

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	No.
	:	
SIEBEL SYSTEMS, INC., KENNETH A.	:	<u>COMPLAINT</u>
GOLDMAN and MARK D. HANSON,	:	
	:	
Defendants.	:	

Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows:

NATURE OF THE CASE

1. This matter involves violations of Regulation FD (Fair Disclosure) and the disclosure controls provisions of the Securities Exchange Act of 1934 (“Exchange Act”).
2. Regulation FD protects small investors by prohibiting issuers from selectively disclosing material nonpublic information to certain persons – securities analysts, broker-dealers, investment advisers and institutional investors – before disclosing the same information to the public. Defendant Siebel Systems, Inc. (“Siebel” or the “Company”) violated Regulation FD when Kenneth A. Goldman (“Goldman”), its Chief Financial Officer, disclosed material nonpublic information during two private events he attended with defendant Mark D. Hanson (“Hanson”) in New York on April 30, 2003, a “one-on-one” meeting with an institutional investor and an invitation-only dinner hosted by Morgan Stanley & Co. (“Morgan Stanley”). At both the meeting and the

dinner, Goldman made positive comments about the Company's business activity levels and transaction pipeline. These statements materially contrasted with negative public statements made by the Company concerning its business in the three weeks leading up to the private meetings. Recipients of this information promptly acted on it either by trading or by further disseminating it to selected investors.

3. Siebel also violated the disclosure controls provisions of Exchange Act Rule 13a-15 by failing to maintain disclosure controls and procedures designed to ensure the proper and timely handling of information required to be disclosed in reports filed or submitted under the Exchange Act, and to ensure that management has the information it needs to make timely disclosure decisions.

4. This is the second time Siebel has violated Regulation FD. In November 2002, the Commission entered a settled cease-and-desist order and obtained a \$250,000 civil penalty against Siebel for violating Regulation FD at an invitation-only conference sponsored by Goldman Sachs in 2001. In that case, the Company violated Regulation FD when it failed simultaneously to disseminate material nonpublic information that Thomas Siebel, the Company's Chairman and Chief Executive Officer, privately disclosed to attendees of the conference. Following the entry of the cease-and-desist order, the Company did little to prevent future violations of Regulation FD. As a result, the violations giving rise to this action occurred less than six months after the Commission ordered Siebel to cease and desist from committing further violations of Regulation FD.

5. Goldman and Hanson, Siebel's Investor Relations Director, aided and abetted the Company's violations of Regulation FD.

6. Goldman knew or was reckless in not knowing that his disclosures at the meeting and the dinner constituted material nonpublic information and that such disclosures were not being simultaneously disseminated to the public. Hanson, who was responsible for the Company's compliance with Regulation FD, acted knowingly or recklessly because he failed to take any precautions to ensure that Goldman did not disclose material nonpublic information under circumstances where he knew that the disclosures would not be simultaneously disseminated to the public.

7. On May 1, 2003, both Goldman and Hanson acted knowingly or recklessly when they learned that the market was reacting to rumors of what was said at the dinner and failed promptly to cause Siebel to issue a public disclosure within the time period mandated by Regulation FD.

8. The defendants will, unless restrained and enjoined, continue to engage in the acts and practices alleged herein, or in acts and practices of similar purport and object.

9. The Commission seeks a judgment from the Court: (a) commanding Siebel to comply with the Commission's cease-and-desist order; (b) permanently enjoining Siebel from committing future violations of Section 13(a) of the Exchange Act, Regulation FD and Exchange Act Rule 13a-15; (c) permanently enjoining Goldman and Hanson from aiding and abetting future violations of Section 13(a) of the Exchange Act, Regulation FD and the Commission's cease and desist order; (d) requiring the defendants to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act; (e) ordering other equitable relief to ensure that Siebel adopts adequate Regulation FD and Rule 13a-15

compliance procedures and controls; and (f) ordering such other relief that the Court may deem just and proper.

JURISDICTION

10. This Court has jurisdiction pursuant to Section 21(d) and (e) and Section 27 of the Exchange Act [15 U.S.C. §§ 78u(d) & (e), 78aa].

DEFENDANTS

11. Siebel Systems, Inc., is a Delaware corporation with its headquarters in San Mateo, California. At all relevant times, the Company's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and traded on the NASDAQ National Market under the symbol SEBL. The Company is a provider of customer relationship management software and other business applications.

12. Kenneth A. Goldman, 55, was, at all times relevant to this action, Siebel's Senior Vice President for Finance and Administration and Chief Financial Officer.

13. Mark D. Hanson, 43, was, at all times relevant to this action, Siebel's Senior Vice President for Corporate Development and Investor Relations.

OTHER RELEVANT INDIVIDUALS AND ENTITIES

14. Jeffrey Amann ("Amann") was, at all times relevant to this action, Siebel's General Counsel.

15. Thomas M. Siebel ("Thomas Siebel") is Siebel's founder and Chairman of the Board of Directors and was, until May 2004, its Chief Executive Officer.

16. Morgan Stanley & Co. is an investment banking, securities and investment management firm headquartered in New York. Morgan Stanley sponsored the one-on-one meeting and hosted the dinner at which the violations described below occurred.

17. Alliance Capital Management (“Alliance”) is a complex of mutual funds and hedge funds, with more than \$400 billion under management, headquartered in New York.

18. Deutsche Bank is an investment banking, securities and investment management firm with offices in New York.

**REGULATION FD AND THE COMMISSION’S FIRST ENFORCEMENT
ACTION AGAINST SIEBEL**

19. In October 2000, the Commission adopted Regulation FD to level the playing field for all investors with respect to the disclosure of material nonpublic information by issuers and persons acting on their behalf. Prior to Regulation FD, small investors were often disadvantaged because they did not have equal access to such information at the same time as large institutional investors and other securities industry professionals.

20. Regulation FD requires that when an issuer discloses material nonpublic information to persons outside the issuer, it must simultaneously disclose such information to the public. Where the issuer or person acting on its behalf knows or is reckless in not knowing that the information it is communicating is both material and nonpublic, the disclosure is intentional within the meaning of Regulation FD.

21. Where the issuer or person acting on its behalf lacks that state of mind, the disclosure is non-intentional under Regulation FD. When a senior official of the issuer learns that there has been a non-intentional disclosure of information that the senior official knows, or is reckless in not knowing, is both material and nonpublic, the issuer is required “promptly” to make “public disclosure.” Under Regulation FD, “promptly”

means as soon as reasonably practicable (but in no event after the later of 24 hours or the commencement of the next day's trading on the New York Stock Exchange).

22. An issuer is required to make "public disclosure" by filing with the Commission a Form 8-K disclosing that information. An issuer is exempt from the filing requirements of Regulation FD only if it instead disseminates that information through another method (or combination of methods) of disclosure reasonably designed to provide broad, non-exclusionary distribution of the information to the public.

23. In 2002, the Commission promulgated Rule 13a-15 under Section 13(a) of the Exchange Act. Rule 13a-15 requires that an issuer maintain controls and procedures designed to ensure that the information that is required to be disclosed in reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms. Rule 13a-15 also requires that such information be accumulated and communicated to the issuer's management so that timely decisions can be made concerning whether public disclosure is required.

24. On November 25, 2002, the Commission entered an order finding that Siebel violated Regulation FD and Section 13(a) of the Exchange Act and requiring Siebel to cease and desist from future violations. *In the Matter of Siebel Systems, Inc.*, Exchange Act Rel. No. 46896 (Nov. 25, 2002) ("*Siebel I*"). On November 26, 2002, the United States District Court for the District of Columbia entered a final judgment ordering Siebel to pay a civil money penalty of \$250,000, in connection with the conduct described in *Siebel I*. *SEC v. Siebel Systems, Inc.*, Civil Action No. 1:02CV02330 (D.D.C.) (JDB) (Nov. 25, 2002).

25. In *Siebel I*, the Commission found that the Company violated Regulation FD and Exchange Act Section 13(a) when Thomas Siebel selectively disclosed material nonpublic information to persons outside the Company at an invitation-only conference sponsored by Goldman Sachs in November 2001. In that case, Thomas Siebel selectively disclosed that the Company was optimistic because its business was returning to normal and it was witnessing a positive trend in its sales transactions pipeline. The Commission found that these statements materially contrasted with negative statements that the Company had publicly made in its quarterly earnings conference call three weeks earlier. Because Siebel failed publicly to disseminate Thomas Siebel's disclosures at the conference, the Commission found that the Company violated Regulation FD.

26. Shortly before the Commission entered its cease-and-desist order in *Siebel I*, Thomas Siebel appointed Hanson as head of the Company's investor relations department and directed Hanson to ensure that the Company did "everything . . . possible" to comply with Regulation FD. In his new position, Hanson had responsibility for overseeing the Company's compliance with Regulation FD.

27. Following *Siebel I*, the Company did little to improve its compliance with Regulation FD. Neither Hanson nor his investor relations staff received any formal training regarding Regulation FD. Nor did Hanson promulgate a formal Company policy regarding compliance with Regulation FD or implement additional safeguards to ensure that Siebel's senior officials did not disclose material nonpublic information in circumstances where such information would not be simultaneously disseminated to the public.

28. Hanson considered compliance with Regulation FD to be a low priority. According to his own weighted performance objectives for the first and second quarters of 2003, approved by the Company's CEO, Hanson's priorities were as follows: to obtain upgraded analyst ratings (30%); to have institutional investors "significantly increase their holdings" (30%); to "enhance Siebel's position in the investment community" (20%); to "establish Investor Relations as an organization that is known as a great place to work" (10%); and, last, to "fully comply with Regulation FD" (10%).

29. Hanson knew that private one-on-one meetings between an issuer and institutional investors or analysts posed serious risk under Regulation FD. After assuming his responsibilities as Investor Relations director, Hanson reviewed an article prepared by the Company's outside corporate counsel, in which it warned of the "substantial risks" of participating in one-on-one meetings:

Limited access [one-on-one] meetings between a company and analysts and investors pose substantial risks under the new rules. While such meetings are not prohibited, companies must take particular care not to release material, non-public information inadvertently in response to questions or requests for guidance on earnings forecasts or "street" estimates.

30. Goldman also understood that he needed to be careful in one-on-one meetings with investors, and that it was highly risky to discuss guidance in such settings.

SIEBEL'S PUBLIC DISCLOSURES PRIOR TO APRIL 30, 2003

31. On April 4, April 23, and April 28, 2003, Siebel made several public statements concerning its performance in the first quarter of 2003 and its expected performance in the second quarter of 2003. In each statement, the Company discussed its disappointing first quarter 2003 results and attributed those results to the poor economy. In each statement, the Company characterized the economy negatively (as not improved

or not improving). The Company further explained that its performance in the first quarter of 2003 was negatively affected by “deals that slipped,” that is, deals in the “pipeline” that were being negotiated and were expected, but failed, to close by the end of the first quarter.

32. A software company’s transaction pipeline is a leading indicator of the company’s future financial performance. The Company’s senior executives use the Company’s own software to monitor the day-to-day activities of the sales force and to track developments on transactions. For shareholders or potential investors, information concerning the status of the Company’s pipeline – whether it is lagging, static or growing – and the activity levels of the sales force – whether they are active or inactive – is important to making an investment decision because such information is an indicator of the Company’s ability to generate revenue.

33. On April 4, Siebel issued an earnings warning. Siebel warned that first quarter revenues would fall short of its forecast and, in its press release, attributed the shortfall to deals that did not close before the end of the quarter, *i.e.*, the “deals that slipped.” During the conference call that day to discuss the earnings shortfall, Thomas Siebel stated that “there is clearly less business activity right now than there was three months ago.”

34. In the Company’s public statements on April 23 and 28, it provided guidance for the second quarter of fiscal year 2003. The Company projected that its software license revenue would be in the range of \$120 to \$140 million, which was more than the Company’s reported revenue for the first quarter. The Company conditioned its estimate on the performance of the overall economy. It said that if the economy

improved, Siebel's business would improve, and that, conversely, if the economy did not improve, then Siebel's business would not improve.

35. On April 23, Siebel announced its first quarter results and hosted a conference call to discuss first quarter earnings and guidance for the second quarter. In discussing the Company's first quarter performance, Thomas Siebel was negative. He characterized the first quarter as a "tough quarter" and linked the Company's difficulties to the economy generally. He further stated that certain deals "didn't get signed . . . due to basically uncertainty and war and disease and everything that's going on around the world that's kind of yucky right now" and that "the economic situation is really very uncertain out there . . . we are not in expansive stage of the business cycle yet."

36. At least twice during the April 23 conference call, an analyst asked Thomas Siebel to quantify or comment upon the impact of the deals that "slipped" on the Company's calculation of its second quarter guidance. The analyst wanted to know how much of the projected increase in software license revenues in the second quarter compared to the first quarter revenues was attributable to the deals that slipped from the first quarter as opposed to the Company's expectation that it would generate new business in the second quarter. In response to one of the questions, Thomas Siebel avoided answering the question by describing the process that the Company used to formulate its guidance; when pressed a second time, he directly declined to answer the question.

37. On April 28, Thomas Siebel spoke at a conference sponsored by Deutsche Bank in New York that was broadcast to the public over the World Wide Web. In that speech, Thomas Siebel reiterated how "tough" the market was for Siebel's products and

again linked the Company's past and future performance to general economic conditions. He repeated his negative assessment of the economy: "With war, with famine, with disease, I mean it's like the apocalypse out there." When asked what the Company was witnessing "in terms of activity levels now in April and the economy," Thomas Siebel responded:

"Well I read *Business Week* on the airplane and I see that they've extrapolated the downward trend in software to now boomerang and it's all happy days are here again. I don't see anything in the market to indicate that that's true."

38. Once again, Thomas Siebel was asked to comment on the increase in the Company's second quarter guidance over the first quarter actual software license revenues and to specify whether the increase was attributable to the "pushed out" deals from the first quarter or to a bigger second quarter pipeline. Once again, he evaded the question; he responded, as he had in the April 23 conference call, by listing the general factors that went into the formulation of the Company's guidance. He did not quantify the deals that slipped, did not describe the status of the company's pipeline and did not characterize the Company's activity levels. Again, he linked the Company's prospective performance to the economy's performance – that is, if the economy improved, Siebel's business would improve.

39. Goldman and Hanson were present for or had knowledge of the April 4 earnings warning and conference call, the April 23 earnings announcement and conference call, and Thomas Siebel's April 28 Deutsche Bank speech.

SIEBEL'S SELECTIVE DISCLOSURES ON APRIL 30

40. The April 28 Deutsche Bank conference marked the beginning of a three-day "marketing" effort in which Goldman and Hanson met privately with numerous

institutional investors. At that conference, Goldman and Hanson conducted a series of one-on-one meetings in New York with institutional investors. The next day, April 29, in connection with a similar conference in Boston, Goldman and Hanson conducted additional one-on-one meetings with large institutional investors.

41. On April 30, 2003, Hanson and Goldman returned to New York to participate in yet three more one-on-one meetings, including one with Alliance, and a dinner, all sponsored or hosted by Morgan Stanley. The dinner at Morgan Stanley's offices was private and was attended by approximately six institutional investors and a number of Morgan Stanley research and institutional sales personnel.

42. Hanson and Goldman knew that the Alliance one-on-one meeting and the Morgan Stanley dinner would be attended by institutional investors. They also knew that neither of those events was being webcast or otherwise simultaneously disseminated to the public.

The Alliance One-on-One Meeting

43. During the Alliance one-on-one meeting, Goldman disclosed material nonpublic information about Siebel's business. Goldman stated that Siebel's activity levels were "better," that new deals were coming back into the pipeline, and that the pipeline was now "growing." Goldman also disclosed that there were some \$5 million deals in Siebel's pipeline. Neither Siebel nor any of its representatives (Thomas Siebel, Goldman or Hanson) had made these disclosures in the April 4 earnings warning, the April 23 conference call or the April 28 Deutsche Bank conference.

44. Prior to the Alliance one-on-one meeting, the two Alliance portfolio managers who attended the meeting had not held Siebel stock in the funds they managed

for approximately 12 months. A third Alliance portfolio manager viewed Siebel as “kind of a small junky company” and held short positions in Siebel stock in funds he managed, as did yet a fourth Alliance portfolio manager.

45. Immediately following Goldman’s disclosures, the two Alliance portfolio managers who attended the one-on-one meeting placed orders to purchase 114,200 shares of Siebel stock. The following morning, May 1, the Alliance personnel who had met with Goldman and Hanson communicated Goldman’s disclosures to the third Alliance portfolio manager, who then covered his existing short position in Siebel stock and advised the fourth portfolio manager to do the same – which he did.

46. Thus, within roughly four trading hours after Goldman and Hanson met with Alliance representatives, Alliance converted its 108,200 share short position in Siebel stock into a 114,200 share long position – a net change of 222,400 shares.

47. Following the Alliance meeting, Hanson did not assess whether Goldman had disclosed material nonpublic information at the meeting, did not counsel Goldman not to disclose material nonpublic information about current business conditions, and made no effort to ensure that Goldman discussed only information that had already been publicly disclosed when he appeared at the Morgan Stanley dinner a few hours later.

The Morgan Stanley Dinner

48. At or around 6:00 p.m. on April 30, Goldman and Hanson attended a dinner in Morgan Stanley’s offices. At the dinner, Goldman made disclosures of positive material nonpublic information about Siebel’s business. He stated that the Company’s business activity levels were “good” or “better” and that its sales transaction pipeline was “building.”

49. These statements materially contrasted with the public statements that Thomas Siebel had made during the April 4 and 23 conference calls and at the Deutsche Bank conference on April 28. For example, in contrast to the apocalyptic economic environment that Thomas Siebel described at the Deutsche Bank conference, Goldman's disclosures at the April 30 Alliance meeting and Morgan Stanley dinner were significantly more positive and upbeat. Unlike the Company's prior public disclosures about its prospective performance in the second quarter, Goldman's statements about the Company's business were not linked to or conditioned upon the performance of the economy.

50. Nor were Goldman's statements mere descriptions of the process that the Company used to formulate its guidance. Rather, by disclosing that Siebel's business activity levels were "good" and "better," and that its sales transaction pipeline was "growing" and "building," Goldman communicated to his private audiences that Siebel's business was improving as the result of new business, and that the increase in the Company's guidance for the second quarter was not simply because deals that had slipped from the first quarter were closing. Goldman thus answered privately the questions that Thomas Siebel just days before had refused to answer publicly.

51. At the time the comments were made, Goldman and Hanson knew, or were reckless in not knowing, that Goldman's comments at the Alliance meeting and the Morgan Stanley dinner were both material and nonpublic.

SIEBEL FAILED TO MAKE PROMPT PUBLIC DISCLOSURE

52. Early the next morning, May 1, Morgan Stanley began publicizing Goldman's positive statements to its institutional clients. For example, at approximately

6:50 a.m., a Morgan Stanley institutional sales trader called a client to report on the dinner. He said that the Morgan Stanley “analyst’s take” on the dinner was “the body language was positive . . . the pipeline building and expected to grow,” and characterized the information as “positive data points.” Morgan Stanley communicated Goldman’s selective disclosures by e-mail to hundreds of individuals, many of whom were affiliated with its institutional investor clients.

53. At least two of the attendees at the Morgan Stanley dinner bought Siebel stock on the morning of May 1. In addition, certain of the recipients of the Morgan Stanley e-mail also bought Siebel stock on the morning of May 1.

54. Siebel’s stock closed at \$8.66 on April 30. On May 1, the stock price closed at \$9.34, or roughly 8% higher than the prior day’s close. Trading volume on May 1 was nearly double the average daily volume for the preceding 12 months.

55. As Siebel’s stock price began climbing on May 1, the Company began receiving inquiries concerning rumors about what was said at the Morgan Stanley dinner. At this time, Hanson was en route from New York to San Francisco. When he arrived in San Francisco, Hanson retrieved several voicemail messages from investors and analysts who were calling about the dinner the previous evening. One of the voicemails was from a caller who indicated that he or she was hearing rumors that the Company’s CEO (Thomas Siebel) had spoken positively about the Company’s business at a dinner in New York the previous night.

56. Hanson also checked his e-mail while he was at the San Francisco airport and received a message from one of his assistants about activity in Siebel stock. The assistant forwarded Hanson a message from an investor that included information from a

financial news service that had been posted on an internet message board: “SEBL higher on chatter of CFO speaking positively on business conditions at an event last night.” The assistant asked Hanson what Goldman had said at the dinner. Hanson responded at 11:36 a.m. PDT by e-mail, as follows:

Pipeline a little stronger. We’ve closed a few deals that slipped from Q1, not all. Focused on cost cutting further to improve margins. Still a lot of work left in Q2 but **confidence in the quarter is good.** [Emphasis added.]

57. Hanson consulted with Amann, Siebel’s general counsel. Hanson told Amann that the rumors were false. Hanson and Amann discussed whether public disclosure was necessary. Hanson did not reveal to Amann that Goldman had made statements at both the Alliance one-on-one meeting and Morgan Stanley dinner about Siebel’s activity levels and its transaction pipeline.

58. Goldman was traveling on personal business on May 1, and his only communications with Amann regarding his disclosures on April 30 were a brief e-mail exchange and a telephone conversation late in the afternoon. At 4:45 p.m. PDT, Amann sent an e-mail to Goldman with the reference, “Stock Activity,” and the message, “I’m sure we have nothing to worry about here, but please let me know if you think any additional disclosure or other actions are required.” Amann attached a *CBS MarketWatch* article reporting that Siebel shares rose on high volume after Goldman attended a dinner with financial analysts the previous evening. Goldman responded late that evening, telling Amann that he “only reiterated exactly what was stated at the earnings call.” Goldman did not inform Amann that he had characterized the Company’s activity levels as being “good” or “better” at the dinner, even though that information had not been disclosed in the Company’s prior public statements.

59. Siebel did not record or memorialize what Goldman said at the Alliance one-on-one meeting or at the Morgan Stanley dinner.

60. Siebel failed to file with the Commission the required Form 8-K disclosing the material nonpublic information that Goldman had disclosed at the Alliance meeting and the Morgan Stanley dinner within the time periods specified in the Commission's rules or forms, or to disseminate that information through another method of disclosure reasonably designed to provide broad, non-exclusionary distribution of the information to the public.

FIRST CLAIM

Intentional Selective Disclosures in Violation of Section 13(a) of the Exchange Act and Regulation FD (Against Siebel)

61. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 6 and 8 through 59 above.

62. Siebel is an "issuer" within the meaning of Regulation FD [17 C.F.R. § 243.101(b)].

63. The attendees at the Alliance one-on-one meeting and the Morgan Stanley dinner were "person[s] outside the issuer" within the meaning of Regulation FD [17 C.F.R. § 243.100(b)].

64. Goldman and Hanson were "persons acting on behalf of the issuer" and "senior officials" within the meaning of Regulation FD [17 C.F.R. §§ 243.101(c) and (f)].

65. Goldman's disclosures at the Alliance one-on-one meeting and the Morgan Stanley dinner constituted material nonpublic information that was not simultaneously disseminated to the public.

66. Goldman knew or was reckless in not knowing that his disclosures at the Alliance one-on-one meeting and the Morgan Stanley dinner constituted material nonpublic information.

67. Goldman's disclosures were intentional selective disclosures within the meaning of Regulation FD [17 C.F.R. § 243.101(a)].

68. By reason of the actions alleged herein, Siebel violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Regulation FD [17 C.F.R. § 243.100 *et seq.*].

SECOND CLAIM

Non-Intentional Selective Disclosures in Violation of Section 13(a) of the Exchange Act and Regulation FD (Against Siebel)

69. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 5, 7 through 50, and 52 through 60 above.

70. Siebel is an "issuer" within the meaning of Regulation FD [17 C.F.R. § 243.101(b)].

71. The attendees at the Alliance one-on-one meeting and the Morgan Stanley dinner were "person[s] outside the issuer" within the meaning of Regulation FD [17 C.F.R. § 243.100(b)].

72. Goldman and Hanson were "persons acting on behalf of the issuer" and "senior officials" within the meaning of Regulation FD [17 C.F.R. §§ 243.101(c) and (f)].

73. Goldman's disclosures at the Alliance one-on-one meeting and the Morgan Stanley dinner constituted material nonpublic information that was not simultaneously disseminated to the public.

74. Even if Goldman's statements are not deemed to be intentional disclosures, such disclosures were, at a minimum, non-intentional selective disclosures within the meaning of Regulation FD [17 C.F.R. § 243.100 *et seq.*].

75. On May 1, 2003, Goldman and Hanson learned that there had been non-intentional disclosures by Goldman at the Alliance one-on-one meeting and at the Morgan Stanley dinner that they knew or were reckless in not knowing were both material and nonpublic.

76. Siebel failed "promptly," as that term is defined in Regulation FD [17 C.F.R. § 243.101(d)], to make public disclosure of the material nonpublic information selectively disclosed at the Alliance one-on-one meeting and at the Morgan Stanley dinner.

77. By reason of the actions alleged herein, Siebel violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Regulation FD [17 C.F.R. § 243.100 *et seq.*].

THIRD CLAIM

Violation of Commission Cease-and-Desist Order (Against Siebel)

78. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 77 above.

79. In its November 25, 2002 Order in *Siebel I (In the Matter of Siebel Systems, Inc., Exchange Act Rel. No. 46896 (Nov. 25, 2002))*, the Commission ordered Siebel to "cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Regulation FD, 17 C.F.R. § 243.100, *et seq.*"

80. Section 21(e) of the Exchange Act [15 U.S.C. § 78u(e)] states that “[u]pon application of the Commission the district courts of the United States . . . shall have jurisdiction to issue writs of mandamus, injunctions, and orders commanding . . . any person to comply with the provisions of this title, the rules, regulations, and orders thereunder”

81. By reason of the conduct alleged above, and as alleged in the claims for relief above, Siebel committed violations of Section 13(a) of the Exchange Act and Regulation FD after entry of the cease-and-desist order in *Siebel I*. Accordingly, Siebel has violated the Commission’s November 25, 2002 Order in *Siebel I*.

FOURTH CLAIM

Aiding and Abetting Intentional Selective Disclosures in Violation of Section 13(a) of the Exchange Act, Regulation FD and the Commission’s Cease-and-Desist Order
(Against Goldman and Hanson)

82. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 6, 8 through 59, 61 through 68, and 78 to 81 above.

83. Goldman and Hanson knowingly provided substantial assistance to Siebel in its violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Regulation FD [17 C.F.R. § 243.100 *et seq.*].

84. By reason of the actions alleged herein, Goldman and Hanson aided and abetted Siebel’s violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Regulation FD [17 C.F.R. § 243.100 *et seq.*].

85. In addition, by aiding and abetting Siebel’s violations of Section 13(a) of the Exchange Act and Regulation FD, Goldman and Hanson aided and abetted Siebel’s violations of the Commission’s cease-and-desist order in *Siebel I*.

FIFTH CLAIM

Aiding and Abetting Non-Intentional Selective Disclosures in Violation of Section 13(a) of the Exchange Act, Regulation FD and the Commission's Cease-and-Desist Order (Against Goldman and Hanson)

86. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 5, 7 through 50, 52 through 60, and 69 through 81 above.

87. Goldman and Hanson knowingly provided substantial assistance to Siebel in its violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Regulation FD [17 C.F.R. § 243.100 *et seq.*].

88. By reason of the actions alleged herein, Goldman and Hanson aided and abetted Siebel's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Regulation FD [17 C.F.R. § 243.100 *et seq.*].

89. In addition, by aiding and abetting Siebel's violations of Section 13(a) of the Exchange Act and Regulation FD, Goldman and Hanson aided and abetted Siebel's violations of the Commission's cease-and-desist order in *Siebel I*.

SIXTH CLAIM

Violation of Section 13(a) of the Exchange Act and Rule 13a-15 thereunder (Against Siebel)

90. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 80 above.

91. Siebel has at all relevant times been an issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l].

92. Regulation FD is a disclosure rule that imposes filing requirements under the Exchange Act [17 C.F.R. § 243.101(e)(1)].

93. As alleged above, Siebel failed to maintain controls and other procedures designed to ensure that information required to be disclosed in the reports that it files or submits under the Exchange Act (15 U.S.C. § 78a *et seq.*) is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms.

94. As alleged above, Siebel also failed to maintain controls and procedures designed to ensure that information required to be disclosed in the reports that it files or submits under the Exchange Act is accumulated and communicated to its management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

95. By reason of the actions alleged herein, Siebel violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rule 13a-15 [17 C.F.R. § 240.13a-15] thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a final judgment:

I.

Commanding Siebel to comply with the Commission's cease-and-desist order in *In the Matter of Siebel Systems, Inc.*, Exchange Act Rel. No. 46896 (Nov. 25, 2002), pursuant to Section 21(e) of the Exchange Act [15 U.S.C. § 78u(e)];

II.

Permanently enjoining and restraining Siebel from violating Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], Regulation FD [17 C.F.R. § 243.100 *et seq.*] and Rule 13a-15 [17 C.F.R. § 240.13a-15];

III.

Permanently enjoining and restraining Goldman and Hanson from aiding and abetting violations of Section 13(a) of the Exchange Act, Regulation FD and the Commission's cease-and-desist order;

IV.

Ordering Siebel to pay a civil money penalty for each violation of the Commission's cease-and-desist order, pursuant to Section 21(d)(3)(D) of the Exchange Act [15 U.S.C. § 78u(d)(3)(D)];

V.

Ordering Siebel to pay a civil money penalty for each violation of Section 13(a) of the Exchange Act, Regulation FD and Rule 13a-15, pursuant to Section 21(d)(3) of the Exchange Act;

VI.

Ordering Goldman and Hanson each to pay a civil money penalty for aiding and abetting violations of Section 13(a) of the Exchange Act, Regulation FD and the Commission's cease and desist order, pursuant to Section 21(d)(3) of the Exchange Act;

VII.

Granting other equitable relief, including the imposition of such undertakings as may be appropriate or necessary to ensure that Siebel adopts, maintains and enforces adequate Regulation FD and Rule 13a-15 compliance controls and procedures; and

VIII.

Granting such other relief as this Court may deem just and proper.

Respectfully submitted,

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Dated: June 29, 2004