

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 59401 / February 13, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13372

In the Matter of

SG Americas Securities, LLC and
Francois O. Barthelemy,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against SG Americas Securities, LLC (“SGAS”) and Francois O. Barthelemy (“Barthelemy”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and the Offers submitted by the Respondents, the Commission finds¹ that:

a. SUMMARY

1. This matter involves the failure by SGAS (by and through the transactions described in paragraph 5. below) and Barthelemy to reasonably supervise Guillaume Pollet (“Pollet”), a former managing director at SG Cowen Securities Corporation (“SG Cowen”). Pollet was the head of SG Cowen’s two-person Reg. D/Private Placement desk (“Reg. D Desk”), in charge of investing the capital of SG Cowen’s parent, Société Générale (“SG”), in private issuances of public equities, popularly known as “PIPE” transactions. During 2001, Pollet violated the antifraud provisions of the federal securities laws by selling short the publicly traded securities of PIPE issuers prior to the close of the PIPE transaction in which he was investing or contemplating investing. In certain instances, Pollet’s short-selling was contrary to specific representations in Securities Purchase Agreements (“SPAs”), including representations that no short selling or trading in the issuer’s securities had taken place. With respect to ten PIPE transactions, Pollet’s pre-close short selling also constituted unlawful insider trading. All of the trading took place in an SG proprietary account, which made at least \$5.75 million in profits from Pollet’s unlawful conduct.

2. In 2005, the Commission filed an enforcement action against Pollet based on this conduct, *SEC v. Guillaume Pollet* (05 Civ. 1937 (SLT)). The United States Attorney’s Office for the Eastern District of New York (“EDNY”) also filed criminal charges against Pollet. *See U.S. v. Guillaume Pollet*, 05 Cr. 287 (SLT). A final settlement has been entered by the Court in the Commission’s action, pursuant to which Pollet was permanently enjoined from violating Section 17(a) of the Securities Act of 1933 (“Securities Act”), and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and ordered to pay a civil penalty in the amount of \$150,000. In addition, the Commission instituted and simultaneously settled administrative proceedings against Pollet barring Pollet from association with any broker or dealer pursuant to Section 15(b)(6) of the Exchange Act. Pollet pled guilty to one count of securities fraud in the criminal case, relating to his trading in one of the PIPE transactions at issue in the Commission’s complaint. In December 2005, Pollet was sentenced to two months imprisonment, three months of home confinement, and three years of supervised release.

3. SG Cowen failed to have a reasonable system to implement its compliance and supervisory policies to prevent and detect Pollet’s unlawful trading. SG Cowen investment bankers failed to notify SG Cowen’s Control Room staff that they had contacted Pollet about investing in PIPE transactions where SG Cowen served as placement agent, in violation of SG Cowen’s Chinese Wall procedures. Nevertheless, Pollet’s proprietary trading in such transactions

¹ The findings herein are made pursuant to Respondents’ Offers and are not binding on any other person or entity in this or any other proceeding.

appeared on SG Cowen's Watch List. SG Cowen's Control Room staff failed to adequately investigate Pollet's trading, even though they realized it was suspicious, and in violation of SG Cowen's internal policies and procedures: a Control Room staff member contacted Pollet but accepted Pollet's concocted explanation for the trading, even though the staff member later admitted that he did not understand Pollet's explanation. Further, prior to Pollet's suspension, SG Cowen did not have a reasonable system to implement its policies or procedures concerning the proper retention of outside counsel, or the vetting of legal advice received from outside counsel. As a result of SG Cowen's failure to have a reasonable system to implement its policies and procedures for supervisory oversight of legal advice given to Pollet and follow up with Pollet regarding his trading in light of the legal advice, Pollet was able to engage in opinion shopping, and to attach his own self-serving interpretation to legal advice he received.

4. At all times relevant to this proceeding, Barthelemy was Pollet's direct supervisor. Barthelemy failed reasonably to supervise Pollet because he failed to follow up on the "red flags" indicating that Pollet's trading was questionable. For example, Barthelemy was copied on an e-mail stating that a senior SG official in Paris was "astonished" that Pollet had borrowed and sold shares of a potential PIPE issuer during a period of time when Pollet was "closely in touch" with the company's management. Barthelemy took no action to follow up on the e-mail. Barthelemy was also aware that Pollet's post-close trading could present legal and regulatory concerns, and while Barthelemy directed Pollet to obtain legal advice from counsel concerning post-close trading, Barthelemy did not take steps to find out what the advice was or whether it was being appropriately followed. Instead, Barthelemy erroneously assumed that Pollet's trading was in accordance with legal guidance Pollet had received. For example, in August 2001, Pollet gave Barthelemy a legal memorandum that Pollet represented to Barthelemy sanctioned pre-close short selling. Barthelemy did not read or review this memorandum – which was limited in important ways – until October 2001 when an SG Cowen client raised questions about Pollet's trading, and SG Cowen commenced an internal investigation of the trading at issue here. In addition, while Pollet was on vacation, Barthelemy signed two SPAs that contained false representations and failed to follow up with Pollet regarding the accuracy of those representations.

b. RESPONDENTS

5. **SGAS**, a Delaware limited liability company, is a broker-dealer registered with the Commission. SGAS is an indirect wholly-owned U.S. subsidiary of SG, an international bank headquartered in Paris, France. SGAS, which was formed in August 2003, did not commence operations until April 2004. At the time of the conduct at issue, SG Cowen was a wholly-owned indirect subsidiary of SG. SG Cowen's equity derivatives business had, until late 2001, included the Reg. D Desk which was supervised by Barthelemy. Effective April 23, 2004, SG Cowen merged into another entity indirectly wholly owned by SG. Through a series of transactions in April 2004, SGAS acquired that other entity's U.S. Equity Derivatives Group ("EDG") and certain

other businesses.² As a result of the April 2004 merger, SG Cowen ceased to exist. At all times relevant hereto, SG Cowen's EDG reported into SG's global EDG, based in Paris, France.

6. **Barthelemy**, age 40, is a resident of Rye, New York. He is head of equity derivatives and a managing director at SGAS. In 2001, Barthelemy was an SG Cowen managing director and the head of EDG. As the head of EDG, Barthelemy supervised the EDG's eleven sales and trading desks, including the Reg. D Desk, which was managed by Pollet. In 2001, Barthelemy held Series 7, 24, 55, and 63 licenses. Barthelemy subsequently obtained Series 9 and 10 licenses. At all times relevant hereto, Barthelemy reported to the two co-heads of SG's global EDG in Paris. Following its internal investigation in this matter, SG Cowen suspended Barthelemy for 30 days and fined him \$25,000.

c. OTHER RELEVANT INDIVIDUAL AND ENTITIES

7. **Pollet**, age 43, is a resident of Switzerland. He was a managing director at SG Cowen in charge of the Reg. D Desk from 1999 until his termination in December 2001 as a result of the unlawful trading discussed herein. The two members of the Reg. D Desk were Pollet and an analyst who reported to Pollet (the "Analyst"). SG had a proprietary account with SG Cowen, and Pollet invested SG's capital in PIPE transactions, and traded in the underlying stock of the PIPE issuers. Pollet reported directly to Barthelemy. During the period at issue, Pollet held Series 7, 8, and 55 licenses.

8. **The PIPE Issuers:** Pollet's unlawful trading involved eleven companies that issued, or contemplated issuing, PIPEs: The viaLink Company ("viaLink"), Computer Motion Inc. ("Computer Motion"), Daleen Technologies, Inc. ("Daleen"), Hollywood Media Corp. ("Hollywood Media"), SangStat Medical Corporation ("SangStat"), EntreMed, Inc. ("EntreMed"), DMC Stratex Networks, Inc. ("DMC Stratex"), Sorrento Networks, Inc. ("Sorrento"), Aradigm Corporation ("Aradigm"), HealthExtras, Inc. ("HealthExtras"), and Proxim, Inc. ("Proxim") (collectively, the "Issuers"). In 2001, the common stock of each of the Issuers was registered with the Commission pursuant to Section 12(g) of the Exchange Act, and traded on the Nasdaq National Market, with the exception of viaLink's common stock, which traded on the Nasdaq Small Cap Market.

d. BACKGROUND

Overview of PIPE Transactions

9. PIPEs are private investments in public equities. Companies typically utilize the PIPE market when more traditional means of financings, such as registered follow-on offerings are impracticable. PIPE securities are generally issued pursuant to Section 4(2) of the Securities Act, which provides an exemption from registration for a non-public offering by an issuer. At the

² In 1998, SG purchased the retail brokerage business asset of Cowen and Co., and combined them with SG's U.S. broker dealer subsidiary, SG Securities Corporation, to form SG Cowen Securities Corporation.

closing of a PIPE transaction, PIPE investors receive restricted securities. The stock purchase agreements generally require the issuer to file a registration statement to register the securities issued in the PIPE transaction (or in the case of convertible securities, the underlying securities) within a specified period, usually 30 or 60 days, and to take reasonable steps to have it declared effective by the Commission, typically within 60 to 120 days after the close. In other words, PIPE investors are required to wait a certain period of time before they can freely trade the securities received in the PIPE transaction. PIPE transactions often contain price discounts or other concessions, such as warrants, to compensate for the temporary illiquidity of the investment.

10. PIPE financings are generally not announced publicly until the transaction closes. Each of the Issuers considered their PIPE transaction to be a significant event for the company, and expressed varying degrees of concern about keeping confidential the fact that they were contemplating such a financing, lest potential investors sell short the Issuer's stock ahead of the close of the transaction. The marketing materials for PIPEs typically are marked "confidential" and some PIPE issuers require potential PIPE investors to enter into confidentiality agreements. A PIPE financing generally tends to have a dilutive effect on the issuer's stock price as more shares of its stock become available in the marketplace. As a result, when a PIPE is publicly announced, the stock price of the issuer often declines. Also, because the number of shares issued in a PIPE transaction is typically calculated based on the average share price of the issuer's stock in the days leading up to the close of the transaction, PIPE investors may be motivated to engage in manipulative short selling prior to the close in an effort to lower the stock price, and thus increase the number of shares received by the PIPE investor.

11. In order to invest SG's capital in PIPEs, Pollet needed approval from Barthelemy and from one of the co-heads of the global EDG in Paris. Besides making PIPE investments and trading in the securities of companies which had participated in, or which were contemplating, PIPEs and other private offerings, the Reg. D Desk engaged in no other type of trading.

12. SG Cowen's Private Equity Group ("PEG"), which was not among the assets acquired by SGAS, was headed by a managing director ("PEG Director"), and provided investment banking services to PIPE issuers and other public and non-public companies. Pollet invested in four PIPE transactions in which SG Cowen investment bankers served as the placement agent for the PIPE.

e. POLLET'S FRAUDULENT CONDUCT RELATING TO PIPE TRANSACTIONS

Pollet Sold Short PIPE Issuers' Securities Prior to the Close, as Well as After the Close But Prior to the Registration of the PIPE Shares

13. In 2001, Pollet's trading practice relating to PIPEs fell into a general pattern: Pollet would start to sell short an issuer's common stock in varying quantities when Pollet first learned that the issuer was contemplating a PIPE financing in which Pollet might invest SG's capital. The short sales were made in an SG proprietary account. Such short-selling would begin prior to the close of the PIPE transaction and, in all but one case, before the transaction had been made public.

Pollet would continue to sell short the stock of the issuer after the close, but prior to the registration of the securities issued in the PIPE transaction. Pollet used the securities that he acquired for SG in the PIPE transaction to cover the short position he had built in the stock of the issuer of those securities. If the PIPE transaction did not close, or Pollet did not cause SG to invest in it, Pollet typically covered his short position with securities acquired on the open market.

14. With respect to the PIPE transactions at issue here, Pollet invested a fixed amount of SG's capital and SG received in exchange an amount of securities that was determined based on the average share price of the Issuer's stock over a certain number of days – ranging from five days to twenty days – leading up to the close of the transaction (“Average Price”). The PIPE shares were priced at a percentage of the Average Price, ranging from 85 percent to 115 percent. In most PIPE transactions, SG also received warrants to purchase additional stock, and in the convertible transactions, SG received dividend or interest payments. In the transactions where SG received PIPE shares at a discount to the Average Price, Pollet's pre-close short selling allowed SG to lock in the spread between the price at which Pollet sold short the stock of the Issuer and the discounted PIPE share price. In the PIPE transactions structured as convertibles and priced at a premium to the Average Price, Pollet's pre-close short selling allowed him to eliminate any risk relating to the underlying convertible security Pollet purchased in the transaction, without any adverse effect on Pollet's ability to trade the warrants included in those transactions, and for SG to collect the periodic interest and dividend payments. As a result of Pollet's unlawful trading, SG locked in gains in PIPE transactions in which Pollet invested on SG's behalf, and it earned trading profits in PIPE transactions in which SG did not invest. In total, SG made \$5,756,086.03 in profits from Pollet's unlawful trading.

Pollet's Trading Violated Representations Made to Issuers

15. In certain instances, Pollet's trading violated specific representations in SPAs. For example, in two PIPE transactions – involving Computer Motion and Hollywood Media – SG represented that SG had not sold short the Issuer's stock prior to the close of the PIPE transaction. In two other PIPE transactions – involving viaLink and Sorrento – SG represented that SG had not traded in the Issuer's securities prior to the close of the PIPE transaction. Pollet negotiated the provisions in all four SPAs and signed three of them, while the Hollywood Media SPA was signed by Barthelemy because Pollet was on vacation when that SPA was executed. The representations in these SPAs were false because Pollet had, in fact, accumulated for SG a significant short position in the stock of each such Issuer prior to the close of the transactions, and Pollet knew the representations were false because he placed the trades.

Pollet's Insider Trading Violated a Duty Owed to the PIPE Issuer

16. Pollet's pre-close short-selling constituted insider trading in ten PIPE transactions. In each of those transactions, Pollet violated a duty of trust or confidence that SG Cowen owed the Issuer. In four PIPE transactions – involving Sorrento, Aradigm, HealthExtras, and Proxim – SG Cowen owed a fiduciary duty to the Issuer because the PEG was acting as the Issuer's investment banker, and Pollet breached such duty by selling short the Issuer's publicly-traded common stock. Moreover, in at least two of those four transactions, SG Cowen expressly agreed to keep the fact of

the PIPE transaction confidential as well. In six other PIPE transactions – involving SangStat, Hollywood Media, Computer Motion, Daleen, EntreMed, and DMC Stratex – SG Cowen entered into confidentiality agreements with the Issuer that gave rise to a duty of confidentiality, which Pollet then breached by selling short such Issuer’s publicly traded common stock.

f. THE ENTITY’S FAILURE TO SUPERVISE

17. During 2001, while Pollet was engaging in the unlawful trading activity described above, SG Cowen failed to have a system to implement its compliance, control, and supervisory policies to prevent and detect Pollet’s unlawful trading. Specifically, the Control Room failed to detect Pollet’s trading in PIPE Issuers’ securities even though Pollet’s trades appeared on the Control Room’s Watch List Exception Reports. The SG Cowen investment bankers failed to notify the Control Room that they had solicited Pollet about investing in PIPE transactions in which SG Cowen acted as the PIPE placement agent. If SGAS (by and through the transactions described in paragraph 5. above) had a system in place to implement its policies and procedures with respect to communications between the investment banking group and traders and subsequent monitoring of related trades, Pollet’s illegal trading activity could have been prevented and detected.

18. SG Cowen Failed to Implement Controls to Bring Pollet Over the Chinese Wall.

a. In 2001, SG Cowen’s compliance manual set forth firm-wide Chinese Wall procedures, which prohibited members of the banking group from sharing information with SG Cowen sales, trading or research personnel, absent pre-clearance. Specifically, the policy provided that “members of our corporate and investment banking groups are not permitted to ‘Cross the Wall’, i.e., share inside information with sales, trading or research personnel unless the proposed disclosure has been pre-cleared with the Legal and Compliance Department” (emphasis in original).

b. Furthermore, SG Cowen’s manual stated that where a trader, salesperson or research analyst is brought “Over the Wall,” the recipient of the information becomes an “insider” and is subject to the same restrictions and confidentiality obligations as corporate and investment banking personnel. The PEG Director, who headed SG Cowen’s PEG, solicited Pollet to invest in PIPE transactions without first notifying the Control Room. If SG Cowen had had a reasonable system to implement its policies and procedures regarding bringing a trader “Over the Wall,” controls would have been put in place to determine the appropriateness of sharing inside information with Pollet and to subject Pollet’s trading activity to greater scrutiny.

19. SG Cowen’s Control Room Failed to Detect Pollet’s Unlawful Trading.

a. The SG Cowen PEG instructed the Control Room to place the names of the PIPE Issuers it represented on its Watch List. This is a list of companies on which SG Cowen has inside information, and it is monitored daily by the Control Room staff for potential improper trading. At the time of the trading at issue, the Control Room had three employees who, in addition to maintaining the Watch List, also monitored proprietary trading. Every morning, the

Control Room generated a report of the prior day's trading in the stocks of companies listed on the Watch List (the "Watch List Exception Report"). The Watch List Exception Report was reviewed daily by Control Room staff. Most of the Watch List Exception Reports that listed Pollet's trades in the securities of the PIPE Issuers represented by the SG Cowen PEG were reviewed by a PEG staff member ("Staff Member A"). SG Cowen's Control Room manual stated that, "[w]hen circumstances indicate that the Chinese Wall may have been compromised, the Control Room will conduct a further analysis of the securities positions taken and inquire into the reasons the positions were taken and information known to the person making the investment decision in question."

b. Virtually all of Pollet's trades in the Issuers which had retained the SG Cowen PEG as placement agent appeared on the daily Watch List Exception Reports, and were clearly identifiable as proprietary SG trades. However, prior to August 2001, Pollet's trades were not questioned by the Control Room staff or any supervisor. Instead, they were either checked off or marked "ok."

c. On August 14, 2001, Staff Member A e-mailed Barthelemy asking him to clarify the trading strategy being used by Pollet for SG's proprietary account. Barthelemy responded via e-mail that the strategy was "Reg. D and private placements."

d. On August 28, 2001, when Pollet's trades in one of the PIPE Issuer's stock appeared on the Watch List Exception Report, Staff Member A e-mailed Pollet asking, "As is (sic) understand [your] account's strategy is Reg D and Private Placements. I see that you are buying and selling...a registered security. Can you please tell me the strategy in buying and selling this stock?" Pollet responded, "It is an equity swap arbitrage." Staff Member A accepted Pollet's explanation and performed no further inquiries, even though Staff Member A did not know what the term "equity swap arbitrage" meant. In fact, "equity swap arbitrage" is a meaningless term which Pollet used to confuse the Control Room and evade further investigation. Going forward, Staff Member A wrote "equity swap arbitrage" next to all trades in that stock that Pollet made in SG's account that appeared on the Exception Reports. Staff Member A failed to inquire further into Pollet's trading even though one of the things Staff Member A was supposed to look for when reviewing the Watch List Exception Report was "position building" *i.e.*, someone building a position, long or short, over time, which is precisely what Pollet was doing with each Issuer. Nor did Staff Member A bring Pollet's trading or explanation to the attention of Staff Member A's superiors.

20. SG Cowen Failed to Have a Reasonable System to Address Whether Supervisors Followed Up on Questionable Trading in the Firm's Proprietary Account.

a. The PIPE investment process required Pollet to submit a credit analysis report on the issuer – called an Issuer Line Application ("ILA") – to Barthelemy and senior SG officials in Paris seeking authorization for the PIPE investment. One of the senior officials ("Senior Official") who received the ILAs was a co-head of global EDG and one of Barthelemy's supervisors in Paris. The ILAs discussed the extent to which a PIPE investment would be hedged in the future, and the stock borrowing capacity available at SG and elsewhere. Initially, Pollet disclosed in the ILAs the amount of an Issuer's stock that he had already sold short (that is, sold

prior to the close of the PIPE transaction he was seeking authorization to invest in). However, in February 2001, Pollet's ILA on viaLink, which disclosed his pre-close short selling activity in connection with the viaLink PIPE, elicited an e-mail, dated February 6, 2001 ("February 6th e-mail"), from an SG private placement analyst in Paris to Pollet (with a "cc" to Barthelemy) that said, in part, "[The Senior Official] was very astonished that you [*i.e.* Pollet] already borrowed and sold shared (sic) on [viaLink] before getting the final agreement from management and also during a period of time you were closely in touch with [viaLink's] management." Because there was no system to address whether supervisors followed up on questionable trading in the firm's proprietary account, neither SG's senior management in Paris nor Barthelemy, nor anyone else at SG Cowen alerted the Legal and Compliance Departments or took other action after this e-mail.

b. The Legal and Compliance Departments failed to take meaningful action to ensure that Pollet's post-close trading of an issuer's stock was in compliance with SG Cowen's internal guidelines. Throughout the relevant period, SG Cowen had an unwritten internal guideline prohibiting short sales of an issuer's stock within 30 days after the PIPE transaction had closed (the "30-day Guideline"). SG Cowen failed to reasonably implement this guideline.

c. The purpose of the 30-day Guideline was to ensure that transactions designed to hedge positions in restricted PIPE securities would not be deemed sales of restricted securities. In November 2000, Pollet sought to have the 30-day Guideline modified so he could trade in the issuers' stock within 30 days after the close of the PIPE deal. Pollet went to SG's then-Chief U.S. Compliance Officer ("Chief Compliance Officer") who told Pollet to consult with an in-house lawyer ("In-house Counsel 1"). In-house Counsel 1 never reached a final decision on this matter; rather, In-house Counsel 1 advised Pollet to consult with outside counsel as to industry practice, which resulted in Pollet seeking advice from a securities lawyer at a law firm ("Counsel A"), who advised Pollet that while industry practice varied widely, most firms imposed a restriction of some length in order to establish investment intent.

d. In February 2001, Pollet received a memorandum from a securities lawyer at a law firm who regularly provided legal guidance to SG Cowen ("Counsel B") regarding a possible change to the 30-day Guideline. Counsel B's advice – which was never adopted by SG Cowen – was that the 30-day Guideline should only be deviated from in situations where the price of the common stock of the PIPE issuer fell significantly during the 30-day period, such that, by entering into a hedge during this period, SG Cowen would lock in a significant economic loss.

e. In March 2001, Pollet and the Chief Compliance Officer engaged in an e-mail exchange that concluded with the Chief Compliance Officer advising Pollet to consult with another in-house counsel ("In-house Counsel 2") on the issue of whether Pollet could modify the 30-day Guideline under certain circumstances. The Chief Compliance Officer undertook no follow-up to determine if Pollet had consulted with In-house Counsel 2 on this topic. Pollet ultimately abandoned his effort to modify the 30-day Guideline, which remained in effect until SG Cowen shut down the Reg. D Desk.

f. In addition to failing to ensure that Pollet was trading in compliance with SG Cowen's internal guidelines, the Legal and Compliance Departments failed to determine

whether Pollet was trading in compliance with the legal advice Pollet received from Counsel B. Finally, after April 2001, and until SG Cowen closed down the Reg. D Desk in late 2001, there was no in-house lawyer at SG Cowen who was specifically designated to handle legal inquiries concerning the Reg. D Desk. SG Cowen's lack of oversight enabled Pollet to engage in opinion shopping when he received unfavorable advice.

g. BARTHELEMY'S FAILURE TO SUPERVISE

21. Barthelemy was the head of SG Cowen's EDG in the U.S., which included the Reg. D Desk. Barthelemy was Pollet's direct supervisor. Barthelemy knew about Pollet's general trading strategy with respect to PIPE transactions, he reviewed the Reg. D Desk's profit and loss statements ("P&Ls") on a daily basis, and he reviewed the Reg. D Desk's trading positions at least weekly. Barthelemy also discussed the P&Ls with Pollet and the Analyst several times a week. Barthelemy failed reasonably to supervise Pollet with a view to preventing and detecting Pollet's violations of the federal securities laws by failing to respond to various "red flags" relating to Pollet's trading activity.

22. Red Flags.

a. Barthelemy failed to follow up on several "red flags" that Pollet's trading was questionable. Barthelemy was copied on the February 6th e-mail, which stated that a senior SG official had expressed astonishment that Pollet had borrowed and sold shares of viaLink stock before getting a final approval to invest in viaLink's PIPE from SG management, and while Pollet was in close contact with viaLink's management. Barthelemy took no action to follow up on the February 6th e-mail, even though it reflected concerns by one of SG's top officers about Pollet's trading.

b. Following Pollet's receipt of the February 6th e-mail, Pollet instructed the Analyst to omit pre-close short positions Pollet had entered into from future ILAs, which the Analyst did. Going forward, Pollet and the Analyst also concealed short positions Pollet had entered into during conference calls with SG officials in Paris, limiting their discussions only to post-close hedging of an Issuer's stock and the borrowing capacity available in the marketplace for such stock. Barthelemy reviewed each of these later ILAs, and although he was aware at least on a weekly basis of the positions Pollet had already taken on behalf of SG in the Issuers' stock, Barthelemy took no corrective action or follow-up with respect to these omissions. For example, on April 17, 2001, Barthelemy received the Hollywood Media ILA which discussed Pollet's "plan" to build a short position in Hollywood Media's stock on behalf of SG, even though Pollet had started to short such stock nearly a month earlier, in mid-March. Barthelemy took no action to follow up on this red flag as to why Pollet was concealing his short selling activity. Further, a subsequent ILA sent to SG's officers in Paris and to Barthelemy on April 23, 2001, did not disclose that Pollet had already taken a short position in VaxGen Inc.'s ("VaxGen") stock, also beginning in mid-March. However, two days later, on April 25, 2001, the Analyst e-mailed Barthelemy, "[t]hus far, we have a hedge of 48,000 shares or \$900,000." Barthelemy failed to take any action in response to this e-mail.

c. Another “red flag” was raised on August 14, 2001, when Barthelemy received an e-mail from SG Cowen’s Control Room asking to clarify Pollet’s trading strategy. Barthelemy replied that the strategy was “Reg. D and private placements,” but took no further steps to inquire why the Control Room was seeking to clarify the trading strategy of a desk that he supervised.

23. Red Flags Related to Legal Advice Concerning Pollet’s Trading and Investments.

Pre-Close Short Selling.

a. In early 2001, Counsel B advised Pollet that Pollet should not sell short a PIPE Issuer’s stock prior to the close of a PIPE transaction in which Pollet was contemplating investing. Counsel B warned Pollet not to engage in such pre-close short selling activity for three reasons: (i) it quite likely was insider-trading; (ii) it likely violated the Securities Act’s registration requirements; and (iii) it could violate the “investment intent” representations routinely made in SPAs. Pollet did not ask Counsel B to put his advice in writing, and Pollet did not share Counsel B’s legal advice with Barthelemy or SG Cowen’s Legal and Compliance Departments. In direct contravention of Counsel B’s legal advice, Pollet engaged in pre-close short selling in eight PIPE transactions prior to July 12, 2001, at which point Pollet sought other legal advice concerning pre-close short selling. Prior to Pollet’s suspension, Barthelemy did not discuss with anyone at SG Cowen, including Pollet, whether it was proper for SG Cowen to engage in pre-close short selling.

b. On July 12, 2001, Pollet asked another lawyer (“Counsel C”) who was representing SG Cowen in a PIPE transaction, about the propriety of pre-close short selling. When Counsel C indicated that, in certain situations, pre-close short selling might be permitted, Pollet requested a written memorandum on the issue. On August 13, 2001, Counsel C provided Pollet with a legal memorandum which stated that pre-close short selling could be permissible provided that Pollet ceased all such activity once he concluded that a PIPE transaction was reasonably likely to occur. Counsel C also cautioned Pollet to consider the terms of any confidentiality agreement to which SG Cowen might be a party. Pollet gave Barthelemy Counsel C’s memorandum on or around August 15, 2001, but Barthelemy failed to review it at the time, and only looked at it after SG Cowen had launched its internal investigation into Pollet’s trading in October 2001. Because Barthelemy failed to read Counsel C’s memorandum, Barthelemy did not know that Pollet had ignored Counsel C’s advice and repeatedly sold short in advance of four PIPE transactions even after it was reasonably likely that the PIPE transactions would close. For example, in the HealthExtras PIPE, Pollet sold short the Issuer’s stock on the very day he sent an e-mail stating that the closing had been set for the next day. Moreover, the PEG acted as the investment banker in each of the four remaining PIPEs, and therefore had a duty of confidentiality with respect to the Issuers.

Post-Close Short Selling.

c. In February 2001, Pollet received a memorandum from Counsel B regarding a possible change to the 30-day Guideline. Counsel B’s advice – which was never

adopted by SG Cowen – was that the 30-day Guideline should only be deviated from in situations where the price of the common stock of the PIPE issuer fell significantly during the 30-day period, such that, by entering into a hedge during this period, SG Cowen would lock in a significant economic loss. While Barthelemy received a copy of Counsel B’s memorandum at the time, he did not read it or discuss it with Pollet, and took no steps to determine whether Pollet’s trading complied with the legal advice in Counsel B’s memorandum.

d. In March 2001, Barthelemy was copied on the e-mail exchange between Pollet and the Chief Compliance Officer that clearly showed that the issue of post-close short selling within the 30-day period was still unresolved. At that point, Barthelemy directed Pollet to seek guidance from a senior lawyer in the Legal Department. However, Pollet failed to do so, and Barthelemy never followed up with Pollet to see if Pollet had complied with Barthelemy’s instructions. The 30-day Guideline was, in fact, never modified, and both Pollet and Barthelemy knew that it remained in effect. Nevertheless, in direct contravention of the 30-day Guideline, Pollet repeatedly sold short the stock of Issuers immediately after the close of the PIPE, and Barthelemy was aware of Pollet’s trading on at least a weekly basis. Barthelemy knew that Pollet’s trading in this regard was more aggressive than the 30-day Guideline.

SG Cowen’s Participation on Both Sides of PIPEs.

e. Barthelemy did not adequately inquire about the propriety of SG Cowen being on both sides of a PIPE transaction – that is, acting as the issuer’s investment banker, as well as being an investor in the transaction. When Barthelemy first learned that Pollet was contemplating an investment in Sorrento, a transaction for which SG Cowen was acting as the investment banker, Barthelemy asked Pollet to get legal advice on this issue and was satisfied when Pollet told him that he had consulted with a lawyer who had opined that SG Cowen’s dual role was not problematic. Pollet showed Barthelemy a legal memorandum from Counsel C at the time, but Barthelemy did not read the memorandum or ask about the substance of the advice it contained. As it turns out, the memorandum had no bearing whatsoever on the issue of whether it was okay for SG Cowen to participate on both sides of a PIPE deal. Instead, as Barthelemy discovered much later, Counsel C’s memorandum addressed only pre-close short selling.

24. Other Supervisory Failures.

a. Pollet sought legal advice on the issue of hedging PIPE securities from three different outside lawyers. Barthelemy knew that Counsel B was the lawyer regularly used by Pollet’s group. He also knew that Pollet sought advice from Counsels A and C. In fact, Barthelemy asked Pollet why he was seeking advice from Counsel C, but failed to pursue the matter any further. Pollet’s use of different lawyers was a “red flag” that Barthelemy should have followed up on.

b. In Pollet’s absence, Barthelemy signed two SPAs negotiated by Pollet containing misrepresentations without following up with Pollet or reviewing the trading records to confirm the accuracy of those representations. Barthelemy signed the Hollywood Media SPA, which contained a false representation that SG had not sold short Hollywood Media’s common

stock prior to the closing date, when in fact Pollet had accumulated a significant short position in Hollywood Media shares at the time the SPA was executed. Barthelemy also signed the VaxGen SPA. Barthelemy testified that he did not read either the Hollywood Media SPA or the VaxGen SPA prior to signing the documents, but that his general practice was to verify that a document he was signing had been reviewed by counsel. There is no evidence that Barthelemy followed such a practice in these two instances. In any event, the false representations at issue concerned factual and business matters, not legal questions. Barthelemy's failure to confirm the accuracy of the representations in the Hollywood Media and VaxGen SPAs prior to signing the documents meant that he missed red flags, which could have led to the prevention and detection of Pollet's unlawful trading.

c. Finally, Barthelemy did not implement SG Cowen's Chinese Wall procedures. SG Cowen's Equity Division Compliance Manual requires that all supervisors, among other practices, must "[p]romote respect for and full adherence to [the firm's] Chinese Wall policies by emphasizing the severe consequences, including fines and imprisonment, for breaches." Barthelemy was not familiar with SG Cowen's Chinese Wall procedures while supervising Pollet and therefore failed to implement these procedures. If Barthelemy had implemented these procedures, he could have prevented Pollet's wrongful conduct.

h. APPLICABLE LAW

Sections 15(b)(4)(E) and 15(b)(6)(A) of the Exchange Act

25. Section 15(b)(4)(E) of the Exchange Act authorizes the Commission to sanction a broker or dealer if that broker or dealer has "fail[ed] reasonably to supervise, with a view toward preventing securities law violations, a person subject to its supervision who commits [a violation of, among other statutes, any provision of the Exchange Act]." In the Matter of Dean Witter Reynolds Inc., et al., Admin. Proc. File No. 3-9686, 2001 SEC Lexis 99 (Jan. 22, 2001) (citing In the Matter of James Harvey Thornton, Exch. Act Rel. No. 41007, 69 SEC Docket 49, 53 (Feb. 1, 1999)). Section 15(b)(6)(A) of the Exchange Act incorporates Section 15(b)(4)(E) by reference and authorizes the Commission to impose sanctions for deficient supervision on individuals associated with broker-dealers. Under Section 15(b)(4)(E), such sanction must be in the public interest. In order to prove a failure to supervise claim, the Commission must establish: (i) an underlying securities law violation; (ii) association of the registered representative or person who committed the violation; (iii) supervisory jurisdiction over that person; and (iv) failure reasonably to supervise the person committing the violation. See In re Philadelphia Investors, Ltd. and Clarence Z. Wurts, SEC Admin. Proc. File No. 3-9114, 1998 WL 122180 (March 20, 1998).

26. During 2001, Pollet sold short the publicly traded securities of the PIPE Issuers prior to the close of PIPE transactions in which Pollet was investing or contemplating investing on behalf of SG. In several instances, Pollet's short-selling was contrary to specific representations made to the Issuers in the SPAs. Pollet's conduct violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

27. At the time Pollet committed the violations of the antifraud provisions described above, Pollet was associated with SG Cowen, and Barthelemy was Pollet's direct supervisor. Both SG Cowen and Barthelemy had supervisory jurisdiction over Pollet during this time.

28. In large organizations it is especially imperative that those in authority exercise particular vigilance when indications of irregularity reach their attention. See Wedbush Securities, Inc., 48 S.E.C. 963, 967 (1988) (citations omitted). "The supervisory obligations imposed by the federal securities laws require a vigorous response even to indications of wrongdoing." In the Matter of John H. Gutfreund, 51 S.E.C. 93, 108, Exch. Act Release No. 34-31554 (Dec. 3, 1992). Supervisors who learn of red flags or suggestions of irregularity in the conduct of their employees may not discharge their supervisory obligations simply by relying on the unverified representations of such employees. In the Matter of Dean Witter Reynolds Inc., et al., 69 S.E.C. Docket 725, Exch. Act Release No. 41145 (March 8, 1999) (citations omitted). Instead, "[r]ed flags and suggestions of irregularities demand inquiry as well as adequate follow-up and review. When indications of impropriety reach the attention of those in authority, they must act decisively to detect and prevent violations of the federal securities laws." In the Matter of Edwin Kantor, 51 S.E.C. 440, 447, Exch. Act Release No. 32341 (May 20, 1993).

29. Moreover, the Commission has long emphasized that the responsibility of broker-dealers to supervise their employees by means of effective, established procedures is a critical component in the regulatory scheme to protect investors. Lehman Brothers, Inc., Exch. Act Rel. No. 37673, 1996 SEC Lexis 2453, at *21 (September 12, 1996) (citing Smith Barney, Harris Upham & Co., Exch. Act Rel. No. 21813, 1985 SEC Lexis 2051 (March 5, 1985)). However, the establishment of policies and procedures alone is not sufficient to discharge supervisory responsibilities; on-going monitoring and review is necessary to ensure that the established procedures which make up the supervisory program are effective in preventing and detecting violations. Consolidated Investment Services, Inc., Exch. Act Rel. No. 36687, 1996 WL 20829 (January 5, 1996).

30. As a result of the conduct described above in Sections III.f. and III.g., SGAS and Barthelemy, respectively, failed reasonably to supervise Pollet with a view to preventing and detecting Pollet's violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

i. RESPONDENTS' REMEDIAL EFFORTS

31. In determining to accept the Offer, the Commission considered remedial acts taken by SG Cowen, and the cooperation SG Cowen afforded the Commission staff during its investigation.

j. UNDERTAKING

32. Barthelemy shall provide to the Commission, within ten (10) days after the end of the three-month suspension period described below in Section IV, an affidavit that he has complied fully with this sanction. Such affidavit shall be submitted under cover letter that identifies

Barthelemy as a Respondent and the file number of these proceedings, and hand-delivered or mailed to David Rosenfeld, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, Room 4300, New York, New York 10281-1022.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 15(b)(4)(E) of the Exchange Act, SGAS is hereby censured.
- B. SGAS shall, within ten (10) days of the entry of this Order, pay disgorgement of \$5,756,086.03 and prejudgment interest of \$2,628,846.40 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies SGAS as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to David Rosenfeld, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, Room 4300, New York, New York 10281-1022.
- C. Barthelemy be, and hereby is, suspended from acting in a supervisory capacity for any broker or dealer for a period of three (3) months, effective beginning the second Monday following the issuance of this Order.
- D. Barthelemy shall comply with his undertaking enumerated in Section III.j. above.
- E. Barthelemy shall, within ten (10) days of the entry of the Order, pay a civil money penalty in the amount of \$50,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Barthelemy as a Respondent in these proceedings, the file number of these proceedings, a

copy of which cover letter and money order or check shall be sent to David Rosenfeld, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, Room 4300, New York, New York 10281-1022.

By the Commission.

Elizabeth M. Murphy
Secretary