan A. Llorens filed herewith ("Llorens Decl."), Ex. A (Dave Clark, *French 'rogue trader' blames bosses*, Agence France Presse, Feb. 6, 2009).

Defendants' other primary argument, regarding subject matter jurisdiction, will not end this litigation. First, this jurisdictional argument is premature because the issue is highly fact-specific and because Plaintiffs are entitled to discovery so that this issue can be determined on a more complete factual record. *See Kamen v. Am. Tel. & Tel. Co.*, 791 F.2d 1006, 1011 (2d. Cir. 1986); *Pension Comm. of the Univ. of Montreal Pension Plan v. Banc of Am. Sec., LLC*, No. 05 Civ. 9016 (SAS), 2006 U.S. Dist. LEXIS 11617, at *27 (S.D.N.Y. Mar. 20, 2006). Second, Defendants concede subject matter jurisdiction for those U.S. investors who purchased common shares outside the United States and for those investors, foreign and domestic, who purchased ADRs in the United States. Further, the facts alleged support subject matter jurisdiction for foreign purchasers on foreign exchanges, as certain of Defendants' statements were made in the United States (¶¶354-365), and the conduct which forms the basis of the Subprime Fraud was centered in New York. ¶354. *See Pension Comm. of the Univ. of Montreal Pension Plan v. Banc of Am. Sec., LLC*, No. 05 Civ. 9016 (SAS), 2009 U.S. Dist. LEXIS 206, at *29-*34 (S.D.N.Y. Jan. 5, 2009). These and other facts distinguish this case from the Second Circuit's recent decision in *Morrison v. Nat'l Austl. Bank Ltd.*, 547 F.3d 167 (2d Cir. 2008).

II. STATEMENT OF FACTS

A. The Kerviel Fraud

1. Kerviel's Job on the "Delta One" Desk Involved the Relatively Risk-free Practice of Arbitrage

Jerome Kerviel was a 31-year-old junior trader on SocGen's "Delta One" arbitrage desk. ¶90. The purpose of arbitrage is to earn a marginal, riskless profit from offsetting transactions.

However, Kerviel was allowed to engage in massive unhedged, directional (or "naked") equity trades, ultimately exposing SocGen to billions of euros in market risk. ¶95.

In August 2005, the beginning of the Class Period (August 1, 2005-January 25, 2008), Kerviel began taking "naked" positions on the Eurex, DAX and FIMAT exchanges. ¶¶95, 186. By 2007, Kerviel's trades produced €25 million in earnings, of which only €3 million was the result of legitimate arbitrage trades. ¶95. The remaining €22 million was from unhedged, directional positions. *Id*. Combined, Kerviel's earnings accounted for 59% of the "Delta One" earnings in 2007. ¶96. These naked positions increased throughout the Class Period (*id.*), ultimately reaching over €50 billion in exposure in January 2008.

Defendants misled investors about all of this, leaving the market with no idea that a significant percentage of SocGen's supposed riskless arbitrage earnings was the result of unchecked, directional bets being placed by a 31-year-old junior trader, who now likens his trading duties to that of playing a video game. Llorens Decl., Ex. I (Angelique Chrisafis, '*It was like playing a video game,' says Kerviel*, guardian.co.uk, Jan. 22, 2009). Had the truth been told, SocGen stock certainly would have traded at a significant discount to account for such risk. ¶97. In fact, a key metric for SocGen's stock price is its "Value at Risk" or VaR, which measures the potential market risk exposure of SocGen's RMBS and CDO portfolios.

2. SocGen Management Received Numerous Alerts and Warnings

While the public was in the dark about the risks inherent in Kerviel's trading activities, SocGen's management was not. As early as February 2007, SocGen was notified by FIMAT Frankfurt concerning certain of Kerviel's trades. ¶186. Shortly thereafter in March 2007, SocGen received additional warnings regarding Kerviel from multiple market exchanges and the Bank of

France. *Id.* However, because Kerviel's unhedged trading was profitable, SocGen took no action to stop (or even slow) Kerviel's trading. *Id.*

Kerviel's trading activity also set off internal alerts within SocGen. For instance, an internal e-mail dated April 16, 2007, sent to Kerviel's supervisors and several financial controllers, identified ***€94 million in "'fictitious' transactions" booked by Kerviel***. ¶187. In response, the Company held an "***emergency meeting***" to discuss the issue, at which Kerviel was asked to explain these transactions. ¶188. According to SocGen's internal audit of the fiasco (the Mission Green Report), Kerviel's explanation simply was not credible. ¶189. SocGen was more concerned with how to account for the fictitious transactions rather than ending them (¶195), as Defendants took no action to stop Kerviel's trading.

Also in March and April 2007, the Bank of France sent two separate letters to Defendant Bouton warning him that SocGen's risk control management system with respect to derivatives – the precise area in which Kerviel worked – was "***wanting***." ¶190. Neither SocGen nor Bouton took any action in response, and Kerviel was allowed to continue placing unhedged, directional bets.

By late June-early July 2007, the accounting gap created by Kerviel's "fictitious transactions" reached ***€2.2 billion***. ¶189. Still, Kerviel was allowed to continue placing bets.

Later in November 2007, the "Eurex," the European futures and options exchange, took the unusual step of notifying SocGen of Kerviel's trading activities. ¶191. The Eurex questioned two unusually "large" transactions of Kerviel's and asked what his investment strategy was and why he entered the transactions through SocGen's London-based subsidiary FIMAT Futures Limited. ¶¶171(b), 192. Despite this high-level inquiry, and because Kerviel's trading remained profitable, SocGen took no action in response to this high-level inquiry. Kerviel continued to increase his bets.

SocGen's numerous internal alerts also continued throughout 2007. Indeed, Kerviel's nearly 1,000 unauthorized or "fictitious" transactions, beginning in 2005, triggered "***more than 70 'alert' warnings***" within SocGen, and still SocGen failed to take any action. ¶197. The following are but a sampling of the types of internal "alerts" triggered by Kerviel's trading activities:

- "Intraday" trade alerts: "such transactions were 'unjustified' given [Kerviel's] job assignment and experience level." *Id.*
- "Control of input" alerts: for example that transactions purportedly occurred on Saturday when markets are closed. ¶198.
- "Front-back spreads/buffer banks" alerts: for example that Kerviel failed to supply the broker's name. *Id.*
- "Gateways" which warned SocGen management of the high nominal value of Kerviel's trades. *Id.*
- Alerts regarding discrepancies in Kerviel's various trading accounts, including tens of billions of euros in discrepancies throughout 2007. *Id.*
- Alerts that Kerviel's Delta One desk had exceeded its stress test limit for risk. *Id.*

These and many other alerts were in addition to SocGen's knowledge that Kerviel refused to take the required ***vacation time***. ¶193. As Kerviel explained, "[i]t is one of the first rules of internal controls: ***a trader who doesn't take holidays is a trader who doesn't want his books to be seen by others***." *Id.* SocGen's management also failed to question both the volume and magnitude of Kerviel's trades, including a €500,000 one-way (*i.e.*, unhedged) trade, well above Kerviel's authorization level. ¶195. Surprisingly, and contrary to its many assurances that its risk-control management systems were state of the art, SocGen failed to monitor ***gross trading positions***, and failed to even regularly change its ***computer passwords***, a fundamental industry practice. Indeed, what Kerviel was doing was "***not at all sophisticated***." ¶176.

By year-end 2007, a SocGen ***internal report*** informed management that "measures dedicated to the permanent control were insufficient in both qualitative and quantitative terms, with regard to

the necessity of preventing operational risk." ¶236. Meanwhile, Kerviel was unwinding his trades, recording an unprecedented gain of €1.4 billion at year-end 2007. ¶175. Of course, a gain of this magnitude was impossible in Kerviel's junior position and at his modest authorization level. With Kerviel well in the black, SocGen did nothing, ***internal reports*** notwithstanding, and when the new year began, so did Kerviel's unhedged trading activity.

By January 2008, Kerviel's trading fortunes had turned and because of this, Defendants' treatment of Kerviel's trading turned as well. As the market began to drop, Kerviel began experiencing significant trading losses. In response, he substantially increased his bets, in essence "doubling down" to make up ground. By mid-January 2008, Kerviel's trading had quickly spun out of control, as he had amassed unhedged positions, *i.e.*, exposure, totaling ***over €50 billion*** ($65 billion). By comparison, SocGen's market capitalization was only €35 billion. At this point, with its very solvency on the line, SocGen management was forced to stop the game and unwind Kerviel's positions, virtually overnight, taking a massive €4.9 billion loss in the process. The actual loss was even higher, but SocGen was allowed to offset Kerviel's €1.4 billion gain from 2007 against his 2008 losses. ¶175.

3. SocGen Misrepresented Its Risk Control Management Systems and Expertise

Even as Defendant Bouton was being warned by the Bank of France about SocGen's risk control management system issues, and as SocGen was receiving warning after warning about Kerviel, Bouton signed and issued the Company's 2007 Registration Document, the equivalent of an annual report on Form 10-K, filed with the SEC, which falsely assured the market that SocGen's "[r]isk management procedures are defined at the highest levels" (¶128), that "the procedures for managing, preventing and evaluating risks are regularly analyzed in-depth by the Board of Directors, and, in particular, its Audit Committee" (*id.*), and that its Risk Division "guarantee[d] a robust and

efficient framework of risk management." ¶129. Bouton continued, "[t]he permanent supervision of activities at a local level by operational staff forms the cornerstone of ongoing control within Société Générale Group . . . to ***guarantee*** that transactions carried out at an operational level are correctly handled, secure ***and valid***." ¶130. Bouton even assured the market of SocGen's "daily verification of the economic reality of the [financial and accounting data]." ¶132. Defendants' emphatic and unequivocal statements assuring the market regarding the quality of SocGen's risk control management systems were patently false.[6] Indeed, "***it's hard to see any oversight system that misses such a large amount of unauthorized trading for nearly nine months as anything other than a [sic] abject failure***." ¶185. "***[T]he bank let an elephant stroll down the corridor unseen***." Llorens Decl., Ex. J (Oddo Securities report, dated January 25, 2008).

In her February 4, 2008 report to the French Prime Minister, French Finance Minister Christine Lagard concluded: "***Very clearly, certain mechanisms of internal controls of Societe Generale did not function, and those that did were not always followed up with appropriate changes***." ¶232. The French Banking Commission similarly found "***serious deficiencies***" in SocGen's internal control systems that went "***beyond the repetition of simple individual failures***." ¶239. The Commission imposed its largest fine ever, which it said "***reflects the scale of systematic and managerial short-comings identified***." ¶233.

SocGen's former inspector of trading operations Maxime Legrand explained that SocGen's management knew, as it must, that its internal controls were woefully inadequate:

> Since inspectors do not have enough power in the bank [SocGen], we are not given the time we need, or the means to check things out. ***We pretend to have an***

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[6] Defendants also misrepresented SocGen Equity Trades Value at Risk or VaR – the risk associated with the Kerviel Fraud. It was false as it failed to reflect the true risk associated with Kerviel's trading activities. ¶100.

> ***inspection to please the banking commission***. That's where the hypocrisy lies with management: ***everyone knows about this***.

¶199. As one commentator stated, Kerviel's trading activities "***suggest a higher-level failure of risk management***." ¶200.

B. The Subprime Fraud

Throughout the Class Period SocGen accumulated significant subprime-related assets. Not only did Defendants misrepresent the amount and types of subprime assets SocGen was carrying, they misrepresented the ***risks*** inherent in these assets and their proper ***valuation***. As the U.S. subprime residential real estate market cratered in 2006 and 2007, SocGen was left holding billions of euros worth of subprime-related assets that it was ultimately forced to write down, contradicting Defendants' numerous Class Period statements about its subprime exposure.

1. Residential Mortgage-Backed Securities (RMBS) and Collateralized Debt Obligations (CDOs)

Beginning in 2005, SocGen significantly expanded its New York operations under its TGV initiative in order to begin structuring, trading and investing in RMBS and CDO assets. Through its CDO Group in New York, SocGen began building a portfolio of ***undisclosed*** and unhedged positions in subprime RMBS and mezzanine CDOs, *i.e.*, CDOs backed by extremely risky junior (BBB and sub-BBB rated) tranches of subprime RMBS securities (¶¶9, 299), which exposed it directly to the U.S. subprime real estate market. For instance, its mezzanine CDOs were backed almost entirely by subprime collateral. ¶298 (89% of CDO 1 and 74% of CDO 2 backed by subprime collateral). Thus, although SocGen had senior positions in these mezzanine CDO securities, as Defendants repeatedly argue, that fact is entirely meaningless.

Unbeknownst to investors, through its New York offices SocGen was acquiring and warehousing massive amounts of these assets totaling hundreds of millions of euros (¶318), with the goal of repackaging them into more-complex structured finance products and selling them to

investors. ¶10. In the midst of doing so the U.S. residential real estate market collapsed, beginning with subprime mortgages that backed much of the RMBS and CDOs held by SocGen. As the market quickly dried up, becoming illiquid in late 2006 and early 2007 (and certainly no later than mid-2007), SocGen was left holding worthless investments it could not sell and would not write down. *Id.*

Rather than writing down these investments, as it was required to do under IAS 39 (¶¶310-312), SocGen shifted from a "mark-to-market" valuation to a "mark-to-model" valuation, using internally-generated valuation models that relied on variables and forward-looking estimates supplied by SocGen's own management. ¶310. According to CW1, in mid-2007 SocGen stopped using the ABX Index in its modeling when valuing the Company's RMBS portfolio. ¶209.[7] SocGen ceased applying the ABX Index because, among other things, the Index in mid-2007 (at the latest) was showing a precipitous increase in the cost of insurance for RMBS – meaning that the market believed that RMBS products were becoming volatile – which, according to CW1, clearly showed that SocGen New York's RMBS valuations were overstated. *Id.*[8] As CW2 explained, based on attending a high-level meeting in New York, SocGen's numerous valuation models failed to reflect reality, as SocGen simply plugged in various assumptions in order to attempt to buoy the value of these assets and avoid writing them down. ¶¶164, 310, 319.

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[7] The ABX Index is a widely-used modeling index for RMBS and CDO market valuations. Created in January 2006 by several banks and a financial information services company, Markit, the ABX Index is the valuation model preferred by the American Institute of Certified Public Accountants' Center for Audit Quality. ¶315.

[8] SocGen's abrupt abandonment of the ABX Index in November 2007 becomes even more remarkable where, as here, SocGen only two months later re-adopted the ABX Index in order to take a €2.05 billion write-down on its subprime assets, including an additional €1.1 billion write-down on its RMBS and CDO portfolios.

Meanwhile, in statements to the market, senior SocGen management, including Defendant Bouton and Jean-Pierre Mustier ("Mustier"), concealed or otherwise misrepresented its exposure to these types of assets. In August 2007, SocGen assured the market that it had "low exposure to the current credit market crisis." ¶143. This statement was repeated to the market by numerous analysts, as it was a key factor in their valuations of SocGen's future cash flows and hence its stock price. ¶¶144-147.

In September 2007, well after the market for these assets had tanked, Defendant Bouton represented that the credit crisis was "***under control***" and that it would have only a "***limited impact***" on SocGen. ¶152. Bouton also stated that SocGen had only a "***marginal exposure***" to the subprime market. *Id.*

When the Company issued its Q3 2007 financial results in November 2007, even though the market for its RMBS and mezzanine CDOs had long since evaporated and SocGen was left holding ***billions*** of euros worth of subprime-related assets, SocGen reported that it had a relatively benign write-down of only €230 million. In a November 7, 2007 conference call with analysts, the Company's CFO Frédéric Oudéa assured investors that SocGen had exposed its RMBS and CDO portfolios to a ***vigorous "stress test"*** to measure the Company's "***maximum exposure***." ¶154. This €230 million write-down was purportedly based on a "***worst-case forward-looking scenario***." ¶310. At the same time Defendant Bouton represented that the subprime market was "***gradually improving***." ¶160. And, Mustier reassured the market that SocGen was in a good position with respect to its mezzanine CDO holdings. ¶154.

On November 22, 2007, SocGen management met with analysts, including those at Deutsche Bank, and reassured them that there would be "***no further write-downs***." ¶161. Shortly thereafter,

on December 19, 2007, Defendant Bouton stated that "he saw '***limited impact***' on the profitability of France's [second-largest] bank from the current subprime mortgage crisis." ¶162.

Despite these explicit assurances, just weeks later SocGen shocked the market by announcing a massive, additional write-down of its subprime assets of €2.05 billion in Q4 2007 – ***ten times larger than its previous write-down only two months prior*** – as SocGen's valuation methodology returned to utilizing the ABX Index. ¶168. Hoping to create "noise" in the market, SocGen coupled this announcement with its disclosure of the Kerviel Fraud and the larger €4.9 billion loss.

2. Confidential Witnesses

While Defendants attempt to dismiss the above allegations as "hindsight," they are anything but. Indeed, the Complaint is grounded in the personal accounts of a number of confidential, percipient witnesses. Their accounts demonstrate both the falsity of Defendants' subprime-related statements and their knowledge, or reckless disregard, of such falsity. Significantly, these witnesses were employed by SocGen during the Class Period and were in management-level positions, several of them at the vice president level, which allowed them access to critical information. Their accounts of events that took place at SocGen's New York offices are consistent with one another – ensuring the credibility and accuracy of their information.

For instance, according to CW1 (Vice President of FICC Analytics – SocGen New York),[9] by mid-2007 ***at the latest*** the market for CDOs and RMBS assets, which SocGen had acquired, had become illiquid. ¶¶204-205. This forced SocGen to switch from a "mark-to-market" valuation method to a "mark-to-model" valuation method. ¶207. Also by mid-2007, and because of the "serious problems with liquidity," SocGen dissolved the New York-based CDO Group responsible

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[9] "FICC" is an acronym for Fixed Income, Currencies and Commodities.

for the purchasing and "warehousing" of subprime-related assets to be securitized – another indicator that the RMBS and CDO market was no longer viable. ¶¶207-208. SocGen also stopped using the ABX Index, which was dropping rapidly, as a tool to value its subprime portfolio. ¶209.

CW2 (Director of IT for Capital Markets – SocGen New York), participated in regular budget meetings with the head of SocGen's New York operations Paolo Taddonio. ¶212. According to CW2, in mid-2007, the budget for the New York office was drastically reduced, at least in part due to the collapse of the U.S. residential mortgage market. *Id.* By mid-2007, the CDO market was "***shot***," as SocGen's attempt at CDO underwriting had "***turned out to be a train wreck***." ¶¶213-214. In response, the head of CDO structuring (Carlos Beneto) and the head of RMBS (Arno Derries) issued an ***urgent mandate*** to change the parameters (*e.g.*, recovery rates, default rates, etc.) of its Calypso System, a computer program which ran the valuation models to assign valuations to SocGen's RMBS and CDO portfolios. ¶215.[10] During this time frame, CW2 recalls attending a meeting, which was also attended by Taddonio, where the participants specifically discussed the fact that ***the valuation models were not working and did not reflect reality***. ¶164. By the end of 2006, it was common knowledge in sales meetings that the RMBS and CDO assets had diminished in value and had become illiquid. ¶214.

CW5 (Vice President Structured Asset Groups – SocGen New York) was responsible for selling RMBS and CDOs, including those structured by SocGen. ¶220. CW5 explained that the

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[10] According to CW2, SocGen moved the Value at Risk or VaR process from New York to Paris in late 2006. ¶211. The VaR metric was a key measure of SocGen's risk, which SocGen falsely reported during the Class Period. ¶¶98-100. SocGen's New York operations created bogus values and VaR models for its RMBS and CDO portfolios. ¶355. Further, the VaR reports were sent to Paris executives on a daily basis. ¶¶64, 216, 273. CW2, who was directly involved in the transition process from New York to Paris, corroborates CW1's belief that the transition of the VaR process occurred so that the Executive group in Paris could exercise "more control" over the VaR analysis. ¶¶211, 362.

RMBS and CDO market began tightening up in 2006 during which SocGen engaged in a scheme to convince investors that the market was still active. ¶222. For instance, when investors waited until the lower (or equity) tranches of a CDO were purchased before purchasing a senior tranch, SocGen agreed with Magnatar, a Wall Street hedge fund, to purchase the equity tranch ***on the condition that the fund could turn around and "short" the CDO through a credit default swap***. *Id.*

According to CW5, it was common knowledge within SocGen that by the end of 2006 its RMBS and CDO assets had become illiquid. ¶223. CW5's knowledge is based on attendance at ***sales meetings*** and from reviewing ***inventory reports*** that reflected the lack of turnover within SocGen's RMBS and CDO portfolios. The Company's ***monthly cash reports*** also reflected the deteriorating value of its CDOs. ¶225. According to CW5, the sales staff referred to these assets as "crap." ¶224.

C. SocGen's False Financial Statements

1. SocGen's Restatement as a Result of the Kerviel Fraud

As a result of the Kerviel Fraud, SocGen restated its operating income and net income for each quarter in 2007. A table of restated amounts (¶290) is attached hereto as Appendix A.

Defendants, particularly Bouton, represented that SocGen's financial statements had been prepared in accordance with International Financial Reporting Standards ("IFRS") and gave a fair view of the Company's assets, liabilities, financial position, and profit and loss. ¶281(c). In May 2008, SocGen was forced to admit that its 2007 financial results were in fact ***not*** prepared in accordance with IFRS and could no longer be relied upon. ¶288. By not timely recording or disclosing the financial impact of the Kerviel Fraud, SocGen violated numerous IFRS standards, including, but not limited to, IAS1 39, IFRS 7, IAS 10, IAS 30, IAS 32, IAS 34. ¶¶296-297. Moreover, by restating its previously-issued 2007 financial results, the Company admitted that its financial results for 2007 were false and misleading when originally prepared. In accordance with

IFRS standards (IAS 8), the information that caused the misstatements ***was available to the Company when the financial statements for those periods were authorized and issued*** and could reasonably be expected to have been obtained ***and taken into account*** when the financials were prepared. ¶¶291-292.

2. SocGen's Numerous Accounting Violations as a Result of the Subprime Fraud

SocGen's financial statements were also materially overstated by at least ***€3.6 billion*** during the Class Period because the Company failed to account properly for its RMBS and CDO assets. ¶¶299-300. Although Defendants failed to disclose it in SocGen's financial statements, SocGen took a relatively small write-down in its RMBS and CDO assets in Q1 and Q2 2007 (€13 and €66 million, respectively). In fact, SocGen failed to disclose any information relating to its subprime-related RMBS and CDO portfolios prior to Q3 2007, including (i) the types of subprime RMBS and CDO securities it held, (ii) the balance of the securities, and (iii) the credit rating or market sensitivity of its pre-Q3 2007 restatements. ¶302.

Failing to properly disclose and value its RMBS and CDO securities is a violation of IFRS accounting standards, particularly IFRS 7, IAS 32, IAS 10 and IAS 34. ¶¶303-309. Moreover, IAS 39 required SocGen to value its RMBS and CDO portfolios at "the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction." ¶310. In violation of IAS 39, SocGen opted to value its subprime portfolio based on a "model" which it knew, or recklessly disregarded, ignored information readily available to it relating to the valuations of its RMBS and CDO portfolios, including: (i) information from its wholly-owned U.S. subsidiary Trust Company of the West ("TCW") – "the leading player in the CDO market" (¶313); (ii) the ABX Index which tracked the cost of buying and selling credit default swaps on

certain RMBS transactions (¶315); and (iii) SocGen's trading experience, reflected on its weekly inventory sheets (discussed at its weekly sales meetings) and its daily cash reports. ¶320.

On January 24, 2008, when SocGen could no longer conceal its mounting RMBS and CDO losses from investors, the Company announced that it would record over €2 billion in write-downs of its subprime-related assets, including a €1.1 billion write-down of its RMBS and CDO portfolios.

3. SocGen's Internal Controls

SocGen's 2007 Registration Document included a report on Internal Controls which was certified by Defendant Bouton, in accordance with article L. 225-37 of the French Commercial Code. ¶334. Throughout the report, the Company described the importance of effective internal controls at SocGen. Defendants' numerous assurances in the 2007 Registration Document, as discussed above, as well as similar statements made throughout the Class Period regarding the quality of the Company's disclosure controls and procedures, internal control over financial reporting, and risk management controls, were materially false and misleading because, in fact, SocGen had numerous, serious deficiencies in these areas as reflected by the government agencies investigating SocGen.

Accordingly, SocGen's true financial condition and results of operations were further masked by false and misleading statements that the Company maintained an effective framework of internal controls covering financial disclosures, financial reporting and risk management. ¶333.

D. When the Truth Begins to Be Revealed, SocGen's Common Shares and ADRs Drop

The market reacted swiftly to leakage that SocGen would have to take drastic additional subprime-related write-downs and to the eventual January 24, 2008 dual announcement revealing both the subprime write-down and the Kerviel losses, sending the Company's stock and ADR prices down sharply. ¶¶168-169, 407-408. During the period from January 18-21, 2008, the Company's

stock price dropped 16% from €93 to €78.52. ¶407. This price drop was statistically significant, *i.e.*, not explained by movements in the market as a whole, and it was the direct result of the leakage of information into the market that SocGen's subprime assets continued to be significantly overvalued. *Id.*[11] Similarly, as a result of SocGen's January 24, 2008 disclosure, SocGen's stock shot down from €79.08 to €75.81 on January 24, 2008, or €3.27 per share, on heavy volume of over 26 million shares. ¶408. SocGen's ADR shares in the United States similarly lost value as a result of these revelations on extremely high volume. ¶¶340, 408. This price decline was also statistically significant. *Id.*

E. The Individual Defendants' Insider Trading and SocGen's Repurchase Program

By concealing the massive risks being taken by SocGen throughout the Class Period, the Individual Defendants were able to unload over 2.3 million inflated SocGen shares for more than €225 million. ¶251. The Individual Defendants sold between 51% and 81% of their individual shares, as follows:

- ***Defendant Day*** (SocGen Director and Chairman and CEO of TCW) sold 1,886,187 SocGen shares (53% of his holdings) for ***€168 million***. ¶¶252, 383. This includes 1.5 million shares which Defendant Day unloaded from January 9, 2008 to January 18, 2008 for proceeds at ***€140 million***.

- ***Defendant Bouton*** (SocGen Chairman and CEO) sold 255,713 SocGen shares (65% of his holdings) for proceeds of over ***€30 million***.

- ***Defendant Citerne*** (SocGen Director and Co-CEO) sold 201,129 SocGen shares (81% of his holdings) for proceeds of over ***€23 million***.

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[11] Demonstrating the direct relationship between this 16% drop and leakage regarding SocGen's impending write-down, one analyst explained that the 16% drop in share price during these few days was consistent with a drop in 2007 net profit ***if SocGen were to write down its RMBS and CDO portfolios €1.3 billion***. ¶407.

- ***Defendant Alix*** (SocGen Co-CEO) sold 23,171 SocGen shares (81% of his holdings) for proceeds of ***€3.3 million***.

¶¶368-371.

Throughout the Class Period, these Defendants caused SocGen to repurchase 12.3 million of its shares at a cost of nearly €1.1 billion. ¶¶20, 372. Defendants' rationale for the stock repurchase program was SocGen's "low exposure to credit risk." ¶377. In truth, the stock repurchase sent the false message to investors that SocGen's stock was undervalued, which served to prop up the stock price and provide the Individual Defendants an opportunity to dump their shares and realize significant profits. *Id.*

F. Defendants' Fraudulent Scheme Sparked Several Government Investigations

Governmental agencies in both France and the United States initiated investigations of the Company in response to SocGen's January 24, 2008 revelations. ¶230. The agencies' investigations, many of them still ongoing, have focused on SocGen's deficient internal controls, statements regarding its subprime exposure, and Defendant Day's massive and suspicious insider trading. These agencies include the following:

- ***French Finance Minister***: It only took the French Finance Minister 11 days to conclude that SocGen's woefully inadequate internal controls were to blame for allowing the Kerviel Fraud to occur. ¶¶231-232.

- ***French Banking Commission***: After its investigation, focusing on the Kerviel Fraud, the French Banking Commission fined SocGen €4 million – its largest fine ever – for the Company's deficient internal controls and violations of French banking laws, noting that the failures were "serious deficiencies" that were "beyond the repetition of simple individual failures." ¶¶233-241.

- ***Autorite des Marches Financiers ("AMF")***: "The goal of the [AMF] investigation is to determine whether the information put out by [SocGen] on the subprime crisis in recent months was 'complete, appropriate and reliable." ¶242. The AMF is also investigating Defendant Day's unloading of more than €140 million in SocGen stock just prior to the January 24, 2008 announcement. *Id.*

- ***U.S. Securities and Exchange Commission ("SEC")***: The SEC announced in February 2008 that it was investigating the timing of Defendant Day's stock sales. Its investigation is ongoing. ¶243.

- ***U.S. Attorney for the Eastern District of New York***: Commenced on January 25, 2008, this criminal investigation is ongoing and focused on at least two separate issues: (1) the loss SocGen incurred from Kerviel's trades; and (2) Defendant Day's stock sales prior to the Company's January 24, 2008 announcement. ¶244.

G. SocGen Cleans House

Following SocGen's January 24 announcement and the resultant government investigations, the Company demoted, terminated and/or forced the resignations of several high-level executives. ¶264. On April 17, 2008, SocGen announced that Defendant Bouton would be stripped of his role as CEO and Defendant Citerne was forced to give up his Board seat. ¶266. In an effort to distance themselves from Kerviel's activities, SocGen's executive management also terminated and/or forced the resignations of lower-level management who worked directly above Kerviel. ¶267.

There was also fallout from the subprime-related write-downs. In September 2008, the Company announced that Liz Hogan and Jerome Jacques would become co-heads of FICC Americas, replacing Taddonio. ¶269.

III. THE COMPLAINT SUFFICIENTLY ALLEGES MATERIALLY FALSE AND MISLEADING STATEMENTS

To sufficiently allege false and misleading statements pursuant to Fed. R. Civ. P. 9(b), the pleading must "'"'(1) specify the statements that . . . were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent."'" *Novak v. Kasaks*, 216 F.3d 300, 306 (2d Cir. 2000) ("'The primary purpose of Rule 9(b) is to afford defendant fair notice of the plaintiff's claim and the factual ground upon which it is based.'"); *accord* 15 U.S.C. §78u-4(b)(1) (the complaint need only "specify each statement alleged to have been misleading [and] the reason or reasons why the statement is misleading").

The Complaint easily meets this standard. It identifies with specificity each of Defendants' materially false and misleading statements made in press releases, analyst conference calls, public filings, and other means during the Class Period. These statements concern (i) SocGen's risk control management systems (*see, e.g.*, ¶¶108-111, 115-116, 120, 128-132, 136, 143, 154-155), (ii) the extent and nature of SocGen's subprime exposure, including the valuation of its RMBS and CDO portfolios (*see, e.g.*, ¶¶126, 141, 143-147, 152, 154-155, 160-162), and (iii) SocGen's false financial statements and restatements (¶¶114, 119, 122-124, 135, 143, 155). The Complaint identifies where and when the statement was made and who was responsible for the statement. *See, e.g.*, ¶¶108-109, 114-115, 117, 119-120, 122-124, 128, 135-136, 141, 143-147, 152, 154-155, 161-162.

The Complaint also alleges with specificity the reason ***why*** each statement is false and misleading. *See, e.g.*, ¶¶112-113, 118, 125, 133-134, 137-138, 148, 156, 166 (SocGen's subprime exposure); ¶¶127, 142, 149, 153, 157, 163-165 (SocGen's risk control management systems); ¶¶125, 139-140, 150-151, 158-159, 281-337 (SocGen's false financial statements).

A. Defendants' Risk Control Management Statements Are Both False and Actionable[12]

1. Defendants' Statements Are Clearly Actionable and Pleaded with Sufficient Specificity

Defendants publicly characterized SocGen's risk control management systems as "highly sophisticated control systems which have already proved their worth in extreme situations" (¶108), and that SocGen engages in a daily analysis "of the exposure and risk incurred by all of the Group's

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[12] Defendants confuse SocGen's accumulations of "risky" subprime-related assets with Defendants' false and misleading statements regarding SocGen's risk control management systems. Defs.' Mem. at 54-56. Although it is certainly true that SocGen's deficient risk control management systems contributed to the Subprime Fraud, Defendants' subprime exposure statements are false and misleading for specific reasons identified in the Complaint (¶¶112-113, 118, 125, 133-134, 137-138, 148, 156, 166, 202-229), and as discussed below, independent of SocGen's deficient risk controls.

market activities and comparison of these exposure [sic] and risks with the limits set." ¶115; *see also* ¶¶108-111, 116, 128-132, 136.[13] These statements were very specific and, fairly characterized, conveyed the message that SocGen had in place effective and meaningful risk controls in connection with its potentially risky derivatives trading.

These statements are also actionable as they provided investors detailed accounts of SocGen's daily risk management procedures purportedly in place and followed during the Class Period. *See Shapiro v. UJB Fin. Corp.*, 964 F.2d 272, 283 (3d Cir. 1992) (defendants' statement that "internal controls not only existed, but were properly centralized, supervised, and managed" could be actionable); *Ballan v. Wilfred Am. Educ. Corp.*, 720 F. Supp. 241, 245 (E.D.N.Y. 1989) (defendants represented "'additional, elaborate compliance and control steps which [they believed to be] the best procedures in the industry'").[14]

2. Defendants' Statements Are False

Defendants' risk control management statements were each patently false and misleading for each of the reasons documented by the French Finance Minister (¶¶231-232), the French Banking

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[13] For example, Defendants stated that with respect to derivatives, "the growth of this activity has only been possible, and more importantly, acceptable, thanks to the parallel development of a strong expertise in the management of risks linked to derivatives." ¶111. SocGen also issued countless statements detailing SocGen's risk management procedures, including, among others: that IT teams "provide the ever-demanding task of recalculating the risk on market positions each day" (¶110), and that "daily limit monitoring of each activity, and constant checking that appropriate limits have been set for each activity." ¶115; *see also* ¶¶108-109, 116, 120, 128-132, 136, 143, 154-155.

[14] *In re JPMorgan Chase Sec. Litig.*, 363 F. Supp. 2d 595 (S.D.N.Y. 2005), cited by defendants, is not applicable here. Missing from *JPMorgan* are specific and repeated statements relating to risk management that are present here. *Id.* at 632-33. For example, Defendants here claimed that independent risk controllers "carry out daily reviews of all positions and risks taken in the course of the Group's market activities" (¶116), "a set of specific procedures has been compiled for each type of risk" (¶129), and "***risk management is an integral part of our derivatives activity***" (¶111).

Commission (¶¶233-241), the Special Committee Report (¶183),[15] and the Mission Green Report (¶¶245-248).[16] Indeed, the Company's shoddy risk controls failed to prevent a purportedly rogue trader from exposing the Company to over €50 billion in unhedged bets, well beyond the Company's €35 billion market capitalization, even though the Company received numerous red flags, including over 70 internal alerts and several warnings from the major exchanges and the Bank of France. ¶¶186-201. "France's banking commission, after a series of inspections, ***twice wrote to Mr. Bouton*** about the need to reinforce SocGen's controls, particularly in the equity derivatives team where . . . Kerviel worked." ¶176. Had SocGen's "internal controls and risk management functions" been "in place and followed," as Defendants suggest (Defs.' Mem. at 56), Kerviel never would have been able to bet €50 billion on the stock market.

The French Finance Minister similarly concluded that "certain mechanisms of internal controls of Societe Generale did not function, and those that did were ***not*** always followed up with

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[15] The Special Committee Report found that SocGen had received ***more than 70 alerts*** related to Kerviel's conduct, including, among others, that: (i) between June 2006 and August 2007, SocGen received four alerts regarding problems with "settlement/delivery," reporting further discrepancies in Kerviel's trades (¶183); (ii) between December 2006 and June 2007, SocGen was warned on five occasions of cumulative discrepancies in Kerviel's trades in excess of €3.5 billion (*id.*); (iii) between July 2006 and September 2007, Kerviel's activities generated twenty-four alerts regarding market risk, including that Kerviel's Delta One desk had exceeded its stress test limit for risk (*id.*); (iv) between January and December 2007, SocGen received seven alerts regarding tens of billions of euros in discrepancies between various accounts related to Kerviel (*id.*); (v) between July 2007 and January 2008, SocGen was notified of anomalies regarding counterparty risk, including that Kerviel had exceeded the Company's internal risk limits (*id.*); and (vi) in December 2007, SocGen was alerted to an unusually high commission (€1.2M) related to one of Kerviel's trades (*id.*).

[16] The Mission Green Report found the following deficiencies: (i) the Front Office allowed Kerviel to regularly take intraday directional positions on index futures and on certain equities which were well beyond Kerviel's level of authority; (ii) failure to implement additional risk controls in light of rapid growth in Global Equities and Derivative Solution ("GEDS") and numerous signals revealing a deterioration in the Middle Office; and (iii) failure to react to external alert signals from Eurex and SocGen's subsidiary FIMAT relating to trading activities. ¶¶245-248.

appropriate changes." ¶232. The French Banking Commission likewise concluded that there were "***serious deficiencies***" in SocGen's internal control systems that went "***beyond the repetition of simple individual failures***." ¶239; *see also* ¶¶233-241. Any argument to the contrary, ***at the pleading stage***, is misplaced. *See In re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 74 (2d Cir. 2001) (defendants may later establish that they were at the mercy of cyclical business downturn, but "any speculation to that effect is inappropriate at the pleadings stage"); *Goldman v. Belden*, 754 F.2d 1059, 1070-71 (2d Cir. 1985) (when district court decided defendant's excuses for his stock sales were "'logical'" and "'reasonable'" in light of impending retirement, it "impermissibly reached beyond the scope of the Complaint, and, indeed, invaded the province of the trier of fact").

Defendants' boilerplate "hindsight" argument (Defs.' Mem. at 55-56), is pure sophistry. Defendants ignore obvious and ***contemporaneous*** information regarding SocGen's "serious deficiencies" in internal controls and risk management when they made their statements, removing this case from the realm of "'fraud by hindsight.'" *See In re Atlas Air Worldwide Holdings, Inc. Sec. Litig.*, 324 F. Supp. 2d 474, 494 (S.D.N.Y. 2004).

Nor are Defendants' very specific statements protected by any general cautionary language. Defs.' Mem. at 56. First, the Private Securities Litigation Reform Act of 1995's ("PSLRA") safe harbor provision applies only where the "cautionary language expressly warns of or directly relates to the risk that brought about the investor's loss." *Scantek Med., Inc. v. Sabella*, 583 F. Supp. 2d 477, 496 (S.D.N.Y. 2008) ("'Vague disclosures of general risks will not protect defendants from liability.'"); *In re Initial Pub. Offering Sec. Litig.*, 358 F. Supp. 2d 189, 211-12 (S.D.N.Y. 2004) ("Generalized disclosures of amorphous risks will not shield defendants from liability . . . ."). The generic language Defendants cite is hardly meaningful and is wholly insufficient. *In re Salomon Analyst Level 3 Litig.*, 350 F. Supp. 2d 477, 495 (S.D.N.Y. 2004) (Lynch, J.) (cautionary language

must be "meaningful"). Second, the PSLRA safe harbor provision does not apply to statements that Defendants know are false and misleading at the time the statements are made. *In re AOL Time Warner Sec. & "ERISA" Litig.*, 381 F. Supp. 2d 192, 223 (S.D.N.Y. 2004) ("After all 'no degree of cautionary language will protect material misrepresentations or omissions where defendants knew their statements were false when made.'") (quoting *Milman v. Box Hill Sys. Corp.*, 72 F. Supp. 2d 220, 231 (S.D.N.Y. 1999)).[17]

B. Defendants' Statements Concerning SocGen's Subprime Exposure Are Both False and Actionable

1. Defendants' Subprime-Exposure Misstatements Are Actionable and Pleaded with Sufficient Specificity

Defendants repeatedly represented that the Company's subprime exposure was "low," "negligible," "very limited," or "under control" and that the brewing credit crisis would have only a "limited impact" on the Company's financial condition. ¶¶141, 143-147, 153-154, 162. Defendants also represented that SocGen would not further write down its subprime assets in Q4 2007. ¶161. Because SocGen had written down a mere €230 million in the third quarter when other banks had written down far more (which analysts and others questioned), these statements cannot be dismissed as mere "puffery" or "opinion." Defs.' Mem. at 52. In fact, this was precisely the sort of information that mattered to analysts and the market. ¶¶141, 144-147; *In re Bayer AG Sec. Litig.*, No. 03 Civ. 1546 (WHP), 2004 U.S. Dist. LEXIS 19593, at *38 (S.D.N.Y. Sept. 30, 2004) (finding specific, fact-based statements to be "neither puffery nor opinion"); *Newman v. Rothschild*, 662 F.

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[17] Defendants' citation to *Halperin v. ebanker USA.COM, Inc.*, 295 F.3d 352, 359 (2d Cir. 2002), is unpersuasive as that court held that the assessment of cautionary language is intensely factual and needs to be decided on a case by case basis. In *Halperin*, the false statements at issue centered around the "future registration" of securities – not statements based on historical fact. *Id.*

Supp. 957, 959 (S.D.N.Y. 1987) (defense of puffery not available when alleged misstatement concerns specific facts).

Further, Defendants had no reasonable basis for their positive statements. Indeed, they knew just the opposite to be true – that the market for subprime-related assets had collapsed no later than mid-2007 and that they would need to further write down these assets. *See In re Vivendi Universal, S.A. Sec. Litig.*, 381 F. Supp. 2d 158, 182 (S.D.N.Y. 2003) (statements that a company was "financially solid" were actionable where defendants did not have a reasonable basis for them); *In re Oxford Health Plans, Inc. Sec. Litig.*, 187 F.R.D. 133, 140 (S.D.N.Y. 1999) (statements downplaying computer and internal control problems were actionable because they misled investors into believing that the problems were not as extensive or serious as they were).

2. Defendants' Subprime Exposure Statements Are False

Defendants nevertheless contend that the Complaint provides "no basis to infer that [SocGen] was in possession of contradictory facts" relating to its subprime exposure. Defs.' Mem. at 51. This argument simply ignores the Complaint's numerous allegations, including many based on statements from high-level confidential witnesses. *See, e.g.*, ¶¶127, 142, 149, 153, 157, 163-165, 202-229, 313-320. Beginning in late 2006 and into 2007, the ABX Index showed that ***all*** subprime RMBS tranches were being adversely affected by the subprime mortgage crisis. ¶316. By Q1 2007 and Q2 2007, SocGen New York had already experienced major difficulties in valuing its RMBS and CDO portfolios. According to CW1, by mid-2007, SocGen New York switched from the "mark-to-market" valuation method to the "mark-to-model" valuation method because no active market existed by which to determine the value of SocGen's subprime-related assets. ¶207. During this time period, SocGen competitors began to announce writeoffs for their CDO and RMBS assets and credit agencies began downgrading the ratings for such products. ¶205. According to CW2, during a two-week period in Q1 2007 and Q2 2007, the heads of CDO structuring and RMBS issued an

urgent mandate to the IT department to change the parameters of its hundreds of valuation models in order to obtain a more acceptable valuation of SocGen's CDOs. ¶215. However, even after changing the models' parameters (*e.g.*, recovery rates, default rates, etc.), SocGen was still not able to come up with an acceptable valuation for its CDOs. *Id.*

By late 2006 and early 2007, according to CW5, SocGen was experiencing greater difficulty in finding buyers for its CDO products. For example, (i) at ***weekly sales meetings*** held in New York, it became clear that it was increasingly difficult to sell SocGen RMBS and CDO products (¶223), (ii) the ***inventory reports*** distributed at the sales meetings and by e-mail showed that the turnover of RMBS and CDO products had decreased dramatically throughout 2006 (¶224) – in fact, the RMBS and CDO products showed no activity (¶320), and (iii) ***daily and monthly cash reports*** showed that SocGen was receiving much less cash on the CDOs in its portfolio – a clear indication that defaults had increased (¶¶225, 320). These facts demonstrate the falsity of Defendants' statements regarding SocGen's subprime exposure.

Defendants do not dispute these facts. Instead they attempt to discount the Complaint's allegations by arguing that SocGen's RMBS and CDOs had no history of defaults or downgrades before Q3 2007 and that SocGen held highly-rated RMBS and CDOs. Defs.' Mem. at 51. Defendants' argument fails because SocGen's internal valuations reflected the fact that its RMBS and CDO portfolios were quickly dropping in value. *E.g.*, ¶¶205, 207, 212. In addition, SocGen's mezzanine CDOs were backed by extremely risky junior (BBB and sub-BBB rated) tranches of subprime RMBS securities. *E.g.*, ¶298. Because all subprime RMBS tranches were adversely affected, the fact that SocGen had senior positions in these CDOs was absolutely meaningless. ¶98.

Defendants also attempt to minimize their false statements by arguing that SocGen's statement that its CDOs represented only 1% of its investment bank (CIB) revenue was not false.

Defs.' Mem. at 51-52. While that may be technically true, it misses the point: The Complaint alleges that this statement was misleading because it was part of Defendants' efforts to convince the market that SocGen had "[l]ow exposure to credit risk segments." ¶145. In fact, SocGen had accumulated over €5 billion in subprime-related assets and knew that its CDO valuation models "did not reflect reality" by this time and that no viable market existed for CDOs by mid-2007. ¶149. SocGen's January 24, 2008 subprime write-down of €2.05 billion was material and equaled half of SocGen's entire 2006 net income. ¶124.

3. Defendants Had a Duty to Disclose Their True Subprime Exposure

Defendants also contend that SocGen was under "no duty to disclose additional information about CDOs and RMBS" and thus Defendants did not need to "disaggregate" their CDOs and RMBS holdings by line item. Defs.' Mem. at 53-54. This argument confuses the facts alleged and misconstrues clear Second Circuit law.

Statements, though literally true, may nevertheless be misleading if the speakers fail to disclose material information. *McMahan & Co. v. Wherehouse Entm't*, 900 F.2d 576, 579 (2d Cir. 1990) ("The central issue . . . is not whether the particular statements, taken separately, were literally true, but whether defendants' representations, taken together and in context, would have misled a reasonable investor about the nature of the debentures.").

Both the language of SEC Rule 10b-5 and the Second Circuit make clear that whether or not there is an "independent duty to speak in the first instance becomes irrelevant once a party chooses to discuss material issues, because upon choosing to speak one 'has a duty to be both accurate and complete.'" *Lapin v. Goldman Sachs Group, Inc.*, 506 F. Supp. 2d 221, 237 (S.D.N.Y. 2006) (quoting *Caiola v. Citibank, N.A.*, 295 F.3d 312, 331 (2d Cir. 2002)).

When Defendants voluntarily chose to speak publicly regarding SocGen's subprime exposure – which they did on numerous occasions (¶¶126, 141, 143-147, 152, 154-155, 160-162) – they undertook a duty "to speak truthfully and to make such additional disclosures as . . . necessary to avoid rendering the statements made misleading." *In re Par Pharm., Sec. Litig.*, 733 F. Supp. 668, 675 (S.D.N.Y. 1990).[18] SocGen certainly had a duty to disclose fully and accurately its exposure to subprime-related assets in 2007 when the market for these assets became illiquid, like when SocGen began secretly writing down these assets in Q1 and Q2 2007, and certainly when it disclosed its Q3 2007 subprime-related write-down – all the while making statements into the market.

Moreover, when asked about its subprime exposure, Defendants repeatedly assured the market that the Company's exposure was "limited," "negligible," and "minimal." ¶¶141, 143, 147. These statements, making it appear as though SocGen had very low exposure to these toxic assets, were not only false and misleading, they gave rise to an independent duty to fully disclose SocGen's entire subprime exposure. *See In re Nat'l Golf Props. Sec. Litig.*, No. CV 02-1383-GHK(RZx), 2003 U.S. Dist. LEXIS 4321, at *15-*16 (C.D. Cal. Mar. 18, 2003) (failure to disclose concentration of receivables in single entity deemed a "material omission").[19] Also, these statements are hardly

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[18] *Accord In re Van Der Moolen Holding N.V. Sec. Litig.*, 405 F. Supp. 2d 388, 400-01 (S.D.N.Y. 2005) ("although a defendant does not have a Rule 10b-5 duty to speculate about the risk of a future investigation or litigation, if it puts the topic of the cause of its financial success at issue, then it is 'obligated to disclose information concerning the source of its success, since reasonable investors would find that such information would significantly alter the mix of available information'").

[19] Conference calls with industry analysts along with those analysts' reports to the market remove any doubt that SocGen's subprime exposure was material to the market. For example, following SocGen's August 2, 2007 announcement that it has "low exposure to the current credit market crisis" (¶143), Deutsche Bank upgraded SocGen to "Buy" based partly on SocGen's "confirm[ation] that it has negligible exposure." ¶147. Credit Suisse maintained their outperform

opinions as Defendants claim. Defs.' Mem. at 52. Defendants' reliance on *In re Salomon Analyst Level 3*, 373 F. Supp. 2d 248 (S.D.N.Y. 2005), does not support this contention. *Salomon* concerned the actionability of analyst opinions, not company statements based on historical fact. *Id.* 251-52.

Defendants were also under a duty to disclose additional information to keep their financial statements from being misleading. At the time Defendants issued SocGen's financial statements, Defendants were in possession of contradictory information that was required to be disclosed under the IFRS to ensure that SocGen's financial statements provided a fair representation of SocGen's true financial position. *See, e.g.*, ¶¶125, 140, 151, 159, 298-327.

C. Although SocGen's Accounting Restatement Is an Admission that Its Previous Financial Statements Were False and Misleading and Violated Relevant Accounting Rules, the Complaint Nevertheless Separately Pleads with Specificity SocGen's Improper Accounting Practices and Violations of the IFRS and French Financial Regulations

The Complaint painstakingly identifies the particular false financial statements and explains how they violate particular provisions of the IFRS and French financial regulations. *See, e.g.*, ¶¶122-125(a)-(b), 135, 139-140, 143, 150-151, 155, 158-159, 281-332. In fact, SocGen restated its 2007 financial statements – an admission that they were false. ¶¶288-294. Defendants nevertheless contend that the Complaint does not connect them to the false financials and that the false financial statement allegations do not otherwise satisfy Rule 9(b). Defs.' Mem. at 57-58. Both contentions fail.

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designation for SocGen stating that they "are optimistic with regards to . . . [SocGen's] ability to withstand the current challenging credit environment because we believe that their exposure is limited in size, closely monitored, collateralized, and rather safe in our view." ¶146. "It is commonplace for analysts to 'ferret out and analyze information,' and this often is done by meeting with and questioning corporate officers and others who are insiders. And information that the analysts obtain normally may be the basis for judgments as to the market worth of a corporation's securities." *Dirks v. SEC*, 463 U.S. 646, 658-59 (1983) (footnote omitted).

As discussed in more detail below (§VI.), Plaintiffs are entitled to rely on the group pleading doctrine in order to satisfy the requirement that the Complaint identify the source of the false and misleading statements for purposes of a §10(b) claim. *Luce v. Edelstein*, 802 F.2d 49, 55 (2d Cir. 1986).

Defendants attempt to taint the accounting allegations by arguing that the accounting standards cited by Plaintiffs "have been superceded or amended" and "went into effect after the beginning of the Proposed Class Period." Defs.' Mem. at 58. This is grossly misleading. Defendants cannot point to a single accounting allegation that is not supported by a contemporaneous accounting standard. Plaintiffs gave a thorough list of contemporaneous accounting rules that were violated at the time Defendants made their false statements. ¶¶283-287, 291-292, 295-297, 303-307. In fact, Plaintiffs clearly explain how IFRS 7 amended IAS 32 and superseded IAS 30. *See* ¶306 n.9. The accounting standards cited by Plaintiffs may have been superseded or amended after August 1, 2005, but they were applicable at the time Defendants issued their false financial statements.

Further, to the extent Defendants are attempting to argue that the Complaint does not allege how IAS 1 was violated or how the financial statement impact is an item of income or expense (Defs.' Mem. at 58), they are simply wrong. Financial "impact" means just that – the impact on income and/or expense. The Complaint details and quantifies precisely how income and net income are impacted by SocGen's multi-billion euro restatement. ¶290. The quantification is the amount of the restatement, which, for example, turned a €721 million profit into a €641 million loss in Q2 2007. ¶289. Thus, Defendants' argument that Plaintiffs do not allege any basis to claim that the financial statement impact is an item of income or expense under IAS 1 is nonsensical.

Defendants' next argument – that the Complaint does not allege why the judgments used in SocGen's valuations of its subprime assets violated IAS 39 – fares no better. The Complaint explains in detail why the valuations were wrong. For instance: (i) SocGen's models did not reflect reality, and SocGen was not valuing its RMBS and CDO portfolios properly (¶319); (ii) SocGen's own subsidiary, TCW, was aware of the deterioration in the CDO market (¶314); and (iii) the very data SocGen relied on for its modeling/valuations, including the ABX Index, demonstrated a complete collapse of the CDO values which required SocGen, under IAS 39, to write down the CDO assets to fair value (¶315). All of the above is corroborated by confidential witnesses. In fact, the Complaint alleges that SocGen ultimately disclosed that the "model" calculated to arrive at the massive €2 billion subprime write-down in Q4 2007 was derived by (i) comparing values to the ABX Index (an index that they knew had collapsed in earlier quarters and are now claiming they did not have to use) and (ii) taking into consideration the illiquidity of the relevant tranches. ¶300. Both of these steps, which were included ***for the first time*** in determining SocGen's Q4 2007 write-down, were not performed in the previous quarters as required by IAS 39. ¶311.

IV. THE COMPLAINT SUFFICIENTLY PLEADS SCIENTER

A. The Second Circuit Scienter Standard

Under the PSLRA, plaintiffs must "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind," or scienter. 15 U.S.C. §78u-4(b)(2). This is established by alleging ***either*** (a) strong circumstantial evidence of conscious misbehavior or recklessness, ***or*** (b) that defendants had both motive and opportunity to commit fraud. *Novak v. Kasaks*, 216 F.3d 300, 307-08, 311 (2d Cir. 2000). The Supreme Court's decision in *Tellabs*, 127 S. Ct. 2499, did not alter this pleading standard. *ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 98 (2d Cir. 2007).

In *Tellabs*, the Supreme Court explained that courts must continue to "accept all factual allegations in the complaint as true." 127 S. Ct. at 2509. Also, courts must consider a complaint in its entirety: "The inquiry . . . is whether ***all*** of the facts alleged, ***taken collectively***, give rise to a strong inference of scienter, not whether any individual allegation, scrutinized in isolation, meets the standard." *Id.* at 2509-11 ("We reiterate, however, that the court's job is not to scrutinize each allegation in isolation but to assess all the allegations ***holistically***.").

Next, "in determining whether the pleaded facts give rise to a 'strong' inference of scienter, the court must take into account plausible opposing inferences." *Id.* at 2509. Importantly, the opposing inference must be an "***opposing inference one could draw from the facts alleged***." *Id.* at 2510. As such, the opposing inference cannot come from facts taken outside the Complaint, as Defendants here urge repeatedly. To be sure, "[t]he inference that the defendant acted with scienter need not be irrefutable, *i.e.*, of the 'smoking-gun' genre, or even the 'most plausible of competing inferences.'" *Id.*; *see also In re Top Tankers, Inc. Sec. Litig.*, 528 F. Supp. 2d 408, 413-14 (S.D.N.Y. 2007) ("courts since Tellabs have concluded that even if the plaintiff demonstrates only that an inference of scienter is at least as compelling as any nonculpable explanation for the defendant's conduct, the 'tie . . . goes to the plaintiff'").

Further, "the required strong inference 'may arise where the complaint sufficiently alleges that the defendants: (1) benefited in a concrete and personal way from the purported fraud; (2) engaged in deliberately illegal behavior; (3) knew facts ***or had access to information*** suggesting that their public statements were not accurate; ***or*** (4) failed to check ***information they had a duty to monitor***.'" *Teamsters Local 445 Freight Div. Pension Fund v. Dynex Capital, Inc.*, 531 F.3d 190, 195 (2d Cir. 2008); *accord Novak*, 216 F.3d at 311.

The Second Circuit and courts in this District have long held that knowledge regarding a product or transaction that is of critical importance to a company, like risk control management is to SocGen, may be imputed to the company and its highest-level insiders.[20] Courts in this District have also held that company insiders who sign SEC filings, or in this case AMF filings, have a "'duty to familiarize themselves with the facts relevant to the core operations of [the company],'" so that a strong inference arises that such insiders knew all material facts concerning core operations. *Alstom*, 406 F. Supp. 2d. at 459, 461; *accord Atlas Air*, 324 F. Supp. 2d at 497 (it is reasonable to impute knowledge to a signatory of SEC filings directly involved in the day-to-day operations of the company).

Finally, with respect to pleading scienter against a corporate defendant, "the pleaded facts must create a strong inference that someone whose intent could be imputed to the corporation acted with the requisite scienter." *Dynex*, 531 F.3d at 195. According to the Second Circuit, "it is possible to raise the required inference with regard to a corporate defendant without doing so with regard to a specific individual defendant" or "'without being able to name the individuals who concocted and

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[20] *See, e.g.*, *Cosmas v. Hassett*, 886 F.2d 8, 13 (2d Cir. 1989) (where sales to a particular customer represented a significant part of the company's business, it raised a strong inference that the director defendants knew about certain import restrictions that eliminated sales to the customer); *In re Regeneron Pharms., Inc. Sec. Litig.*, No. 03 Civ. 3111 (RWS), 2005 U.S. Dist. LEXIS 1350, at *69 (S.D.N.Y. Feb. 3, 2005) (strong inference of scienter was raised that defendants knew about the existence of antibodies that neutralized drug's effect where drug was a "make-or-break" product and the market for it was extensive); *In re Alstom SA Sec. Litig.*, 406 F. Supp. 2d 433, 456-57, 459-60 (S.D.N.Y. 2005) (imputing knowledge of company's loan guarantees to customers of its fastest-growing division to its CEO and CFO); *Atlas Air*, 324 F. Supp. 2d at 489 ("[I]f a plaintiff can plead that a defendant made false or misleading statements when contradictory facts of critical importance to the company either were apparent, or should have been apparent, an inference arises that high-level officers and directors had knowledge of those facts by virtue of their positions with the company.").

disseminated the fraud.'" *Id.* (quoting *Makor Issues & Rights, Ltd. v. Tellabs, Inc.*, 513 F.3d 702, 710 (7th Cir. 2008)).

B. The Complaint Sufficiently Alleges Facts Demonstrating Defendants' Conscious Misbehavior or Recklessness

1. Defendants' Knowledge or Reckless Disregard that Their Statements Regarding SocGen's Risk Control Management Systems Were False and Misleading

The Complaint alleges facts that establish strong circumstantial evidence of conscious misbehavior or recklessness with respect to the Kerviel Fraud. SocGen both received and generated numerous alerts and warnings regarding Kerviel's trading and the breakdown in SocGen's risk controls, including warnings from the Bank of France in March and April 2007 that went directly to Defendant Bouton, all of which support a strong inference of scienter with respect to Defendants' numerous false statements regarding SocGen's risk controls.

For instance, Kerviel was the subject of over ***70 alert warnings*** relating to his nearly 1,000 unauthorized transactions beginning in 2005. ¶¶197-198. On April 16, 2007, the Director of Middle Results sent an e-mail to Kerviel's direct supervisors and several financial controllers, among others, informing them of "'***fictitious***' ***transactions***" that had no economic reality – a significant difference in what Kerviel reported as his trades and their actual accounting value. ¶187. Moreover, subsequent to this e-mail, a number of SocGen supervisors held an "***emergency meeting***" to discuss how to account for Kerviel's "'fictitious' transactions." ¶188. Despite knowing precisely what Kerviel was doing and the significant risk posed by his trades, Kerviel was nonetheless allowed to continue trading.

FIMAT Frankfurt sent SocGen warnings of Kerviel's trades as early as February 2007. ¶186. In March and April 2007, ***Defendant Bouton*** received two separate letters from the ***Bank of France*** warning him that SocGen's risk control management systems and its security procedures for certain

financial derivatives were "***wanting***." ¶190. Also, the Eurex (the derivatives exchange jointly operated by the Deutsche [Börse] and the SWX Swiss Exchange stock markets) sent SocGen letters warning of Kerviel's trading practices. ¶¶191-192. As one SocGen director accurately explained, "[i]f the Eurex warning is confirmed then there is a lot more responsibility in the organisation than we thought." ¶172(h). Charlie McCreevy, the EU's internal market commissioner, described SocGen's failure to heed Eurex warnings was "***abject carelessness***" **–** "***inexcusable***." ¶175(c).

Significantly, the French Banking Commission's investigation of SocGen revealed that a 2007 SocGen ***internal report*** acknowledged SocGen's ***insufficient controls*** and ***discussed a plan to correct the weaknesses***. ¶¶236-238. Thus, SocGen and Defendant Bouton knew, or at an absolute minimum were reckless in not knowing, that their unqualified statements regarding SocGen's risk control management systems were false. *See No. 84 Employer-Teamster Joint Council Pension Trust Fund v. Am. West Holding Corp.*, 320 F.3d 920, 942 (9th Cir. 2003) (FAA investigations and letters to company relevant to defendants' knowledge of ongoing maintenance problems).

And because risk control management systems are a "core" part of the Company's business, particularly with respect to derivatives trading, and of critical importance to the market (¶¶7, 108-111, 115-116, 128-130), the numerous alerts and warnings received by the Company (§II.A.2., above) are properly imputed to the Individual Defendants. *Cosmas*, 886 F.2d at 13; *Alstom*, 406 F. Supp. 2d at 459. Further, imputing knowledge to SocGen and the other Defendants is entirely reasonable and consistent with statements by several commentators. ¶184 ("A loss of the size that was on Mr. Kerviel's trading book in July would have been unlikely to escape notice in Société Générale's back office" and "'Large losses would have implied very large margin calls, which the bank would have had to cover in cash.'"); ¶185 ("[I]t's hard to see any oversight system that misses such a large amount of unauthorized trading for nearly nine months as anything other than [an]

abject failure."). These facts clearly establish conscious misbehavior, or, at a minimum, they establish recklessness.

Defendants' contention that they are entitled to a competing inference that SocGen was actually the victim of a fraud perpetrated by Kerviel has been rejected by the French Banking Commission, which concluded that SocGen suffered from "***serious deficiencies***" in internal controls that went "beyond the repetition of simple individual failures." ¶239. To be sure, the Complaint does ***not*** allege that Defendants knew the precise amount of Kerviel's trades or the precise amount of risk posed from such trades at all times throughout the Class Period. Rather, Defendants knew or should have known, based on the Company's purported oversight and risk controls, the numerous alerts and warnings received and the sheer magnitude of Kerviel's trades, including over 1,000 "fictitious" trades totaling €2.2 billion, as well as an internal report, e-mail and meetings regarding same, that their statements regarding the quality of SocGen's risk control management systems – repeated unequivocally and without qualification each year in the Company's annual Registration Document and elsewhere – were false and misleading. Alternatively, if SocGen's risk control management systems were so deficient that a 31-year-old junior trader could place unhedged, directional bets, the outstanding amount of which totaled €50 billion by January 2008, then Defendants were at least reckless in representing that SocGen's risk control management systems were such that they could "***guarantee*** that transactions carried out at an operational level are . . . ***valid***." ¶130.

Moreover, the Complaint's theory is far more compelling than Defendants' since, up until the end of the Class Period, Kerviel's trades were actually ***improving*** SocGen's bottom line. ¶195. *See Tellabs*, 127 S. Ct. at 2511 ("When the allegations are accepted as true and taken collectively, would a reasonable person deem the inference of scienter ***at least as strong as any opposing inference***?").

2. Defendants' Knowledge or Reckless Disregard that Their Statements Regarding SocGen's Subprime Exposure Were False and Misleading

a. Statements from Numerous Confidential Witnesses and Other Facts Support the Complaint's Scienter Allegations

The statements of the confidential witnesses are highly probative of scienter as they identify ***meetings***, ***reports*** and ***specific conduct*** relating to the valuation of SocGen's subprime assets that demonstrate knowledge or reckless disregard of the falsity of Defendants' statements. ¶¶61-76, 202-229, 318-320. As discussed above, in §§II.B.2. and III.B.2., Defendants manipulated the valuations of SocGen's subprime-related assets in order to defer writing them down. Confidential witnesses also established that by mid-2007, at the latest, SocGen could not sell any of its CDO assets purchased by its CDO Group earlier that year (¶214 (CW2)), and that New York's IT budget was slashed by 20%, as a result of the collapse of the U.S. residential mortgage market (¶212 (CW2)). SocGen's TGV Initiative (to structure and underwrite CDOs consisting of residential mortgage-backed securities) had become a "***train wreck***." ¶213 (CW2). Thus, the most-senior executives in New York, including the Heads of CDO Structuring and RMBS and Taddonio, knew that the Company's subprime-related assets were overvalued and must be written down. ¶¶215, 319. SocGen Paris knew as well, based on the significant interaction between SocGen New York and SocGen Paris concerning the VaR and P&L reports. ¶216 (CW2).

These are not mere generalized witness statements, as they identify specific internal SocGen ***reports*** that contained information regarding the valuation of SocGen's subprime assets:

- Daily market risk reports for Fixed Income products, which were provided to senior management in New York (¶¶62, 204 (CW1));
- "Analyses" regarding SocGen's VaR, "stress testing" and benchmarking (¶¶62, 204 (CW1));

- Daily VaR and P&L reports prepared by SocGen New York and provided to SocGen Paris (¶¶64, 216 (CW2));
- Inventory reports discussed at weekly sales meetings which showed that the turnover of RMBS and CDOs decreased drastically in 2006 (¶224 (CW5));
- Monthly cash reports which showed cash received on SocGen's CDOs (¶225 (CW5)); and
- Excel spreadsheet reports relating to RMBS and CDO Profits and Losses which were regularly submitted to a manager in the Middle Office (¶69 (CW4)).

These witnesses also identified the following key ***meetings*** that Mustier and senior SocGen management in New York attended in which the value of the Company's subprime assets was discussed:

- Mustier visited the New York office once a month to meet with Taddonio (¶216 (CW2));
- Mustier regularly held "Town Hall" meetings in the New York office where performance, outlook and strategy for SocGen's North American operations was discussed (¶217 (CW2));
- Both Taddonio and Dansby White held weekly sales meetings where sales of RMBS and CDO products were discussed; by the end of 2006, it was common knowledge that RMBS and CDO assets had become illiquid, as reflected on inventory reports discussed at these meetings (¶¶223, 320 (CW5));
- Taddonio held meetings during late Q1 or early Q2 2007 where participants discussed the fact that the valuation models were not working and did not reflect reality (¶¶215, 319 (CW2)); and
- Leifert and Taddonio held regular budget meetings (¶212 (CW2)).

In addition, SocGen's subsidiary ***TCW*** was "the number one player in cash CDOs." ¶313. TCW certainly knew that the market for subprime-related assets had become illiquid and that SocGen's RMBS and CDO assets needed to be significantly written down. ¶¶313-314 (information regarding market condition trends and the liquidity of CDOs was communicated to SocGen's executive management). Defendants' use of the ***ABX Index*** provides further, reliable information confirming these assets' significant decline in value. ¶¶315-317 (By mid-2007, the ABX had

declined precipitously, which, according to CW1, clearly showed that SCGL's RMBS valuations needed to be reduced.). These allegations establish that Defendants had access to information demonstrating that their statements regarding SocGen's subprime exposure were false and misleading, and "taken collectively, give rise to a strong inference of scienter." *See Tellabs*, 127 S. Ct. at 2509.

Defendants improperly attempt to recast the Complaint's allegations into a simple disagreement over how to value SocGen's subprime-related assets. Defs.' Mem. at 28-30. This argument fails on several levels. First, a beneficial change in SocGen's valuation model that is alleged to have concealed the fraud is ***alone*** sufficient to establish scienter. *In re WorldCom, Inc. Sec. Litig*, 294 F. Supp 2d 392, 425 (S.D.N.Y. 2003). Second, Defendants ignore that the Company manipulated the valuations – it issued an urgent mandate to change the parameters of its valuation models in order to generate an acceptable value and defer the needed write-downs. ¶¶215, 319. However, even by changing the parameters, these models did not reflect reality. ¶319. Third, Plaintiffs are not required to allege or prove that Defendants' fraud made sense or that it was a good fraud. *See Asher v. Baxter Int'l Inc.*, 377 F.3d 727, 728 (7th Cir. 2004) ("the securities laws forbid foolish frauds along with clever ones"). "The fact that a gamble – concealing bad news in the hope that it will be overtaken by good news – fails is not inconsistent with its having been considered, though because of the risk a reckless, gamble. . . . It is like embezzling in the hope that winning at the track will enable the embezzled funds to be replaced before they are discovered to be missing." *Makor Issues & Rights*, 513 F.3d at 710.[21]

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[21] Defendants' reliance on *Salomon Analysts Level 3*, 373 F. Supp. 2d 248, and *Podeny v. Robertson Stephens Inc.*, 318 F. Supp. 2d 146 (S.D.N.Y. 2004), is misplaced for the reasons stated above and are factually distinguishable, as these cases concerned analyst opinions and the veracity of those opinions. Defs.' Mem. at 29, 52.

Defendants argue that Plaintiffs' scienter argument is somehow weakened because SocGen purportedly "pre-announced" the write-down of its subprime assets prior to the end of Q3 2007 and year-end 2007. Defs.' Mem. at 25. Defendants incorrectly suggest that SocGen was not required to announce the write-downs until it announced its Q3 2007 and year-end 2007 financial results. Once again, Defendants ignore that they knew or recklessly disregarded that the market for SocGen's subprime-related assets had dried up well before Q3 2007 and year-end 2007. ¶¶207-209, 214-215. In fact, the market for these assets may have become illiquid as early as the end of 2006 (¶222) and no later than mid-2007. ¶¶207-209. Moreover, whether Defendants pre-announced SocGen's €230 million write-down in September 2007 is of no moment, as Defendants' statements made in connection with that write-down were false and misleading, including statements that the credit crisis was "under control" (¶152) and "[d]irect and indirect exposure to US mortgage assets and loans ***leading to limited losses in case of severe stress tests***." ¶364.[22]

b. Defendants' Attack on the Confidential Witnesses' Statements Is Unsupported

The Second Circuit has stated that a complaint can satisfy the PSLRA's particularity requirement by identifying documentary or personal sources, although it does not require that a complaint do so. *Novak*, 216 F.3d at 314. These sources need not be named, "provided they are described in the complaint with sufficient particularity ***to support the probability*** that a person in the position occupied by the source would possess the information alleged." *Id.* The Complaint's

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[22] Defendants' argument misapplies *In re AlliedCapital Corp. Sec. Litig.*, No. 02 Civ. 3812 (GEL), 2003 WL 1964184 (S.D.N.Y. Apr. 25, 2003). Whereas in *AlliedCapital* the issue amounted to no more than a disagreement over accounting principles, the Complaint here alleges far more. *Id.* at *2, *4. SocGen manipulated its valuations in response to market changes in order to defer the write-down of its subprime-related assets. ¶310. As such, the reasoning in *Allied Capital* does not apply.

thorough description of several confidential witnesses – their positions and the basis for their knowledge – certainly provides the particularity required by *Novak*. ¶¶61-76. Their credibility is bolstered by their consistent, cross-corroborative accounts of SocGen's true internal state. *In re Cabletron Sys.*, 311 F.3d 11, 29-30 (1st Cir. 2002) (in determining whether confidential sources credible, among other things, the court looked at "the corroborative nature of other facts alleged (including from other sources)").

Relying on *Steinberg v. Ericsson LM Tel. Co.*, No. 07 CV. 9615 (RPP), 2008 WL 5170640 (S.D.N.Y. Dec. 10, 2008), Defendants claim that these witnesses' statements are somehow too generalized (Defs.' Mem. at 34), greatly overstating the Second Circuit's relevant standard for information provided by confidential witnesses. The court in *Steinberg* does not attempt to establish a new standard for the treatment of confidential witnesses at the pleading stage – nor could it. It held only that the confidential witnesses there were simply mistaken as to the true facts. *Steinberg*, 2008 WL 5170640, at *6.

Defendants' broad assertion that "all" of the confidential witnesses are too "low-level" to have "particularized knowledge of [SocGen's] CDO or RMBS valuations" (Defs.' Mem. at 35) is also not accurate. CW1, CW4, CW5 and CW7 were all vice presidents and CW2 was director of IT. All of these high-ranking officials had direct involvement with SocGen's subprime-related valuations. ¶¶62-64, 67-72, 75-76. CWs 2 and 5 attended meetings with other senior SocGen executives, including Taddonio, who reported directly to Mustier. ¶¶215-217, 223, 319-320. These very particularized allegations cannot be swept aside by Defendants' boilerplate Rule 12(b)(6) arguments, especially at the pleading stage, when Plaintiffs' allegations are accepted as true.

Further, contrary to Defendants' claims regarding CW3, CW4, CW5 and CW6 (Defs.' Mem. at 35), a confidential witness need not be at a company for the entire class period to have plausible

and relevant information to contribute to a finding of a strong inference of scienter. *Hall v. Children's Place Retail Stores, Inc.*, 580 F. Supp. 2d 212, 233 (S.D.N.Y. 2008) (holding that the confidential witnesses supported a strong inference of scienter) (complaint in *Hall v. Children's Place Retail Stores, Inc.*, No. 07 Civ. 8252 (SAS), 2007 U.S. Dist. Ct. Pleadings 78252, at *14-*18 (S.D.N.Y. filed Feb. 28, 2008) indicates that not a single confidential witness worked at the company for the entire March 9, 2006 to August 23, 2007 class period). Defendants' related argument – that since CW5 left SocGen in January 2007 there is "no basis whatsoever to conclude that CW5 would know whether statements as to SG's subprime exposure after this date, were in fact false" – is a strawman. Defs.' Mem. at 35. The Complaint does not allege, nor do Plaintiffs argue here, that CW5 has relevant knowledge covering time periods ***after*** CW5 left the Company.

Defendants' contention that the information provided by the confidential witnesses is neither cogent nor compelling (*id.* at 33) misses the mark. Contrary to the *Tellabs* standard, Defendants' conclusion is driven largely by their improper attempt to analyze each fact provided by each confidential witness separately and in isolation. *Tellabs*, 127 S. Ct. at 2509 ("The inquiry . . . is whether all of the facts alleged, ***taken collectively***, give rise to a strong inference of scienter, ***not whether any individual allegation, scrutinized in isolation, meets that standard***."). Accordingly, the information provided by all of the confidential witnesses must be reviewed together, in light of ***all*** the surrounding facts taken from other sources, and viewed as a whole. *Id.*

Defendants' heavy reliance on *In re Am. Express Co. Sec. Litig.*, No. 02 Civ. 5533 (WHP), 2008 WL 4501928 (S.D.N.Y. Sept. 26, 2008), is also misplaced. In *Am. Express*, the court found that the plaintiffs' general scienter allegations "do no more than state in conclusory fashion what Defendants should have known." *Id.* at *6. Therefore, the analysis of the information provided by the confidential witnesses in that case was essentially the only information from which to infer

scienter. *Id.* Here, the Complaint alleges non-conclusory facts, other than confidential witness statements, that support scienter, including that Defendants knew, or should have known, through SocGen's TCW subsidiary, the ABX Index and other market data, that additional subprime-related write-downs were necessary in November 2007.

In addition, the *Am. Express* decision is of questionable value since it relies on the Seventh Circuit's decision in *Higginbotham v. Baxter Int'l, Inc.*, 495 F.3d 753 (7th Cir. 2007), which was later limited and distinguished by the Seventh Circuit in *Makor Issues & Rights*, 513 F.3d at 711-12 (accepting scienter inferences arising from confidential-witness accounts); *see also City of Brockton Ret. Sys. v. Shaw Group Inc.*, 540 F. Supp. 2d 464, 474 (S.D.N.Y. 2008) (declining to adopt *Higginbotham* standard as applied to confidential witnesses); *accord Rosenbaum Capital, LLC v. McNulty*, 549 F. Supp. 2d 1185, 1192 (N.D. Cal. 2008).

Under proper standards, the Complaint's particularized statements by confidential witnesses concerning the Subprime Fraud are compelling and support a strong inference of scienter.

c. The Close Proximity Between Defendants' False Statements and Their Disclosure of the Truth Supports a Strong Inference of Scienter

Further bolstering a strong inference of scienter is defendants' revelation of a damning truth close on the heels of contrary misstatements. *Helwig v. Vencor, Inc.*, 251 F.3d 540, 552 (6th Cir. 2001) (en banc) ("closeness in time of an allegedly fraudulent statement or omission and the later disclosure of inconsistent information" is one of the "fixed constellations of facts that courts have found probative of securities fraud"); *see also Shaw v. Digital Equip. Corp.*, 82 F.3d 1194, 1224 (1st Cir. 1996) ("[W]e need not turn a blind eye to the obvious: the proximity of the date of the allegedly fraudulent statements and omissions to both the end of the quarter then in progress and the date on which disclosure was eventually made.").

Defendants announced SocGen's €230 million subprime write-down on November 7, 2007 (¶154), and at the same time they represented to analysts that SocGen would have "no further write-downs" in the fourth quarter. ¶161. As late as December 19, 2007, Defendant Bouton represented that "he saw 'limited impact' on the profitability of France's [second-largest bank] from the current subprime mortgage crisis." ¶162. Yet despite these reassurances, only five weeks later SocGen announced its €2.2 billion subprime write-down – ten times the write-down it took in the third quarter.

The closeness in time between these inconsistent disclosures with Defendants' earlier misstatements bolsters a strong inference of Defendants' scienter. *Helwig*, 251 F.3d at 552; *Plotkin v. IP Axess Inc., Etc.*, 407 F.3d 690, 698 (5th Cir. 2005) (company's bankruptcy "a mere eight months" after misleading press releases among several events "temporally connected" to earlier misstatements).

3. The Complaint Sufficiently Alleges Defendants' Scienter with Respect to SocGen's False Financial Statements

SocGen's ***restatement*** of its 2007 financial statements acknowledges that Defendants had access to information regarding Kerviel's trading when the Company filed those false and misleading financials. The accounting policy that covers restatements of previously-issued financial results clearly states that the restatement arises from a failure to use, or misuse of, reliable information that: "***(a) was available when financial statements for those periods were authorized for issue; and (b) could reasonably be expected to have been obtained and taken into account in the preparation and presentation of those financial statements***." ¶291. SocGen's restatement of its 2007 financials bolsters Defendants' scienter because it evidences that Defendants "'knew facts or had access to information suggesting that their public statements were not accurate.'" *See Dynex*,

531 F.3d at 195. Thus, the Complaint properly pleads scienter with respect to SocGen's restated financial statements.

By not recording or disclosing the financial impact of the Kerviel Fraud, SocGen violated IFRS standards, including, but not limited to, IAS 1, IAS 39, IFRS 7, IAS 10, IAS 30, IAS 32, and IAS 34. ¶¶296-297. Like all departures from accepted accounting standards, IFRS violations nevertheless may give rise to a ***false*** statement. Here, Defendant Bouton falsely represented that the Company's financial results were prepared in accordance with IFRS. ¶281(c). Legally binding or not, the knowing violation of IFRS satisfies the scienter element.

The Complaint also alleges the specific IFRS violations relating to the Subprime Fraud, and it quantifies the material impact of that fraud on SocGen's financial statements. ¶¶298-309. These accounting violations, detailed in the Complaint, are supported by the accounts of several confidential witnesses, discussed above in §II.B.2. Again, the scienter element is satisfied as Defendants knowingly disregarded these facts resulting in valuations that did not reflect the fair value of SocGen's subprime-related assets in violation of IFRS, specifically IAS 39. ¶¶310-312.

The cases cited by Defendants to support the proposition that an accounting restatement does not raise a compelling inference of scienter (Defs.' Mem. at 47) are distinguishable from this case in at least one significant manner – the restatement here was pursuant to international accounting standards. ¶¶291-292. Under IAS 8, but not under the restatement policies used in the cases relied on by Defendants, the information that caused the restatement (i) must have been available to Defendants when the restated financials were initially authorized, or (ii) ***could reasonably be expected to have been obtained and taken into account*** when the financials were prepared. *See Dynex*, 531 F.3d at 195 ("the required strong inference 'may arise where the complaint sufficiently

alleges that the defendants . . . knew facts ***or had access to information*** suggesting that their public statements were not accurate'").[23]

4. Additional Allegations Support the Complaint's Allegations that Defendants Acted with the Required State of Mind

a. The Magnitude of the Frauds Supports a Strong Inference of Scienter

The sheer magnitude of both the Kerviel and Subprime Frauds supports a strong inference of scienter. *Scholastic*, 252 F.3d at 77; *In re Global Crossing, Ltd. Sec. Litig.*, 322 F. Supp. 2d 319, 347 (S.D.N.Y, 2004) (Lynch, J.). When SocGen finally revealed the magnitude of the Kerviel Fraud, it restated €1.4 billion, or 78% of all net income recorded for the fiscal quarter ended June 30, 2007. ¶¶8, 289.[24] In total, SocGen lost over €4.9 billion when Kerviel's outstanding positions were unwound (¶17), which the French Finance Minister described as "exceptional." ¶231. Similarly, the enormous write-down of SocGen's subprime exposure, including its RMBS and CDO portfolios, revealed the magnitude of the Subprime Fraud. On January 24, 2008, SocGen announced it was writing down over €2 billion in subprime-related exposure. ¶¶17, 101, 168, 322, 343, 403. SocGen's subprime-related losses ultimately totaled over €3.6 billion. ¶300. While not the only factor, the magnitude of the fraud must be considered, together with the other facts alleged, in determining whether Plaintiffs have properly pleaded a strong inference of scienter. *Tellabs*, 127 S.

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[23] *Ley v. Visteon Corp.*, 543 F.3d 801, 810 (6th Cir. 2008), is further distinguishable because, unlike the Second Circuit, the Sixth Circuit does not appear to hold that access to information is sufficient to establish scienter.

[24] The market as a whole also viewed the fraud as being extraordinarily large. ¶184 ("a loss of the size that was on Mr. Kerviel's trading book in July would have been unlikely to escape notice in Société Générale's back office"); ¶185 ("it's hard to see any oversight system that misses such a large amount of unauthorized trading"). The French Banking Commission imposed its largest fine ever on SocGen as a result of the fraud. ¶6.

Ct. at 2511 ("the court's job is not to scrutinize each allegation in isolation but to assess all the allegations holistically").

b. The Government Investigations Support a Strong Inference of Scienter

The fact that SocGen was investigated by the French Finance Minister, the French Banking Commission, the AMF, the SEC, the U.S. Attorney and its own internal General Inspection Department (¶¶230-248) supports a strong inference of scienter. *Hall*, 580 F. Supp. 2d at 233 (SEC investigation "probative of scienter"). These investigations reveal facts that also contribute to Plaintiffs' scienter allegations. For example, the French Finance Minister investigation revealed that the Eurex notified SocGen about Kerviel's trades (¶231), and that the French Banking Commission reprimanded SocGen for allowing its internal controls to become seriously deficient despite numerous warnings (¶234). The French Banking Commission also found that there was an ***internal report*** – transmitted to the management at the end of 2007 – discussing problems with the Company's internal controls and the measures needed to remedy them. ¶236. These facts support a strong inference of scienter.

In early February 2008, the SEC announced that it was investigating the timing of Defendant Day's stock sales, and the U.S. Attorney's office for the Eastern District of New York has opened a criminal investigation relating to both Day's stock sales and Kerviel's trades. ¶¶243-244. These two investigations are ongoing and further support a strong inference of scienter. *See In re Syncor Int'l Corp. Sec. Litig.*, 327 F. Supp. 2d 1149, 1162 (C.D. Cal. 2004), *aff'd in part and rev'd in part on other grounds*, 239 F. App'x 318 (9th Cir. 2007).

c. SocGen's Abrupt, High-Level Personnel Changes Support a Strong Inference of Scienter

The key, senior-level personnel changes SocGen made shortly after revealing the Kerviel and Subprime Frauds, and prior to its restatement of its 2007 financials, further support a strong

inference of scienter. *See In re Adaptive Broadband Sec. Litig.*, No. C 01-1092 SC, 2002 U.S. Dist. LEXIS 5887, at *43 (N.D. Cal. Apr. 2, 2002) ("because the changes occurred as Adaptive's financials were being restated and as Adaptive was conducting its own internal investigation . . . they add one more piece to the scienter puzzle"); *see also Kaltman v. Key Energy Servs.*, 447 F. Supp. 2d 648, 664 (W.D. Tex. 2006) (defendant's termination was "a factor which supports a strong inference of scienter"). Merely seven days after SocGen's sobering January 24, 2008 announcement, it began reshuffling its top management in its SGCIB (investment banking) division. ¶265. Moreover, between SocGen's January 24, 2008 announcement and its May 13, 2008 restatement, Defendant Bouton was forced to resign his position as CEO, and Defendant Citerne was forced to give up his seat on SocGen's Board in favor of an independent board member. ¶266. Also, Mustier, the head of SGCIB during the fraud, who had earlier been rumored to be the heir-apparent to succeed Bouton as CEO, was passed over, as he was reassigned to SocGen Asset Management. ¶¶25, 266. These resignations, reassignments and terminations, together with the Company's financial restatement and SocGen's internal investigation, are "***highly suspicious***." *Adaptive Broadband*, 2002 U.S. Dist. LEXIS 5887, at *43.

d. The Timing of SocGen's Disclosures Supports a Strong Inference of Scienter

In order to mask the Subprime Fraud and their blatantly false statements regarding SocGen's subprime exposure, Defendants announced the Kerviel and Subprime losses together, creating "noise" in the market, making it more difficult to determine which portion of the loss is attributable to the Company's subprime-related write-down. Defs.' Mem. at 49. This is yet another fact supporting a strong inference of scienter, as it demonstrates Defendants' conscious effort to manipulate the timing of SocGen's disclosures.

Defendants urge the Court to disregard this fact as circumstantial evidence of scienter, but fail to provide any legitimate basis to do so. The cases they rely on are entirely inapposite. *See, e.g.*, *In re Bio-Tech. Gen. Corp. Sec. Litig.*, 380 F. Supp. 2d 574, 585 (D.N.J. 2005) (providing no discussion whatsoever of market "noise" as an inference of scienter; holding instead that plaintiffs failed to plead scienter where plaintiffs unconvincingly alleged that defendants "must have known" of the fraud); *In re SCB Computer Tech., Inc.*, 149 F. Supp. 2d 334, 354-55 (W.D. Tenn. 2001) (rejecting plaintiffs' reliance on a later press release to argue that defendants' earlier positive statements were knowingly false when made as "fraud by hindsight" but declining to consider the "noise" issue raised here, where defendants released a barrage of bad news on the same day in an attempt bury the root causes, evidencing scienter).

C. The Complaint Also Properly Alleges Scienter by Identifying Defendants' Motive and Opportunity to Commit Fraud

Because Plaintiffs have established a strong inference of Defendants' scienter by alleging their conscious misbehavior or recklessness, it is unnecessary to allege motive and opportunity. *Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 170 (2d Cir. 2000); *AUSA Life Ins. Co. v. Ernst & Young*, 206 F.3d 202, 221 (2d Cir. 2000). Nonetheless, the Complaint's particular allegations here of motive and opportunity, including the Individual Defendants' massive insider trading scheme, coupled with SocGen's €1.1 billion stock repurchase program, support a strong inference of scienter. *See Rothman v. Gregor*, 220 F.3d 81, 93-94 (2d Cir. N.Y. 2000) (alleged motive may serve to establish scienter or contribute to other scienter allegations).[25]

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[25] Day does not refute that his insider sales support an inference of scienter. Instead, Day argues that stock sales alone do not warrant a strong inference of scienter. Robert A. Day's Memorandum of Law in Support of His Motion to Dismiss the First Amended and Consolidated Complaint ("Day's Mem.") at 15. Day's argument ignores that in this Circuit scienter can be satisfied through motive and opportunity alone. *Kalnit v. Eichler*, 264 F.3d 131, 139 (2d Cir. 2001);

The Second Circuit has repeatedly held that those with access to inside information have the ***opportunity*** to commit fraudulent acts. *Kalnit*, 264 F.3d at 139; *Scholastic*, 252 F.3d at 74. The Individual Defendants' status as officers and directors more than sufficiently establishes, at the pleading stage, their opportunity to commit the acts alleged.

"[P]ersonal financial gain may [also] weigh heavily in favor of a scienter inference." *Tellabs*, 127 S. Ct. at 2511. Allegations "'that defendants benefitted in some concrete and personal way' by, for example, ***selling shares while stock prices were artificially high***" can support a strong inference of scienter. *Accord Global Crossing*, 322 F. Supp. 2d at 345 (Lynch, J.); *Burstyn v. Worldwide Xceed Group, Inc.*, No. 01 Civ. 1125 (GEL), 2002 U.S. Dist. LEXIS 18555, at *16 (S.D.N.Y. Sept. 30, 2002) (Lynch, J.).

Here, both the timing and amounts of shares sold, in terms of percentage and volume, are both unusual and suspicious, supporting a strong inference of scienter. ¶¶250-260 (Individual Defendants sold a total of 2.3 million shares for proceeds of over €225 million). Importantly, these numbers may rise significantly as Defendants' early and pre-Class Period sales are ***not*** publicly available. As large as these sales are, they are but a portion of the Individual Defendants' total sales.

1. The Timing of Defendants' Stock Sales Is Unusual

The Individual Defendants' initiation of a €1.1 billion stock repurchase scheme, while simultaneously selling tens of millions of euros worth of their own personal shares, demonstrates the highly unusual timing of their stock sales. The insiders' public action of instituting a company repurchase indicates to the market that the insiders view the stock as undervalued and thus a good

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Novak, 216 F.3d at 307; *In re Refco, Inc. Sec. Litig.*, 503 F. Supp. 2d 611, 644 (S.D.N.Y. 2007). Also, Day fails to raise any legitimate competing inferences for his massive insider stock trades. As such, given the amount and opportunistic timing of his stock sales, the most cogent and compelling inference is that Day traded based on non-public, material inside information.

investment. *In re Countrywide Fin. Corp. Sec. Litig.*, No. CV-07-05295-MRP (MANx), 2008 U.S. Dist. LEXIS 102000, at *144 (C.D. Cal. Dec. 1, 2008) ("[R]epurchases signal to the market that a company believes its stock is undervalued. Repurchases therefore might contribute to a price increase, propping up the prices insiders receive."). Therefore, private stock sales by the very individuals claiming that company stock is a good investment supports a strong inference of scienter.[26]

Day's massive trades just days before the January 24, 2008 announcement of both frauds is highly unusual. ¶¶252-256. From January 9, 2007 through January 18, 2007, Day sold approximately 1.5 million shares of SocGen securities for proceeds of more than ***€140 million***. ¶¶252, 254. Even more suspicious, a portion of Day's trades coincided with SocGen's stock repurchase program, which Day approved as a SocGen director. ¶26 (board approved repurchase program). From January 2006 to January 2007, Day received ***€27.5 million***, plus ***$8.5 million*** in U.S. dollar transactions, on his insider sales. ¶¶372-379.

Defendant Bouton's trades during the transition period in France between their former disclosure laws, requiring far less transparency, and their newly-adopted version provides further evidence of unusual timing. Defendant Bouton exercised two batches of options and then immediately sold on March 17, 2006, one week ***after*** the AMF order of March 9, 2006, which first required that insiders' sales be publicly disclosed on the AMF website, but just days ***before*** this order was officially published and took effect on March 21, 2006. Defendant Bouton's well-timed sale, concealed from public view, is by far the single largest sale he made during the entire Class

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[26] In addition, "[f]actors considered in determining whether insider trading activity is unusual include . . . the number of insiders selling." *Scholastic*, 252 F.3d at 74-75. Here, all four Individual Defendants were dumping their shares.

Period. In this one day, Bouton was able to sell 92,794 shares, at a then all-time stock price high of €116 per share, for proceeds in excess of ***€10.7 million***. ¶390. This sale is highly suspicious and, at a minimum, constitutes circumstantial evidence of scienter.

In addition, as the subprime crisis became increasingly apparent to the market in early 2007, Bouton publicly denied the problem's severity while he personally sold 50,745 shares in the first half of 2007 alone, for proceeds of over ***€6 million***. Defendant Citerne, highly knowledgeable in RMBS and CDO assets as a TCW director, also knew of the looming subprime crisis and, just three days before the end of FY2006, sold over 108,000 shares for proceeds of over ***€13 million***.[27] ¶396.

Defendant Alix's single Class Period trade was also highly unusual in its timing. Alix's single sale of common stock for proceeds of ***€3.3 million*** came just nine trading days after the Company's stock price reached its all-time high of €158.42 and was accomplished in the middle of the April 2, 2007 to June 29, 2007 stock repurchase program. ¶402.[28]

2. The Amounts of Defendants' Trades Are Unusual

In addition, the Individual Defendants' Class Period insider selling is unusual in amount, based both on sheer volume and percentage sold. Even without the prior trading history, the massive

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[27] Therefore, Defendants' reliance on *In re Bausch Lomb, Inc. Sec. Litig.*, No. 06-CV-6294, 2008 WL 4911796, at *15 (W.D.N.Y. Nov. 13, 2008), and *In re AstraZeneca Sec. Litig.*, 559 F. Supp. 2d 453, 469 (S.D.N.Y. 2008), and contention that Plaintiffs do not allege the timing of the sales coincided with any of the false statements (Defs.' Mem. at 44-45), is incorrect.

[28] Other evidence of unusually-timed insider selling is the fact that Bouton and Citerne's sales were in direct violation of the Director's Charter which prohibits short swing sales by SocGen directors. ¶396. According to SocGen's 2008 Registration Document, the Director's Charter prohibits directors from "conducting transactions in Societe Generale shares during the thirty days prior to the publication of results, and from carrying out speculative trading in Societe Generale shares (shares must be held for at least two months, options trading is banned)." Llorens Decl., Ex. K. Defendants make no attempt to challenge this allegation, essentially conceding the violation – more circumstantial evidence of scienter.

amount of proceeds the Individual Defendants reaped, in addition to the high percentages of their holdings sold, suffices to show that their trading during the Class Period was unusual in amount.[29] Defendant Day sold at least 1,886,187 SocGen shares, ***53%*** of his total available SocGen holdings, for proceeds of more than ***€168 million***. ¶252. Defendant Bouton sold at least 255,713 shares of SocGen stock for illegal insider trading proceeds of over ***€30 million***, amounting to over ***65%*** of his available SocGen holdings during the Class Period.[30] ¶388. Defendant Citerne sold at least 201,129 shares of his SocGen common stock, ***81%*** of his available holdings, for over ***€23 million*** in illegal trading proceeds. ¶394. Defendant Alix sold at least 23,171 shares of his SocGen common stock for over ***€3 million*** in illegal insider trading proceeds, amounting to ***81%*** of his available stock holdings in a single day of trading. ¶¶400, 402.

3. Defendants' Response Fails to Undermine the Strong Inference Arising from Defendants' Stock Sales

Defendants claim that a stock repurchase combined with contemporaneous selling by the very individuals who directed the repurchase – ***with Company funds*** – provides no inference of scienter whatsoever. Defs.' Mem. at 45-46; Day's Mem. at 16 n.8. However, given all the facts alleged and the timing and magnitude of Defendants' insider sales, Defendants' so-called competing inference fails miserably. *See Countrywide*, 2008 U.S. Dist. LEXIS 102000, at *145 ("Again, as

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[29] *See Oxford Health*, 187 F.R.D. at 140 (holding that $78 million of insider sales by ten defendants "massive by any measure"); *Rubenstein v. Collins*, 20 F.3d 160, 169 (5th Cir. 1994) (insider sales of just $760,599 raise an inference of scienter); *In re MTC Elec. Techs. S'holders Litig.*, 898 F. Supp. 974, 980 (E.D.N.Y. 1995) (stock sales by one defendant of approximately 8,000 shares for profit of $173,000 "raises a 'strong inference' of fraudulent intent and establishes a motive for the fraud").

[30] These sales by the Chairman and CEO of the Company – over 65% of his holdings – occurred at a time when he had devised and executed the stock repurchase program that, in effect, told shareholders the stock price was cheap and under-valued. ¶388.

insiders were selling, Countrywide was buying – with newly raised capital rather than existing cash reserves. The CAC therefore creates a strong inference that Countrywide's explanation for its stock repurchase plan was economically suspect.").

Relying on *Malin v. XL Capital Ltd.*, 499 F. Supp. 2d 117, 151-52 (D. Conn. 2007), Defendants argue that without citing the insiders' prior trading history, including the percentage of stock sold in pre-Class Period years, there is no basis to infer that the amount sold during the Class Period was unusual. Defs.' Mem. at 44. And while the court in *Malin* had the benefit of examining the individual defendants' pre-class period trading activity (499 F. Supp. 2d at 151), Defendants' early and pre-Class Period sales here are ***not publicly available***, and Defendants fail to introduce them.[31]

Defendants cite no case law but argue that unless they sold ***all*** of their shares, this fact actually undermines scienter. Defs.' Mem. at 46. Similarly, Defendants argue that a lack of insider trading (other than by Defendant Day) in the six months leading up to the end of the Class Period shows a lack of "opportunistic" trading and cuts against scienter. *Id.* at 45. Simply because an insider does not attempt to reap the absolute maximum possible in a fraudulent gain (perhaps out of fear of being discovered or because they believe the fraud will continue) does not mean that this insider cannot be judged by his less-than-absolute gain. *In re Cardinal Health, Inc. Sec. Litigs.*, 426 F. Supp. 2d 688, 731 (S.D. Ohio 2006) ("Thus, the Court does not agree with Cardinal Defendants that Walter's purchase of 40,000 shares – a trifling amount when compared with the 593,910 he sold – cuts against any unusual or suspicious trading."); *see also In re Openwave Sys. Sec. Litig.*, 528 F.

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[31] As Defendants are well aware, until March 2006, Defendants were not required by French law to publicly disclose their trading in SocGen stock. ¶373.

Supp. 2d 236, 249 (S.D.N.Y. 2007) (defendants' backdating of their stock options to dates "nowhere near" the monthly stock price lows did not cut against an inference of scienter).

Defendants make the disingenuous argument that since Bouton and Citerne "increased" their stock holdings during the Class Period, and Alix's holdings remained "almost identical," this undercuts any inference of scienter. Defs.' Mem. at 44. While it may be true that a snapshot of the Individual Defendants' holdings taken at the end of each year makes it ***appear*** as though their holdings were increasing, this completely distorts what was occurring during the 364 days between each snapshot. As tens of thousands of their options were vesting, Defendants were dumping the acquired shares immediately. For instance, while Bouton held 98,500 shares at December 31, 2005 and 120,000 shares at December 31, 2006, in between those two snapshots, he sold ***204,968*** shares in 2006. ¶427. While Citerne held 25,897 shares at December 31, 2005 and 43,124 shares at December 31, 2006, he sold ***201,129*** shares during that period. ¶¶394-399. And finally, while Alix had 5,030 shares at December 31, 2006 and 5,037 shares at December 31, 2007, in between he sold ***23,171*** shares in 2007. ¶¶400-402.

Defendants also argue that scienter cannot be inferred from their insider sales because the Complaint does not allege that: (i) the sales did not include the exercise of vested options; (ii) the sales did not occur within trading windows; and (iii) the sales were not part of a predetermined plan. Defs.' Mem. at 45. The first argument fails as Defendants do not identify any vested unexercised options they held.

Defendants' second argument fails because sales made within a designated trading window can still be improper if the insider is in possession of undisclosed, adverse inside information – which is exactly what occurred here. ¶¶384, 388, 392, 394, 396, 400-401. If the insider was in receipt of non-public, adverse inside information, that insider must either disclose or abstain from

trading. *See, e.g.*, *Chiarella v. United States*, 445 U.S. 222, 227, 229 (1980) (an "insider," such as a corporate officer, who possesses material non-public information about the company, is subject to a duty to "disclose or abstain").

Defendants' third argument fails as it is Defendants' burden to establish the ***affirmative defense*** that the insider sales were part of a pre-determined trading plan – a burden they do not attempt to satisfy here. *See In re Fannie Mae Sec.*, 503 F. Supp. 2d 25, 48 (D.D.C. 2007) (trading plan is an affirmative defense); *In re Cray Inc. Derivative Litig.*, 431 F. Supp. 2d 1114, 1131 (W.D. Wash. 2006) ("The Court will not dismiss the insider sales claims on the basis of a yet-to-be-pled [10b-5 plan] affirmative defense, particularly where the Individual Defendants bear the burden of proof.").

D. The Alternative Inferences Urged by Defendants Are Implausible

According to Defendants, SocGen "simply made investment decisions that . . . proved imprudent." Defs.' Mem. at 4. Defendant Day claims that his insider trading, reaping €140 million in proceeds was a mere "coincidence." Day's Mem. at 1. Defendants' proposed inferences are not "plausible," as they require the Court to ignore too much.

Defendants' supposed alternative inference that they did not know or have access to information that would have alerted them to the "serious deficiencies" in SocGen's internal controls (Defs.' Mem. at 7) cannot be inferred from the facts alleged because the Court would have to ignore, for example: (i) that the Bank of France warned Defendant Bouton twice about SocGen's derivatives trading; (ii) that SocGen knew and held meetings to discuss Kerviel's "fictitious" transactions; (iii) that SocGen prepared an "internal report" acknowledging problems with its internal controls; and (iv) that over 70 internal alerts and questions from Eurex specific to Kerviel were ignored. The Court must also ignore the sheer magnitude of Kerviel's 2007 earnings which could not have been achieved by normal arbitrage trading at Kerviel's modest authorization level. The fact is that

SocGen fostered (and concealed) a culture of risk and that risk materialized in the form of a junior trader whom Defendants chose to ignore as long as he was adding to the Company's earnings. ¶192.

Moreover, Defendants did not merely conceal these enormous risks, they ***affirmatively*** represented just the opposite – that SocGen had "highly sophisticated control systems which have already proven their worth in extreme situations" (¶7), "risk is kept under control, under strong supervision and using our expertise" (*id.*), and "[o]ne of the most important aspects of this business is controlling our exposure to . . . different types of risk . . . in order to limit their impact on our profitability" (¶108).[32]

As for the Subprime Fraud, Defendants claim that SocGen's losses were innocent because they could not foresee the credit crisis and its severity. Defs.' Mem. at 4, 27-28. SocGen's subprime losses are not the result of a supposedly sudden and unforeseen market loss of over €3 billion. That is not a plausible inference that can reasonably be taken from any of the facts alleged. SocGen manipulated its valuation models to justify the inflated value of its subprime assets in order to defer their inevitable write-down and otherwise ignored a number of red flags throughout the Class Period. ¶¶204-205, 207, 209, 214-216, 221-229.

V. THE COMPLAINT SUFFICIENTLY ALLEGES LOSS CAUSATION

The Complaint carefully explains how Defendants' false and misleading statements caused Plaintiffs' losses. ¶¶403-410. On January 24, 2008, SocGen disclosed that a 31-year-old junior trader had been able to place massive unhedged equity bets resulting in a €4.9 billion loss. ¶403. The same day it announced – confirming market rumors circulating days prior – that it would write

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[32] ***After-the-fact*** corrective steps by SocGen to improve its risk control management (Defs.' Mem. at 7) cannot cure these patently false and misleading statements. Corrective measures taken in the wake of a fraud cannot negate an inference that the earlier fraud occurred. *In re Alstom SA Sec. Litig.*, 454 F. Supp. 2d 187, 207 (S.D.N.Y. 2006).

down an additional €2 billion on its subprime-related assets, including its RMBS and CDO portfolios. *Id.* When the truth about SocGen's risk control management systems and its subprime exposure was revealed, SocGen stock and ADRs dropped in response, removing much of the prior artificial inflation from the stock. ¶404. Because Plaintiffs purchased their SocGen shares at prices artificially inflated by Defendants' fraudulent conduct, SocGen's revelations and consequent stock drop caused Plaintiffs to suffer economic loss. *Id.* Plaintiffs also suffered economic loss as a result of market rumors that circulated from January 18 through January 21, 2008. ¶407. Moreover, the Complaint alleges that both stock declines were statistically significant, meaning that they are not explained by movements in the market as a whole, and are the direct result of the disclosure of information into the market. *Id.*; *see* ¶410 (timing and magnitude of SocGen's stock price declines negate any inference that the loss suffered by Plaintiffs and other Class members was caused by changed market conditions, macroeconomic or industry factors, or Company-specific facts unrelated to the Defendants' fraudulent conduct).

In response, Defendants make two arguments. Defendants first argue that Plaintiffs have not "control[led] for other factors" and second that the disclosure of the truth was not a "corrective" disclosure. Both of these arguments fail because they are based on an incorrect statement of the relevant pleading and loss causation standards.

A. While Plaintiffs Need Not "Control for Other Factors" at the Pleading Stage, the Complaint Nevertheless Does So

SocGen first argues that, while we are only at the pleading stage, Plaintiffs must nevertheless "account for the ongoing credit crisis." Defs.' Mem. at 59. In doing so, Defendants misconstrue the Supreme Court's decision in *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005). The portion of *Dura* relied on by Defendants (*see* Defs.' Mem. at 59) pertains to the ***proof*** necessary to establish loss causation ***at trial***. *Dura*, 544 U.S. at 343. Later, the *Dura* opinion goes on to explain that for

pleading purposes, "it should not prove burdensome for a plaintiff who has suffered an economic loss to provide a defendant with ***some indication of the loss and the causal connection that the plaintiff has in mind***." *Id.* at 347. Thus, at the pleading stage it is not necessary to quantify the losses, just to provide a showing of the existence of such losses. Accordingly, the economic analysis to determine how much of SocGen's losses (stock price decline) caused by both the Kerviel Fraud and the Subprime Fraud – an analysis which necessarily requires expert analysis – is certainly not necessary here.

In any event, the Complaint goes much further and provides a very straightforward and detailed explanation of loss causation, setting forth precisely how the alleged misrepresentations caused Plaintiffs' losses, even alleging that the price declines are statistically significant and therefore ***not*** the result of market, industry or other Company-specific information unrelated to Defendants' false and misleading statements. *See, e.g.*, ¶407. The losses associated with SocGen's subprime-related write-downs relate to the alleged fraud because, had they been taken when required, the stock price would have incorporated such write-downs much earlier, as opposed to when SocGen did on January 18-21, 2008. *Id.*

With respect to the January 18-21, 2008 price decline, there is a difference between demonstrating what caused that decline and what caused its RMBS and CDO portfolios write-downs. The latter goes to the issue of whether Defendants' statements were false. SocGen's price decline was caused, in part, by its subprime-related write-downs, thereby establishing loss causation. ¶¶404-405, 407-408. This is what *Dura* requires – identification of the loss. An entirely different issue is what caused the write-down – contemporaneous industry events or a fraudulent delay in recognizing those losses. SocGen was later than other banks in writing down its losses:

> After vainly trying to convince us that the group's 4% provisioning rate of subprime CDOs was sufficient, management has decided to join the 30%

> provisioning club. Subprime CDOs were written down by over € 1bn (€ 1.1bn), in addition to € 200m of general provisions. In all, exposure to subprime CDOs is now 30% provisioned, a ratio more or less in line with the international standard (33%).

Llorens Decl., Ex. J (Oddo Securities report, dated January 25, 2008).

B. The Complaint Sufficiently Alleges a Corrective Disclosure

The Complaint also sufficiently alleges a corrective disclosure which provides a causal connection between Defendants' fraudulent conduct and Plaintiffs' losses. Defendants' argument requiring a corrective disclosure which baldly admits to the fraud is incorrect.

Dura did not disturb this Circuit's existing loss causation law.[33] Indeed, the Supreme Court cited ***approvingly*** to Second Circuit loss causation precedent in overruling the Ninth Circuit. *Dura*, 544 U.S. at 344. This Circuit has long held that a plaintiff must allege and eventually prove ***either***: (i) a materialization of an undisclosed risk that consequently leads to the plaintiff's loss; ***or*** (ii) a disclosure correcting a prior false statement that causes the loss. *Lentell v. Merrill Lynch & Co.*, 396 F.3d 161, 173 (2d Cir. 2005). Thus, loss causation requires "both that the loss be foreseeable and that the loss be caused by the materialization of the concealed risk." *Id.*; *see also In re Initial Pub. Offering Sec. Litig.*, 297 F. Supp. 2d 668, 675 (S.D.N.Y. 2003) (Defendants knew that inflation caused by their manipulations "would eventually recede to reflect the actual value of the securities, thereby injuring innocent investors. That is loss causation.").

Loss causation can be shown by any corrective event causally related to the misrepresentations, whether or not the event explicitly reveals the underlying fraud. *See, e.g.*, *Emergent Capital Inv. Mgmt., LLC v. Stonepath Group, Inc.*, 343 F.3d 189, 192 (2d Cir. 2003) (finding loss causation prior to revelation of the fraud based on "a causal connection between the

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[33] *See, e.g.*, *In re Initial Pub. Offering Sec. Litig.* ("*IPO II*"), 399 F. Supp. 2d 261, 266 (S.D.N.Y. 2005) (Second Circuit loss causation standard "is undisturbed by *Dura*").

subject matter of [the] omissions and the ultimate decline" in the stock's value); *Suez Equity Investors, L.P. v. Toronto-Dominion Bank*, 250 F.3d 87, 98 (2d Cir. 2001) (finding loss causation resulted from foreseeable event that preceded disclosure of the misrepresentation); *In re Parmalat Sec. Litig.*, 376 F. Supp. 2d 472, 510 (S.D.N.Y. 2005) ("'[T]he damages suffered by plaintiff must be a foreseeable consequence of any misrepresentation or material omission.' . . . [L]oss causation does not, as the defendants would have it, require a corrective disclosure followed by a decline in price.").

The Second Circuit's *Emergent* decision is instructive. There, defendants had concealed that an investment vehicle's two officers had a long history of constructing pump-and-dump stock schemes. 343 F.3d at 191. Importantly, although the plaintiffs did not allege that the investment's value plunged ***because*** of revelations concerning the two officers' shady backgrounds – something Defendants' argument here requires – they still satisfied loss causation: Loss causation was satisfied because the plaintiffs' losses were "'a foreseeable consequence of defendants' omissions particularly ***in light of the drastic price declines which occurred in the shares of the other companies***' controlled" by the two men. *Id.* at 197 (emphasis in original). Other Second Circuit decisions are in accord. *See, e.g.*, *Suez Equity*, 250 F.3d at 98 (despite no sudden disclosure that investment's principal lacked necessary skills to run venture, loss causation was satisfied because the venture's eventual ***failure*** under his flawed stewardship was "entirely foreseeable").

Clearly, then, when it is foreseeable that an undisclosed risk may later materialize and cause plaintiffs' losses, loss causation is satisfied without there being an explicit disclosure of the precise fraud. It was foreseeable here that Defendants' misrepresentations and omissions regarding the "'abject' failure" (¶175(c)) of SocGen's risk control management system and the need for additional write-downs of its subprime-related assets would eventually cause SocGen's stock price to drop following revelations of the relevant truth – leading to the loss of billions of dollars in equity value.

Defendants' reliance on *Lentell* for the proposition that *Dura* requires a "corrective disclosure" is misplaced. Defs.' Mem. at 60. Although the *Lentell* court mentions the lack of any "corrective disclosure," it does not ***require*** one in order to satisfy loss causation. 396 F.3d at 175. Rather, the court explains that the plaintiffs had failed to allege ***either*** "that the subject of [Merrill's] false recommendations . . . ***or*** any corrective disclosure regarding the falsity of those recommendations, is the cause of the decline in stock value that plaintiffs claim as their loss." *Id*. *See, e.g.*, *In re Parmalat Sec. Litig.*, 375 F. Supp. 2d 278, 306 (S.D.N.Y. 2005) (*Lentell*'s "use of the word 'or' indicates that a corrective disclosure is not necessary where, as here, plaintiffs allege that the subject of the misrepresentations and omissions caused their loss."); *see also Catton v. Def. Tech. Sys*., 457 F. Supp. 2d 374, 381-82 (S.D.N.Y. 2006) ("The Second Circuit's opinion in *Lentell* referred to several permissible ways of pleading loss causation**,** including direct causation, 'materialization of risk,' and 'corrective disclosure.'") (citing *Lentell*, 396 F.3d at 173-75).

Moreover, the *Lentell* plaintiffs could not rely upon the "materialization of the risk" method of establishing loss causation, for there simply was no ***undisclosed*** risk in that case. Although falsely optimistic, the analyst reports at issue were loaded with risk factors and "unchallenged" analysis showing that the covered stocks were "subject to sudden and substantial devaluation risk." *Lentell*, 396 F.3d at 176. Because the complained-of risk was "apparent on the face of every report challenged" as misleading, said the *Lentell* court, plaintiffs were unable to demonstrate losses from the risk's materialization. *Id*.

In any event, SocGen's disclosure that a 31-year-old junior trader was allowed to lose €5 billion in undisclosed derivatives trading certainly qualifies as a corrective disclosure that SocGen's numerous unequivocal statements about its risk management control expertise were absolutely false. As one analyst concluded in response to its disclosure: "***Has Société Générale not***

sold its technical expertise in risk control management to clients until now? Is this not the very strength of Lyxor or DEAI in general? Will it not now be more difficult than before to win over clients when ***the bank let an elephant stroll down the corridor unseen***?" Llorens Decl., Ex. J (Oddo Securities report, dated January 25, 2008).

SocGen's disclosure of €2 billion in further subprime-related write-downs similarly satisfies even the most-stringent loss causation pleading standard. SocGen's statement reveals the materialization of a previously-concealed risk – that SocGen had failed to fully write down its subprime-related assets. Nor is this some sort of "fraud by hindsight." The Complaint alleges, "[a]s explained by one analyst, the 16% drop in share price during these few days [January 18-21, 2008] was consistent with a drop in 2007 net profit ***if SocGen were to write down its RMBS and CDO portfolios €1.3 billion***." ¶407. Thus, the market priced SocGen's stock in January 2008 – following the leakage that it would write down another €1 billion plus of its RMBS and CDO portfolios – to the level that this analyst believed the stock should have traded ***had SocGen timely made these write-downs in November 2007***. The causal connection, demonstrated by the market's reaction to rumors of further subprime write-downs, could not be clearer, and this is precisely what this analyst explained.

VI. THE COMPLAINT PROPERLY PLEADS SECTION 10(b) CLAIMS AGAINST DEFENDANTS CITERNE, ALIX AND DAY

Defendants argue that claims against Defendants Citerne, Alix and Day should be dismissed because they did not physically make any of the false statements at issue. Defs.' Mem. at 62; Day's Mem. at 8. These arguments ignore the well-established group pleading doctrine.[34]

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[34] Even aside from the group pleading doctrine, Defendants Citerne, Alix and Day are independently liable through their primary participation in the scheme to defraud shareholders, which includes their massive illegal insider trading scheme discussed in §VII., below.

Group pleading allows plaintiffs to "'rely on a presumption that statements in "prospectuses, registration statements, annual reports, press releases, or other group-published information," are the collective work of those individuals with direct involvement in the everyday business of the company.'" *Oxford Health.*, 187 F.R.D. at 142; *accord Luce v. Edelstein*, 802 F.2d 49, 55 (2d Cir. 1986) ("[N]o specific connection between fraudulent representations in the Offering Memorandum and particular defendants is necessary where, as here, defendants are insiders or affiliates participating in the offer of the securities in question."); *In re Pfizer Inc. Sec. Litig.*, 584 F. Supp. 2d 621, 637 (S.D.N.Y. 2008) ("[U]nder the group pleading doctrine, a plaintiff may 'circumvent the general pleading rule that fraudulent statements must be linked directly to the party accused of the fraudulent intent.'").

The false statements at issue here are found in SocGen's press releases, public registration documents, analyst conference call transcripts and other types of statements to which the group pleading doctrine applies. ¶¶40, 78, 81, 108-166, 363-364, 421-422, 430. *See Pfizer*, 584 F. Supp. 2d 621 (holding that the group pleading doctrine applied to false statements in the company's financial statements and press releases).

Each of the Individual Defendants were responsible for and participated in drafting, producing, reviewing and/or disseminating the materially false and misleading information. ¶¶78-79, 81. Further, Defendants Citerne, Alix and Day, by virtue of their positions of control and authority as officers, and Defendants Citerne and Day as insiders and directors of the Company, were able to, and did, control the content of the various public filings, press releases and other public statements pertaining to SocGen during the Class Period. *Id.* The three were provided with, or had unlimited access to, copies of the documents alleged to be false and misleading prior to, and shortly

after, these statements were issued and had the ability and opportunity to prevent the issuance of the statements or cause the statements to be corrected. *Id.*

In addition, Defendant Citerne was responsible for ensuring the overall consistency and efficiency of SocGen's internal control management systems. ¶¶45, 334. He even chaired SocGen's Internal Coordination Committee which met on a quarterly basis to implement and monitor SocGen's internal control management systems. ¶¶45, 277. Defendant Alix, the other Co-CEO, assisted Defendant Bouton during most of the Class Period in carrying out his duties as CEO. ¶47. The responsibilities of Defendants Citerne and Alix, as two of the top four officers at SocGen (¶¶45, 47, 54, 81, 334), is more than sufficient to apply the group pleading doctrine. *In re BISYS Sec. Litig.*, 397 F. Supp. 2d 430, 440-41 (S.D.N.Y. 2005) ("By virtue of their high level positions at the Company throughout the Class Period, the Court is bound to infer at this stage that all three had direct involvement in BISYS' daily affairs."); *see Pfizer*, 584 F. Supp. 2d at 638 ("the kinds of documents Plaintiffs seek to impute to the Individual Defendants would . . . be the responsibility of top management such as the Individual Defendants").

The group pleading doctrine also applies to Defendants Day and Citerne as they are SocGen inside directors with large equity stakes. ¶¶43, 45-46, 383. *See In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.*, 398 F. Supp. 2d 244, 250 (S.D.N.Y. 2005) (group pleading doctrine applies to "members of the Board of Directors with equity interests"); *Oxford Health*, 187 F.R.D. at 142-143; *see also In re Solucorp Indus. Sec. Litig.*, No. 98 Civ. 3248 (LMM), 2000 U.S. Dist. LEXIS 16521, at *25 (S.D.N.Y. Nov. 15, 2000) (director with equity interest and access to information concerning company's day to day business can be considered part of a group for the group pleading exception).

Defendants misread *Wright v. Ernst & Young LLP*, 152 F.3d 169, 176 (2d Cir. 1998), in claiming that Rule 10b-5(b) liability cannot attach to non-speaking parties. Defs.' Mem. at 62. The

Wright case dealt with secondary actors, ***third party*** accountants, not the most-senior company officers which we have here. 152 F.3d at 176. The group pleading doctrine certainly still applies to non-speaking insiders who are primary violators of Rule 10b-5. *SEC v. Espuelas*, 579 F. Supp. 2d 461, 473 (S.D.N.Y. 2008). Moreover, ***primary violators***, even where they are secondary actors, can still be held liable under §10(b). *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, __ U.S. __, 128 S. Ct. 761, 773-74 (2008); *Cent. Bank, N.A. v. First Interstate Bank, N.A.*, 511 U.S. 164, 191 (1994).[35]

VII. THE COMPLAINT PROPERLY ALLEGES CLAIMS UNDER RULE 10b-5(a) AND (c)

The Complaint adequately alleges separate claims under Rule 10b-5(a) and (c) against the Individual Defendants, since these Defendants were direct and primary participants in a deceptive scheme aimed at artificially inflating SocGen's share price throughout the Class Period, thereby allowing them to profit through illicit insider trades. ¶¶271-280, 419-428. As this Court noted in another matter, "[a]ll that is required in order to state a claim for a primary violation under Rule 10b-5(a) or (c) is an allegation that the defendant (1) committed a manipulative or deceptive act (2) in furtherance of the alleged scheme to defraud, (3) scienter, and (4) reliance." *Global Crossing*, 322 F. Supp. 2d at 336 (Lynch, J.). Indeed, Rule 10b-5(a) and (c) claims are rather broad, as they "encompass much more than illegal trading activity: they encompass the use of 'any device, scheme

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[35] Defendants' reliance on *Refco*, 503 F. Supp. 2d at 641, and *Dresner v Utility.com, Inc.*, 371 F. Supp. 2d 476, 494 (S.D.N.Y. 2005), is misplaced. Defs.' Mem. at 63. In *Refco*, this Court held that each of the three defendants there "'was a corporate insider or affiliate with direct involvement in the daily affairs of the company.'" 503 F. Supp. 2d at 642. This is precisely what the Complaint alleges here. ¶¶78-79, 81. Further, while the court in *Dresner* held that ***non***-insider defendants were not presumed to have participated in the preparation of group-published statements, the court still held that: "Plaintiffs may make use of the group pleading doctrine with respect to the Insider Defendants, who by virtue of their positions as executives of Utility.com can be presumed to have had active daily roles in the company." 371 F. Supp. 2d at 495.

or artifice,' or 'any act, practice, or course of business' used to perpetrate a fraud on investors." *Id.* (quoting 17 C.F.R. §240.10b-5(a), (c)).

Further, alleging liability under Rule 10b-5(b) for false statements does ***not*** preclude Plaintiffs from alleging liability, arising from the same set of facts, based on violations of Rule 10b-5(a) and (c), if the scheme went beyond the misrepresentations. *Alstom*, 406 F. Supp. 2d at 475 ("[I]t is possible for liability to arise under both subsection (b) and subsections (a) and (c) of Rule 10b-5 out of the same set of facts . . . . The subsections provide alternate mechanisms of pleading a primary violation of Section 10(b)."). Finally, where "the principal allegations of wrongdoing involve market manipulation rather than false statements, the level of specificity required by Rule 9(b) is somewhat relaxed." *Dietrich v. Bauer*, 76 F. Supp. 2d 312, 339 (S.D.N.Y. 1999). *See ATSI*, 493 F.3d at 102 ("A claim of manipulation, however, can involve facts solely within the defendant's knowledge; therefore, at the early stages of litigation, the plaintiff need not plead manipulation to the same degree of specificity as a plain misrepresentation claim."); *In re Sterling Foster & Co. Sec. Litig.*, 222 F. Supp. 2d 216, 269-70 (E.D.N.Y. 2002) (holding that Rule 9(b) relaxed when alleging market manipulation under §10(b)).

The Complaint satisfies these standards by detailing an insider trading scheme (*see* ¶¶275-278, 420, 427), which occurred simultaneously with a €1.1 billion stock repurchase scheme (¶¶19-20, 26, 261-263, 372-379, 380-402). The U.S. Supreme Court has made clear that insider trading is an independent violation of Rule 10b-5(a), since it is a deceptive device. *United States v. O'Hagan*, 521 U.S. 642, 651-52 (1997) ("Trading on [inside] information qualifies as a 'deceptive device' under §10(b), we have affirmed, because 'a relationship of trust and confidence [exists] between the shareholders of a corporation and those insiders who have obtained confidential information by reason of their position with that corporation.'") (quoting *Chiarella*, 445 U.S. at 228).

Inexplicably, buried in a footnote in a separate section of their motion, Defendants briefly conclude that Plaintiffs' claim based on the Individual Defendants' insider trading scheme fails "for the same reasons Plaintiffs have failed to allege scienter." Defs.' Mem. at 64 n.18. This argument fails for the reasons stated in §IV., above.

Defendant Day attempts to shield himself from liability under 10b-5(a) and (c) by claiming Plaintiffs lack standing to bring such a claim and that Plaintiffs do not otherwise adequately allege a claim for insider trading. Day's Mem. at 12.

Day argues that Plaintiffs do not have standing because the majority of Plaintiffs' purchases of SocGen securities did not occur contemporaneously with Day's sales. *Id.* at 13-14. Day's standing argument fails as contemporaneous trading is not an element of a Rule 10b-5(a) and (c) claim. Defendant Day has confused the standard for that claim with that of a §20A claim. Moreover, even if contemporaneous trading were an element of an insider trading claim under Rule 10b-5(a) and (c), this alone does not defeat Plaintiffs' claim, since "[t]he term 'contemporaneously' may embrace the entire period while relevant material non-public information remained undisclosed." *In re Am. Bus. Computers Corp. Sec. Litig.*, No. 913 (CLB), 1994 U.S. Dist. LEXIS 21467, at *10-*11 (S.D.N.Y. Feb. 24, 1994) (the issue of standing is best left for the trier of fact). Further, "***[a]s the Second Circuit has held, the lead plaintiff need not have standing to sue on all possible causes of action***." *Openwave*, 528 F. Supp. 2d at 256 n.11 (citing *Hevesi v. Citigroup Inc.*, 366 F.3d 70, 82 & n.13 (2d Cir. 2004)).

Day's second argument, that Plaintiffs do not establish "whether Mr. Day actually possessed, failed to disclose and intended to profit from any material, nonpublic information at the time of the alleged trades" (Day's Mem. at 15), misstates the relevant standard, as intent to profit is not an element of the claim. *Refco*, 503 F. Supp. 2d at 664 (Lynch, J.). All that must be shown is that Day

knowingly possessed non-public information when he traded. *United States v. Royer*, 549 F.3d 886, 899 (2d Cir. 2008).

The Complaint satisfies this element and even alleges facts supporting an intent to profit. ¶¶18-19, 44, 172(g), 173-174, 250, 252, 254-256, 271-278, 349, 380-387 (Day was in knowing possession of non-public information); ¶¶43-44, 77, 175(g), 173-174, 250, 252, 253, 272-275, 314, 347-348, 380-387 (as an interested director of SocGen, and CEO and Chairman of TCW, Day knowingly came into possession of material non-pubic information).

VIII. THE COMPLAINT PROPERLY ALLEGES CONTROL PERSON CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS UNDER SECTION 20(a)

A claim under §20(a) involves (1) a primary violation by a controlled person; (2) control of the primary violator by the defendant; and (3) that the controlling person was in some meaningful sense a culpable participant in the primary violation. *Boguslavsky v. Kaplan*, 159 F.3d 715, 720 (2d Cir. 1998). However, "'[a]llegations of control are not averments of fraud and therefore need not be pleaded with particularity.'" *Hall*, 580 F. Supp. 2d at 228.[36]

All Defendants are alleged to be primary violators of §10(b) and Rule 10b-5, based on the several schemes designed to artificially inflate SocGen's share price, namely numerous false and misleading statements, and an insider trading scheme coupled with a massive stock repurchase scheme, as discussed in §VII., above. *See* ¶¶368-402.

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[36] While the law in the Second Circuit with regard to control person liability is unclear as to whether "culpable participation" is actually an element of the claim, the Complaint nevertheless alleges this. ¶¶79-82, 429-432. *In re Parmalat Sec. Litig.*, 497 F. Supp. 2d 526, 532 (S.D.N.Y. 2007) (culpable participation is not an element of §20(a), and Second Circuit cases that seem to say otherwise are dicta).

Further, Defendants Bouton, Citerne, Alix and Day controlled the Company by virtue of their high-level positions and responsibilities at SocGen. ***Indeed, Defendants do not even challenge Bouton's status as a control person***. Defs.' Mem. at 63. These responsibilities included the monitoring and implementation of internal controls with regard to operational risk, the valuation of SocGen's RMBS and CDO portfolios, and their duty to prevent illegal insider trading, in which they engaged. ¶¶40-41, 45, 47, 77-82, 116, 277, 334. In addition, the Complaint alleges that Bouton, Citerne, Alix and Day controlled the content and participated in drafting, producing, reviewing and/or disseminating SocGen's various public filings, press releases and other public statements during the Class Period. ¶¶79, 81.

Further, Day, by virtue of his position as an inside director of SocGen, with the largest equity stake of any other director, and one of the largest individual SocGen shareholders (¶¶43, 383), had ""'the power to direct or cause the direction of the management and policies."'" *Adelphia*, 398 F. Supp. 2d at 262.[37]

Defendants argue that Plaintiffs have merely alleged control based on "status," relying on *Rich v. Maidstone Fin., Inc.*, No. 98 Civ. 2569 (DAB), 2002 WL 31867724, at *11 (S.D.N.Y. Dec. 20, 2002). Defs.' Mem. at 63. The Complaint alleges far more than was required in *Rich*. Here, the Individual Defendants are the most-senior officers in the Company. ¶54. Defendants Citerne, Alix and Day, along with Bouton, had access to internal reports and oversaw and directed the issuing of the Company's public statements. ¶¶77-81. Collectively, they spoke on the Company's behalf, as

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[37] *See Oxford*, 187 F.R.D. at 143 (finding that four of the outside directors were control persons based on their director status combined with their equity interests in the corporation and their intimate knowledge of the day-to-day operations of the company); *In re Indep. Energy Holdings PLC Sec. Litig.*, 154 F. Supp. 2d. 741, 772 (S.D.N.Y. 2001) (director status with equity interest is one indicia for control).

discussed in §VI., above, in connection with the group pleading doctrine. ¶¶78-79, 81. Accordingly, the Complaint adequately alleges control.[38]

The Complaint also sufficiently alleges culpable participation against all the Individual Defendants, based on their false and misleading statements made with scienter. ¶¶108-337. Defendants also engaged in a massive illegal insider trading scheme, which used Company funds to manipulate SocGen's share price through a €1.1 billion stock repurchase program designed to prop up SocGen's stock price and maximize Defendants' fraudulent gains. ¶¶19-20, 26, 261-263, 372-379, 380-402. Defendants also participated in the day-to-day management and strategic decisions of SocGen (¶¶78, 81), which is more than sufficient to allege culpable participation. *Pfizer*, 584 F. Supp. 2d at 641 ("Plaintiffs' allegations that [Individual Defendants] participated directly in the day-to-day management of Pfizer and made strategic decisions is sufficient to meet Plaintiffs' pleading obligation as to culpable participation.").[39] This included the ***board-approved*** €1.1 billion stock repurchase. ¶26 ("5/24/06").

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[38] Defendants also argue that neither Citerne nor Alix is alleged "with particularity" to possess the power to control the actions of SocGen. Defs.' Mem. at 63. This argument fails as it is factually incorrect and it distorts the relevant pleading standard. ¶¶80-81. Again, "[c]ontrol person liability need not be pleaded with particularity and is generally analyzed under the 'short and plain' statement analysis of Rule 8(a)." *In re Bristol Myers Squibb Co. Sec. Litig.*, 586 F. Supp. 2d 148, 2008 U.S. Dist. LEXIS 63567, at *59-*60 (S.D.N.Y. Aug. 20, 2008). Regardless, the Complaint's allegations regarding control, as summarized above, have met even this higher standard of particularity by describing Defendants' positions within the Company, their responsibilities and their subordinates. ¶¶45, 47, 54, 56, 277-278, 334, 353, 395.

[39] Finally, Defendants, Day excluded, claim that Plaintiffs' scienter allegations are "entirely vague" under *In re Emex Corp. Sec. Litig.*, No. 01 Civ. 4886 (SWK), 2002 WL 31093612, at *11 (S.D.N.Y. Sept. 18, 2002), and *Mishkin v. Ageloff*, No. 97 Civ. 2690 LAP, 1998 WL 651065, at *26 (S.D.N.Y. Sept. 23, 1998), supposedly rendering the culpable participation element unmet. Defs.' Mem. at 64. As discussed in §IV., above (addressing scienter), the Complaint alleges facts which give rise to a strong inference of scienter. Therefore, even if a heightened pleading standard applies to the culpable participation element, Plaintiffs meet that standard. *Emex*, 2002 WL 31093612, at *10 (While the court dismissed claims against three other corporate entities, "[w]ith respect to the

IX. DEFENDANTS BOUTON AND DAY ARE LIABLE UNDER SECTION 20A

"To state a Section 20A claim for insider trading, plaintiffs must allege an insider trading violation by an individual defendant and trading by the plaintiffs contemporaneously with that of the individual defendant." *Pfizer*, 584 F. Supp. 2d at 642.

For the reasons discussed in §VII., above, Plaintiffs have established a predicate insider trading violation under Rule 10b-5 by Defendants Bouton and Day. Defendants contend, however, that since Bouton sold stock after the §20A Plaintiffs' purchases for all of his §20A trades, and Day for two of his, the contemporaneous element of §20A has not been met with respect to these trades. Defs.' Mem. at 64-65; Day's Mem. at 14.[40] While it is true that Defendant Bouton's actual trading dates, and two of Day's, occur just after Plaintiffs' acquisitions (¶¶433-435), these trades are nevertheless still "contemporaneous" under §20A.[41]

Allowing a plaintiff to recover under §20A for contemporaneous acquisitions ***during*** the height of the scheme's repurchase, although just prior to the insider's sale, acknowledges precisely

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Individual Defendants, the Court has already determined that plaintiffs have alleged scienter under Section 10(b) and, as a result, plaintiffs have therefore also done so under Section 20(a).").

[40] Although Day discusses the contemporaneous requirement in the context of Rule 10b-5(a) and (c), Day's Mem. at 13-14, which we address below, we nevertheless address it here as well, in its proper context under §20A.

[41] Defendants' reliance on *O'Connor & Assocs. v. Dean Witter Reynolds, Inc.*, 559 F. Supp. 800, 803 (S.D.N.Y. 1983), is misplaced. That case predates the enactment of §20A by five years. Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100-704, 102 Stat. 4677, 1988 Enacted H.R. 5133. Defendants' reliance on dicta from *In re Take-Two Interactive Sec. Litig.*, 551 F. Supp. 2d 247, 311 (S.D.N.Y. 2008), for the same point, is also misplaced. That decision is distinguishable as the plaintiffs there "failed to allege a predicate insider trading violation of Section 10(b) and Rule 10b-5." *Id.* In fact, the court in *Take-Two* explicitly rejected a restrictive definition of "contemporaneous" as running "contrary to the weight of authority in this Circuit." *Id.* at 311 n.51.

the type of injury that the enactment of §20A was intended to remedy – injuries to plaintiffs contemporaneously caught up in the heart of an insider trading scheme. *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, 396 F. Supp. 2d 1178, 1201 (D. Colo. 2004) ("The fraud aspect of a §20A claim resides in the requirement that a §10(b) or Rule 10b-5 claim be pled adequately as a predicate to a §20A claim. The contemporaneous trading requirement of §20A is, at most, tangential to the underlying fraud aspect of the claim."). Notably, Day does not challenge the contemporaneous timing of four trades. Therefore, §20A liability with respect to at least these trades is clear. Day's Mem. at 14.

In addition, because Defendant Bouton was a §20(a) control person during the time period when Defendant Day violated Rule 10b-5, and was also personally involved in the illegal insider trading scheme as a culpable participant, Bouton is liable under §20A for Defendant Day's illegal contemporaneous insider trades. *See* §VII., above. *Refco*, 503 F. Supp. 2d at 666. *See In re Musicmaker.com Sec. Litig.*, No. CV 00-2018 CAS (MANx), 2001 U.S. Dist. LEXIS 25118, at *90-*91 (C.D. Cal. June 7, 2001) (noting that, "Section 20A expressly provides that the controlling person liability set forth in §20(a) is applicable thereto").

X. THIS COURT HAS SUBJECT MATTER JURISDICTION OVER ALL OF PLAINTIFFS' CLAIMS

Defendants concede that this Court has subject matter jurisdiction over the claims of (i) U.S. and foreign investors who purchased SocGen ADRs on U.S. exchanges, and (ii) U.S. investors who purchased SocGen shares on foreign exchanges. Defendants challenge only this Court's jurisdiction over the claims of foreign investors who purchased SocGen shares on foreign exchanges, even though their claims are based on the very same fraudulent scheme.

In determining whether a court has subject matter jurisdiction over foreign claims, "'the court must take all facts alleged in the complaint as true and draw all reasonable inferences in favor of

plaintiff.'" *Morrison*, 547 F.3d at 170 (quoting *NRDC v. Johnson*, 461 F.3d 164, 171 (2d Cir. 2006)). Moreover, "[i]n resolving a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) a district court may consider evidence outside of the pleadings." *Id.* To the extent it does, Defendants' motion is "assessed by the standards that govern summary judgment motions." *See Semi-Tech Litig., L.L.C. v. Bankers Trust Co.*, 272 F. Supp. 2d 319, 329 (S.D.N.Y. 2003).

Where, as here, facts outside the pleadings are introduced, or in any case where the question of jurisdiction is a close one, a court should be "mindful of not depriving plaintiffs of their day in court with a premature order dismissing the case." *In re Vivendi Universal*, No. 02 Civ. 5571 (RJH), 2004 U.S. Dist. LEXIS 21230, at *27 (S.D.N.Y. Oct. 22, 2004). Under such circumstances, Plaintiffs should be allowed to conduct discovery concerning Defendants' U.S. conduct and its effects. *See Inv. Props. Int'l, Ltd. v. IOS, Ltd.*, 459 F.2d 705, 708 (2d Cir. 1972) ("discovery may well be needed" in Rule 10b-5 case); *Pension Comm.*, 2006 U.S. Dist. LEXIS 11617, at *27 ("Jurisdictional discovery 'should be granted where pertinent facts bearing on the question of jurisdiction are controverted . . . or where a more satisfactory showing of the facts is necessary.'"); *see also Cromer Fin. Ltd. v. Berger*, 137 F. Supp. 2d 452, 483, 493 (S.D.N.Y. 2001) (allowing jurisdictional discovery).[42] Accordingly, Plaintiffs request that the Court not resolve the issue of subject matter jurisdiction until Plaintiffs' proposed discovery is completed and Plaintiffs have had an opportunity to supplement this briefing with that discovery. In any event, the facts here provide more than ample basis to support this Court's subject matter jurisdiction over the claims of all foreign investors.

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[42] Since Plaintiffs are entitled to discovery in resolving this issue, Plaintiffs request leave to serve the proposed document requests, interrogatories, and Rule 30(b)(6) deposition notice. Llorens Decl., Exs. D-F.

In order to establish subject matter jurisdiction, the Second Circuit has applied two jurisdictional tests, the "conduct" test and the "effects" test, both of which are discussed below. *Morrison*, 547 F.3d at 170-71. "Where appropriate, the two parts of the test are applied together because 'an admixture or combination of the two often gives a better picture of whether there is sufficient United States involvement to justify the exercise of jurisdiction by an American Court.'" *Id.* at 171 (quoting *Itoba Ltd. v. LEP Group PLC*, 54 F.3d 118, 122 (2d Cir. 1995)). In applying these tests, the Court must evaluate subject matter jurisdiction on the basis of the fraud as a whole, not by reference only to a particular defendant's activities in isolation. *See Cromer Fin. Ltd. v. Berger*, No. 00 CIV. 2284 (DLC), 2003 U.S. Dist. LEXIS 10554, at *10-*14 (S.D.N.Y. June 23, 2003). Plaintiffs satisfy both tests here.

A. This Court Has Subject Matter Jurisdiction Under the "Effects" Test

The ***effects*** test asks "whether the wrongful conduct had a substantial effect in the United States or upon United States citizens." *Morrison*, 547 F.3d at 171; *Europe & Overseas Commodity Traders, S.A. v. Banque Paribas London*, 147 F.3d 118, 128 & n.12 (2d Cir. 1998) ("[T]he effects test concerns the impact of overseas activity on U.S. investors and securities traded on U.S. securities exchanges."). This Court has subject matter jurisdiction over the claims brought by foreign plaintiffs under the effects test where the transactions at issue involve stock registered on a national securities exchange and are detrimental to the interests of American investors. *In re Alstom SA Sec. Litig*, 406 F. Supp. 2d 346, 368 (S.D.N.Y. 2005). Stated another way, jurisdiction over foreign securities transactions exists when "illegal activity abroad causes a 'substantial effect' within the United States." *Alfadda v. Fenn*, 935 F.2d 475, 478 (2d Cir. 1991).

In conceding that this Court has jurisdiction over U.S. and foreign investors who purchased SocGen ADRs on U.S. exchanges and U.S. investors who purchased shares on foreign exchanges, Defendants acknowledge that their alleged fraudulent scheme had a substantial effect in the United

States and was detrimental to the interests of U.S. investors. Such a substantial effect in the United States supports subject matter jurisdiction over ***all*** investors, foreign and domestic, who purchased SocGen securities during the Class Period, regardless of where the transaction occurred. *See Itoba*, 54 F.3d at 124; *A.I.G. Asian Infrastructure Fund, L.P. v. Chase Manhattan Asia Ltd.*, No. 02-cv-10034 (KMW), 2004 U.S. Dist. LEXIS 27334, at *5 (S.D.N.Y. Mar. 25, 2004) (jurisdiction over claims of foreign plaintiff exists because defendants marketed securities within the United States and U.S. investors were harmed), *aff'd*, 122 F. App'x 541 (2d Cir. 2005).

SocGen's actions indeed had a substantial effect on U.S. markets and U.S. investors. As the chart included in the Complaint (at ¶26) demonstrates, SocGen's ADRs traded on the U.S. exchange and tracked the movement of SocGen's common shares traded on the Euronext Exchange, which shares dropped substantially upon the markets' realization of Defendants' concealed risk. ¶¶25, 408. Indeed, SocGen's over-4 million ADRs traded in tandem with its common shares as both these securities lost value in response to the revelation of Defendants' fraud. ¶¶26, 339-340, 408. The impact on SocGen's ADR price is indisputable and supports a finding of subject matter jurisdiction over the claims made by all Plaintiffs, foreign and domestic. *Itoba*, 54 F.3d at 124 (adverse effect on American economy and American investors found when ADRs traded in the United States and U.S. investors lost $100 million in shareholder equity).

The effect of Defendants' fraud on the United States and U.S. investors is further evidenced by the ongoing SEC and U.S. Attorney investigations into Defendant Day's massive insider trading just days before SocGen's January 24, 2008 announcement. ¶¶243-244. The U.S. Attorney is also investigating SocGen's losses resulting from Kerviel's trading. ¶244.

Defendants incorrectly assert that the effects test has no bearing on claims of foreign purchasers on foreign exchanges. Defs.' Mem. at 19-20 (citing *Alstom*, 406 F. Supp. 2d at 369-70;

In re Rhodia S.A. Sec. Litig., 531 F. Supp. 2d 527, 538 (S.D.N.Y. 2007)). The two district court cases relied on by Defendants on this point are eclipsed by the Second Circuit's decisions in *Morrison* and *Itoba*. In *Itoba*, the Second Circuit applied an admixture of the effects and conducts tests in finding that subject matter jurisdiction exists over claims made there by foreign purchasers on foreign exchanges. *Itoba*, 54 F.3d at 122 ("There is no requirement that these two tests be applied separately and distinctly from each other."); *accord Cromer*, 137 F. Supp. 2d at 479. The Second Circuit in *Morrison* similarly concluded that jurisdiction over foreign claims is governed by a combination of the "conduct" and "effects" test. *Morrison*, 547 F.3d at 170-71. The only reason the Second Circuit in *Morrison* did not apply the effects test was because "Appellants rel[ied] solely on the conduct component of the test." *Id.* at 171.

B. This Court Has Subject Matter Jurisdiction Under the "Conduct" Test

Under the ***conduct*** test, subject matter jurisdiction is present "if activities in this country were more than merely preparatory to a fraud and culpable acts or omissions occurring here directly caused losses to investors abroad." *Id.*; *accord Itoba*, 54 F.3d at 122-24; *Bersch v. Drexel Firestone, Inc.*, 519 F.2d 974, 987, 993 (2d Cir. 1975). The test is met "when 'substantial acts in furtherance of the fraud were committed within the United States.'" *SEC v. Berger*, 322 F.3d 187, 193 (2d Cir. 2003). Stated another way, U.S. actions are more than merely preparatory when "acts of material importance that had significantly contributed to the fraud occurred in the United States." *Vivendi*, 2004 U.S. Dist. LEXIS 21230, at *10 (citing *Psimenos v. E.F. Hutton & Co.*, 722 F.2d 1041 (2d Cir. 1983)).

Moreover, the "determination of whether American activities 'directly' caused losses to foreigners depends on what and how much was done in the United States and on what and how much was done abroad." *Morrison*, 547 F.3d at 171. Inherent in the conduct test is the principle that

"***Congress did not mean the United States to be used as a base for fraudulent securities schemes even when the victims are foreigners***." *Bersch*, 519 F.2d at 979, 987. When applying the conduct test the court should "identify which action or actions constituted the fraud and directly caused harm . . . and then determine if that act or those actions emanated from the United States."[43] *Morrison*, 547 F.3d at 173; *Itoba*, 54 F.3d at 123 (conduct test centers on "'the nature of conduct within the United States as it relates to carrying out the alleged fraudulent scheme'").

Defendants' conduct in the United States was more than merely preparatory to their fraudulent scheme and included the following: (i) SocGen's CFO (and current CEO) Frédéric Oudéa made actionable false statements at a September 10, 2007 Lehman Brothers conference in New York (¶364); (ii) through its TGV Initiative and CDO Group, SocGen's New York operations purchased, warehoused, structured, issued and eventually got stuck with billions of dollars in U.S. subprime residential mortgage-backed securities and CDOs which originated in the United States (¶¶208, 213-214); (iii) SocGen's New York operations utilized valuation models, the parameters of which they manipulated in order to create inflated values for its RMBS and CDO portfolios and its VaR metric (¶¶207, 215, 356, 358, 367); (iv) SocGen's New York operations regularly prepared market risk reports, VaR analyses and valuations for SocGen's RMBS and CDO portfolios (¶¶204, 207, 210, 215, 355-356, 358); (v) SocGen's New York operations was responsible for generating SocGen's response to the decline in its RMBS and CDO portfolios (¶¶207-209, 215, 356, 358-359); (vi) meetings regarding the false valuations, and the need to create models to justify them, took place in New York (¶¶207, 209, 215, 355, 358); (vii) SocGen's Audit Committee held several meetings in

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[43] The Second Circuit in *Morrison* disavowed the D.C. Circuit's characterization of the conduct test – that the domestic conduct must comprise all the elements necessary to establish a violation of Rule 10b-5. *Morrison*, 547 F.3d at 172 n.6. The *Morrison* court recognized that not all elements of the fraud must have occurred in the United States. *Id.*

New York to review and discuss risk controls (¶345); (viii) SocGen senior executives routinely visited SocGen New York, including Mustier, the head of SGCIB, to review and discuss those false valuations (¶361); (ix) a significant portion of Defendant Day's insider sales, totaling over €168 million, occurred in the United States (¶380); and (x) SocGen's New York operations engaged in a short-selling scheme with U.S. hedge fund Magnetar in order to foist "crap" CDOs onto certain of its customers. ¶¶222-224. These actions were "central [and] at the heart of [Defendants'] fraudulent scheme," and not just merely "ancillary." *Morrison*, 547 F.3d at 174.

A recent decision in this District offers insights into *Morrison*'s application. *See Pension Comm.*, 2009 U.S. Dist. LEXIS 206. In *Pension Comm.*, a group of investors sued under, *inter alia*, the federal securities laws to recover damages for their purchase and retention of shares in two British Virgin Island-based hedge funds tainted by fraud. *Id.* at *1. The hedge funds' administrators, located outside of the United States in Curacao, had allegedly inflated the funds' "net asset values," and had communicated those false numbers to the investors each month. *Id.* at *5. The investors suing in this District were "mostly foreign." *Id.* at *2.

The Curacao defendants sought summary judgment based (partially) on an ostensible lack of subject matter jurisdiction. Raising much the same points as the SocGen defendants here, they argued that because (1) the calculation of the net assets values was performed in Curacao, and (2) the values were disseminated from Curacao, their conduct was not subject to the U.S. securities laws. *Id.* at *30.

Applying *Morrison*'s "conduct" test, Judge Shira Scheindlin rejected this argument. While it was true that the defendants had calculated the false net asset values ***in*** Curacao, and had sent the funds' investors the false financial statements ***from*** there as well, the conduct that had actually caused harm to investors had emanated from the United States. *Id.* The funds' manager in New

York City had purchased listed securities at inflated prices, and had fraudulently valued other, unlisted securities. *Id.* at *31. Moreover, Judge Scheindlin found "further support" for subject matter jurisdiction in that (1) the funds invested in securities that traded on various American stock exchanges, and (2) significant communications took place between the Curacao administrators and the New York manager concerning the net assets values' calculation. *Id.* at *32.

These facts echo similar facts in the present matter. *See* §II.B., above. While not an exact fit, they nonetheless support the conclusion that subject matter jurisdiction is proper here under the "conduct" test.

Despite their pervasive conduct in the United States and without the benefit of *Pension Comm.*, Defendants argue that *Morrison* somehow precludes a finding of jurisdiction. Defendants first argue that because the majority of the false statements emanated from Paris, the Paris conduct was more central to the fraudulent scheme, entirely precluding subject matter jurisdiction over foreign plaintiffs purchasing SocGen stock on foreign exchanges. Defs.' Mem. at 18. In urging such a bright-line rule, Defendants gloss over much of the Second Circuit's analysis in both *Morrison* and *Itoba*. Instead of a bright-line rule, *Morrison* utilized a highly fact-specific analysis to determine jurisdiction.[44] *Morrison*, 547 F.3d at 174-75; *accord City of Edinburgh Council v. Vodafone Group Pub. Co.*, No. 07 Civ. 9921 (PKC), 2008 U.S. Dist. LEXIS 98888, at *9 (S.D.N.Y. Nov. 24, 2008) ("Any analysis of the conduct test is intensely fact specific."). All of the facts of a particular case will determine whether jurisdiction is appropriate – not just where many of the false

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[44] To abandon the "conduct" and "effects" test for a bright-line rule "would conflict with the goal of preventing the export of fraud from America." *Morrison*, 547 F.3d at 175. A bright-line rule "cannot anticipate all the circumstances in which the ingenuity of those inclined to violate the securities laws should result in their being subject to American jurisdiction." *Id.*

statements are made. *Itoba*, 54 F. 3d at 124; *see Pension Comm.*, 2009 U.S. Dist. LEXIS 206, at *30 (subject matter jurisdiction satisfied even though public statements emanated from Curacao).

The U.S. conduct here far exceeds that alleged by the *Morrison* plaintiffs. The plaintiffs there alleged only that the U.S. subsidiary calculated the present value of its Mortgage Servicing Right asset. *Morrison*, 547 F.3d at 175-76. That calculation was overstated because the interest assumption was incorrect. *Id.* at 169. The overstated valuation was later incorporated into financial statements by the Australian parent corporation – and it is those false numbers that constituted the misleading information passed on to investors. *Id.* at 169, 175-76. Balancing the activities that occurred in the United States against those in Australia, the Second Circuit held that the defendants' conduct in Australia was far more significant then the conduct that occurred in the United States. *Id.* at 175-76. SocGen's myriad actions in the United States are distinguishable and they are "significantly more central to the fraud and more directly responsible for the harm to investors" than the conduct that occurred in Paris. *Id.* at 176.

First, Defendants' conduct here goes beyond being merely the situs of accounting manipulations or the creation of false numbers. Significantly, many of Defendants' false and misleading statements were either made in the United States or were made on conference calls with U.S. brokerage firms. ¶¶136, 154, 363-364. Further, SocGen purposely chose New York (the epicenter of U.S. residential mortgage-backed securities market) as the headquarters for its TGV Initiative and its CDO Group, the task of which was to purchase, warehouse, structure, and underwrite RMBS and CDO securities and "to establish a significant presence in the U.S. markets for structured-finance products and asset-backed securities." ¶354 n.11. This was not "merely prepatory" to the fraud as the ***entirety*** of SocGen's RMBS and CDO write-down was the result of assets purchased, warehoused, structured and underwritten from its assets acquired in New York.

The Second Circuit has held that preventing the export of criminal activity is a key goal of the securities laws. *See Itoba*, 54 F.3d at 122 (Congress did not intend ""'the United States to be used as a base for manufacturing fraudulent security devices for export, even when these are peddled only to foreigners.'"'"). Thus, given this stated desire to avoid the exportation of criminal behavior, exercising jurisdiction over a case where U.S. law enforcement and regulatory entities are investigating such behavior is completely consistent with a key purpose justifying the exercise of subject matter jurisdiction over frauds committed by foreign corporations in the United States. *See Morrison*, 547 F.3d at 173 ("'[t]his country would surely look askance if one of our neighbors stood by silently and permitted misrepresented securities to be poured into the United States'").

In addition, hroughout the Class Period, SocGen's ADRs had substantial trading volume, reaching a high of 4,423,717 on August 20, 2007, and total trading volume during the Class Period of 87,412,345. ¶340. And, at the end of the Class Period, SocGen had outstanding approximately 3.8 million ADRs. *Id.* In addition, a number of U.S. analysts, including Goldman Sachs & Co., Morgan Stanley and Merrill Lynch, follow SocGen for investors both here and abroad. *Id.*

In *Morrison*, moreover, there was no fraud investigation by any U.S. agency mentioned in the Second Circuit or district court opinions, let alone intensive ones by multiple law enforcement authorities like in this case. The existence of these investigations, as noted above, demonstrates the links between this case and the United States.

Morrison involved ***only*** foreign plaintiffs, suing a foreign issuer of securities for violation of U.S. securities law based solely on securities transactions in foreign markets, where the misrepresentations all occurred abroad. 547 F.3d at 172. "Strikingly absent[t]" from the facts in *Morrison* and a "significant factor at play" in the Second Circuit's reasoning was the absence of any claims by a domestic plaintiff relating to any "meaningful effect on America's investors or its capital

markets." *Id.* at 176. Here, not only have domestic plaintiffs brought claims against SocGen, based on the same underlying facts that support claims by foreign plaintiffs, but Defendants ***concede*** that the Court has jurisdiction over such claims – even those by domestic plaintiffs who purchased on foreign markets. Defs.' Mem. at 19-20. Defendants have therefore acknowledged that the alleged fraud affected American investors and American capital markets. *Morrison*, 547 F.3d at 176. This fact significantly distinguishes the factual analysis in *Morrison* and strongly supports subject matter jurisdiction over foreign plaintiffs here.

Another factor considered relevant by the *Morrison* court was that the alleged causal chain between the U.S. conduct and the harm to investors was attenuated and "lengthy." *Id.* at 177. Here, SocGen's false statements with respect to its subprime exposure – made in both the United States and France – directly concern its activities in the United States. This includes the valuations of its RMBS and CDO portfolios which were purchased in the United States under the direction of senior executive Paolo Taddonio. ¶358. Moreover, SocGen's subprime exposure emanated from its purchase in the United States of assets backed by the U.S. residential real estate market. Finally, SocGen's CDO Group in New York structured and underwrote these securities by purchasing and warehousing subprime mortgages in New York. ¶¶213-214, 354.

Finally, the Complaint alleges that Defendants' acts in the United States caused harm to ***all*** buyers of SocGen securities, foreign and domestic. ¶¶26, 404, 406-408 (Defendants' false statements in the United States caused SocGen's securities to trade at artificially inflated prices on the over-the-counter market exchange and the Euronext Paris stock exchange). Again, SocGen's common shares on the Euronext Paris stock exchange and its ADRs tracked one another throughout the Class Period (¶¶25-26, 408), including when the truth concerning SocGen's lack of risk control management systems and subprime write-downs entered the market and became apparent to

investors. ¶¶26, 404. Accordingly, Plaintiffs have established that the misrepresentations giving rise to their claims had a direct impact on investors throughout the world, not just in the United States. Here, the ***conduct*** is both foreign and ***domestic***, and ***caused both*** foreign and domestic harms that were not independent of each other, and both harms give rise to Plaintiffs' claim.[45]

XI. THIS COURT HAS PERSONAL JURISDICTION OVER DEFENDANTS CITERNE AND ALIX

Defendants challenge personal jurisdiction over Defendants Citerne and Alix. As a threshold matter, in having this issue determined based on all relevant evidence Plaintiffs are permitted to conduct jurisdictional discovery, and this Court has discretion to lift the PSLRA discovery stay to effect that. *APWU v. Potter*, 343 F.3d 619, 627 (2d Cir. 2003) ("a court should take care to 'give the plaintiff "ample opportunity to secure and present evidence relevant to the existence of jurisdiction"'"); *Alstom*, 406 F. Supp. 2d at 401; *Pension Comm.*, 2006 U.S. Dist. LEXIS 11617, at *26-*30; *Cromer*, 137 F. Supp. 2d at 476-75.[46] To this end, Plaintiffs' proposed discovery requests are attached as Exhibits G-H to the Llorens Declaration.

Plaintiffs' right to discovery on this issue notwithstanding, the Complaint alleges sufficient facts that the Court can exercise jurisdiction over Defendants Citerne and Alix. Personal jurisdiction for securities fraud claims is permitted to the full extent allowed by the Due Process Clause of the

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[45] *See Itoba*, 54 F.3d at 123 ("Inevitably, there was a direct linkage between the prices of the ADRs representing . . . ordinary shares and the prices of the single ordinary shares themselves. If the ordinary share price fell on the London Exchange, the market price of an ADR would decrease in similar manner, and visa versa."); *In re Gaming Lottery Sec. Litig.*, 58 F. Supp. 2d 62, 74 (S.D.N.Y. 1999) (alleged misrepresentations and omissions that artificially inflated the defendant's stock price on the Toronto Stock Exchange and the NASDAQ directly caused injury to non-U.S. residents who bought on the Toronto exchange for purposes of the conduct test).

[46] *Accord Filus v. Lot Polish Airlines*, 907 F.2d 1328, 1332 (2d Cir. 1990) ("generally a plaintiff may be allowed limited discovery with respect to the jurisdictional issue").

Fifth Amendment. *In re DaimlerChrysler AG Sec. Litig.*, 247 F. Supp. 2d 579, 582 (D. Del. 2003). As such, this Court may exercise personal jurisdiction over an individual if (i) he or she has minimum contacts with the United States, and (ii) the exercise of jurisdiction is reasonable. *Id.* As explained below, these standards are met as to Defendants Citerne and Alix.[47]

A. Defendants Citerne and Alix Have Sufficient Minimum Contacts with the United States

Citerne and Alix have sufficient minimum contacts with New York to support a finding of personal jurisdiction. The minimum contacts requirement is intended to test whether the defendant has purposefully availed himself of the forum. *Cromer*, 137 F. Supp. 2d at 473 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). Relevant factors for minimum contacts include: (i) whether the individual performed business in the forum; (ii) whether an individual committed any act in the forum; and (iii) whether an individual caused an effect in the forum by acts committed elsewhere. *Alstom*, 406 F. Supp. 2d at 398.

The minimum contacts analysis can be satisfied through a showing of either general or specific jurisdiction. General jurisdiction exists when the party's contacts with the forum are "'continuous and systematic,'" even if they are not related to the lawsuit. *In re DaimlerChrysler AG Sec. Litig.*, 197 F. Supp. 2d 86, 93 (D. Del. 2002). Specific jurisdiction, in contrast, arises from contacts related specifically to the subject of the litigation. *Id.* (citing *Helicopteros Nactionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-16 (1984)).

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[47] At the pleading stage, a plaintiff need only plead facts sufficient to show jurisdiction. *Credit Lyonnais Sec., Inc. v. Alcantara*, 183 F.3d 151, 153 (2d Cir. 1999). Prior to discovery, "allegations are construed in the light most favorable to the plaintiff." *A.I. Trade Fin. v. Petra Bank*, 989 F.2d 76, 79-80 (2d Cir. 1993). Personal jurisdiction extends to foreigners subject to the due process clause of the Fifth Amendment. *Leaseco Data Processing Equip. Corp. v. Maxwell*, 468 F.2d 1326, 1340 (2d Cir. 1972).

The content and dissemination of the materially false and misleading statements are attributable to SocGen's Co-CEOs Citerne and Alix under the group pleading doctrine. This alone should satisfy an inquiry into jurisdiction. *Alstom*, 406 F. Supp. 2d at 399 (allegations that a foreign defendant was "'otherwise responsible for the contents and dissemination of the Registration Statements'" which were alleged to be false supported an exercise of jurisdiction at the pleading stage). In addition, throughout the Class Period, Defendant Citerne was a director of SocGen and a director of TCW, SocGen's asset management subsidiary with offices in New York, Los Angeles and Houston. ¶¶45, 346.

Defendants do not deny these facts. Nor is the Declaration of Gérard Gardella ("Gardella Declaration") sufficient to defeat a finding of personal jurisdiction, as it falls woefully short of the declaration submitted in *Rhodia*, 531 F. Supp. 2d 527, relied on by Defendants. Defs.' Mem. at 20. The declaration in *Rhodia* stated that the defendants "were 'wholly uninvolved' with the transactions at issue in the Complaint, played no role in Rhodia's acquisition of A&W and ChiRex, made no allegedly false statements described in the Complaint, and finalized none of the publicly filed reports therein." 531 F. Supp. 2d at 542. The Gardella Declaration does not even attempt to claim that Defendants Citerne and Alix were "uninvolved" in any capacity with respect to the wrongdoing alleged here.

Personal jurisdiction is also established here in light of the Restatement of Conflict of Laws §37, which states that:

> A state has power to exercise judicial jurisdiction over an individual who ***causes effects*** in the state by an act done elsewhere with respect to any claim arising from these effects unless the nature of the effects and of the individual's relationship to the state make the exercise of such jurisdiction unreasonable.

Restatement of Conflict of Laws §37 (1989); *Alstom*, 406 F. Supp. 2d at 401. Because Defendants concede that their conduct had an effect in the United States (Defs.' Mem. at 16-20), personal

jurisdiction is established over Defendants Citerne and Alix, and Defendants cannot logically argue that it would be unreasonable for this Court to exercise jurisdiction. *Alstom*, 406 F. Supp. 2d at 401 (personal jurisdiction established where plaintiffs alleged that the registration statement contained misleading information which resulted in an adverse effect in the United States and the foreign defendant is alleged to be responsible for the contents and dissemination of the registration statement).

B. It Is Reasonable to Require Defendants Citerne and Alix to Litigate in the United States

The following factors are weighed in determining whether it is reasonable to require the defendant to litigate here: (i) the burden imposed on the defendant; (ii) the interests of the forum in adjudicating the case; (iii) the interests of the plaintiffs in obtaining the most efficient resolution of the dispute; (iv) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (v) the shared interest of states in furthering social policies. *Asahi Metal Indus. Co. v. Superior Court of California*, 480 U.S. 102, 107 (1987). Any burden imposed on Defendants Citerne and Alix here is outweighed by the interests of the United States and Plaintiffs in resolving this matter in the United States. American courts have an "interest in preventing fraud here, in protecting the integrity of its stock markets, in promoting investor confidence, and in providing relief under federal statutes to those harmed by securities fraud." *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 351 F. Supp. 2d 334, 353 (D. Md. 2004). Moreover, as alleged (¶¶341-353), SocGen has a vast presence in the United States, which supports a finding that jurisdiction is not unreasonable. *In re Amaranth Natural Gas Commodities Litig.*, 587 F. Supp. 2d 513, 2008 U.S. Dist. LEXIS 79235, at *54 (S.D.N.Y. Oct. 6, 2008) (exercising jurisdiction is reasonable given defendants' business contacts with the United States). Defendants Citerne and Alix, as Co-CEOs of the Company (and Citerne as a director of SocGen and TCW, with offices in New York), were "'primary participants in

[SocGen's] contacts with the United States.'" *Royal Ahold*, 351 F. Supp. 2d at 353. It is therefore reasonable to require these Defendants to litigate in this forum.

XII. CONCLUSION

For each of the foregoing reasons, Defendants' motions to dismiss are not well taken and should be denied in their entirety. Alternatively, if the Court finds Plaintiffs' allegations insufficient in any respect, Plaintiffs respectfully request leave to amend. Fed. R. Civ. P. 15(a); *Min Jin v. Metro. Life Ins. Co.*, 310 F.3d 84, 101 (2d Cir. 2002) ("[l]eave to amend should be freely granted"); *accord Eminence Capital, L.L.C. v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (leave to amend should be liberally granted, particularly in securities cases).

DATED: February 16, 2009

Respectfully submitted,

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APPENDIX A

SOC GEN
RESTATEMENT OF 2007 RESULTS

	Q1		
	Reported	Restated	% Overstatement/ (Understatement)
SG Corporate and Investment Banking			
Operating Income	€ 895	€ 798	12%
Net Income	€ 666	€ 602	11%
Societe Generale Group			
Operating Income	€ 2,156	€ 2,059	5%
Net Income	€ 1,431	€ 1,367	5%

	Q2		
	Reported	Restated	% Overstatement/ (Understatement)
SG Corporate and Investment Banking			
Operating Income	€ 996	€ (1,068)	193%
Net Income	€ 721	€ (641)	212%
Societe Generale Group			
Operating Income	€ 2,619	€ 555	372%
Net Income	€ 1,744	€ 391	346%

	Q3		
	Reported	Restated	% Overstatement/ (Understatement)
SG Corporate and Investment Banking			
Operating Income	€ 407	€ 2,931	-86%
Net Income	€ 310	€ 1,976	-84%
Societe Generale Group			
Operating Income	€ 1,775	€ 4,299	-59%
Net Income	€ 1,123	€ 2,778	-60%

	Q4		
	Reported	Restated	% Overstatement/ (Understatement)
SG Corporate and Investment Banking			
Operating Income	€ (6,056)	€ (6,419)	6%
Net Income	€ (3,918)	€ (4,158)	6%
Societe Generale Group			
Operating Income	€ (4,748)	€ (5,111)	7%
Net Income	€ (3,351)	€ (3,589)	7%

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 16, 2009.

s/ Theodore J. Pintar
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