Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEVIN CORNWELL et al.,

Plaintiffs,

- against -

CREDIT SUISSE GROUP et al.,

Defendants.

08 Civ. 3758 (VM)

DECISION AND ORDER

VICTOR MARRERO, United States District Judge.

Plaintiffs Kevin Cornwell ("Cornwell"), John M. Grady ("Grady"), and Louisiana Municipal Police Employees Retirement Systems ("LAMPERS") (collectively, "Plaintiffs") filed a Second Amended Class Action Complaint dated March 10, 2010 (the "Complaint"), naming as defendants Credit Suisse Global ("CSG"), Brady W. Dougan, Renato Fassbind, D. Wilson Ervin, and Paul Calello (collectively, "Defendants"). Plaintiffs assert claims under § 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b) ("§ 10(b)"), Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, and § 20(a) of the Exchange Act, 15 U.S.C. § 78t(a). Plaintiffs bring these claims on behalf of themselves and all other persons or entities, except for Defendants, who, during the period February 15, 2007 through April 14, 2008, purchased CSG securities either on the Swiss Stock Exchange ("SWX") or as American Depositary Shares ("ADSs") on the New York Stock Exchange ("NYSE").

On June 24, 2010, the United States Supreme Court issued Morrison v. National Australia Bank, No. 08-1191, 2010 WL 2518523, __ U.S. __ (June 24, 2010), which set forth a new rule for determining the extraterritorial application of the United States securities laws. Invoking Morrison, Defendants moved via letter on July 6, 2010 for a partial judgment on the pleadings to dismiss plaintiffs, such as LAMPERS, who had purchased CSG shares on the SWX. Letter-briefs from each party were submitted to the Court on July 19, 2010.

For the reasons discussed below, Defendants' motion is GRANTED.

I. BACKGROUND

The facts as alleged in the Complaint in this case are set forth in detail in prior Decisions and Orders of the Court. See Cornwell v. Credit Suisse Group, 689 F. Supp. 2d 629 (S.D.N.Y. 2010); Cornwell v. Credit Suisse Group, 666 F. Supp. 2d 381 (S.D.N.Y. 2009). As relevant for the motion at hand, Plaintiffs allege that Defendants made material misrepresentations or omissions concerning the robustness of CSG's risk management practices (which were actually very poor), CSG's financials were heavily impacted by the implosion of the American housing market (which their risk management practices were supposed to prevent), and Plaintiffs were injured by the concomitant devaluation of their stock.

Plaintiffs are divided into two categories: (1) those such as Cornwell and Grady who purchased ADSs on the NYSE and (2) those such as LAMPERS who are United States residents that purchased shares of CSG on the SWX. (See Complaint ¶¶ 1, 2, 20, 34-36, 346-47, 354(a); see also id. ¶ 24 ("U.S. institutional investors, and other U.S. residents, routinely purchase Credit Suisse shares trading on the SWX from their offices in the United States.").)

Plaintiffs contend that Morrison does not prevent the latter group from maintaining their claims. Their chief argument is that Morrison is limited to its facts and applies only to so-called "foreign cubed" plaintiffs -- foreign plaintiffs who bought foreign stock on a foreign exchange. To bolster this conclusion, Plaintiffs suggest that "the real question left open by Morrison ... is what factors control when a purchase or sale has some foreign and some domestic 'aspects.'" (Plaintiffs' Letter-Brief dated July 19, 2010 at 3.) To answer this question, Plaintiffs suggest, a court must consider "the text and purpose of the [Exchange Act]" as well as "interpret[ations of] the terms 'purchase' and 'sale' in the context of § 10(b) and common law principles prevailing at the time the [Exchange Act] was enacted." (Id.) In particular, the Court should consider choice of law principles as described in the 1934 edition of the Restatement (First) of

Conflict of Laws. (See id. at 3-5.) Application of these considerations, Plaintiffs contend, would reveal that LAMPERS "made an investment decision and initiated a purchase of CSG from the U.S." and "took the CSG stock into its own account in the U.S. and incurred an economic risk in the U.S." (Id. at 3.) Thus, Lead Plaintiffs conclude that merely because LAMPERS' stock "order was settled overseas on the [SWX]" does not prevent § 10(b) from applying. (Id.) As described below, the Court is not persuaded that the Supreme Court had such a multi-factor analysis in mind when it issued Morrison.

II. DISCUSSION

In Morrison, the Supreme Court roundly (and derisively) buried the venerable "conduct or effect" test the Second Circuit devised and for years had employed to determine whether the protections and remedies contained in § 10(b) of the Exchange Act apply extraterritorially to reach fraudulent securities transactions abroad under the facts of a case. Yet here, Plaintiffs seek to exhume and revive the body. They argue that § 10(b) claims by investors such as LAMPERS survive Morrison on the grounds that such plaintiffs are American citizens, and that some aspects of the foreign securities transactions at issue occurred in the United States. This Court is not persuaded. As this Court reads Morrison, the conduct and effect analysis as applied to § 10(b)

extraterritoriality disputes is now dead letter. Plaintiffs' cosmetic touch-ups will not give the corpse a new life. The standard the Morrison Court promulgated to govern the application of § 10(b) in transnational securities purchases and sales does not leave open any of the back doors, loopholes or wiggle room to accommodate the distinctions Plaintiffs urge to overcome the decisive force of that ruling on their § 10(b) claims here.

The Second Circuit's case law interpreting the extraterritorial application of § 10(b) focused on whether wrongful conduct associated with a particular transaction (1) had a substantial effect on United States markets or upon American citizens, or (2) occurred in the United States. See SEC v. Berger, 322 F.3d 187, 192-93 (2d Cir. 2003); Schoenbaum v. Firstbrook, 405 F. 2d 200, 206 (2d Cir. 1968) (finding that § 10(b) was "necessary to protect American investors"); see also Leasco Data Processing Equip. Corp. v. Maxwell, 468 F. 2d 1326 (2d Cir. 1972) (applying § 10(b) to encompass a transaction involving an American company that was fraudulently induced to purchase in England the securities of a corporation whose shares were not traded on any American exchange, and where some of the acts that comprised the deceptive conduct occurred in the United States). The Morrison Court unequivocally repudiated this longstanding

jurisprudence. It found the rule inconsistent with the presumption against extraterritorial application of statutes, and not supported by any provision of the Exchange Act evincing Congress' clear intent to extend the remedies of the law to foreign securities transactions.

Textually, the Morrison Court not only found no affirmative language in the Exchange Act to suggest that § 10(b) extends to foreign transactions, it rejected both the Second Circuit's extraterritoriality doctrine as well as the Government's amicus argument, which had suggested that § 10(b) or the Exchange Act in general has at least some application abroad, and which proposed an alternative "significant and material conduct" rule derived as a variation of the Second Circuit's conduct test. See Morrison, 2010 WL 2518523 at *9-*10, *13. In fact, the Court noted that while § 10(b) lacks a clear expression of extraterritorial effect, in §§ 30(a) and 30(b) of the Exchange Act, Congress explicitly provided for application of the statute to certain transactions abroad, but limited the scope to very narrow circumstances.[1]

[1] Section 30(a) specifically covers only prohibited transactions effected on a foreign exchange involving securities of which the issuer resides in, is organized under, or has its principal place of business within the United States. See 15 U.S.C. § 78dd(a). And § 30(b) bars application of the statute to any securities transaction outside the jurisdiction of the United States unless it is done in violation of regulations of the Securities and Exchange Commission issued to prevent evasions of the Exchange Act. See 15 U.S.C. § 78dd(b).

In stating its threshold conclusion that § 10(b) has no extraterritorial effect and affirmatively enunciating the new rule specifying the transactions to which § 10(b) does apply, the Supreme Court declared that the purchases and sales which comprise the objects of the Exchange Act's "solicitude," id. at *11 -- the dealings the statute seeks to regulate and the investors it seeks to protect -- narrow exclusively to domestic transactions, specifically "[1] only ... the purchase or sale of a security listed on an American exchange, and [2] the purchase or sale of any other security in the United States." Id. at *14 (emphasis added). The determinant of the first factor is the listing of the security in a domestic exchange, and that of the second factor is the occurrence of the purchase or sale within United States territory. A corollary of this rule embodies its converse: that § 10(b) would not apply to transactions involving (1) a purchase or sale, wherever it occurs, of securities listed only on a foreign exchange, or (2) a purchase or sale of securities, foreign or domestic, which occurs outside the United States. In either case, a threshold event determines the applicability of § 10(b): an actual purchase or sale of covered securities.

Morrison makes clear that in overturning a generation of Second Circuit precedent, despite the preeminence of its pedigree and however well-established its grounding in other

circuit case law, the Supreme Court sought to strike at the complexity, vagueness, inconsistency and unpredictability engendered by the conduct and effect analysis in many cases. See id. at *7-*8 (noting that the conduct and effect tests "were not easy to administer" and hence that the widespread criticism of them by commentators, governments and courts seemed justified). Instead, as also evident in its majority opinion, the Court manifested an intent to weed the doctrine at its roots and replace it with a new bright-line transactional rule embodying the clarity, simplicity, certainty and consistency that the tests from the Second and other circuits lacked.

Nothing in the plain language of the Supreme Court's new test, or in the contextual circuit court case law that prompted it, suggests that Morrison envisions the exceptions and embellishments with which Plaintiffs seek to burden the rule even before it settles in the law books. In essence, Plaintiffs would exclude from operation of the new test transactions in securities traded only on exchanges abroad if the purchase or sale involves American parties, or if some aspects or contacts of such foreign transactions occur in the United States. But insofar as this proposition superimposes an exclusion based strictly on the American connection of the purchaser or seller, it simply amounts to a restoration of the

core element of the effect test. Similarly, to carve out of the new rule a purchase or sale of securities on a foreign exchange because some acts that ultimately result in the execution of the transaction abroad take place in the United States amounts to nothing more than the reinstatement of the conduct test.

Specifically, this exception carries the markings of the "merely preparatory activities" doctrine devised by the Second Circuit under the conduct test, which required inquiry into whether particular steps taken in the United States in connection with a securities transaction consummated abroad were too preliminary to constitute sufficient wrongful conduct in this country, or instead served wrongdoers to use the United States as a base to perpetrate securities fraud abroad. See, e.g., Bersch v. Drexel Firestone, Inc., 519 F.2d 974, 992 (2d Cir. 1975); ITT v. Vencap, Ltd., 519 F.2d 1001, 1017 (2d Cir. 1975). The creation of such an exception to the Morrison transactional rule necessarily would invite extensive analysis required to parse foreign securities trades so as to assess quantitatively how many and which parts or events of the transactions occurred within United States territory, and then to apply value judgments to determine whether the cluster of those activities sufficed to cross over the threshold of enough domestic contacts to justify extraterritorial

application of § 10(b). The complexity inherent in such far-reaching inquiries and fine-line judgments in practice formed a central element of the Morrison Court's "damning indictment" of the conduct and effect tests. 2010 WL 2518523, at *7.

Thus, Plaintiffs' arguments not only ignore the absence of textual grounding in Morrison's new transactional test, they defeat the various purposes the Supreme Court's rule seeks to achieve. Nor can Plaintiffs escape the reality, expressed by the Morrison Court as a substantial concern, that by applying § 10(b) to reach the foreign securities at issue here, this Court would be called upon to enforce American laws regulating transactions in securities that are also governed by the laws of the foreign country and exchanges where those securities were actually purchased or sold.

Plaintiffs make much of the narrow facts and limited disputes actually at issue in Morrison, on this point stressing that the case involved a classic instance of a so-called foreign-cubed transaction -- foreign securities purchased by foreign parties on a foreign exchange -- to which § 10(b) clearly did not apply. They therefore urge that the decision should be confined to its facts and limited holding, and that all the language the majority opinion expended amplifying its judgment, fraught as it is with larger implications, should be dismissed as mere dictum. This Court

is not convinced that the Supreme Court designed Morrison to be squeezed, as in spandex, only into the factual straitjacket of its holding. As a point of departure, even if everything the Supreme Court said in elaborating its decision were deemed dictum, "it does not at all follow that [this Court] can cavalierly disregard it," especially where the Supreme Court "is providing a construction of a statute to guide the future conduct of inferior courts." United States v. Bell, 524 F.2d 202, 206 (2d Cir. 1975). As the Second Circuit has instructed, though Supreme Court dictum may not be binding, "it must be given consideration and weight and can not be ignored in the resolution" of the issue at hand. Id.; see also United States v. Oshatz, 912 F.2d 534, 540 (2d Cir. 1990) (recognizing that "in some contexts expressions of views by an appellate court must be regarded as the law of the circuit, even though not an announcement of a holding or even a necessary step in the reasoning leading to a holding." (citing Bell, 524 F.2d at 205-06)); Columbia Broad. Sys. v. American S. of Composers, Authors & Publishers, 620 F.2d 930, 935 (2d Cir. 1980) (noting that while the safer course is to read judicial opinions for what they purport to decide, "[t]hat may not always be only the narrow holding, for courts ... have an entirely legitimate function of elucidating principles of law, fairly raised by litigation, even if the resulting

pronouncements are not absolutely required for the precise decision reached. Appellate guidance is not valueless because it is dictum.").

A careful reading of Morrison evinces that the majority reached beyond the four corners of the case before it and went out of its way to fashion a new rule designed to correct the enumerated flaws the Court found in the Second Circuit's tests, while also fully aware of its far broader implications. As the concurring opinions of both Justice Breyer and Justice Stevens point out, had the majority confined its ruling strictly to the facts presented, it would have been unnecessary for it to stretch outside the bounds of the case so as to trash the Second Circuit's conduct and effect doctrine so unceremoniously and then fashion an entirely new rule cut out of whole cloth. See id. at *14 (Breyer, J., concurring) (noting that because the relevant facts placed the foreign transaction in question squarely outside the territorial scope of § 10 (b), "[t]his case does not require us to consider other circumstances."); id. at *18, *19 (Stevens, J., concurring) (noting that no party to the litigation "contends that § 10(b) applies to wholly foreign frauds," and thus that there was no justification for the majority to repudiate the prevailing circuit court jurisprudence and enunciate the Court's "novel rule").

In fact, read as a whole, the Morrison opinions indicate that the Court considered that under its new test § 10(b) would not extend to foreign securities trades executed on foreign exchanges even if purchased or sold by American investors, and even if some aspects of the transaction occurred in the United States. In dispatching the conduct and effect rule, the Morrison Court was fully cognizant that one of the hallmarks of the discarded tests depended on whether "the harmed investors were Americans or foreigners." Id. at *7 (reading the Second Circuit rule to hold that "[w]hen the alleged damages consisted of losses to American investors abroad, it was enough that acts of material importance performed in the United States significantly contributed to that result" (quotation marks omitted)).

Moreover, the Supreme Court also signaled that the geographic exception which Plaintiffs seek to carve here for foreign transactions on the basis of the occurrence of some activities or contacts in the United States would not satisfy the new rule. First, the Court recognized that even in strictly foreign securities purchases or sales to which the reach of § 10(b) squarely does not extend, some connection of the transaction with the United States is always highly likely. See id. at *11 (noting that "it is a rare case of prohibited extraterritorial application that lacks all contact

with the territory of the United States" and that "the presumption against extraterritorial application would be a craven watchdog indeed if it retreated to its kennel whenever some domestic activity is involved in the case" (emphasis in original)). Second, in laying the groundwork for its new rule, the Court concluded that the place where the wrongful conduct began is not controlling. See id. ("[T]he focus of the Exchange Act is not upon the place where the deception originated ...."); id. at *12 ("[W]e reject the notion that the Exchange Act reaches conduct in this country affecting exchanges or transactions abroad ...."); see also Stackhouse v. Toyota Motor Co., CV-10-0922, at 2 (C.D. Cal. July 16, 2010) (the "position ... better supported by Morrison" is that a United States resident purchasing stock on a foreign exchange "has figuratively traveled to that foreign exchange -- presumably via a foreign broker -- to complete the transaction.").

That the Supreme Court considered and was entirely aware that its new test would preclude extraterritorial application of § 10(b) to foreign securities transactions involving alleged wrongful conduct that could cause harm to American investors in the United States, or that entail the occurrence of some acts in the United States in furtherance of the purchase or sale, is further underscored by the Court's

reference to EEOC v. Arabian American Oil Co., 499 U.S. 244 (1991) ("Aramco"). The Court cited Aramco to support the proposition that the presumption against extraterritorial effect should not be diminished just because "some domestic activity is involved in the case." 2010 WL 2518523 at *11 (emphasis in original). The Morrison Court further noted that in Aramco, which rejected the extraterritorial application of Title VII of the Civil Rights Act of 1964, the plaintiff had been hired in Houston and was an American citizen. In this connection, the Court voiced concern over the prospect of incompatibility of American securities rules with applicable laws and procedures of foreign countries which also regulate securities exchanges and transactions that occur within their territory.[2]

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[2] Further evidence that the Morrison Court understood the consequences of its bright line rule to American investors in foreign transactions, even when some acts related to the purchase or sale occur in the United States, is found in the concurring opinion of Justice Stevens. Illustrating what he described as the "drawbacks" of the Court's new test, Justice Stevens cited the following example, which the majority did not challenge:

> Imagine ... an American investor who buys shares in a company listed only on an overseas exchange. That company has a major American subsidiary with executives based in New York City; and it was in New York City that the executives masterminded and implemented a massive deception which artificially inflated the stock price and which will, upon disclosure, cause the price to plummet. Or imagine that those same executives go knocking on doors in Manhattan and convince an unsophisticated retiree, on the basis of material misrepresentations, to invest her life savings in the company's doomed securities. Both of these investors would, in the Court's new test, be barred from seeking relief under § 10(b).
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> ... Indeed, the Court's rule turns § 10(b) jurisprudence (and the presumption against extraterritoriality) on its head, by withdrawing the statute's application from cases in which there is both substantial wrongful conduct that occurred in the United States

Plaintiffs' arguments here, insofar as premised on the occurrence of some aspects of the transactions at issue within the United States to justify application of § 10(b) to their purchases of foreign securities listed in a foreign exchange, ignore the multiple concerns that moved the Supreme Court to prescribe a new test clarifying the application of § 10(b) in transnational securities trading. In that restructuring of United States securities law, the Second Circuit's conduct and effect doctrine took a great fall. And neither the Plaintiffs' law horses nor this Court's pen can put the pieces together again.[3]

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and a substantial injurious effect on United States markets and citizens.

Id. at *19 (Stevens, J., concurring) (emphasis in original). Summarizing his objections to the majority's new rule, Justice Stevens later noted that the test "pays short shrift to the United States' interest in remedying frauds that transpire on American soil or harm American citizens ...." Id. at *20.

[3] For whatever comfort it may bring to Plaintiffs and counsel, and however much vindication of the Second Circuit's pride and jurisprudence it is worth, the Court notes that in legislation recently enacted, Congress explicitly granted federal courts extraterritorial jurisdiction under the conduct or effect test for proceedings brought by the SEC, and called for further SEC study and report on the issue in regard to extraterritorial private rights of action. See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §§ 929P(b), 929Y, 124 Stat. 1376 (July 21, 2010).

III. ORDER

For the reasons stated above, it is hereby

ORDERED that the motion for judgment on the pleadings of defendants Credit Suisse Global, Brady W. Dougan, Renato Fassbind, D. Wilson Ervin, and Paul Calello is GRANTED; it is further

ORDERED that the claims of plaintiff Louisiana Municipal Police Employees Retirement Systems asserted under Section 10(b) of the Exchange Act of 1934 are dismissed from this action.

SO ORDERED.

Dated: New York, New York
27 July 2010

VICTOR MARRERO
U.S.D.J.