UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PHILLIP J. BARKETT, JR., Plaintiff, vs. SOCIÉTÉ GÉNÉRALE, et al., Defendants.	Civil Action No. 1:08-cv-02495-GEL CLASS ACTION
CITY OF TAYLOR EMPLOYEES RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. SOCIÉTÉ GÉNÉRALE GROUP, et al., Defendants.	Civil Action No. 1:08-cv-02752-GEL CLASS ACTION
HAROLD OBERKOTTER, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. SOCIÉTÉ GÉNÉRALE, et al., Defendants.	Civil Action No. 1:08-cv-02901-GEL CLASS ACTION

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF THE INSTITUTIONAL INVESTOR GROUP'S MOTION FOR CONSOLIDATION, APPOINTMENT AS LEAD PLAINTIFF AND FOR APPROVAL OF ITS SELECTION OF LEAD COUNSEL AND IN RESPONSE TO THE OPPOSITION OF THE COMPETING MOTIONS

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Institutional Investors Vermont Pension Investment Committee ("VPIC"), Boilermaker-Blacksmith National Pension Fund ("Boilermaker-Blacksmith Fund"), United Food and Commercial Workers Union-Employer Pension Fund ("UFCW") and United Food and Commercial Workers Union Local 880 – Retail Food Employers Joint Pension Fund ("UFCW 880") (collectively, the "Institutional Investor Group") respectfully submit this reply memorandum of law in further support of their motion for consolidation, appointment as Lead Plaintiff and for approval of their selection of Lead Counsel and in response to the opposition of the competing movants.

I. PRELIMINARY STATEMENT

No one disputes that the Institutional Investor Group has the largest financial interest in this litigation. With losses of $6,847,909, its losses are substantially greater than the losses of €1,157,035 (or $1,790,443) claimed by Oklahoma Firefighters Pension and Retirement System ("Oklahoma"), the losses of $1,406,440 claimed by New Jersey Carpenters Annuity and Pension Funds (the "New Jersey Funds Group"), and the losses of $41,480 claimed by Harold Oberkotter. VPIC, one of the members of the Institutional Investor Group, ***alone*** has losses of $3,442,044, which exceeds the losses of all of the other competing movants ***combined.*** Also, Oklahoma readily acknowledges the greater loss of the Institutional Investor Group, stating, "the Institutional Investor Group has presented a larger loss in Societe Generale securities than the loss asserted by Oklahoma or any other movant for lead plaintiff." Oklahoma Response at 2. Thus, there can be no legitimate challenge to the Institutional Investor Group's claim that it has the largest financial interest. Moreover, no one has raised any opposition to the Institutional Investor Group's adequacy and typicality under Federal Rule of Civil Procedure 23.

While it would appear, based on the foregoing, that all of the movants would agree that the Institutional Investor Group should be appointed Lead Plaintiff, the New Jersey Funds Group has nevertheless filed a memorandum in opposition to the Institutional Investor Group's motion. The

New Jersey Funds Group contends that the Court should not appoint a group of investors as lead plaintiff where: (i) that group does not have a pre-existing relationship; (ii) it has not explained how it plans to work together as a group; (iii) it has not explained how it can effectively manage the litigation; and (iv) it has not explained how it intends to resolve any conflicts among its different members.

The members of the Institutional Investor Group, however, have already provided the Court with answers to all of these questions. As set forth in their joint declaration previously filed on May 30, 2008, *see* Institutional Investor Group's Joint Declaration in Further Support of its Motion for Consolidation, Appointment as Lead Plaintiff and Approval of its Selection of Lead Counsel (the "Joint Declaration"), the members of the Institutional Investor Group are prepared to litigate this case in an organized and efficient manner for the benefit of the class. Joint Declaration at ¶6. This includes, among other things, their implementation of decision-making and communication procedures that are designed to maximize the size of any recovery. *Id.* at ¶10. They also believe that their collective resources and experiences will provide additional benefits to the Class. *Id.* at ¶6. Thus, there is clear justification in this case for the members of the Institutional Investor Group seeking their joint appointment as Lead Plaintiff.

There is also a rational explanation for why they should be appointed together as a group. The Boilermaker-Blacksmith Fund and VPIC each sustained multi-million dollar losses as a result of their purchases of Societe Generale ("SocGen") ordinary shares. Indeed, each of their individual losses is substantially greater than the combined losses of the two funds that make up the New Jersey Funds Group. Similarly, UFCW and UFCW 880, the other members of the Institutional Investor Group, are two related funds with overlapping trustees that have both sustained similar-sized losses as a result of their purchases of SocGen ADRs during the Class Period. *Id.* ¶4.

For these reasons, as well as those set forth in its prior submissions, the Institutional Investor Group respectfully submits that the Court should grant its motion in full, appoint it as Lead Plaintiff for the Class, approve of its selection of Coughlin Stoia Geller Rudman & Robbins LLP ("Coughlin Stoia") as Lead Counsel and deny the competing motions.

II. ARGUMENT

A. The Institutional Investor Group Represents the Largest Financial Interest in This Litigation

It is undeniable that the Institutional Investor Group represents the largest financial interest in this litigation. *See* Institutional Investor Group Opp. at 5-6 (setting forth the losses of the different movants). Accordingly, the Institutional Investor Group should be afforded the presumption of most adequate plaintiff – the Lead Plaintiff

B. The Institutional Investor Group Is Otherwise Adequate and Typical and None of the Other Movants Have Offered Any "Proof" to Rebut Its Presumption of Lead Plaintiff

The PSLRA directs that "the court shall adopt a presumption that the most adequate plaintiff . . . is the person ***or group of persons*** that . . . has the largest financial interest in the relief sought by the class," and that "otherwise satisfies the requirements of Rule 23." 15 U.S.C. §78u-4(a)(3)(B)(iii)(I) (emphasis added). The PSLRA's rebuttable presumption may be rebutted only by ***proof*** that the presumptively most adequate plaintiff "will not fairly and adequately protect the interests of the class; or . . . is subject to unique defenses that render such plaintiff incapable of adequately representing the class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(II).

Only one movant, the New Jersey Funds Group, makes any argument in an effort to rebut the presumption afforded to the Institutional Investor Group. As discussed below, their argument has no merit.

C. The Institutional Investor Group Is a Cohesive Group of Institutional Investors Which May Serve as Lead Plaintiff

The New Jersey Funds Group contends that the Institutional Investor Group is not a proper Lead Plaintiff movant because its members did not have a pre-litigation relationship and they did not explain how they intend to litigate this case together as a group.[1]

The PSLRA, however, does not say that a group seeking appointment must be "related" in any fashion, and neither its text nor its legislative history contain any suggestion that "unrelated" groups may not seek appointment as lead plaintiff. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 266 (3d Cir. 2001); *In re Cavanaugh*, 306 F.3d 726, 738 (9th Cir. 2002) ("We are bound by what Congress did, and ***we may not add to the statute terms that Congress omitted*** even if we believe they would serve the statutory purpose.") (emphasis added).

As the SEC has concluded – and the Third and Sixth Circuits have held – it is the statute's test of fair and adequate representation, and ***"not one of relatedness,*** with which courts should be concerned" in appointing lead plaintiffs. *Cendant*, 264 F.3d at 267 (emphasis added); *In re New Jersey Dep't of the Treasury, Div. of Inv.*, No. 05-3227, Slip op. (6th Cir. July 26, 2005) (attached hereto as Exhibit A); *In re Baan Co., Sec. Litig.*, 186 F.R.D. 214, 216-17 (D.D.C. 1999) (quoting memorandum submitted by SEC).

Moreover, whether a group of institutional investors is related or has "pre-existing relationships" ***should*** be irrelevant under the PSLRA. "[T]he pre-litigation relationship approach

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[1] The New Jersey Funds Group also contends that it has the "largest loss of any movant seeking sole appointment as lead plaintiff." New Jersey Funds Group Opp. at 2. That claim, however, is inaccurate. Even though it refers to itself in its papers as the singular New Jersey Fund, the New Jersey Funds Group is actually made up of two funds, the New Jersey Carpenters Annuity Fund, with a loss of $469,044, and the New Jersey Carpenters Pension Fund, with a loss of $937,395, both of which have losses smaller than the losses claimed by VPIC or the BoilermakerBlacksmith Fund.

focuses on a trait that is uncommon among investors. . . . Limiting the potential pool of lead plaintiffs to those with a pre-litigation relationship would foreclose the great majority of investors, who are willing and able to come together, to pursue a securities class action." *In re Versata, Inc.*, No. C 01-1439 SI, 2001 U.S. Dist. LEXIS 24270, at *20-*21 (N.D. Cal. Aug. 17, 2001) (internal citations omitted).

Ultimately, "there can be no doubt that the PSLRA contemplates that ***some*** 'groups' can serve as lead plaintiff – indeed, the plain language of the statute provides for this outcome." *Barnet v. Elan Corp.*, PLC, 236 F.R.D. 158, 162 (S.D.N.Y. 2005) (emphasis in original). "The pivotal issue as to the designation of Lead Plaintiff in the instant matter, then, comes down to whether multiple class members may aggregate their financial stake in order to establish the PSLRA's rebuttable presumption." *Weltz v. Lee*, 199 F.R.D. 129, 132 (S.D.N.Y. 2001).

Indeed, this Court, and others in this district, has routinely appointed groups of investors with no pre-litigation relationship as Lead Plaintiff pursuant to the PSLRA. ***See, e.g.,*** *In re Refco, Inc. Sec. Litig.*, Case No. 05 Civ. 8626 (GEL) (S.D.N.Y. Feb. 8, 2006) (appointing a group of investors as Lead Plaintiffs);[2] *In re Global Crossing Access Charge Litigation*, Case No. 04 MD 1630 (GEL) (S.D.N.Y. Dec. 17, 2004); *DeMarco, et al. v. Robertson Stephens, et al.*, Case No. 03-cv-00590-GEL (S.D.N.Y. June 30, 2003); *Mann, et al. v. Worldwide Xceed, et al.*, Case No. 01-cv-01125-GEL (S.D.N.Y. June 25, 2001); *In re Allied Capital*, Case No. 02-cv-03812-GEL (S.D.N.Y. Aug. 15, 2002); *Reimer v. Ambac Fin. Group, Inc.*, No. 08 Civ. 411 (NRB), 2008 U.S. Dist. LEXIS 38729 S.D.N.Y. (S.D.N.Y. May 9, 2008) (same); *Xianglin Shi v. SINA Corp.*, No. 05 Civ. 2154 (NRB),

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[2] All of these unreported decisions were previously attached as exhibits B through G to the Institutional Investor Group's memorandum of law in opposition to the competing motions, filed on May 30, 2008.

2005 U.S. Dist. LEXIS 13176 (S.D.N.Y. July 1, 2005); *Ferrari v. Impath*, No. 03 Civ. 5667 (DAB), 2004 U.S. Dist. LEXIS 13898 (S.D.N.Y. July 15, 2004).

Despite this Court's numerous prior holdings, as well as many holdings of other judges in this District, the New Jersey Funds Group cites to two cases in which courts did not appoint groups of investors as Lead Plaintiff and argues that the Court should follow those rulings. In neither of those instances, however, was there a compelling reason to appoint those investors as groups.[3] Here, however, where two of the members of the Institutional Investor Group have losses resulting from their purchases of SocGen ordinary shares and two have losses resulting from their purchases of SocGen ADRs, and where a showing of the group's cohesiveness has been made through the filing of the Joint Declaration, its motion should be granted.[4]

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[3] In each of those cases, the courts expressed their preference for appointing the single investor who represented the largest financial interest, whether or not that investor filed a motion individually or together as part of a group. In *Goldberger v. PXRE Group Ltd.*, No. 06-cv-3410 (KMK), 2007 U.S. Dist. LEXIS 23925 (S.D.N.Y. March 30, 2007), the court appointed a single investor as lead plaintiff because it had a "far greater financial interest" in the case than any of the individual losses of those investors who made up the competing group, even though the group as a whole had a larger collective financial interest. In *In re Pfizer Inc. Sec. Litig.*, 233 F.R.D. 334 (S.D.N.Y. 2005), Judge Owen chose to sua sponte appoint the investor with the single largest loss as lead plaintiff, even though that investor had filed its motion seeking to be appointed together with a group of other investors. Here, where VPIC and Boilermaker alone each have a "far greater financial interest" than the combined New Jersey Funds Group, even if the Court were to follow the reasoning of the courts in *Goldberger* and *Pfizer*, the New Jersey Funds Group would still not have the largest financial interest. Moreover, because of the different securities purchased by the different members of the Institutional Investor Group, there is a rational explanation as to why the Institutional Investor Group, as a group, should be appointed Lead Plaintiff. In *Goldberger* and *Pfizer*, there was no similar justification.

[4] The New Jersey Funds Group also criticizes the Institutional Investor Group by stating that it is "unusual" that "two of the four members of the group have insignificant losses." New Jersey Funds Group Opp. at 3. The losses of UFCW and UFCW 880, which appear to be what the New Jersey Funds Group is referring to, were from investments in SocGen ADRs, whereas the larger losses of VPIC and Boilermakers were from investments in SocGen ordinary shares. Thus, there is nothing "unusual" about these investors seeking to be appointed Lead Plaintiff together. In fact, by

Most recently, Judge Buchwald addressed this issue in *Reimer*, in which she stated that the cases not allowing the appointment of groups of unrelated investors "is now the minority view." *Reimer,* 2008 U.S. Dist. LEXIS 38729 at *8. Judge Buchwald then appointed a group of institutional investors as Lead Plaintiff, relying on a declaration from the movants as evidence that they are "cooperating and pursuing this litigation separately and apart from their lawyers." *Id*. at *9; *see also In re Espeed, Inc. Sec. Litig.*, 232 F.R.D. 95, 99-100 (S.D.N.Y. 2005) ("The fact that the PSLRA was designed to favor institutional investors should be taken into account when determining what constitutes a reasonable group of 'members'"); *In re Star Gas Sec. Litig*, No. 04cv1766 (JBA), 2005 U.S. Dist. LEXIS 5827, at *12 (D. Conn. Apr. 8, 2005) ("The majority of courts considering the issue have taken an intermediate position, allowing a group of unrelated investors to serve as lead plaintiffs. . . .").

The SEC and most courts have correctly reasoned that while the PSLRA prevents joint lead plaintiff applications by dozens or hundreds of ***individual*** investors, the PSLRA does permit "'a group that is small enough to be capable of effectively managing the litigation and the lawyers. . . [and] should be no more than ***three to five persons.***"' *Baan*, 186 F.R.D. at 216-17 (quoting memorandum submitted by the SEC; emphasis added). Here, due to the Institutional Investor Group's small size and cohesive composition, it meets the test articulated by the SEC in *Baan*. *See id.; see also Cendant,* 264 F.3d at 267 ("We . . . agree with the [SEC] that courts should generally

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purchasing SocGen ordinary shares and SocGen ADRs, the members of the Institutional Investor Group are able to represent the interests of all class members in this action.

presume that groups with ***more than five*** members are ***too large*** to work effectively.") (emphasis added).[5]

In addition to its small size, the Institutional Investor Group also satisfies the "rule of reason" test articulated by the Third Circuit in *Cendant*. 264 F.3d at 268. For a group to demonstrate its adequacy, the rule of reason provides only that the group demonstrate that it can actively represent the class and drive the litigation. *See Id.* The Institutional Investor Group has made both of these showings. In addition, the Institutional Investor Group's members provided evidence that they had conferred with one another and their selected Class counsel in connection with their joint

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[5] The New Jersey Funds Group's argument against the appointment of a group of investors as lead plaintiff is undermined by the numerous times that the two funds that comprise the New Jersey Funds Group have themselves sought to be appointed lead plaintiff with other investors with whom they had no prior relationship. *See, e.g.,* Notice of Motion of the FBR Group for Consolidation, Appointment as Lead Plaintiff and Approval of Selection of Lead Counsel, filed in *Weiss v. Friedman, Billings, Ramsey Group, Inc.*, Case No. 05-cv-4617 (RJH) (S.D.N.Y.) (attached hereto as Exhibit B); Notice of Motion of the New Jersey Institutional Investor Group for Consolidation, Appointment as Lead Plaintiff and Approval of Selection of Lead Counsel, filed in *Curkin v. Solomon et al.*, Case No. 05-cv-2827 (KMW) (S.D.N.Y.) (attached hereto as Exhibit C); Motion of the LVC Group for Consolidation, Appointment as Lead Plaintiff and Approval of Selection of Co-Lead Counsel, filed in *A1 Credit Co. v. RAIT Financial Trust, et al.*, Case No. 07-cv-3148-LDD (E.D. Pa.) (attached hereto as Exhibit D); Motion of the Boston Scientific Institutional Investor Group for Consolidation, Appointment as Lead Plaintiff and Approval of Selection of Lead and Liaison Counsel, filed in *Shankar v. Boston Scientific Corp.*, Case No. 05-cv-11934-JLT (D. Mass.) (attached hereto as Exhibit E). Similarly, Oklahoma has also sought appointment as lead plaintiff as part of a group of investors with no pre-litigation relationship. *See* Motion of the City of Miami General Employees' & Sanitation Employees' Retirement Trust and the Oklahoma Firefighters Pension and Retirement System For (1) Appointment as Lead Plaintiffs; (2) Approval of Their Selection of Counsel as Co-Lead Counsel For The Class; and (3) Consolidation Of All Related Actions, filed in *United Food and Commercial Workers Union Local 880 - Retail Food Employers Joint Pension Fund, et al. v. Sunrise Senior Living Inc.*, Case No. 07-cv-00102-RBW (D.D.C.) (attached hereto as Exhibit F); Motion of Oklahoma Firefighters Pension & Retirement System, Alameda County Employees' Retirement Association, Laborers District Council Construction Industry Pension Fund, Bucks County Retirement Board and Montgomery County Retirement Board for Consolidation, Their Appointment as Co-Lead Plaintiffs and for the Approval of Their Selection of Counsel, filed in *Mizzaro v. Home Depot, Inc. et al.*, Case No. 06-cv-01151-ODE (N.D. Ga.) (attached hereto as Exhibit G).

prosecution of this litigation. *See* Joint Decl. ¶10; *Local 144 Nursing Home Pension Fund v. Honeywell Int'1, Inc.*, No. 00-3605(DRD), 2000 U.S. Dist. LEXIS 16712, at *7-*15 (D.N.J. Nov. 16, 2000) (discussing groups ***at length*** and appointing five institutional investors with largest loss as lead plaintiff).[6]

Accordingly, the Court should appoint the Institutional Investor Group as Lead Plaintiff because it is the movant with the largest loss (and it includes the investor with the single largest loss), it includes investors who purchased SocGen ordinary shares and SocGen ADRs, it is otherwise adequate and typical and no movant has offered any of the requisite "proof" as to why its motion should not be granted.

III. CONCLUSION

For all the reasons stated herein, the Institutional Investor Group's motion for consolidation, appointment as Lead Plaintiff and for approval of its selection of Lead Counsel should be granted and the competing motions should be denied.

DATED: June 9, 2008

COUGHLIN STOIA GELLER
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/s/ *Samuel H. Rudman*
SAMUEL H. RUDMAN

[6] The New Jersey Funds Group has also proposed two law firms to serve as Lead Counsel, without providing any explanation as to why they require two firms to represent them. *See In re Pfizer*, 233 F.R.D. at 338 ("I do not see the need for two law firms. [Appointing only one firm] avoids the danger of unnecessarily duplicative work and, ultimately, a lower recovery for the class").

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CERTIFICATE OF SERVICE

I, Mario Alba, Jr., hereby certify that on June 9, 2008, I caused a true and correct copy of the attached:

> Reply Memorandum Of Law In Further Support Of The Institutional Investor Group's Motion For Consolidation, Appointment As Lead Plaintiff And For Approval Of Its Selection Of Lead Counsel And In Response To The Opposition Of The Competing Motions

to be served: (i) electronically on all counsel registered for electronic service for this case; and (ii) by first-class mail to any additional counsel on the attached service list.

/s/ *Mario Alba, Jr.*
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