UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re SOCIÉTÉ GÉNÉRALE SECURITIES LITIGATION	:	No. 1:08-cv-02495-RMB
	:	
		CLASS ACTION

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO MOTION OF DEFENDANTS SOCIÉTÉ GÉNÉRALE, DANIEL BOUTON, PHILLIPPE CITERNE, DIDIER ALIX, JEAN-PIERRE MUSTIER AND ROBERT DAY TO DISMISS THE SECOND AMENDED AND CONSOLIDATED COMPLAINT

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I. Introduction

In response to Plaintiffs' extremely detailed Second Amended and Consolidated Complaint for Violation of the Federal Securities Laws ("Complaint"), Defendants have jointly moved to dismiss, relying primarily on the notion that they were innocently swept up in the financial crisis. This glib response entirely fails to address the over 70 warnings and alerts concerning Jerome Kerviel's trading activity and Société Générale's ("SocGen" or the "Company") shoddy risk controls, and comes nowhere close to addressing Defendants' blatantly false statements about SocGen's credit market exposure. Rather than a defense, the financial crisis rendered Defendants' false and misleading statements all the more material to the market. Even with respect to SocGen's failure to timely write down the value of its toxic assets, the Complaint's numerous confidential witness accounts demonstrate that Defendants knew by mid-2007, at the latest, these assets were worthless. Thus, 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 SocGen stock, or that SocGen failed to predict the future – but rather that it fraudulently described the present.

Defendants committed two separate but related frauds, both of which concern SocGen's risk controls. One concerns Kerviel who, despite numerous internal and external 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), more than SocGen's entire market value, which SocGen was forced to unwind, leaving it with a ***€4.9 billion loss***. The second fraud involved another type of risk, SocGen's foray into credit market securities. These securities were backed by, or tied to, U.S. residential mortgages, particularly those issued to subprime lenders. While Defendants largely ignore this claim, the Complaint details how Defendants misrepresented SocGen's massive ***exposure*** to these toxic assets as "low" and

"negligible," representations which analysts used to upgrade SocGen stock and quickly communicated to the market. In fact, SocGen had amassed €15 billion ($22 billion) of these toxic assets, second only to UBS for European banks.

The Complaint also alleges that Defendants misrepresented the value of these assets. It identifies seven confidential, percipient witnesses who 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 CDOs and RMBS plunged and had become illiquid. When Defendants could no longer conceal the market collapse, SocGen was forced to write off ***€2.05 billion*** in credit market exposure, which amount was later increased to €2.6 billion, ***just days after falsely assuring investors that its exposure to such assets was "low***."

When SocGen revealed the materialization of 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 stock holdings) before the massive writedowns and losses were announced. 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***.

France's Banking Commission fined SocGen €4 million for its risk control failures, a conclusion supported by each of the government agencies that investigated SocGen and an internal review commissioned by SocGen's Board of Directors. Indeed, there was nothing subtle or tricky

about Kerviel's unhedged, directional bets. He was questioned about €94 million in fictitious trades at least six months prior to Defendants' January 2008 disclosure, yet he was permitted to continue trading and was even rewarded with a €300,000 bonus at year end.

Just this month, May 2010, Kerviel published a book, *L'engrenage: Mémoires d'un Trader* (*The Spiral: Memories of a Trader*), and was interviewed about his SocGen trading, revealing that his superiors knew of his trading activities and even "helped" him.

II. Statement of Facts

Critical to the long-term profitability of any investment bank is its ability to manage and control the trading risks it takes on a daily basis. SocGen was no different, and it repeatedly assured the market throughout the Class Period that its risk control management systems were best in class. For instance, Defendants characterized the Company's risk controls as "***highly sophisticated control systems which have already proved their worth in extreme situations***." ¶¶7, 118, 122.[1] Likewise, Defendants represented that "***risk management is an integral part of our derivatives activity***" and that its "***risk management and hedging techniques***" were "***improving***." ¶¶118, 135.

These and each of the statements identified in the Complaint were false and misleading as SocGen's risk controls were grossly deficient in virtually every respect; indeed, an "***abject failure***." ¶202. While Defendants were making false and misleading statements about SocGen's risk controls, one of its traders was amassing tens of billions of euros in risky, unhedged bets, and the Company was accumulating massive amounts of undisclosed, toxic credit market exposure – both of which led SocGen to the brink of insolvency.

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[1] Paragraph references ("¶__" or "¶¶__") are to the Complaint. Emphasis is added and citations are omitted throughout unless otherwise indicated.

A. The Kerviel Fraud

Throughout the Class Period, unbeknownst to investors, SocGen and its senior management allowed Kerviel, a 31-year-old junior trader on SocGen's "Delta One" arbitrage desk – whom they referred to as "***la cash machine***" – to run his own private hedge fund. ¶205. Kerviel engaged in massive unhedged, directional (or "naked") equity trades, ultimately exposing SocGen to €50 billion in market risk (more than the market value of the entire Company). ¶¶4, 105.

Kerviel's nearly 1,000 unauthorized or "fictitious" transactions, beginning in 2005, triggered "***more than 70 'alert' warnings***" within SocGen and numerous warnings from Eurex (the options exchange), Fimat (which provides derivatives clearing and execution services), and French banking regulators. ¶¶5, 191(c), 215-216, 221. As early as February 2007, SocGen was notified by FIMAT Frankfurt concerning a number of Kerviel's trades. ¶¶200, 210. In March 2007, after a series of inspections, France's banking commission ***twice*** wrote Defendant Bouton directly about issues with SocGen's risk controls, including those involving the equity derivatives team where Kerviel worked. ¶¶210, 214. SocGen received additional warnings regarding Kerviel from multiple market exchanges and the Bank of France. *Id.* At the same time the Bank of France was questioning SocGen, Kerviel's activities added €88 million to the Company's profit and loss account. ¶5.

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***. ¶211. When Kerviel was questioned, in response he admitted that he had "invent[ed] a lie," but the Company did nothing. ¶213. By late June-early July 2007, Kerviel had created a ***€2.2 billion*** accounting gap through his "fictitious transactions." *Id.* Still, nothing was done. *Id.*; *see also* ¶¶275-277, 281. Kerviel explained that "[SocGen] let me do them and encouraged me to do them." ¶205. In fact,

Kerviel's trades were made in the open, in the middle of a busy trading desk – where everything was visible. ¶6.

A flurry of red flags continued throughout 2007. In November 2007, Eurex took the unusual step of notifying SocGen directly of Kerviel's trading activities. ¶215. This was quickly followed by a year-end 2007 SocGen ***internal report*** informing 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." ¶258. Meanwhile, Kerviel was unwinding his trades, recording an unprecedented gain of €1.4 billion at year-end 2007 – an impossible profit given Kerviel's junior position and modest authorization level. ¶182. With Kerviel well in the black, SocGen continued to do nothing (¶¶208, 210), and for 2007, with profits in hand, SocGen rewarded Kerviel with a €300,000 bonus. ¶198.

By January 2008, as Kerviel quickly opened new positions, his trading had spun out of control. Within a few short weeks, he had amassed an exposure of ***over €50 billion*** ($65 billion). ¶¶17, 182. 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, all of which was ultimately disclosed on January 24, 2008. ¶¶18, 210.

B. SocGen's Credit Market Exposure

Beginning in 2005, through its CDO Group in New York, SocGen began building a portfolio of ***undisclosed*** and unhedged positions in RMBS and mezzanine CDOs, *i.e.*, CDOs backed by extremely risky junior (BBB and sub-BBB rated) tranches of RMBS securities (¶¶9, 111), with the goal of repackaging them and selling them to investors. While SocGen amassed over €15 billion ($22 billion) of assets tied to U.S. residential mortgages, Defendants grossly misrepresented SocGen's credit market ***exposure***. For instance, in August 2007, SocGen assured the market that it

had "***low exposure to the current credit market crisis***." ¶158. 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. ¶¶159-162. In September 2007, well after the market for these assets had tanked, Defendant Bouton represented that the credit crisis was "***under control***." ¶167. Bouton also stated that SocGen had only a "***marginal exposure***" to the subprime market. *Id.*

In November 2007, SocGen reported that it had a relatively benign writedown 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 potential losses***." ¶169. Oudéa even represented that SocGen had a "***small RMBS portfolio***." *Id.*

At the same time, the Company was manipulating the valuation models for its CDOs and RMBS, creating the illusion that the assets did not require a further writedown. ¶¶232, 237. In fact, Defendants knew that SocGen's credit market assets were grossly overvalued. ¶180. For example, SocGen stopped using the ABX Index in its models in mid-2007 and simply plugged in various assumptions in order to buoy the value of these assets and avoid writing them down, or even disclosing them.[2] ¶¶15, 364.

On November 7, 2007, Defendant Bouton represented that the subprime market was "***gradually improving***" (¶176), and on November 22, 2007, SocGen management again reassured

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[2] By mid-2007 (at the latest), the ABX Index was showing a precipitous increase in the cost of insurance for RMBS – meaning that RMBS products were becoming more volatile. 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 writedown on its subprime assets, including an additional €1.1 billion writedown on its RMBS and CDO portfolios.

analysts that there would be "***no further write-downs***." ¶177. 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." ¶178. Despite these explicit assurances, just weeks later, on January 24, 2008, SocGen shocked the market by announcing a massive, additional writedown of its credit market assets of €2.05 billion in Q4 2007 – ***ten times larger than its previous writedown only two months prior***. ¶¶18, 184. SocGen, as it turned out, ranked second in all of Europe for its credit market exposure, behind only UBS. ¶184.

Beginning in late 2006 and into 2007, the ABX Index showed that ***all*** RMBS tranches were being adversely affected by the mortgage crisis. ¶366. By Q1 2007 and Q2 2007, SocGen New York had already experienced major difficulties in valuing its RMBS and CDO portfolios. ¶¶229-230, 232, 237, 243. 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 and credit market-related assets. ¶230. At the same time, SocGen competitors began to announce writeoffs for their CDO and RMBS assets and credit agencies began downgrading the ratings for such products. ¶229. 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. ¶237. Despite changing the models' parameters (*e.g.*, recovery rates, default rates, etc.), SocGen was still unable to come up with an acceptable valuation for its CDOs.[3] *Id.*

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[3] By late 2006 and early 2007, according to CW5, SocGen was experiencing greater difficulty in finding buyers for its CDO products. ¶243. 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

Days before SocGen's January 24, 2008 announcement, the market reacted swiftly to leakage that SocGen would have to take drastic, additional credit market writedowns. ¶183. During the period from January 18-21, 2008, the Company's stock price dropped 16% from €93 to €78.52. ¶461. When the Kerviel fraud and credit market fraud were disclosed together on January 24, 2008, to create "noise," SocGen's stock dropped from €79.08 to €75.81, or €3.27 per share, on heavy volume of over 26 million shares. ¶462. SocGen's ADR shares in the United States similarly lost value as a result of these revelations, on extremely high volume. *Id.*

C. The Market Learns the Truth About SocGen's Shoddy Risk Controls

While Defendants pretended to be "shocked" that gambling was going on at SocGen, investigators soon learned that Defendants knew all along. In light of Kerviel's trades questioned by Eurex in November 2007, "Société Générale SA struggled . . . to defend its stated assertion that Jerome Kerviel . . . acted entirely undetected for almost a year as his trading positions climbed to tens of billions of euros." ¶187(b). Indeed, Kerviel's "fictitious trading started as far back as 2005 – a year earlier than the bank had acknowledged" (¶188(c)), and SocGen had been warned all along about Kerviel's risky bets. The numerous internal and external warnings in response to Kerviel's trades "raise[d] further questions about the bank's internal control systems." ¶191(a).

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products (¶245); (ii) the ***inventory reports*** showed decreased turnover of RMBS and CDO products throughout 2006 (¶246) – in fact, the RMBS and CDO products showed no activity (¶371); and (iii) ***daily and monthly cash reports*** showed that SocGen was receiving much less revenue on its CDOs – a clear indication that defaults had increased (¶¶247, 371). These facts demonstrate the falsity of Defendants' statements regarding the valuation of SocGen's credit market assets and the likelihood of further writedowns.

Charlie McCreevy, the EU's internal market commissioner, described SocGen as having "***fundamental control weaknesses***," and described the fact that it had allowed a single trader to risk its entire market value as "***abject carelessness***." ¶191(c).

D. SocGen's False Financial Statements

As a result of the Kerviel fraud, SocGen restated its operating income and net income for each quarter in 2007. ¶¶8, 282, 323-324. A table of restated amounts (¶324) is attached hereto as Appendix A.

In May 2008, SocGen admitted that its 2007 financial results were in fact ***not*** prepared in accordance with IFRS and could no longer be relied upon. ¶323. By not timely recording or disclosing the financial impact of the Kerviel fraud, SocGen violated numerous IFRS standards, including, but not limited to, IFRS 7, IAS 1, IAS 10, IAS 30, IAS 32, IAS 34, and IAS 39. ¶319(a). Moreover, by restating its previously issued 2007 financial results, the Company admitted that its financial results for 2007 were materially false and misleading when originally prepared. ¶¶325-326. 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. ¶326.

Defendants also violated IFRS by failing to (i) disclose its true exposure to credit market assets, including CDOs and U.S. RMBS, and (ii) timely write down these toxic assets. ¶319(b). Defendants violated IFRS by failing to disclose in its 2007 financial statements "***the significance of financial instruments [including CDOs, RMBS, and related assets] to the entity's financial position and performance***" and "***the nature and extent of risks arising from financial instruments to which the entity is exposed during the period and at the end of the reporting period, and how***

the entity manages those risks" (IFRS 7). ¶332. While Defendants hinted at SocGen's exposure in November 2007, they misrepresented and otherwise failed to disclose the Company's full exposure until January 2008. ¶¶184, 457. By 2007, SocGen had amassed more than €15 billion ($22 billion) of these assets (¶¶345-354), which, ***together with the information available to Defendants***, *i.e.*, effects of the U.S. financial crisis (¶¶355-356), ***information from SocGen's subsidiary TCW*** (¶¶357-360), ***ABX Index valuation information*** (¶¶361-368), and SocGen's knowledge that the market for CDOs and RMBS had become illiquid (¶¶369-371), ***rendered SocGen's exposure critical to the market and required its disclosure***.

In addition, SocGen failed to timely write down its credit market assets in violation of IFRS. SocGen improperly valued these assets using internally generated valuation models that relied on variables and highly subjective forward-looking estimates supplied by SocGen's own traders (¶342), discussed above, which were inconsistent with actual market conditions. *Id.* Even in November 2007, when Defendants began writing down the value of its credit market assets, SocGen recorded only a marginal writedown of €230 million, which did not reflect the true value of these assets. ¶343. Only when it could couple its writedowns with the Kerviel fraud, did SocGen announce its over €2 billion writedown in subprime-related losses, based on the ABX Index and the illiquidity of these assets – the same two factors intentionally disregarded just two months earlier. ¶344.

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

At the same time Defendants were concealing the massive risks being taken by SocGen and falsely representing that the Company's stock was undervalued through a stock repurchase program totaling €1.1 billion, the Individual Defendants unloaded over 2.3 million inflated SocGen shares for more than €225 million – between 50% and 81% of their individual shares. ¶416.

F. Government Investigations and Charges

Following SocGen's January 24, 2008 announcement, government agencies in both France and the United States initiated investigations of the Company in response to SocGen's January 24, 2008 revelations. ¶251. Ultimately, 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***." ¶¶255-261. The Autorite des Marches Financiers ("AMF"), the French equivalent to the SEC, sent letters of grievance opening proceedings against Defendants Day and Mustier based on their stock sales. ¶265. The French Finance Ministry concluded that SocGen's woefully inadequate internal controls were to blame for allowing the Kerviel fraud to occur. ¶¶252-253.

III. The Complaint Sufficiently Pleads a Claim Under §10(b) and Rule 10b-5

A. The Applicable Rule 12(b)(6) Standards

"Motions to dismiss are generally viewed with disfavor." *Freudenberg v. E*Trade Fin. Corp.*, No. 07 Civ. 8538, 2010 U.S. Dist. LEXIS 46053, at *11 (S.D.N.Y. May 11, 2010). As such, when "faced with a Rule 12(b)(6) motion to dismiss a §10(b) action, courts must . . . accept all factual allegations in the complaint as true." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). "Under Section 10(b) of the Exchange Act, 15 USC §78j(b), and Rule 10b-5, 17 C.F.R. 240.10b-5(b), a plaintiff must plead six elements: (1) a material misrepresentation or omission; (2) scienter; (3) a connection between the misrepresentation or omission and purchase or sale of a security; (4) reliance; (5) economic loss; and (6) loss causation." *E*Trade*, 2010 U.S. Dist. LEXIS 46053, at *12-*13.

B. The Complaint Sufficiently Alleges Materially False and Misleading Statements

To sufficiently allege false and misleading statements the Complaint 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, 314 (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).

A statement or omission is material if a reasonable investor would have considered it significant in making the investment decision. *In re Ambac Fin. Group, Inc.*, No. 08 Civ. 411 (NRB), 2010 U.S. Dist. LEXIS 16701, at *71 (S.D.N.Y. Feb. 22, 2010). Pleading materiality, however, "poses a very low burden," and "the trier of fact usually decides the issue." *E*Trade*, 2010 U.S. Dist. LEXIS 46053, at *18-*19; *In re Nortel Networks Corp. Sec. Litig.*, 238 F. Supp. 2d 613, 627 (S.D.N.Y. 2003).

The Complaint satisfies this standard by identifying statements concerning: (i) SocGen's risk control management systems (*see, e.g.*, ¶¶118, 122-125, 130-131, 135, 139, 143-147, 150-151, 156, 158-162, 169); (ii) the extent and nature of SocGen's undisclosed credit market exposure (*see, e.g.*, ¶¶119, 141, 156, 158-162, 167); (iii) the valuation and potential writedowns of its RMBS and CDO portfolios (*see, e.g.*, ¶¶120, 169, 177-178); and (iv) SocGen's false financial statements (*see, e.g.*, ¶¶134, 137-139, 158, 170). The Complaint identifies where and when the statements were made and who was responsible for them. *See, e.g.*, ¶¶118-120, 122-125, 130-131, 134-135, 137-139, 141, 143-147, 150-151, 156, 158-162, 167, 169-170, 177-178. The Complaint also alleges with specificity the reasons ***why*** each statement was false and misleading when made – the underlying ***facts***. *Cf.* 15 U.S.C. §78u-4(b)(1). *See, e.g.*, ¶¶142, 157, 164, 168, 173, 179-181 (SocGen's credit market exposure and writedowns); ¶¶126-128, 133, 136, 140(c), 148-149, 152-153, 163, 171-172, 182

(SocGen's risk control management systems); ¶¶140, 154-155, 163, 165-166,, 171, 174-175 (SocGen's false financial statements).[4]

In light of the Complaint's well-pled allegations, Defendants' "puzzle pleading" argument (Defs' Mem. at 23-24) is misplaced. The Complaint's block quotes simply offer context and highlight the particularly relevant portions of Defendants' statements. *In re NTL Inc. Sec. Litig.*, 347 F. Supp. 2d 15, 22 (S.D.N.Y. 2004) (the complaint does not resort to "puzzle pleading" by "reproducing blocks of text" when "the complaint[] specifically identif[ies] the date, publication and speaker of each of the alleged misstatements or omissions"); *In re First Marblehead Corp. Sec. Litig.*, 639 F. Supp. 2d 145, 154 (D. Mass. 2009) (rejecting claim that "Lead Plaintiffs have engaged in puzzle pleading by reproducing blocks of text without specifying which portions are false or misleading"). Further, the Complaint is organized in such a manner that the Court is not required to match allegations to determine Plaintiffs' claims.

1. Defendants' Risk Control Management Statements Are Both False and Actionable

Defendants blatantly misrepresented SocGen's risk control management systems, including, for example, that they were "***highly sophisticated***" (¶7) and that SocGen engaged in a ***daily analysis*** of its risk exposures. ¶¶109, 130. SocGen also issued countless statements detailing SocGen's risk management procedures. *See, e.g.*, ¶124. Defendants later acknowledged these statements were

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[4] The suggestion that Defendants' statements somehow were protected by general cautionary language in AMF filings is not a defense here. Defs' Mem. at 2-3 (Docket No. 101). Cautionary language does not shield 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)).

false. ¶25 ("our derivatives business was going 130 miles an hour, risk control was only going 80"); Defs' Mem. at 24 ("there was a breakdown in controls in the Delta One area").

In the context in which these statements were made and in light of SocGen's "leading expertise in derivatives" (¶162), these statements are of a genre that have been deemed actionable in many other cases. *See, e.g.*, *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 . . . if made knowingly or recklessly, are actionable"); *E*Trade*, 2010 U.S. Dist. LEXIS 46053, at *48-*49 ("Because the misstatements regarding risk management, discipline, monitoring and credit quality are 'misrepresentations of existing facts,' that would have misled a reasonable investor, . . . they are actionable."); *In re RAIT Fin. Trust Sec. Litig.*, No. 2:07-cv-03148-LDD, 2008 U.S. Dist. LEXIS 103549, at *22 (E.D. Pa. Dec. 22, 2008) (statements "that the January 2007 Registration Statement misrepresented the credit underwriting and monitoring processes that existed at the time of filing" held actionable); *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 held actionable).

Defendants' characterization of the misstatements as nonactionable general descriptions of SocGen's controls (Defs' Mem. at 24) fails on at least two levels. First, it ignores the fact that such terms "in a commercial context are reasonably understood to rest on a factual basis that justifies them as accurate, the absence of which renders them misleading." *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1093 (1991). Second, certain of Defendants' statements were specific to the very derivatives trading engaged in by Kerviel, the very core of SocGen's business, which, according to the Company, "***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***."

¶125. These repeated statements were material to the market's valuation of SocGen because it was a leader in highly risky derivatives trading.

The quality of SocGen's risk controls was also material to its credit market exposure and writedowns. In fact, in August 2007, Deutsche Bank "upgraded" SocGen's stock, in part, because "[w]e have also no doubt on the quality of internal procedure to highlight potential [credit market, subprime and LBO] weaknesses." ¶162; *see* ¶161 (SocGen credit market risk "closely monitored"). And in November 2007, Defendant Oudéa was quite specific in his reassurance to the market regarding SocGen's "significant experience in ***market risk management***." ¶169.

Each statement was patently false and misleading for a number of reasons, including those documented by the French Finance Minister (¶¶252-253), the French Banking Commission (¶¶255-263), the Special Committee Report (¶¶279-280), and the Mission Green Report (¶¶271-278). In fact, 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***." ¶261.

2. Defendants' Statements Concerning SocGen's Credit Market Exposure Are Both False and Actionable

a. Defendants Misrepresented SocGen's Credit Market Exposure

At a time when other banks worldwide were reporting massive writedowns on credit market assets such as CDOs, RMBS and other securitized, fixed income assets, Defendants repeatedly represented that SocGen's exposure to such assets was "***low***," "***negligible***," "***very limited***," and "***under control***," and that the brewing credit crisis would have only a "***limited impact***" on the Company's financial condition. ¶¶12, 119-120, 158-162, 167, 178. Similar statements have been held actionable, as the "concealment of specific information related to [a] Portfolio's subprime

exposure and contents" may mislead investors. *In re MoneyGram Int'l, Inc.*, 626 F. Supp. 2d 947, 978 (D. Minn. 2009).

Conference calls with industry analysts, along with those analysts' reports to the market, remove any doubt that Defendants' statements regarding SocGen's credit market exposure were material to the market. For example, following SocGen's August 2, 2007 announcement that it has "***low exposure to the current credit market crisis***" (¶158), equity analysts at two major investment banks upgraded or maintained their rating because of SocGen's low exposure. ¶¶161-162; *see Dirks v. SEC*, 463 U.S. 646, 658-59 (1983) ("information that the analysts obtain normally may be the basis for judgments as to the market worth of a corporation's securities").

Moreover, the issue is not about "disaggregating" their RMBS holdings or the percentage of investment banking ***revenue*** attributable to SocGen's credit market portfolio. Defs' Mem. at 25. Defendants' statements were both actionable and false because SocGen did not have "[l]ow exposure to credit risk segments" (¶160), and investors were particularly interested in its exposure to these toxic assets given their illiquidity (and, accordingly, their risk) and the fact that other banks were writing down similar assets.[5]

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[5] The facts in *Fulton County Employees' Ret. Sys. v. MGIC Inv. Corp.*, No. 08-C-0458, 2010 WL 601364 (E.D. Wis. Feb. 18, 2010), relied on by Defendants, are distinguishable from the facts here. In *MGIC*, the defendants' statements regarding MGIC's underwriting practices were not actionable because defendants never suggested that those underwriting practices "insulated" MGIC from the subprime crisis. *Id.* at *5. Here, however, when discussing their CDO exposure, Defendants affirmatively reassured investors that they were protected from the credit market crisis by stating their exposure was "limited," "negligible," and "minimal." ¶¶12, 52, 120, 167, 178.

b. Defendants' Statements Concerning SocGen's Credit Market Writedowns Were False and Misleading

After writing down a mere €230 million in Q3 2007, Defendants reassured analysts and investors that SocGen would have "***no further write-downs***" of its credit market assets in Q4 2007. ¶177. Indeed, at the same time Defendant Bouton was discussing SocGen's modest writedown, he stated that the subprime market was "***gradually improving***." ¶176.

These statements are actionable because Defendants knew that SocGen's credit market assets ***were*** illiquid, and other banks were writing down credit market assets. ¶¶173, 175, 180. Accordingly, this was precisely the sort of information that mattered to analysts and the market. ¶¶159-162; *see E*Trade*, 2010 U.S. Dist. LEXIS 46053, at *19 ("A material omission is actionable '[e]ven if, [Defendants] were not able to quantify the exact impact of the defect at the time of the filing [of the Company's SEC report].'"); *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).

Defendants nevertheless contend that the Complaint does not sufficiently allege SocGen's belief that its credit market assets involved a risk of loss. Defs' Mem. at 25. This argument simply ignores the Complaint's detailed allegations, many based on statements from high-level confidential witnesses, that Defendants knew that the market for its CDO and RMBS assets had become illiquid by mid-2007, at the latest. *See, e.g.*, ¶¶226-250. In fact, the Complaint is quite explicit that Defendant Mustier falsely stated that SocGen's 2005 and 2006 mezzanine CDOs were "good assets" that still had "value," when in fact the Company simply could not unload them. ¶¶169, 173.

Defendants' suggestion that the AAA-rated super senior tranches were not deteriorating (Defs' Mem. at 4, 25), fails for at least two reasons. First, it ignores the Complaint's detailed allegations that even though certain of SocGen's CDOs were purportedly rated AAA, they were

comprised of mezzanine CDOs which were rated much lower and therefore extremely risky. ¶¶112-114. Second, the Complaint alleges numerous facts indicating that all of SocGen's CDO and RMBS assets lost substantial value well before its Q3 2007 writedown. ¶¶230, 232, 236-237, 243, 245-250.[6]

3. The Complaint Pleads with Specificity that SocGen's Financial Statements Were Materially False and Misleading

The Complaint alleges with particularity SocGen's false financial statements and explains how they violated particular International Financial Reporting Standards (IFRS).[7] *See, e.g.*, ¶¶134, 137-140, 154-155, 158, 163, 165-166, 171, 174-175. In fact, the Kerviel fraud resulted in SocGen's ***restatement*** of its 2007 financial statements – an admission that the financial statements originally issued during the Class Period were materially false and in violation of IFRS. ¶¶323-328. As a result, Defendants do not contest that the Complaint sufficiently alleges the falsity and materiality of these statements.[8]

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[6] Defendants' Exhibit 4 shows that while SocGen's subprime assets may have technically been labeled "AAA super senior," the majority of those assets were part of mezzanine CDOs (€3,104 million were mezzanine CDOs and only €1,721 million were high grade CDOs), meaning the highest risk tranches of RMBS. *See* ¶¶114, 349. Because the majority of SocGen's CDOs were mezzanine, the ABX Index corresponding to the RMBS tranches the CDOs were taken from would have indicated that the CDOs were losing value by mid-2007. ¶¶361, 365-366. Of course, Defendants removed the ABX Index from SocGen's valuation models prior to the November 2007 writedown, likely because they realized the ABX Index would crush the value of their mostly mezzanine-level CDOs.

[7] SocGen was required by the EU Commission, Regulation (EC) No. 1606, Article 4, to issue financial statements in accordance with International Financial Reporting Standards.

[8] Defendants' Motion to Dismiss Plaintiffs' First Amended and Consolidated Complaint suggested that Plaintiffs failed to properly plead the falsity of SocGen's financial statements during the Class Period. Docket No. 64 at 57-58. Defendants abandon that argument in their instant motion, which is not surprising giving the specificity of the Complaint's allegations.

The Complaint also alleges that SocGen's financial statements were materially false and misleading due to SocGen's failure to adequately disclose its true credit market exposure during 2007 of over €15 billion ($22 billion). ¶¶331-338. In accordance with IAS 30, IAS 32 and IFRS 7, SocGen was required to disclose the nature, extent and concentrations of risks stemming from its massive portfolio of these toxic assets, particularly given the deterioration and illiquidity of those assets in 2006 and 2007. ¶337.

Finally, the Complaint alleges that SocGen's financial statements also were materially false and misleading during the Class Period because SocGen failed to write down its portfolio of subprime-backed assets and other credit market assets to fair value in clear violation of IAS 39. ¶¶339-344. Avoiding these IFRS-required writedowns allowed Soc Gen to materially overstate and therefore misrepresent its financial position during the Class Period.

4. The Individual Defendants Are All Liable for Their False and Misleading Statements Under the Group Pleading Doctrine

Defendants ignore the group pleading doctrine in arguing that Plaintiffs cannot attribute certain misstatements to all Defendants. Defs' Mem. at 26-27; ¶¶53, 55, 57, 87-92. That doctrine permits 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 In re Forest Labs. Sec. Litig.*, No. 05 Civ. 2827 (RMB), 2006 U.S. Dist. LEXIS 97475, at *28-*29 (S.D.N.Y. July 19, 2006); *In re BISYS Sec. Litig.*, 397 F. Supp. 2d 430, 439 (S.D.N.Y. 2005) ("majority of courts in this and other jurisdictions have found that the doctrine is alive and well") (collecting cases).

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. ¶¶122-125, 129, 131, 134-135, 137-139, 141, 143-147, 151, 169, 170; *see In re Pfizer Inc. Sec. Litig.*, 584 F. Supp. 2d 621, 637-38 (S.D.N.Y. 2008) (applying group pleading doctrine to false statements in financial statements and press releases). In addition, the Complaint alleges that the Individual Defendants had direct involvement in SocGen's everyday business and were responsible for and participated in drafting, producing, reviewing and/or disseminating the materially false and misleading information. ¶¶88-91; *cf. In re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 75-76 (2d Cir. 2001) (crediting allegations vice president of finance and investor relations was "therefore in a position both to access" information and control its release to the public).

Further, Defendants Bouton (Chairman and CEO, ¶¶44-47), Mustier (CEO of SGCIB, ¶¶48-52), Citerne (Co-CEO of SocGen, ¶¶55-56) and Alix (Co-CEO of SocGen, ¶¶57-58), by virtue of their positions of control and authority as officers, and Defendants Citerne (¶¶55-56) and Day (¶¶53-54) as insiders and directors of the Company, were able to, and did, control the content of SocGen's various public statements during the Class Period. *See Scholastic*, 252 F.3d at 75-76; *see also Forest Labs.*, 2006 U.S. Dist. LEXIS 97475, at *28-*29 (acceptable at this stage to allege that defendants had direct involvement in company's everyday business through defendants' position). The group pleading doctrine also applies to Defendants Day and Citerne as they are SocGen inside directors with large equity stakes. ¶¶53-56; *see In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.*, 398 F. Supp. 2d 244, 250 (S.D.N.Y. 2005); *Oxford Health*, 187 F.R.D. at 142-43.

C. The Complaint Sufficiently Pleads Scienter

1. The Applicable Standard for Pleading Scienter

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). In deciding scienter, a court must determine "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." *Tellabs*, 551 U.S. at 323. "The 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.* at 324; *see In re Top Tankers, Inc. Sec. Litig.*, 528 F. Supp. 2d 408, 413-14 (S.D.N.Y. 2007) (when weighing competing inferences, "the 'tie . . . goes to the plaintiff'"). Instead, the inference only needs to be "at least as compelling as any opposing inference one could draw from the facts alleged." *Tellabs*, 551 U.S. at 324. While, "the court must [also] take into account plausible opposing inferences," those inferences must be "***draw[n] from the facts alleged***" – not, as Defendants here urge, from facts taken ***outside*** the Complaint. *Id*. at 323-24.

> [T]he required strong inference "may arise where the complaint sufficiently alleges that the defendants: (1) benefitted 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.[9] It is sufficient to plead that "'specific contradictory information was available to the defendants at the same time they made their statements.'" *Ambac*, 2010 U.S. Dist. LEXIS 16701, at *61-*62.

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[9] Defendants misstate the standard for pleading scienter against a corporate defendant. Defs' Mem. at 11. "[T]he pleaded facts must create a strong inference that someone whose intent could be imputed to the corporation acted with the requisite scienter." *See Dynex*, 531 F.3d at 195; *see also In re Moody's Corp. Sec. Litig.*, 599 F. Supp. 2d 493, 515-16 (S.D.N.Y. 2009) ("There is no formulaic method or seniority prerequisite for employee scienter to be imputed to the corporation, ***but scienter by management-level employees is generally sufficient to attribute scienter to corporate defendants***.").

2. Defendants Knew or Recklessly Disregarded that Their Statements Regarding SocGen's Risk Control Management Systems Were False and Misleading

The Complaint alleges numerous facts giving rise to a strong inference of Defendants' scienter with respect to SocGen's risk control management systems. These include the litany of internal and external warnings that SocGen management, including Defendant Bouton, received. ¶¶210-225. Accordingly, Defendants knew or were reckless in not knowing that their risk control management statements were false and misleading.

It is undisputed that beginning in 2005 SocGen received over ***70 alert warnings*** related to Kerviel and lapses in SocGen's internal controls. ¶¶200, 210-225, 271-281. For example, Defendant Bouton received two separate letters from the Bank of France in March and April 2007 warning him that SocGen's risk control management systems and its security procedures for certain financial derivatives were "***wanting***." ¶214. By the end of 2007, a SocGen ***internal report*** acknowledged SocGen's ***insufficient controls*** and ***discussed the weaknesses***. ¶258; *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).

Despite the highly relevant nature of these warnings, Defendants brush them aside as "nonconclusory" and ask this Court to entertain an alternative reality where, despite SocGen's purportedly sophisticated risk controls, the 70 alerts and Kerviel's enormous, unhedged, directional positions went entirely unnoticed. Defs' Mem. at 12-13. Such an inference both ignores the pleaded facts and is highly implausible, given how serious the deficiencies were.

Indeed, Kerviel's superiors knew he was making unhedged, directional bets, and even referred to him as "***la cash machine***." ¶¶204-205. Kerviel explained, "[e]verything was visible. I

took my position in front of everyone, in front of managers . . . . Do you honestly believe a 15 billion euro operation could go unnoticed and the bank would ask no questions?" ¶206. In fact, SocGen did ask questions, including an April 16, 2007 e-mail from Maureen Auclair, Director of "Middle Results," to Kerviel's superiors and several financial controllers detailing €94 million in fictitious transactions (¶211), which created an accounting gap of €2.2 billion by late June – early July 2007. ¶213. The reality is that SocGen traders openly operated in an environment "where risk taking was encouraged, as long as it made money for the bank."[10] ¶203.

Further, because "***risk management*** is an ***integral part*** of [SocGen's] derivatives activity," (¶¶2, 118, 122-125, 130-131, 143-145), the numerous alerts and warnings received by the Company are properly imputed to the Individual Defendants.[11] *See E*Trade*, 2010 U.S. Dist. LEXIS, 46053, at *72-*73 (information imputed to senior officers where it is alleged that misstatements concerned core operations); *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, a strong inference arose that the director defendants knew about certain import restrictions that eliminated sales to the customer);

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[10] Nor can the Court simply disregard Kerviel's statements as "self-serving" as Defendants suggest. Defs' Mem. at 11-12. Not only is Kerviel a percipient witness – and arguably the most important one – his statements have been corroborated. ¶¶203-209, 275, 277. For example, the Mission Green report found that the Front Office allowed Kerviel to regularly take intraday directional positions on index futures and on certain equities beyond his level of authority. ¶275. PricewaterhouseCoopers Audit ("PwC"), in its independent review, found that the surge in Delta One trading volumes and profits was accompanied by the emergence of unauthorized practices with limits ***regularly*** exceeded and results smoothed or transferred between traders. ¶281.

[11] This is especially true for Defendants Mustier and Citerne. Mustier headed SGCIB, the investment banking division that included Global Equities and Derivative Solutions or "GEDs." Defendant Citerne chaired SocGen's Internal Coordination Committee, responsible for implementing and maintaining SocGen's internal control management systems. ¶¶48, 55, 63.

Forest Labs., 2006 U.S. Dist. LEXIS 97475, at *32-*33 (information relating to company's "core business operations . . . is . . . presumed by Defendants").

3. Defendants Knew or Recklessly Disregarded that Their Statements Regarding SocGen's Credit Market Exposure and Writedowns Were False and Misleading

Based on the detailed accounts of the confidential witnesses (¶¶226-250), the significant deterioration and illiquidity of SocGen's credit market portfolio (¶¶71-86 and ¶¶345-371), the VaR and P&L reports received by Defendants on a daily basis (¶311), and their role as officers and/or directors (¶¶44-58), Defendants certainly knew or recklessly disregarded that their statements regarding SocGen's credit market ***exposure*** and its ***writedowns*** – Q3 2007 and likelihood of further writedowns in Q4 – were false and misleading.[12] *See Nortel*, 238 F. Supp. 2d at 631 ("Plaintiffs have adequately alleged that the defendants ***either*** had actual knowledge of or ready access to the facts that contradicted their public statements."); *Ambac*, 2010 U.S. Dist. LEXIS 16701, at *70 (complaint upheld where CWs alleged that defendants had access to information that contradicted their public statements regarding their RMBS and CDO portfolio); *Cornwell*, 2010 U.S. Dist. LEXIS

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[12] The Complaint's thorough description of the confidential witnesses – their positions and the basis for their knowledge – and their consistent, cross-corroborative accounts of SocGen's true internal state of affairs certainly provides the particularity required in the Second Circuit under *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"); ¶¶72-86. Defendants' overly broad assertion that "all" of the confidential witnesses are too "low[]-level" and "removed from the Individual Defendants" to support an inference of scienter is not accurate. Defs' Mem. at 13. For instance, CWs 1, 4, 5 and 7 were all vice presidents and CW2 was director of IT. ¶¶72, 74, 77, 81, 85. All of these high-ranking corporate officials had direct involvement with SocGen's credit market-related valuations. ¶¶72, 74, 78-79, 80-82, 86. CWs 2 and 5 attended meetings with other senior SocGen executives, including Taddonio, who reported directly to Defendant Mustier. ¶¶74, 81, 237-239, 245; *see E*Trade*, 2010 U.S. Dist. LEXIS 46053, at *66-*67 (the fact that CWs "'span different levels of the Company hierarchy,'" further supports finding of scienter).

13927, at *20 (upholding complaint where plaintiffs alleged, through CWs, that defendants had access to information that contradicted public statements). *See also supra* §III.B.

A strong inference of scienter also arises based on the importance placed on the New York office as the catalyst to "establish a significant presence in the U.S. markets for structured-finance products and asset-backed securities." ¶385; *see also* ¶¶381-402 (Defendants' conduct in the U.S.); ¶¶238-239 (describing Mustier's regular visits to SocGen New York); *see E*Trade*, 2010 U.S. Dist. LEXIS 46053, at *72-*73; *In re Alstom SA Sec. Litig.*, 406 F. Supp. 2d 443, 459 (S.D.N.Y. 2005) (where plaintiffs allege importance of marine division to the company's overall profit and liquidity, the individual defendants should have been aware of events at that division).

The CWs identified key ***meetings*** that Defendant Mustier and senior SocGen management in New York attended (¶¶212, 215-217) and specific internal SocGen ***reports*** (*id.*) where the deteriorating value of SocGen's credit market assets was discussed. CWs also identified that SocGen valuation models were manipulated.[13] ¶¶230, 232, 237. *See In re WorldCom, Inc. Sec. Litig.*, 294 F. Supp 2d 392, 425 (S.D.N.Y. 2003) (a beneficial change in the valuation model that is alleged to have concealed the fraud is ***alone*** sufficient to establish scienter).

In addition, the ***proximity*** between Defendants' November 7, 2007 writedown and accompanying positive statements of "no further write-downs" (¶¶177-178), and the January 24,

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[13] *See Cornwell v. Credit Suisse Group*, No. 08 Civ. 3758 (VM), 2010 U.S. Dist. LEXIS 13927, at *21 (S.D.N.Y. Feb. 11, 2010) (confidential witness statement, "coupled with the massive write downs . . . during the Class Period, suggest that analogous information was available to Defendants during the Class Period"); *E*Trade*, 2010 U.S. Dist. LEXIS 46053, at *49-*52 (it is not fraud by hindsight where "Complaint sets forth that Defendants knowingly and/or recklessly purchased high-risk loan pools and ABS with inadequate due diligence, while contemporaneously assuring investors to the contrary"); *Atlas v. Accredited Home Lenders Holding Co.*, 556 F. Supp. 2d 1142, 1156 (S.D. Cal. 2008) (knowledge imparted to defendants from reports tracking and analyzing data of rejected loans).

2008 writedown of €2.2 billion – ten times the writedown it took in the third quarter (¶184), also supports an inference of scienter. *In re AnnTaylor Stores Sec. Litig.*, 807 F. Supp. 990, 1006 (S.D.N.Y. 1992) ("close proximity between" falsehoods and contradictory disclosures led to strong scienter inference).[14]

Taken collectively, Plaintiffs' allegations give rise to a strong inference of scienter. *See Tellabs*, 551 U.S. 321-22.[15] Defendants respond by misstating the applicable pleading standard, insisting that Plaintiffs must allege facts that Defendants definitively "knew." Defs' Mem. at 14-15. This standard is too high; at the pleading stage, it is sufficient to show that defendants "had access to non-public information contradicting their public statements."[16] *Scholastic*, 252 F.3d at 76.

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[14] *See also 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."); *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).

[15] *See also Citiline Holdings, Inc. v. iStar Fin., Inc.*, No. 08 Civ. 3612 (RJS), 2010 U.S. Dist. LEXIS 29706, at *22 (S.D.N.Y. Mar. 26, 2010) (finding scienter based on circumstantial evidence that defendants monitored the value of their portfolio); *Atlas*, 556 F. Supp. 2d at 1155-56 (defendants had access to information about risky loans and reserves where company utilized sophisticated tracking and analyzing software); *Jones v. Corus Bankshares, Inc.*, No. 09 C 1538, 2010 U.S. Dist. LEXIS 33579, at *41 (N.D. Ill. Apr. 6, 2010) (in action alleging widespread knowledge of deteriorating financial conditions related to financial crisis the court found that "'[w]hile [it] cannot "presume" scienter, a strong inference of scienter may still be credited where it is almost inconceivable that an individual defendant would be unaware of the matters at issue'").

[16] The cases cited by Defendants are not on point. Defs' Mem. at 15. Unlike Plaintiffs here, the *Sec. Capital* "plaintiffs' own allegations reveal" that "Defendants were woefully unaware of the true risk presented by their investments in CDOs, and did not know the facts or have the information necessary to know that their statements might be inaccurate." *In re Sec. Capital Assurance Ltd. Sec. Litig.*, No. 07 Civ. 11086 (DAB), 2010 WL 1372688, at *26 (S.D.N.Y. Mar. 31, 2010). The *CIBC*

Defendants' attempt to distinguish AAA-rated assets (Defs' Mem. at 14-15) ignores that Defendants either knew or had access to information that SocGen manipulated its valuation models for ***all*** of its CDOs and RMBS in order to generate an acceptable value and to defer necessary writedowns, including its AAA tranches (¶¶180, 237, 342, 370). *See also* §III.B. Regardless, as early as August 2007 Defendants did have information, through TCW, that "investment grade" or AAA tranches would be subject to downgrades. ¶359.

Similarly, SocGen's pre-announcement of a €230 million writedown in November 2007 does not detract from an inference of scienter. Defs' Mem. at 18. The statement itself was false, since Defendants knew then that this writedown was grossly insufficient, and was made to (falsely) differentiate SocGen from its peers who had disclosed greater exposure and writedowns. ¶¶98, 119; *see Corus Bankshares*, 2010 U.S. Dist. LEXIS 33579, at *28 (early disclosures of difficulties "does not necessarily negate an inference of scienter, for Corus's statements may still have been intended to conceal the fact that its condition was substantially worse than its statements suggested").[17]

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decision is also inapposite since "the Complaint ma[de] no reference to internal CIBC documents or confidential sources discrediting Defendants' assertions that they were only adapting to a 'rapidly changing economic landscape' during a 'once-in-a-century credit tsunami.'" *Plumbers & Steamfitters Local 773 Pension Fund v. Canadian Imperial Bank of Commerce*, No. 08 Civ. 8143 (WHP), 2010 U.S. Dist. LEXIS 25041, at *27 (S.D.N.Y. Mar. 17, 2010). Similarly, in *In re Downey Sec. Litig.*, No. CV 08-3261-JFW (RZx), 2009 WL 2767670, at *10 (C.D. Cal. Aug. 21, 2009), plaintiffs' allegations were premised on the individual defendant's position in the company and CW statements based on rumor and hearsay. Likewise, in *In re Radian Sec. Litig*, 612 F. Supp. 2d 594, 616 (E.D. Pa. 2009), scienter was based on defendants' positions, generalized imputations of knowledge and general adverse trends in the subprime industry. Plaintiffs' allegations here are clearly more particular.

[17] Defendants' reliance on *Caiafa v. Sea Containers Ltd.*, 525 F. Supp. 2d 398 (S.D.N.Y. 2007), is misplaced. While, SocGen wrote down subprime assets during the Class Period and took another, much larger, writedown of the same assets at the end of the Class Period, the similarities in the two cases end there. When Defendants announced SocGen's initial writedown in November 2007, Defendants assured investors that SocGen had ***low exposure*** to such assets and would have no

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

By definition, SocGen's ***restatement*** of its 2007 financial statements means that Defendants either knew of, or were reckless in not knowing, reliable and readily available information regarding Kerviel's trading when the Company filed those false and misleading financials.[18] *Dynex*, 531 F.3d at 195 (restatement evidences that defendants "'knew facts or had access to information suggesting that their public statements were not accurate'"). SocGen has admitted that its restatement was done solely to correct material "errors," and not as a result of a change in accounting policies or accounting estimates. ¶328.

Defendants also knowingly disregarded specific IFRS violations relating to SocGen's credit market exposures, resulting in valuations that failed to reflect the fair value of SocGen's subprime-related assets in violation of IFRS, specifically IAS 39. ¶¶345-371. These accounting violations, detailed in the Complaint, are supported by the accounts of several confidential witnesses, discussed above in §III.B.

In addition, the Complaint alleges that the Defendant Bouton knew, or was reckless in not knowing, that SocGen's financial statements were false and misleading during the Class Period as a result of the financial statement certifications that he signed. IFRS clearly states that the preparation and presentation of financial statements are the responsibility of management (IFRS framework

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further writedowns. ¶¶177-178. Further, Plaintiffs allege that Defendants had access to information at the time of the first writedown indicating that the writedown should have been much larger. ¶¶71-86, 226-250, 345-371.

[18] The accounting standard that covers restatements of previously-issued financial results, IAS 8, 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***." ¶326.

¶11), and as a result, Bouton was required to personally certify the Company's financial statements after having taken "reasonable care to ensure" their accuracy. ¶¶132, 321.

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

The timing and amounts of insider shares sold, in terms of percentage and volume, are both unusual and suspicious, supporting a strong inference of scienter:[19]

- ***Day***: sold at least 1,886,187 SocGen shares, ***53%*** of his total available SocGen stock holdings, for proceeds of more than €168 million. Just days before the January 24, 2008 announcement of both frauds, Day sold approximately 1.5 million shares of SocGen securities for proceeds of more than ***€140 million***.[20] ¶¶285-287. A portion of Day's trades coincided with SocGen's stock repurchase program, which Day approved as a SocGen director.[21]

- ***Mustier***: sold ***50%*** of his SocGen stock on August 21, 2007, two and a half weeks after SocGen told investors it "has low exposure to the current credit crisis." ¶290. To complete the sale, Mustier rushed back to Paris on August 21, 2007 from vacation in Scotland so that he could liquidate his SocGen stock holdings.[22] ¶291.

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[19] *See Tellabs*, 551 U.S. at 325 ("personal financial gain may [also] weigh heavily in favor of a scienter inference"); *Scholastic*, 252 F.3d at 67 ("like a ship's captain exiting into the safety of a lifeboat while assuring the passengers that all is well"); *Rothman v. Gregor*, 220 F.3d 81, 93-94 (2d Cir. 2000) (alleged motive may serve to establish scienter or contribute to other scienter allegations); *Forest Labs.*, 2006 U.S. Dist. LEXIS 97475, at *37 ("stock sales, executed during the Class Period by eight 'corporate insiders,' support a strong inference of fraudulent intent"). Here, all five Individual Defendants were dumping their shares.

[20] *Nursing Home Pension Fund, Local 144 v. Oracle Corp.*, 380 F.3d 1226, 1231 (9th Cir. 2004) (insider sales deemed suspicious when made one month before announcement of lower-than-expected sales).

[21] Defendants' attempt to characterize Defendant Day as a non-insider is contradicted by the fact that Defendant Day was SocGen's largest shareholder, a SocGen director and chairman of TCW. ¶53. Also, Day was classified during the Class Period as a "non-independent" director. ¶284 n.6.

[22] The peculiar circumstances surrounding Mustier's sales raise an inference of scienter (Defs' Mem. at 21-22) and are the basis for the AMF's charge of insider trading against Mustier. ¶268.

- ***Bouton***: sold at least 255,713 shares of SocGen stock for proceeds of over ***€30 million***, amounting to over ***65%*** of his available SocGen stock holdings during the Class Period and during SocGen's stock repurchase program.[23] ¶¶293, 437-438.

- ***Citerne***: sold at least 201,129 shares of his SocGen common stock, ***81%*** of his available stock holdings, for over ***€23 million*** in proceeds. ¶294. Just three days before the end of FY 2006, Citerne sold over 108,000 shares for proceeds of over ***€13 million***. ¶450.

- ***Alix***: A single sale of 23,171 shares of his SocGen common stock (***81%*** of his available stock holdings) 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. ¶295.

Despite Defendants' unpersuasive explanations, they greatly benefited in a concrete and personal way from the purported fraud.[24] *E*Trade*, 2010 U.S. Dist. LEXIS 46053, at *78 ("'The fact that there might be an innocent explanation for the timing of [defendant]'s sale is not enough to defeat the inference of scienter that arises from plaintiffs' well-pleaded allegations . . . .'").

Defendants' misleading argument that Bouton and Citerne "increased" their holdings (*see* Defs' Mem. at 19 & n.18) ignores that between December 31, 2005 and December 31, 2006, Bouton sold ***204,968*** shares (¶481) and Citerne sold ***201,129*** (¶¶448-453). *E*Trade*, 2010 U.S. Dist. LEXIS

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[23] 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. *In re Countrywide Fin. Corp. Sec. Litig.*, 588 F. Supp. 2d 1132, 1187 (C.D. Cal. 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.").

[24] For example, sales made during a designated trading window are improper if the insider is in possession of undisclosed, adverse inside information, which is exactly what occurred here. Defs' Mem. at 22-23; *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").

46053, at *80 ("courts refuse to hold that defendants' stock purchases were inconsistent with fraud").

Further, the absence of prior trading history (Defs' Mem. at 20) does not detract from a finding of scienter when the massive proceeds reaped and high percentages of holdings sold are taken into account. Also, as Defendants are well aware, until March 2006, they were ***not*** required by French law to disclose their trading in SocGen stock. Thus, Defendants' early and pre-Class Period sales here are not ***publicly available***, and Defendants fail to introduce them.[25]

6. Additional Facts Supporting Scienter

The sheer magnitude of the frauds that occurred here supports a strong inference of scienter. *Scholastic*, 252 F.3d at 77; *E*Trade*, 2010 U.S. Dist. LEXIS 46053, at *73. The fact that the French Banking Commission ultimately fined SocGen €4 million (¶263) and the AMF opened proceedings against Defendants Day and Mustier for alleged insider trading also supports a strong inference of scienter (¶264). *See Hall v. Children's Place Retail Stores, Inc.*, 580 F. Supp. 2d 212, 233 (S.D.N.Y. 2008) (SEC investigation "probative of scienter"); *In re NYSE Specialists Sec. Litig.*, 260 F.R.D. 55, 63-64 (S.D.N.Y. 2009); *see also* ¶¶251-281 (government investigations). The key, senior-level personnel changes SocGen made shortly after revealing the fraud on January 24, 2008, and prior to its restatement of its 2007 financials are "highly suspicious." *See* ¶¶300-307; *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); *Kaltman v. Key Energy Servs.*, 447 F. Supp. 2d 648, 664 (W.D. Tex. 2006). Also, the

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[25] Nor do Defendants introduce the number of options sold or contend that stock sales were made primarily to make payments required for the exercise of stock options or to pay taxes. Defs' Mem. at 20. Regardless, such an assertion would not be supported by the size of the Class Period sales.

announcement of the Kerviel and subprime losses together, in order to create "noise" in the market, supports an inference of scienter. ¶308.

7. The Alternative Inferences Urged by Defendants Are Implausible

Defendants' alternative inference that SocGen was "negatively affected by the global crisis that began in the third quarter of 2007" (Defs' Mem. at 1) has been rejected where facts, similar to here, have been alleged. *See, e.g.*, *E*Trade*, 2010 U.S. Dist. LEXIS 46053, at *51 ("The 'current financial crisis' is not necessarily an absolute defense if it is alleged that defendants have misled the public as to the quality of their holdings."); *New Century*, 588 F. Supp. 2d at 1230 ("The inference of deliberate recklessness as to false statements regarding loan quality and underwriting is ***at least as*** compelling as inferring that the Officer Defendants were . . . taken by surprise when the market took an unexpected turn for the worse."). Even if ***as*** compelling as the inferences in Plaintiffs' favor, Plaintiffs must prevail. *Tellabs*, 551 U.S. at 324.

D. The Complaint Sufficiently Alleges Loss Causation

When the truth about SocGen's risk control management systems and its credit market exposure was revealed on January 24, 2008, the prices of SocGen stock and ADRs dropped in response, removing much of the prior artificial inflation from the stock. ¶458. 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. ¶461. The Complaint alleges that both stock declines were statistically significant, meaning that they are not explained by movements in the market as a whole or in the banking industry, and are the direct result of the disclosure of information specific to SocGen. ¶¶461-462.

No more is required. At the pleading stage plaintiffs do not need to "disaggregat[e] the impact of the . . . corrective disclosure[s] . . . as opposed to overall market declines related to the credit crisis." Defs' Mem. at 29. This is not the standard under *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005). Instead, plaintiff must simply "provide a defendant with ***some indication of the loss and the causal connection that the plaintiff has in mind***."[26] *Id*. at 347. Nor does *Lentell v. Merrill Lynch & Co.*, 396 F.3d 161 (2d Cir. 2005), require Plaintiffs to quantify or "disaggregat[e]" their loss beyond question at this stage. Defs' Mem. at 29. Instead, "'when the plaintiff's loss coincides with a marketwide phenomenon'" a plaintiff must plead "'facts which, ***if proven***, would show that its loss was caused by the alleged misstatements as opposed to intervening events.'" *Lentell*, 396 F.3d at 174. In any event, the Complaint alleges precisely how the alleged misrepresentations caused Plaintiffs' losses. *See, e.g.*, ¶461. This is what *Dura* requires – identification of the loss.

The Complaint also sufficiently alleges a corrective disclosure which provides a causal connection between Defendants' fraudulent conduct and Plaintiffs' losses. Defs' Mem. at 28. This Circuit has long held that a plaintiff must only 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*, 396 F.3d at 173. 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. *Id*.[27]

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[26] Defendants' mere speculation about "possible" market reaction to SocGen's January 24, 2008 announcement demonstrates why, at the pleading stage, as opposed to trial, plaintiffs must only provide a showing of the existence of such losses. *Dura*, 544 U.S. at 347.

[27] Defendants' assertion that the corrective disclosure must explicitly reveal the underlying fraud is incorrect. Defs' Mem. at 28. 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

It was foreseeable here that Defendants' misrepresentations and omissions regarding the "'abject' failure" (¶191(c)) of the Company's risk control management systems and its credit market exposure and writedowns 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.[28] *See E*Trade*, 2010 U.S. Dist. LEXIS 46053, at *82 ("here, the materialization of concealed risks and information regarding the quality of E*TRADE's mortgage investments sufficed to plead loss causation").

IV. The Complaint Sufficiently Pleads a Claim for Insider Trading Against the Individual Defendants

A. The Individual Defendants Are Liable Under Rule 10b-5(a) and (c)

The Individual Defendants are liable under Rule 10b-5(a) and (c) because they profited through illicit insider sales after directly participating in a deceptive scheme aimed at artificially inflating SocGen's stock price.[29] ¶¶309-318, 473-482. Rule 10b-5(a) and (c) claims encompass "much more than illegal trading activity: they encompass the use of 'any device, scheme or artifice,'

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pump-and-dump stock schemes. *Emergent Capital Inv. Mgmt., LLC v. Stonepath Group, Inc.*, 343 F.3d 189, 191 (2d Cir. 2003). 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 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.

[28] Defendants' reliance on *Lentell* for the proposition that *Dura* requires a "corrective disclosure" is misplaced. Defs' Mem. at 28. Although the *Lentell* court mentions the lack of any "corrective disclosure" there, 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*.

[29] "All 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." *In re Global Crossing, Ltd. Sec. Litig.*, 322 F. Supp. 2d 319, 336 (S.D.N.Y. 2004).

or 'any act, practice, or course of business' used to perpetrate a fraud on investors."[30] *Id*. (quoting 17 C.F.R. §240.10b-5(a), (c)).

Importantly, liability under Rule 10b-5(b) for false statements does ***not*** preclude liability based on violations of Rule 10b-5(a) and (c), if the scheme went beyond the misrepresentations. *Alstom*, 406 F. Supp. 2d at 475 ("it 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 Complaint satisfies these standards by detailing an insider trading scheme (*see* ¶¶312-316, 474, 481), which occurred simultaneously with a €1.1 billion stock repurchase scheme. ¶¶20-23, 31, 297-299, 419-426, 427-456. *See* §III.C.5. The United States 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).

B. Defendants Bouton, Mustier, and Day Are Liable Under §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 just discussed in §IV.A., *supra*, Plaintiffs have established a predicate insider trading violation under Rule 10b-5 by Defendants Bouton, Mustier and Day. Defendants contend, however, that since certain of these Defendants' stock sales occurred shortly before or after the §20A Plaintiffs' purchases, the

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[30] 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 Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 102 (2d Cir. 2007) ("at the early stages of litigation, the plaintiff need not plead manipulation to the same degree of specificity as a plain misrepresentation claim").

contemporaneous element of §20A has not been met with respect to these trades. Defs' Mem. at 30-31. These trades are nevertheless still "contemporaneous" under §20A.[31] *See also* ¶¶488-489.

V. The Complaint Properly Alleges Control Person Claims Against the Individual Defendants Under §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). "'Allegations of control are not averments of fraud and therefore need not be pleaded with particularity.'" *Children's Place*, 580 F. Supp. 2d at 228.[32] All Defendants are primary violators of §10(b) and Rule 10b-5. *See* §III; ¶¶415-456. Further, Defendants Bouton, Mustier, Day, Citerne and Alix controlled SocGen by virtue of their high-level positions and responsibilities at the Company. *See* ¶¶44-46, 48, 50-51, 53-55, 57, 87-92, 131, 312-316, 373. Further, Day, as an inside director of SocGen with the largest equity stake of any other director, and one of the largest

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[31] 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). 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.

[32] 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. ¶¶89-92, 484-486; *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*).

individual SocGen shareholders (¶¶53, 430), had "'"'the power to direct or cause the direction of the management and policies."'" *Adelphia*, 398 F. Supp. 2d at 262.[33]

The Complaint also sufficiently alleges culpable participation against all the Individual Defendants, based on their false and misleading statements made with scienter, as discussed above. ¶¶309-318.

VI. The Court Has Personal 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 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 Citerne and Alix because they: (i) had minimum contacts with the United States; and (ii) the exercise of jurisdiction over them is reasonable. *Id.*[34]

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[33] *See Oxford Health*, 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).

[34] 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). Where, as here, Defendants challenge Plaintiffs' *prima facie* showing of personal jurisdiction over Defendants Citerne and Alix, Plaintiffs are permitted to conduct jurisdictional discovery into Citerne and Alix's U.S. contacts. *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"'"). Accordingly, Plaintiffs' proposed discovery requests are attached as Exs. A-E to the Declaration of Ryan A. Llorens in Support of Plaintiffs' Second Motion to Partially Lift the PSLRA Discovery Stay, filed herewith.

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

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. *In re Alstom SA Sec. Litig.*, 406 F. Supp. 2d 346, 398 (S.D.N.Y. 2005). Citerne and Alix have sufficient minimum contacts with New York, because 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. *Id.* at 399 (allegations that foreign defendant was "'otherwise responsible for the contents and dissemination of the Registration Statements'" alleged to be false supported exercise of jurisdiction at pleading stage). In addition, 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. ¶¶55, 405.

Personal jurisdiction is also established here in light of the Restatement (Second) 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 (Second) of Conflict of Laws §37 (1989); *Alstom*, 406 F. Supp. 2d at 401. Because Defendants' conduct undoubtedly had an effect in the United States, 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.

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 a 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, Plaintiffs and American courts that 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, jurisdiction is certainly not unreasonable here because SocGen has a vast presence in the United States. ¶¶403-412; *In re Amaranth Natural Gas Commodities Litig.*, 587 F. Supp. 2d 513, 536 (S.D.N.Y. 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.

VII. This Court Has Subject Matter Jurisdiction over Claims by Investors that Purchased SocGen Shares on a Foreign Exchange

Defendants challenge this Court's jurisdiction over investors who purchased SocGen shares on foreign exchanges. Defs' Mem. at 9-10. This issue was fully briefed in connection with

Defendants' Motion to Dismiss Plaintiffs' First Amended and Consolidated Complaint. However, because the Supreme Court is expected to directly address the issue of the extraterritorial application of §10(b) in its decision in *Morrison v. Australia Bank Ltd.*, which is expected by June 2010, Plaintiffs respectfully submit that this Court should defer ruling on this discrete issue. Plaintiffs further submit that based on the guidance expected in the Supreme Court's decision, the parties should then be provided the opportunity to fully brief the issue. Nevertheless, if the Court decides to address the issue of the extraterritorial application of §10(b) now, Plaintiffs respectfully refer the Court to their prior briefing on this issue.

VIII. Conclusion

For each of the foregoing reasons, Defendants' motion to dismiss should be denied in its entirety.

DATED: May 28, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2010, 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 May 28, 2010.

s/ Theodore J. Pintar
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