

Filed

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

V.

00 CIV. 2029 (GEL)

AVY AMOUYAL, ANDRE AMOUYAL, PINHAS  
AMOUYAL, SAMUEL CHEMOUNY, SERGE  
HADDAD, MARC BITAN, BERNARD BRACHA,  
GERARD PARIENTE, FRANK NACCACHE, and  
ARNAUD MIMRAN,

## AMENDED COMPLAINT

Defendants.

Plaintiff Securities and Exchange Commission (the “Commission”) alleges for its Amended Complaint:

## NATURE OF THE ACTION

1. In March 2000, the defendants engaged in illegal insider trading in the common stock of Financial Security Assurance Holdings, Ltd., (“FSA”) through accounts at banks headquartered in Luxembourg and Israel, yielding illegal profits of approximately \$ 1.5 million. This Amended Complaint seeks disgorgement of illegal profits plus prejudgment interest, civil

monetary penalties and permanent injunction from further violations of antifraud provisions of the Securities Exchange Act of 1934, specifically Section 10(b) and Rule 10b-5 thereunder.

2. The defendants committed the alleged violations by purchasing, through the facilities of the New York Stock Exchange, common stock of FSA while in possession of material, nonpublic information concerning a contemplated acquisition of FSA by another entity, Dexia Group, when they knew, had reason to know, or recklessly disregarded the fact that material nonpublic information about the merger had been communicated to them, directly or indirectly, in breach of fiduciary or similar duties of trust and confidence.

3. On March 16, 2000, upon the Commission's *ex parte* application, this Court entered a temporary restraining order that, among other things, froze assets in the accounts through which the defendants' unlawful trades were executed. On March 30, 2000, the Court entered a Preliminary Injunction, continuing the asset freeze and the other relief provided for in the TRO.

4. On January 24, 2001, the Court entered final judgments as to defendants Serge Haddad and Marc Bitan who, without admitting or denying that they committed any violation, consented to the entry of the Final Judgments.

5. This action was formerly captioned *Securities and Exchange Commission v. Certain Unknown Purchasers of the Common Stock of Financial Security Assurance holdings, Ltd.* Pursuant to the Court's order of October 22, 2001, the Commission hereby amends its complaint and the caption to, among other things, identify the purchasers of the FSA stock described herein.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to Sections 21(e), 21A and 27 of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. ss 78u(e), 78u-1 and 78aa].

7. Defendants, directly or indirectly, made use of the means or instrumentalities of inter state commerce, or of the United States mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices and course of business alleged herein.

8. This Court properly has venue over this action because certain of the securities transactions at issue herein were affected and cleared through United States broker-dealers with offices located in the Southern District of New York. In addition, the common stock at issue was, at all relevant times, listed on the New York Stock Exchange, which is located in the Southern District of New York.

9. Defendants will, unless restrained and enjoined, continue to engage in the acts, practices and course of business alleged herein, or in transactions, acts practices and courses of business of similar purport and object. If the asset freeze provisions of the Court's Preliminary Injunction are lifted, assets which would otherwise be available to satisfy the Commission's claims for disgorgement, prejudgment interest and civil monetary relief are likely to be transferred out of the United States.

## **DEFENDANTS**

10. Defendant Avy Amouyal is a 23 year-old stockbroker and a resident of Paris, France.
11. Defendant Andre Amouyal is a part-time resident of Paris and the uncle of defendant Avy Amouyal.
12. Defendant Pinhas Amouyal is a relative of defendants Andre and Avy Amouyal, and a resident of Paris.
13. Defendant Serge Haddad is a resident of Paris and co-owner of a jewelry store with defendant Marc Bitan. At all relevant times, Haddad was a friend of defendant Avy Amouyal.
14. Defendant Marc Bitan is a resident of Paris and co-owner of a jewelry store with defendant Haddad.
15. Defendant Bernard Bracha is a 39 year-old resident of Paris and the general manager of a clothing and appliance retail store. At all relevant times, he knew defendant Avy Amouyal.
16. Defendant Samuel Chemouny resides in Paris. At all relevant times, he was a friend of defendant Avy Amouyal.
17. Defendant Frank Naccache resides in Paris.
18. Defendant Gerard Pariente is a resident of Paris.
19. Defendant Arnaud Mimran is a stockbroker and resident of Paris. At all relevant times, he was an acquaintance of defendant Avy Amouyal, and they had one or more friends in common.

## **FSA AND DEXIA**

20. FSA is a New York company headquartered in New York, engaged primarily in providing financial guaranty insurance on asset-backed and municipal obligations such as residential mortgages, consumer receivables, government securities, pooled corporate obligations, investor-owned utility obligations, and a commercial mortgage portfolio. FSA common stock was registered pursuant to Section 12 of the Exchange Act and traded on the New York Stock Exchange.

21. Dexia is Europe's largest municipal lender with assets of over \$230 billion and is headquartered in Paris and Brussels. It provides financial services to the public sector in Europe, having a significant presence in France, Belgium and Luxembourg, and operations throughout Europe. Its common stock trades on the Brussels, Paris and Luxembourg Stock Exchanges.

### **Entities in Paris Participate in the Confidential Merger Discussions**

22. In June 1999, FSA and Dexia entered into a confidentiality agreement confirming that discussions between them concerning a possible business combination would be conducted in confidence. The agreement was revised in January 2000, and required employees and agents working on behalf of FSA and Dexia to keep confidential all information about the proposed merger.

23. In early January 2000, representatives of FSA and Dexia resumed discussions with each other concerning the possible acquisition of FSA by Dexia.

24. Shortly thereafter, the discussions between FSA and Dexia were placed on hold. In early February 2000, the confidential discussions resumed and included law firms, investment banking firms and other entities that were retained to assist the parties.

25. Confidential meetings and discussions concerning the possible acquisition of FSA by Dexia took place in Paris. For example, on February 21, 2000, a meeting took place in Paris between representatives of Dexia and members of the Paris offices of investment banking firms retained by Dexia.

**The New York Stock Exchange Temporarily Halts Trading in FSA Shares**

26. On March 9, 2000, trading in FSA opened at a price of \$46 6/16. By 11:21 a.m., the price of FSA shares had increased by nearly \$7 per share on unusually high trading volume. The SEC is not aware of any news or other public information circulating in the market about the sale of FSA prior to FSA's limited announcement on the afternoon of March 9<sup>th</sup>.

27. At 12:06 p.m. on March 9, 2000, the NYSE halted trading in FSA common stock after noticing that the price of the stock had increased to \$55 per share on unusually high volume without apparent justification. The unusually high volume included, in significant part, shares purchased by the defendants.

28. At 1:47 p.m. on March 9, 2000, after being contacted by the NYSE, FSA announced that it was in discussions with an unnamed third party concerning the possible sale of FSA and that no further news would be forthcoming until a definitive agreement had been reached.

29. At 2:22 p.m. on March 9, 2000, the NYSE lifted its trading halt and trading in FSA shares reopened at \$59 ½ per share and the shares traded as high as \$62/share before closing that day at \$58 ½ per share.

30. On March 14, 2000, FSA and Dexia publicly announced that they had agreed to a transaction in which Dexia would acquire the outstanding shares of FSA in a cash merger for

approximately \$2.6 billion. Under the terms of the acquisition, FSA stockholders were scheduled to receive \$76 for each of their FSA shares. On March 14<sup>th</sup>, FSA stock sold for \$71 11/16 at the close of trading that day.

### **The Defendants' Unlawful Trading in FSA Common Stock**

31. Defendant Avy Amouyal is a beneficial owner of a securities brokerage account maintained in the names of members of the Amouyal family at Bank Leumi Le-Israel (Amouyal Account # 1). On or before March 7, 2000, defendant Avy Amouyal learned that FSA was the subject of a possible merger and that the price of its shares would go up quickly. Thereafter and prior to the afternoon of March 9, 2000, defendant Avy Amouyal recommended the purchase of FSA shares to certain other defendants and disclosed to them what he had learned about the possible merger.

32. Defendant Andre Amouyal is also a beneficial owner of Amouyal Account #1. In addition, he is a beneficial owner of another securities brokerage account at Bank Leumi Le-Israel maintained in his name (Amouyal Account # 2). After defendants Avy and Andre Amouyal learned from a mutual friend, Oliver Senac, that FSA was the subject of a possible merger, defendant Andre Amouyal purchased or caused to be purchased, at least 17,000 shares of FSA common stock in at least three separate transactions. First, on March 7, 2000, defendant Andre Amouyal purchased, or caused to be purchased, a total of 5,000 shares of FSA common stock in Amouyal Account # 1 at an average price of \$ 45 per share. Second, on March 9, 2000, defendant Andre Amouyal purchased or caused to be purchased, a total of 10,000 shares of FSA common stock; 5,000 of those shares were purchased in Amouyal Account # 1 at an average price of \$ 47.09 per share, and the remaining 5,000 shares were purchased in Amouyal Account #2 at a price

of \$ 55 per share. Defendant Andre Amouyal's third purchase occurred on March 10, 2000, when he purchased or caused to be purchased, 2,000 shares of FSA common stock at a price of \$ 58.8125 per share.

33. Defendant Pinhas Amouyal is a beneficial owner of a securities brokerage account maintained in his and his wife's name at Bank Hapoalim. On March 9, 2000, after learning that FSA was the subject of a possible merger, defendant Pinhas Amouyal purchased, or caused to be purchased, 2,000 shares of FSA common stock in his and his wife's account at Bank Hapoalim at an average price of \$ 51.26 per share.

34. Defendant Haddad is a beneficial owner of a securities brokerage account maintained in his name at Israel Discount Bank. On March 9, 2000, after learning from defendant Avy Amouyal that FSA was the subject of a possible merger and that the price of FSA stock would go up quickly, defendant Haddad purchased 8,300 shares of FSA common stock in his account at Israel Discount Bank at an average price of \$ 49.30 per share. Defendant Avy Amouyal solicited, and defendant Haddad agreed to give to defendant Avy Amouyal, a payment of 30,000 francs for that trading tip, a portion of which Haddad paid to Avy Amouyal at the time of the tip. Avy Amouyal repaid Haddad following, and as consequence of, the March 16, 2001 TRO.

35. Defendant Bitan is a beneficial owner of a securities brokerage account maintained in his name at Israel Discount Bank. On March 9, 2000, after learning from defendant Haddad that FSA was the subject of a possible merger and that the price of FSA shares would go up quickly, defendant Bitan purchased 3,000 shares of FSA common stock in his account at Israel Discount Bank at an average price of \$ 49.37 per share.



36. Defendant Bracha is a beneficial owner of a securities brokerage account maintained in his name at Bank Hapoalim. At all relevant times, he was a friend of defendant Avy Amouyal. On March 9, 2000 after learning that FSA was the subject of a possible merger, defendant Bracha purchased 10,000 shares of FSA common stock in his account at Bank Hapoalim at an average price of \$ 48.05 per share. On or about March 10, 2000, defendant Bracha purchased 7,000 shares of FSA at \$ 58.81 per share in his account at Bank Hapoalim.

37. Defendant Chemouny is a beneficial owner of a securities brokerage account maintained in his name at Bank Leumi Le-Israel. On March 9, 2000 after learning that FSA was the subject of a possible merger, defendant Chemouny purchased 2,000 shares of FSA common stock at an average price of approximately \$ 58.60 per share.

38. Defendant Naccache is a beneficial owner of a securities brokerage account maintained in his name at Bank Leumi Le-Israel. On March 9, 2000 after learning that FSA was the subject of a possible merger, defendant Naccache purchased 5,000 shares of FSA common stock in his account at Bank Hapoalim at a price of \$46.38 per share.

39. Defendant Pariente is a beneficial owner of a securities brokerage account maintained at the Geneva offices of Bank Edmond de Rothchild. On March 9, 2000 after learning that FSA was the subject of a possible merger, defendant Pariente purchased 350 shares in his account at Bank Edmond de Rothchild at an approximate average price of \$ 59.15 per share.

40. Defendant Mimran controls and has a beneficial interest in a securities brokerage account maintained at Bank Edmond de Rothschild in the name of Lester Portfolio Management. On the morning of March 9, 2000, after learning that FSA was the subject of a possible merger, defendant Mimran purchased or caused to be purchased 30,000 shares of FSA common stock in the

LPM account at an average price of \$ 56.50 per share and on March 14, 2000, prior to the announcement, he purchased or caused to be purchased, a total of \$ 5,000 shares of FSA common stock in the LPM account at an average price of \$ 59.04 per share.

### **FIRST CAUSE OF ACTION**

#### **Violations of Exchange Act Section 10(b) and Rule 10b-5 Promulgated Thereunder**

41. Paragraphs 1 through 40 are realleged and incorporated herein by reference.

42. At the time the defendants purchased or caused FSA common stock to be purchased as described above, they were in possession of material, nonpublic information about the contemplated merger of FSA and they knew, had reason to know, or recklessly disregarded the fact that the information had been communicated to them about the contemplated FSA merger was material and nonpublic and that it had been communicated to them, directly or indirectly, in breach of a fiduciary or similar duty of trust and confidence.

43. When news of the merger was absorbed by the marketplace by the close of business on March 14, 2000, the price of FSA shares increased to approximately \$70.68 per share, resulting in illegal profits in the following approximate amounts:

	<u>Defendants</u>	<u># Shares</u>	<u>Profit</u>
a.	Amouyals	19,000	\$363,767
b.	Samuel Chemouny	2,000	24,000
c.	Serge Haddad	8,300	177,433
d.	Marc Bitan	3,000	63,922
e.	Bernard Bracha	17,000	335,410
f.	Gerard Pariente	350	4,000
g.	Frank Naccache	5,000	121,000
h.	Arnaud Mimran	35,000	425,000
		<u>89,650</u>	<u>\$1,514,535</u>

44. By reason of the foregoing, the defendants, directly and indirectly, violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and are likely to commit such violations in the future unless enjoined from doing so.


**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Commission respectfully requests that this Court enter a judgment:

- (i) permanently enjoining the defendants from violating Sections 10(b) and 14(e) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rules 10b-5 [17 C.F.R. §§ 240.10b-5];
- (ii) ordering the defendants to disgorge all profits realized from the unlawful trading alleged herein, with prejudgment interest;
- (iii) ordering defendants to pay civil penalties under Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and
- (iv) granting such other relief as this Court may deem just and appropriate.

Dated: December 12, 2001  
Washington, D.C.

Respectfully submitted,

  
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