UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re PARMALAT SECURITIES LITIGATION	)	Master Docket No. 04 MD 1653 (LAK)
This Document relates to:	)	ECF Case
No. 04 Civ. 0030 (LAK)	)	

PLAINTIFFS' PROPOSED JURY INSTRUCTIONS

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Plaintiffs hereby respectfully submit the following Proposed Jury Instructions. Plaintiffs respectfully reserve the right to revise, amend, or supplement these Jury Instructions or to object to any instructions requested by the Defendants.

I. **PRELIMINARY INSTRUCTIONS**

INSTRUCTION NO. 1: OPENING INSTRUCTIONS

Members of the jury, I want to take a few minutes to tell you something about your duties as jurors and to give you some instructions. During the trial you will hear me use a few terms that you may not have heard before. Let me briefly explain some of them to you. The parties who bring a lawsuit are called the "plaintiffs." The parties being sued are called the "defendants." You will sometimes hear me refer to "counsel." "Counsel" is another way of saying "lawyer" or "attorney." I will sometimes refer to myself as the "Court."

By your verdict, you will decide disputed issues of fact. I will decide questions of law that arise during the trial. Before you begin your deliberation at the close of the case, I will instruct you in more detail on the law that you must follow and apply.

It will be your duty to decide from the evidence what the facts are, but you must follow any instructions I give you on the law. You, and you alone, are the judges of the facts. You will hear the evidence, decide what the facts are, and then apply those facts to the law which I will give to you. That is how you will reach your verdict. In doing so, you must follow that law whether you agree with it or not. You should not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be.

Because you will be asked to decide the facts of this case, you must pay careful attention to the testimony and evidence presented. Keep in mind that I will instruct you at the end of the trial about determining the credibility or "believability" of the witnesses. During the trial you should keep an open mind and should not form or express any opinion about the case until you have heard all of the testimony and evidence, the lawyers' closing arguments, and my instructions to you on the law.

From time-to-time during the trial, I may make rulings on objections or motions made by the lawyers. It is a lawyer's duty to object when the other side offers testimony or other evidence that the lawyer believes is not admissible. You should not be unfair or partial against a lawyer or the lawyer's client because the lawyer has made objections. If I sustain or uphold an objection to a question that goes unanswered by the witness, you should not draw any inferences or conclusions from the question. You should not infer or conclude from any ruling or other comment I may make that I have any opinions on the merits of the case favoring one side or the other. I do not favor one side or the other.

While the trial is in progress, you must not discuss the case in any manner among yourselves or with anyone else. In addition, you should not permit anyone to discuss the case in your presence.

The trial lawyers are not allowed to speak with you during this case. When you see them at a recess or pass them in the halls and they do not speak to you, they are not being rude or unfriendly; they are simply following the law.

During the trial, it may be necessary for me to talk with the lawyers out of your hearing about questions of law or procedure. Sometimes, you may be excused from the courtroom during these discussions. I will try to limit these interruptions as much as possible, but you should remember the importance of the matter you are here to determine and should be patient even though the case may seem to go slowly.

Authority: O'Malley, Grenig and Lee, *Federal Jury Practice and Instructions* (5th ed. 2001) (hereinafter "FJPI"), § 101.01 (modified), citing Manual of Model Civil Jury Instructions for the District Courts of the Ninth Circuit, Instruction No. 1.1 (1997) (modified).

INSTRUCTION NO. 2: THE PARTIES

This is a trial of claims brought by a plaintiff in a class action. The Plaintiff is Arch Angelus Sturaitis. The Plaintiff is bringing this case as a class action, on behalf of himself and all other United States persons or entities that purchased equity securities of Parmalat Finanziaria S.p.A. and its subsidiaries and affiliates between and including January 5, 1999 and December 18, 2003, which I will refer to at times as the "Class Period" or the "relevant period." You should regard the Class' attorneys in this case as representing all persons and entities in that group. It is estimated that there are hundreds, perhaps thousand members of the Class, which includes not only individuals, but also institutions and other entities that purchased Parmalat equity securities, including companies, mutual funds and pension and retirement plans. Mr. Sturaitis has been appointed by the Court as the representative of the class, and that is why you will not meet or hear testimony from other members of the class. The class action is a standard legal procedure, and you should not be concerned by the absence of other class members during the trial. You must decide this case in accordance with whatever rights you find that the class has under the facts of this case.

However, the fact that the rules permit this action to proceed as a class action has nothing to do with the merits of Plaintiff's claims.

The Defendants in this action are Grant Thornton International, Grant Thornton International Limited, and Grant Thornton LLP. Grant Thornton LLP is an accounting firm that provides accounting, tax, consulting and auditing services in the United States. Grant Thornton International and Grant Thornton International Limited are entities that do not themselves provide professional accounting or other services to clients. Instead, they serve to coordinate and facilitate the provision of such services by various member firms using the Grant Thornton name in various countries, including Italy. Grant Thornton LLP is the member firm in the United States.

INSTRUCTION NO. 3: DEFINITION OF EQUITY SECURITY

I will explain the meaning of an "equity security." An equity security generally refers to common stock. The securities that are the subject of this trial are Parmalat's ordinary shares which, during the relevant time period, traded on the Milan Stock Exchange, the Luxembourg Stock Exchange, and the Mercato Telematico Azionario.

Authority: FJPI, § 162.280.

INSTRUCTION NO. 4: THE CLAIMS

The Plaintiff alleges violations of the federal securities laws that govern the purchase and sale of securities, such as Parmalat's ordinary shares. The claims are based on audit reports that Grant Thornton S.p.A., the Grant Thornton member firm in Italy, issued concerning the financial statements of Parmalat Finanziaria S.p.A. and/or various subsidiaries and affiliates thereof between January 5, 1999 and December 18, 2003. The Plaintiff alleges that these audit reports and the financial statements to which they related contained materially false or misleading information or failed to disclose material information required to keep the information from being misleading.

Grant Thornton S.p.A. was a defendant in this case, but it defaulted, meaning that it chose not to appear and assert any defense to any of the claims brought against it by the Plaintiff. The Plaintiff's claims against Grant Thornton International, Grant Thornton International Limited and Grant Thornton LLP contend that they are liable for the alleged wrongdoing by Grant Thornton S.p.A.

The Plaintiff alleges that as a result of the misstatements or omissions by Grant Thornton S.p.A., the market price of Parmalat's shares was inflated during the Relevant Period, and that the Plaintiff and the other members of the class purchased Parmalat securities at inflated prices. Then, when the market eventually learned of Parmalat's true financial condition, Parmalat went into bankruptcy, its share price fell, and as a result, the Plaintiff and the other members of the Class suffered damages.

The Defendants deny the Plaintiff's claims in their entirety.

Authority: FJPI, § 101.03; American Bar Association, *Model Jury Instructions: Securities Litigation*, at § 1.01 (modified); Excerpts from Manual of Model Civil Jury Instructions for the District Courts of the Eighth Circuit 2005, 1.01 General: Nature of Case; Burden of Proof; Duty of Jury; Cautionary (2009); 15 U.S.C. §§ 78t(a).

INSTRUCTION NO. 5: *THE ORDER OF PRESENTATION OF THE CASE*

When I finish these preliminary remarks, the case will go forward in the following order: First, the Plaintiff's lawyers may make an opening statement to you outlining the Plaintiff's claims. After that the defendants' lawyers may also make an opening statement outlining the defendants' case. Neither party is required to make a statement. What is said in the opening statement is not evidence. It is simply designed to provide you with an introduction to the evidence which the party making the statement intends to produce.

After the opening statements, the Plaintiff will introduce evidence in support of his claims. At the conclusion of the Plaintiff's case the Defendants may introduce evidence. If the Defendants introduce evidence, the Plaintiff may then introduce rebuttal evidence. Throughout this process, each party will have an opportunity to cross-examine the other parties' witnesses.

After the evidence is presented, the parties may make closing arguments to you as to what they consider that the evidence has shown, and as to the inferences which they think you should draw from the evidence. What is said in closing argument, just as what is said in opening statements, is not evidence. The arguments are designed to present to you the contentions of the parties based on the evidence introduced.

Finally, I will instruct you on the law which you are to apply in reaching your verdict.

Authority: FJPI, §101.02.

INSTRUCTION NO. 6: NOTE TAKING PERMITTED

If you would like to take notes during the trial you may do so. On the other hand, of course, you are not required to take notes if you do not want to. That will be left up to you, individually.

If you do decide to take notes, be careful not to get so involved in note taking that you become distracted from the ongoing proceedings. Also, your notes should be used only as aids to your memory; and if your memory should later differ from your notes, you should rely upon your memory and not your notes.

If you do not take notes, you should rely upon your own independent recollection or memory of what the testimony was, and you should not be unduly influenced by the notes of other jurors.

Notes are not entitled to any greater weight than the recollection or impression of each Juror concerning what the testimony was.

Authority: FJPI, §101.13 (modified).

INSTRUCTION NO. 7: THE DUTY OF THE JURY

After the evidence has been heard and arguments and instructions are concluded, you will retire to consider your verdict. You will decide what the facts are from all the testimony that you hear and the other evidence that is submitted. You are the sole and exclusive judges of the facts, and in that neither I nor anyone else may invade your province.

On the other hand, and equally important, I instruct you that you are bound to accept the rules of law that I give you whether you agree with them or not.

The law of the United States permits the judge to comment on the evidence in the case during the trial or in instructing the jury. Such comments are only expressions of the judge's opinion, and the jury may disregard them entirely, since the jurors are the sole judges of the facts.

Since you will be called upon to decide the facts of this case, you should give careful attention to the testimony and evidence presented for your consideration. During the trial you should keep an open mind and should not form any opinion about the case one way or the other until you have heard all of the testimony and evidence, the closing arguments of the lawyers, and my instructions to you on the applicable law.

Authority: FJPI, § 101.10.

INSTRUCTION NO. 8: BURDEN OF PROOF

This is a civil case. In general, in a civil case the plaintiff has the burden of proving its direct case by what is called the preponderance of the evidence. When a party has the burden to prove any matter by a preponderance of the evidence, it means that you must be persuaded by the testimony and exhibits that the matter sought to be proved is more probably true than not true. Put differently, if you were to put Plaintiff's and Defendants' evidence on opposite sides of a scale, the Plaintiff would have to make the scales tip slightly on that side.

You have probably all heard the expression "beyond a reasonable doubt" in connection with jury verdicts. This standard does not apply to this lawsuit; it is a standard applied only to criminal cases brought by the government involving possible criminal penalties, such as a prison sentence. The burden of proof you will apply in this civil lawsuit is the "preponderance of the evidence" standard which I have just described.

With respect to certain issues in this lawsuit, the Defendants, and not the Plaintiff, may have the burden of proving their defense by a preponderance of the evidence. In the instructions I will give you at the end of the trial, I will tell you which, if any, of those issues on which the Defendants bear the burden of proof.

Authority: L. Sand et al., *Modern Federal Jury Instructions* (2002) ("MFJI") Instructions 73-1, 73-2; FJPI, §101.41.

INSTRUCTION NO. 9: EVIDENCE IN THE CASE

I will now explain the meaning of the word "evidence." My statements are not evidence. The statements and arguments of counsel are not evidence. When, however, the attorneys on both sides have stipulated or agreed as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as proven.

The evidence from which you are to decide what the facts are consists of:

(1) the sworn testimony of witnesses, both on direct and cross-examination, including such deposition testimony as is introduced;

(2) the exhibits which have been received into evidence; and

(3) any facts to which all the lawyers have agreed or stipulated.

Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you:

(a) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

(b) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the Court's ruling on it.

(c) Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition, if testimony or exhibits have been received only for a limited purpose, you must follow the limiting instructions I have given.

(d) Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

I may take judicial notice of certain facts or events. When I declare that I will take judicial notice of some fact or event, you must accept that fact as true.

Authority: MFJI Instruction 74-1; FJPI, §101.40, 101.44.

INSTRUCTION NO. 10: DIRECT-INDIRECT OR CIRCUMSTANTIAL

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, which is the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial. Thus, you should consider all of the evidence presented, both direct and circumstantial.

Authority: MFJI Instruction 74-2; FJPI, §101.42.

INSTRUCTION NO. 11: DEPOSITION TESTIMONY

Depositions may also be received in evidence. Depositions contain sworn testimony, with the lawyers for each party being entitled to ask questions. In some cases, a deposition may be played for you on videotape. Deposition testimony may be accepted by you, subject to the same instructions that apply to witnesses testifying in open court.

Authority: FJPI, §101.40.

INSTRUCTION NO. 12: EXPERT WITNESSES

You will hear testimony in this case from certain expert witnesses. An expert is allowed to express his or her opinion on those matters about which he or she has special knowledge or training. Expert testimony is presented to you on the theory that someone who is experienced in the field may assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing the expert's testimony, you may consider the expert's qualifications, opinions, and reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness' testimony. You may give the expert testimony whatever weight, if any, you find it deserves in light of all of the evidence. You should not accept the witness' testimony merely because the witness is presented as an expert, nor should you substitute it for your own reason, judgment, and common sense. You are not limited to the opinions of experts, but are entitled to consider any evidence that you believe is relevant.

The testimony of the experts in this lawsuit may be in conflict; the experts may disagree. It may seem strange to you that you may be called upon to resolve a conflict between experts who disagree. But you must remember that you are the sole trier of the facts and that their testimony relates to a question of fact, so it is your job to resolve any disagreement. The way you resolve a conflict between experts is the same way that you decide other fact questions and the same way that you decide whether to believe ordinary witnesses. In addition, you should consider the soundness of each expert's opinion, the reasons for the opinion, and the expert's motive, if any, for testifying.

You may give the testimony of each expert such weight, if any, that you think it deserves in the light of all of the evidence. You may reject the testimony of any expert in whole or in part, if you conclude that the reasons given in support of an opinion are unsound or if, for other reasons, you do not believe the expert witness. The determination of the facts in this case rests solely with you.

Authority: MFJI Instructions 76-9, 76-10.

INSTRUCTION NO. 13: EVALUATION OF EVIDENCE

As the sole judges of the facts, you must determine which of the witnesses you believe, what portion of their testimony you accept, and what weight or importance you attach to it. At times during the trial I may sustain objections to questions asked without permitting the witness to answer or, where an answer had been made, may instruct that it be stricken from the record and that you disregard it and dismiss it from your minds. You may not draw any inference from an unanswered question, nor may you consider testimony which has been stricken in reaching your decision. The law requires that your decision be made solely upon the competent evidence before you. Such items as I may exclude from your consideration must be excluded because they are not legally admissible.

The law does not, however, require you to accept all of the evidence I may admit into evidence, even though it be competent. In determining what evidence you will accept you must make your own evaluation of the testimony given by each of the witnesses, and determine the degree of weight you choose to give to his or her testimony. You may believe everything a witness says or only part of it or none of it. The testimony of a witness may fail to conform to the facts as they occurred because he is intentionally telling a lie, because he did not accurately see or hear that about which he testifies, because his recollection of the event is faulty, or because he is not expressing himself clearly in giving his testimony. There is no magic formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves the reliability or unreliability of statements made to you by others. The same tests that you use in your everyday dealings are the tests which you should apply as jurors in your deliberations.

In weighing the testimony of a witness you may consider a number of factors, including the following: (1) the witness's relationship to the plaintiff or the defendant; (2) the witness's interest or lack of interest in the outcome of this case; (3) the witness's possible bias or prejudice, if there be any; (4) the witness's appearance and the manner in which he or she gives testimony on the stand; (5) the opportunity that the witness had to observe the facts concerning which he or she testifies; (6) whether the witness was contradicted by anything he or she said or wrote before trial or by other evidence; (7) the witness' candor, fairness, and intelligence; and (8) the probability or improbability of the accuracy of the witness' testimony when viewed in the light of all of the other evidence in the case. If such considerations make it appear that there is a discrepancy in the evidence, you will have to determine which of the conflicting versions you believe is true.

The weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You may find that the testimony of one witness or of a smaller number of witnesses as to a fact is more credible than the testimony of a larger number of witnesses to the contrary.

The test is not which side brings the greater number of witnesses, or presents the greater quantity of evidence; but which witness, and which evidence, appeals to your minds as being most accurate, and otherwise trustworthy.

The testimony of a single witness which produces in your minds belief in the likelihood of truth is sufficient for the proof of any fact, and would justify a verdict in accordance with such testimony, even though a number of witnesses may have testified to the contrary if, after consideration of all the evidence in the case, you hold greater belief in the accuracy and reliability of the one witness.

Authority: MFJI Instructions 76-1, 76-2, 76-3, 76-4; FJPI, §101.43.

INSTRUCTION NO. 14: RULING ON OBJECTIONS TO EVIDENCE

When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received into evidence. If I sustain the objection, the question cannot be answered and the exhibit cannot be received into evidence.

If I sustain an objection to a question or the admission of an exhibit, you must ignore the question and must not guess what the answer to the question might have been. In addition, you must not consider evidence that I have ordered stricken from the record.

It is a lawyer's duty to object when the other side offers testimony or other evidence that the lawyer believes is not admissible. You should not be unfair or partial against a lawyer or the lawyer's client because the lawyer has made objections. If I sustain or uphold an objection to a question, you should not draw any inferences or conclusions from the question. You should not infer or conclude from any ruling or other comment I may make that I have any opinions on the merits of the case favoring one side or the other. I do not favor one side or the other.

Authority: FJPI, §§ 101.01, 101.49.

INSTRUCTION NO. 15: LIMITING INSTRUCTIONS

Some evidence may be admitted for a limited purpose only. When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

Authority: FJPI, §101.45.

INSTRUCTION NO. 16: QUESTIONS ASKED BY THE COURT

During the course of a trial, I sometimes ask a witness questions to bring out facts not then fully covered in the testimony. That does not mean that I hold any opinion on the matters to which my questions may have related. Remember at all times that you, as jurors, may ignore my comments in arriving at your own findings as to the facts.

Authority: MFJI Instruction 71-5; FJPI, §101.30.

INSTRUCTION NO. 17: BENCH CONFERENCES

From time to time it may be necessary for me to talk to the lawyers out of your hearing. The purpose of these conferences is to decide how certain matters are to be treated under the rules of evidence. The lawyers and I will do what we can to limit the number and length of these conferences. Do not consider my granting or denying a request for a conference as an indication of my opinion of the case or of what your verdict should be.

Authority: FJPI, §§ 101.31, 102.02 (modified).

INSTRUCTION NO. 18: STIPULATED FACTS

Before the trial of this case, the court held a conference with the lawyers for all the parties. At this conference, the parties entered into certain stipulations or agreements in which they agreed that facts could be taken as true without further proof.

The stipulated facts are as follows:

[*Read stipulated facts.*]

Since the parties have stipulated to these facts and do not dispute them, you are to take these facts as true for purposes of this case.

Authority: FJPI, § 101.47.

INSTRUCTION NO. 19: *OFFICIAL TRANSLATION*

Italian or other foreign languages may be used during this trial with some witnesses. If a translator is used, you are to consider only that evidence provided through the official court translator. Although some of you may know the language used, it is important that all jurors consider the same evidence. Therefore, you must base your decision on the evidence presented in the English translation and disregard any different meaning of the non-English words.

Authority: FJPI, § 101.50.

INSTRUCTION NO. 20: JUROR CONDUCT OUTSIDE THE COURTROOM

To ensure fairness, you must obey the following rules:

(1) Do not talk to each other about this case or about anyone involved with this case until the end of the trial when you go to the jury room to decide on your verdict.

(2) Do not talk with anyone else about this case or about anyone involved with this case until the trial has ended and you have been discharged as jurors. "Anyone else" includes members of your family and your friends. You may tell people you are a juror, but do not tell them anything else about the case.

(3) Outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended. If someone should try to talk to you about the case during the trial, please report it to me immediately.

(4) During the trial you should talk with or speak to any of the parties, lawyers or witnesses involved in this case - you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice.

(5) Do not read any printed news stories or articles, or any internet websites, stories or articles, web blogs or instant messages (including Twitter), about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it.

(6) Do not do any research, such as checking dictionaries, the internet, newspapers or any other sources of data, or make any investigation about the case on your own.

(7) Do not post any information about the case, including any observations and opinions, on any internet website, web blog, or instant message.

(8) Do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and the other jurors have discussed all the evidence.

(8) If you need to tell me something, simply give a signed note to the clerk to give to me.

Authority: FJPI, § 101.11 (modified).

II. POST-TESTIMONIAL INSTRUCTIONS

INSTRUCTION NO. 21: GENERAL INTRODUCTION – PROVINCE OF THE COURT AND JURY

MEMBERS OF THE JURY:

Now that you have heard the evidence and the argument, it is my duty to instruct you about the applicable law. It is your duty to follow the law as I will state it and to apply it to the facts as you find them from the evidence in the case. Do not single out one instruction as stating the law, but consider the instructions as a whole. You are not to be concerned about the wisdom of any rule of law stated by me. You must follow and apply the law.

The lawyers have properly referred to some of the governing rules of law in their arguments. If there is any difference between the law stated by the lawyers and as stated in these instructions, you are governed by my instructions.

Nothing I say in these instructions indicates that I have any opinion about the facts. You, not I, have the duty to determine the facts.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

Authority: FJPI, § 103.01.

INSTRUCTION NO. 22: RULINGS DURING TRIAL

Testimony and exhibits can be admitted into evidence during a trial only if it meets certain criteria or standards. It is the duty of the lawyer on each side of a case to object when the other side offers testimony or an exhibit that the lawyer believes is not properly admissible under the rules of law. Only by offering an objection can a lawyer request and obtain a ruling from me on the admissibility of the evidence being offered by the other side. You should not be influenced against any lawyer or the lawyer's client because the lawyer has made objections.

Do not attempt to interpret my rulings on objections as somehow indicating how I think you should decide this case. I am simply making a ruling on a legal question.

Authority: FJPI, § 102.71.

INSTRUCTION NO. 23: PREPONDERANCE OF THE EVIDENCE

As I told you at the start of the trial, the burden is on the Plaintiff in a civil action, such as this, to prove the essential elements of his claim by a preponderance of the evidence. If the proof should fail to establish an essential element of the Plaintiff's claim by a preponderance of the evidence in the case, then the jury should not find for the Plaintiff as to that claim.

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means that such evidence has more convincing force than the evidence offered in opposition to it, and, as a result, you believe that what the evidence was offered to prove is more likely true than not true.

Imagine the familiar figure of Justice as a blindfolded woman holding a scale. Next, imagine that during the trial the plaintiff places his proof on one side of the scale, and the Defendants place theirs on the other. If at the end of the trial as a result of the weight of the evidence, the scale tips in favor of Plaintiff on a matter for which he has the burden of proof, no matter how slightly, then Plaintiff has proven that matter by a "preponderance of the evidence." If, however, the scale tips in favor of Defendants or is perfectly in balance on a matter for which Plaintiff has the burden of proof, then the Plaintiff has not proven that matter by a preponderance of the evidence. I would caution you that the term "weight of the evidence" refers to the quality of evidence and not to its quantity.

This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case. Those of you who have sat on criminal cases or watched them on television will have heard of proof beyond a reasonable doubt. That is not the standard or proof that applies to the case and you should therefore put it out of your mind. That is a stricter standard; it requires more proof than a preponderance of evidence, which is the proper standard here.

In determining whether any fact or issue has been proven by a preponderance of the evidence in the case, the jury may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

Authority: FJPI, §§ 104.01, 104.03.

INSTRUCTION NO. 24: DIRECT AND CIRCUMSTANTIAL EVIDENCE

I told you that evidence comes in various forms such as the sworn testimony of witnesses and exhibits. There are, in addition, different kinds of evidence, direct evidence and circumstantial evidence.

Direct evidence is where a witness testifies about what he or she saw, heard or felt. In other words, when a witness testifies about what is known by the witness' own knowledge, by virtue of the witness' own senses, what he or she sees, touches or hears, that is called direct evidence.

Circumstantial evidence is evidence which tends to prove a disputed fact by referring to other facts.

For example, assume that when you came into the courthouse this morning the sun was shining and it was a nice day. Also assume that the courtroom has no windows and you cannot look outside. As you are sitting here, someone walks in shaking an umbrella which is dripping wet. Somebody else then walks in with a raincoat which also is dripping wet.

Now, if there are no windows, you cannot look outside the courtroom, and you cannot see whether it is raining. So you have no direct evidence of that fact. But, on the combination of facts which I have asked you to assume, it would be reasonable and logical for you to conclude that it was raining outside.

Of course, not all circumstantial evidence presents such a clear compelling inference, and the strength of the inferences arising from other circumstantial evidence is for you to determine.

That is all there is to circumstantial evidence. You infer on the basis of reason and experience and common sense from an established fact the existence or the non-existence of some other fact. Please bear in mind, however, that an inference is not to be drawn by guesswork or speculation.

Circumstantial evidence is of no less value than direct evidence. For it is a general rule that the law makes no distinction between direct and circumstantial evidence. You are to consider all the evidence in the case, both direct and circumstantial, in determining what the facts are in arriving at your verdict.

In their arguments, the attorneys have asked you to infer on the basis of your reason, experience and common sense, from one or more established facts, the existence of some other fact.

An inference is not a suspicion or a guess. It is a reasoned, logical conclusion that a disputed fact exists on the basis of another fact which has been shown to exist.

There are times different inferences can be drawn from facts whether proved by direct or circumstantial evidence. The Plaintiff asks you to draw one set of inferences, while the

Defendants ask you to draw another. It is for you, and you alone, to decide what inferences, if any, you will draw.

The process of drawing inferences from facts in evidence as I told you is not a matter of guesswork or speculation. An inference is a deduction or conclusion which you, the jury is permitted to draw, but not required to draw, from the facts which have been established by either direct or circumstantial evidence. In drawing inferences you should use your common sense.

So, while you are considering the evidence presented to you, you are permitted to draw, from the facts which you find to be proved, such reasonable inferences as would be justified in light of your experience.

Authority: Pattern Civ. Jury Instr. 5th Cir. 3.1 (2006)(modified); MFJI Instructions 74-2 and 75-1 (modified).

INSTRUCTION NO. 25: INFERENCES

You are to consider only the evidence in the case. However, you are not limited to the statements of the witnesses. In other words, you are not limited to what you see and hear as the witnesses testify. You may draw from the facts that you find have been proved such reasonable inferences as seem justified in light of your experience.

"Inferences" are deductions or conclusions that reason and common sense lead you to draw from facts established by the evidence in the case.

Authority: FJPI, § 104.20.

INSTRUCTION NO. 26: WEIGHT OF EVIDENCE AND NUMBER OF WITNESSES

The weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or nonexistence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

You are not bound to decide any issue of fact in accordance with the testimony of any number of witnesses that does not produce in your minds belief in the likelihood of truth, as against the testimony of a lesser number of witnesses or other evidence producing such belief in your minds.

The test is not which side brings the greater number of witnesses or takes the most time to present its evidence, but which witnesses and which evidence appeal to your minds as being most accurate and otherwise trustworthy.

Authority: FJPI, § 104.54.

INSTRUCTION NO. 27: SINGLE WITNESS

The testimony of a single witness may be sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all the other evidence you believe that single witness.

Authority: Pattern Civ. Jury Instr. 5th Cir. 3.1 (2006).

INSTRUCTION NO. 28: CREDIBILITY OF WITNESSES - DISCREPANCIES IN TESTIMONY

You are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testifies, or by the character of the testimony given, or by evidence to the contrary of the testimony given.

You should carefully examine all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor or manner while testifying.

Consider the witness' ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Also, consider any relation each witness may have with either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which the testimony of each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves. In short, you may accept or reject the testimony of any witness, in whole or in part.

Authority: FJPI, § 105.01 (modified).

INSTRUCTION NO. 29: CREDIBILITY OF WITNESSES - INCONSISTENT STATEMENTS OR CONDUCT

A witness may be discredited or impeached by contradictory evidence, or by evidence that at some other time the witness has said or done some thing which is inconsistent with the witness's present testimony.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

If a witness is shown to have knowingly testified falsely concerning any material matter, you have the right to distrust such witness' testimony in other particulars and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is "knowingly" done, if voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Authority: FJPI, § 105.04.

INSTRUCTION NO. 30: CREDIBILITY OF WITNESSES - BIAS AND INTEREST

In deciding whether to believe a witness, you should specifically note any evidence of that witness' hostility toward, or affection for, one of the parties. Likewise, you should consider evidence of any other interest or motive the witness may have in cooperating with a particular party, such as an important business relationship. In evaluating the credibility of the witnesses, you should also take into account any evidence that a witness may benefit in some way from the outcome of the case. Such an interest creates a motive to testify falsely and may sway a witness to testify in a way that advances the witness's own interests. Therefore, if you find that any witness whose testimony you are considering has an interest in the outcome of this trial, you should bear that factor in mind when evaluating the credibility of the testimony.

It is your duty to consider whether the witness has permitted any such bias or interest to color his testimony. In short, if you find that a witness is biased, you should view the witness' testimony with caution, weigh it with care, and subject it to close and searching scrutiny.

Authority: MFJI Instructions 76-2 and 76-3 (modified).

INSTRUCTION NO. 31: ASSERTION OF THE FIFTH AMENDMENT

During the trial you heard evidence that some witnesses refused to answer questions on the grounds that it may tend to incriminate them. In a civil case like this one, you may, but need not, conclude that witnesses who "take the Fifth" and refuse to answer questions believe that they would expose themselves to civil liability and criminal prosecution if they answered the questions truthfully.

Although you may consider a witness' refusal to testify, you should give that refusal no more weight than is warranted by all the facts. A refusal to testify may not be the sole basis upon which you impose liability. You have to have other corroborating evidence, whether documents or testimony, upon which you might impose liability.

A witness invoking his Fifth Amendment privilege cannot be considered evidence that anyone other than the witness or his employer was a participant in any alleged securities law violation. In other words, you may hold a person's refusal to testify against his employer.

Authority: *FDIC v. Fidelity & Deposit Co. of Maryland*, 45 F.3d 969, 979 n.5 (3d Cir. 1995); *RAD Servs. v. Aetna Cas. & Sur. Co.*, 808 F.2d 271 (3d Cir. 1986); *In re Corrugate Container Antitrust Litig.*, No. M.D.L.-310 (S.D. Tex. Apr. 1980) (instruction reprinted in Baylson, *The Fifth Amendment in Civil Antitrust Litigation: Overview of Substantive Law*, 50 Antitrust L.J. 837, 844 (1982)).

INSTRUCTION NO. 32: OPINION EVIDENCE - EXPERT WITNESS

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to "expert witnesses." An expert witness is a person who, by education and experience, has become expert in some art, science, profession, or calling. Expert witnesses may state their opinions as to relevant and material matters, in which they profess to be expert, and may also state their reasons for the opinion. In this case, **[describe who is proffering whom on what issues]**.

You should consider each expert's opinion received in evidence in this case, and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely.

Authority: FJPI, § 104.40.

INSTRUCTION NO. 33: DEPOSITIONS - USE AS EVIDENCE

During the trial of this case, certain testimony has been presented to you by way of deposition, consisting of sworn recorded answers to questions asked of the witness in advance of the trial by one or more of the attorneys for the parties to the case. The testimony of a witness who, for some reason, cannot be present to testify from the witness stand may be presented in writing under oath or on a videotape. A party cannot compel a person who lives more than 100 miles away to appear at trial. Deposition testimony is entitled to the same consideration, and is to be judged as to credibility, and weighed, and otherwise considered by you, insofar as possible, in the same way as if the witness had been present and had testified from the witness stand.

Authority: FJPI, § 105.02; Fed. R. Civ. P. 32(a).

INSTRUCTION NO. 34: ORGANIZATION'S AGENTS AND EMPLOYEES

In weighing the evidence on the Plaintiff's claims, you will be called upon to draw conclusions about what Grant Thornton S.p.A. knew or recklessly disregarded and reasonably should have known about certain matters and what Defendants did or reasonably should have done in certain circumstances. Grant Thornton S.p.A., however, is not a natural person but is a business organization, and you will be called upon to draw conclusions about the conduct and knowledge of this entity. Entities like this may act only though natural persons as its agents or employees. In general, any agents or employees of an entity may bind it by their acts and declarations made while acting within the scope of their authority designated to them by the firm or within the scope of their duties as employees of the firm. The law therefore holds an entity responsible for the acts and omissions of its partners, directors, employees, and agents if those acts and omissions are authorized. By the same token, the knowledge of an entity is the collective knowledge of its partners, directors, officers, employees, and agents acting within the scope of their duties. If you find, therefore, that any of the partners or employees of Grant Thornton S.p.A. violated the law, either individually or collectively, then you must find that Grant Thornton S.p.A. violated the law.

Authority: FJPI, § 103.31; *Suez Equity Investors, L.P. v. Toronto-Dominion Bank*, 250 F.3d 87, 101 (2d Cir. 2001); *S.E.C. v. Ballesteros Franco*, 253 F. Supp.2d 720, 729 (S.D.N.Y. 2003).
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INSTRUCTION NO. 35: CLASS ACTION

I mentioned at the beginning of the trial that Plaintiff Arch Sturaitis is the Plaintiff in what is known as a "class action." He represents himself and other persons and entities from the United States who purchased or otherwise acquired ordinary shares of Parmalat Finanziaria, S.p.A. between January 5, 1999 and December 18, 2003.

A class action is a type of a lawsuit that permits the claims of a large group of people or entities, known as a "class," to be determined through a lawsuit brought by a small number of plaintiffs, called the "class representatives." Each of the claims made by the class representatives is likewise made on behalf of all other class members.

The fact that this is a class action does not indicate that the claims made on behalf of the Plaintiff or the Class have merit or do not have merit. Your consideration of the facts should not be influenced merely because the lawsuit is presented in the form of a class action.

Authority: Fed. R. Civ. P. 23.

INSTRUCTION NO. 36: PURPOSE OF FEDERAL SECURITIES LAWS

The defendants are charged with violating provisions of the Securities Exchange Act of 1934. This law was passed by Congress to provide a comprehensive plan to protect the investing public in the purchase and sale of securities. When the United States Congress enacted the Securities Exchange Act of 1934, it recognized that an investment is different from the purchase of ordinary goods like vegetables bought in a grocery store, in that the average investor is not in a position to make personal investigation to determine the worth, quality and value of securities.

In connection with the sale of ordinary goods, you may have heard of "caveat emptor" or "let the buyer beware," where the seller may have no duty to inform the buyer of problems concerning the goods. By enacting the Securities Exchange Act of 1934, Congress determined that this doctrine does not apply to the sale of securities at all.

Congress passed the Securities Exchange Act of 1934 to ensure fair dealing and to outlaw deceptive and unfair practices by those selling or buying securities on securities exchanges. The Securities Exchange Act and the rules made by the S.E.C. to enforce it are designed to support the investor's expectations that the securities markets are free from fraud. Congress recognized that any deceptive or manipulative practices that hide or distort the facts available to the investing public undermine the function and purpose of a free market.

The federal securities laws are designed to support investor expectations that the securities markets are free from fraud. They are also meant to prevent a wide variety of devices and schemes that are contrary to a climate of fair dealing. They are intended to replace the philosophy of "buyer beware" with a policy of full, fair and accurate disclosure. Such disclosure is designed to enable the investing public to make realistic appraisals about the merits of stocks, so that investors may make informed investment decisions. This is only possible if companies and their officers, directors and employees are prohibited from using manipulative or deceptive practices such as providing false or misleading information, withholding important information, or telling half-truths regarding a company's finances, operations, products or prospects. Such illegal practices prevent investors from making informed decisions regarding the purchase or sale of a stock, and undermine investor faith and confidence in the stock market since an investor normally believes that the price one pays for a stock is a fair and accurate reflection of its true value.

The Plaintiff's federal claims fall under separate provisions of the Securities Exchange Act of 1934, which we will refer to as Section 10(b) and Rule 10b-5 promulgated thereunder, and Section 20(a). Section 10(b) and Rule 10b-5 prohibit the dissemination of documents which contain materially false or misleading information or which fail to disclose other material information necessary to judge that the information given is not misleading, and also prohibit engaging in a scheme to defraud. Section 20(a) provides that anyone that controls a person liable under Section 10(b) is also liable to the same extent as that controlled person.

Authority: MFJI Instruction No. 82-2 (modified); FJPI §§ 162.02, 162.211; American Bar Association, *Model Jury Instructions: Securities Litigation* § 1.07; *See also Basic, Inc. v.*

Levinson, 485 U.S. 224, 230-31, 234 (1988); *CompuDyne Corp. v. Shane*, 453 F. Supp.2d 807, 818-19 (S.D.N.Y. 2006).

INSTRUCTION NO. 37: THE FEDERAL STATUTE AT ISSUE

I will now read to you the portions of the federal securities law that the Class claims that the defendants violated.

Section 10(b) of the Securities Exchange Act of 1934 provides in pertinent part as follows:

> It shall be unlawful for any person, directly or indirectly by the use of any means or instrumentality of interstate commerce or the mails, or any facility of any national security exchange -
>
> (B) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [United States Securities and Exchange] Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

The Securities and Exchange Commission has prescribed Rule 10b-5 in the public interest to protect investors. Rule 10b-5 has the force of law and provides as follows:

> It shall be unlawful for any person, directly or indirectly by the use of any means or instrumentality of interstate commerce, or the mails, or any facility of any national securities exchange,
>
> (1) to employ any device, scheme, or artifice to defraud,
>
> (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
>
> (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,
>
> in connection with the purchase or sale of any security.

> Section 20(a) (15 U.S.C.A. § 78t(a)) of the Securities Exchange Act provides that:

> Every person who, directly or indirectly, controls any person liable under any provision of this chapter or any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controller person to any person to whom such controller person is liable.

Authority: 15 U.S.C. § 78j(b); 17 C.F. R. § 240.10b-5; 15 U.S.C.A. § 78t(a).

INSTRUCTION NO. 38: IMPLIED PRIVATE ACTIONS

Private lawsuits under the securities laws such as this class action are an important enforcement mechanism to supplement governmental regulation of the markets for securities. Public policy encourages such private lawsuits as enforcement devices to aid the public interest. The United States Securities and Exchange Commission has only enough resources to prosecute some of the violations. The major objective of the securities laws is to protect investors. This is why private lawsuits have long been viewed as necessary to protect investors. Thus the United States Supreme Court has recognized that implied private actions provide an essential tool for the enforcement of the securities laws.

Authority: *Herman & MacLean v. Huddleston*, 459 U.S. 375, 382-384 (1983)(implying a right of action for Section 10(b) fraud in registration statement; *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 196 (1976); *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975); *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988); *Mills v. Electric Autolite Co.*, 396 U.S. 375 (1970).

INSTRUCTION NO. 39: SECTION 10(b) AND RULE 10b-5 ELEMENTS

The Plaintiff's first claim is under Section 10(b) of the Securities Exchange Act and Rule 10b-5, which was issued under that Act. To prove a violation under Section 10(b), the Plaintiff must establish, by a preponderance of the evidence, each of the five following elements. Because in this case the claim is that the primary violation of Section 10(b) was committed by Grant Thornton S.p.A., these elements are only required to be proven with respect to Grant Thornton S.p.A.

First: That in connection with the purchase or sale of a security that Grant Thornton S.p.A. made an untrue statement of a material fact or failed to state a material fact that was necessary to prevent the statements that were made from being misleading under the circumstances;

Second: That Grant Thornton S.p.A. acted with scienter, that is, that it acted knowingly or recklessly;

Third: That the Plaintiff justifiably relied on the misrepresentation or omission of Grant Thornton S.p.A.;

Fourth: That the Plaintiff suffered damages as a result of Grant Thornton S.p.A.'s conduct; and

Fifth: that Grant Thornton S.p.A. used, or caused to be used, an instrumentality of interstate commerce or the facilities of a national securities exchange in connection with the purchase or sale of securities to the Plaintiff.

Authority: American Bar Association, *Model Jury Instructions: Securities Litigation*, § 4.02 (modified); MFJI Instruction 82-3; FJPI 162.230; 15 U.S.C. § 78j(b); 17 C.F.R. 240.10b-5 (1993); *Basic Inc. v. Levinson*, 485 U.S. 224, n. 27 (1988); *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 191 (1976); *Herman & MacLean v. Huddleston, 459 U.S. 375 (1983).*

INSTRUCTION NO. 40: MISREPRESENTATIONS AND OMISSIONS

Plaintiff's claims against the Defendants involve allegations of misrepresentations or omissions by Grant Thornton S.p.A..

A misrepresentation is a statement that was false or misleading when it was made.

An omission is a failure to disclose a material fact that needed to be disclosed to keep the statements that were actually made from being misleading. An omission focuses on what was not said rather than what was said.

A misleading statement is a statement that may be literally true, but that omits important facts. For example, if someone says it is sunny outside when it is actually nighttime, that is a false statement. But if someone says it is sunny outside when he is referring only to the sun breaking through in the middle of a rainstorm, the statement is misleading. While it is literally true, it does not tell the whole story and misleads people who may hear the statement.

A statement is not false or misleading merely because subsequent events prove it to have been erroneous. Whether statements or omissions are false or misleading must be determined as of the time they were made.

Authority: American Bar Association, *Model Jury Instructions: Securities Litigation* §§ 2.03[1], 2.03[1][a], 4.02[2] (modified); FJPI, § 162.22 (modified).

INSTRUCTION NO. 41: ONLY ONE MISSTATEMENT OR OMISSION IS REQUIRED

The Plaintiff need only prove one misrepresentation or one omission for you to find that the "misrepresentation or omission" element of Section 10(b) has been satisfied.

Authority: 15 U.S.C. §78j(b); 17 C.F.R §240.10b-5; American Bar Association, *Model Jury Instructions: Securities Litigation*, §§ 2.03[1], 4.02[2]; *Herman & MacLean v. Huddleston*, 459 U.S. 375 (1983); *Madison Consultants v. FDIC*, 710 F.2d 57, 62 (2d Cir. 1983).

INSTRUCTION NO. 42: MAKING OF A STATMENT

If you find that a material misrepresentation or omission was made, then any person who made that misrepresentation or omission may potentially be held liable under Section 10(b). A single statement or omission can be made by more than one person.

Authority: *Howard v. Everex Sys., Inc.*, 228 F.3d 1057, 1061 (9th Cir. 2000); *In re Independent Energy Holdings PLC Sec. Litig.*, 154 F. Supp. 2d 741, 767 (S.D.N.Y. 2001); *F.N. Wolf & Co., Inc. v. Estate of Neal*, 1991 WL 34186, *9 (S.D.N.Y. Feb. 25, 1991).

INSTRUCTION NO. 43: AUDIT ENGAGEMENT

Grant Thornton S.p.A. was engaged to perform audits of the consolidated financial statements of Parmalat Finanziaria S.p.A. for the year ending December 31, 1998 and for several prior years. Grant Thornton S.p.A. was also engaged to perform audits of certain subsidiaries and affiliates of Parmalat Finanziaria S.p.A., whose financial results were included in that company's consolidated financial statements. Among others, Grant Thornton S.p.A. was engaged to audit the financial statements of Bonlat Financing Corporation for the years ending December 31, 1999, 2000, 2001, 2002 and 2003, and it was engaged to audit the financial statements of Parmalat S.p.A. for the years ending December 31, 1999, 2000, 2001, 2002 and 2003.

When auditors are engaged to conduct an audit, they should do two things: first, they should examine the company's financial statements in accordance with auditing standards promulgated by various bodies that regulate the accounting profession; second, if they issue an opinion, then it should be on whether the company's financial statements fairly present the company's financial position, results of operations, and cash flows in conformity with relevant accounting principles, for the period of time covered by the financial statements at the time stated in the opinion. It is the auditors' duty to perform sufficient audit procedures to render an opinion on whether the financial statements are fairly presented in all material respects in conformity with applicable accounting principles.

Authority: ABA, Model Jury Instructions: Securities Litigation § 5.04 (modified) (and authorities cited therein).

INSTRUCTION NO. 44: STATEMENTS AT ISSUE IN THIS CASE

In this case, Plaintiff claims that Grant Thornton S.p.A. made the following statements that contained material misrepresentations or omissions:

Grant Thornton S.p.A.'s audit report on the consolidated financial statements of Parmalat Finanziaria S.p.A. for the period ending December 31, 1998.

Grant Thornton S.p.A.'s review report on the consolidated financial statements of Parmalat Finanziaria S.p.A.'s consolidated financial statements for the period ending June 30, 1999.

Grant Thornton S.p.A.'s audit report on the financial statements of Parmalat S.p.A. for the period ending December 31, 1999.

Grant Thornton S.p.A.'s audit report on the financial statements of Parmalat S.p.A. for the period ending December 31, 2000.

Grant Thornton S.p.A.'s audit report on the financial statements of Parmalat S.p.A. for the period ending December 31, 2001.

Grant Thornton S.p.A.'s audit report on the financial statements of Parmalat S.p.A. for the period ending December 31, 2002.

Grant Thornton S.p.A.'s audit report on the financial statements of Bonlat Financing Corporation for the period ending December 31, 1999.

Grant Thornton S.p.A.'s audit report on the financial statements of Bonlat Financing Corporation for the period ending December 31, 2000.

Grant Thornton S.p.A.'s audit report on the financial statements of Bonlat Financing Corporation for the period ending December 31, 2001.

Grant Thornton S.p.A.'s audit report on the financial statements of Bonlat Financing Corporation for the period ending December 31, 2002.

In addition, Plaintiff claims that Grant Thornton S.p.A. is responsible for and can be deemed to have made misrepresentations and omissions that appear in audit reports issued by Deloitte & Touche S.p.A. on the consolidated financial statements of Parmalat Finanziaria S.p.A. for the periods ending December 31, 1999, 2000, 2001 and 2002. The consolidated financial statements of Parmalat Finanziaria S.p.A. incorporated the financial statements of Parmalat S.p.A. and of Bonlat Financing Corporation, which had been audited by Grant Thornton S.p.A. In each of those Deloitte & Touche S.p.A. audit reports, Deloitte & Touche S.p.A. stated that its audit report was based in part on work carried out by other auditors, which include Grant Thornton S.p.A. In deciding whether Grant Thornton S.p.A. made a misrepresentation or omission, you must consider whether Grant Thornton S.p.A. was sufficiently responsible for any

misrepresentations or omissions in the Deloitte & Touche S.p.A. audit reports and whether the investing public understood that Grant Thornton S.p.A. was responsible, such that Grant Thornton S.p.A. can be deemed to have made those misrepresentations and omissions.

Authority: *In re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 75-76 (2d Cir. 2001); *In re Global Crossing, Ltd. Sec. Litig.*, 322 F. Supp. 2d 319, 331 (S.D.N.Y. 2004); *Teachers' Ret. Sys. of Louisiana v. ACLN, Ltd.*, No. 01 Civ. 11814 (LAP), 2004 U.S. Dist. LEXIS 25927, at *19 (S.D.N.Y. Dec. 20, 2004)

INSTRUCTION NO. 45: MATERIALITY

Each of the Plaintiff's claims also requires proof that any fact that was misrepresented or omitted was material. A fact is material if there is a substantial likelihood that a reasonable investor, under all the circumstances, would consider the information to be significant or important in making an investment decision. This is an objective test: It measures what facts a reasonable investor would probably think are important, not what any individual plaintiff actually considered important. You do not need to find that the misrepresented or omitted fact would have changed the decision to invest, only that it would be considered important.

Also, even if taken by itself, a misleading statement or omission is not material, you may still find that the Plaintiff has satisfied this element if that misleading statement or omission, taken together with other misleading statements or omissions, would have made a difference to a reasonable investor. Misrepresentations and omissions are material when they, considered together and in context, would affect the total mix of information available to investors. In other words, misleading statements and omissions of fact that are not material standing alone may be material collectively when considered together.

A statement can also be misleading, though not technically false, if it amounts to a half-truth by omitting some material fact.

Once a person or entity voluntarily chooses to make a statement which is reasonably calculated to influence the investing public, the speaker has a duty to disclose sufficient information so that the statement made is not false and misleading or so incomplete as to mislead.

A finding of materiality must be based on the facts that existed when the statement was made.

Authority: *Basic, Inc. v. Levinson,* 485 U.S. 224 (1988); *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *Halperin v. eBanker USA.com, Inc.*, 295 F.3d 352, 357 (2d Cir. 2002); *In re American Bank Notes Holographics, Inc. Sec. Litig.*, 93 F. Supp.2d 424, 442 (S.D.N.Y. 2000); *SEC v. Texas Gulf Sulphur*, 401 F.2d 833, 862 (2d Cir.1968); *Fogarazzo v. Lehman Bros., Inc.*, 341 F. Supp.2d 274, 294 (S.D.N.Y. 2004); FJPI §§ 162.48, 162.148, 162.281; American Bar Association, *Model Jury Instructions: Securities Litigation*, §§ 2.03[2], 2.03[2][A], 4.02[3] (modified).

INSTRUCTION NO. 46: DUTY TO CORRECT

There is a duty to correct statements of material fact made in a report filed with the SEC or sent to investors, or in press releases issued by the company. This duty arises if it is learned the statement is or has become materially misleading and if a reasonable person would expect that investors or other market participants would likely still be relying on the earlier, incorrect statement.

Authority: American Bar Association, *Model Jury Instructions: Securities Litigation* § 4.02[2].

INSTRUCTION NO. 47: IN CONNECTION WITH THE SALE OR PURCHASE OF A SECURITY

The Plaintiff must prove by a preponderance of the evidence that Grant Thornton S.p.A.'s conduct was "in connection with" the sale or purchase of a security.

The "in connection with" aspect of this element is satisfied if you find that there was some nexus or relation between the allegedly fraudulent conduct and the sale or purchase of securities. Fraudulent conduct may be "in connection with" the purchase or sale of securities if you find that the alleged fraudulent conduct "touched upon" a securities transaction.

Authority: MFJI Instruction 82-4; *see SEC v. Zandford*, 535 U.S. 813 (2002).

INSTRUCTION NO. 48: SCIENTER, INTENT TO DEFRAUD

The second element that the Plaintiff must prove by a preponderance of the evidence is that Grant Thornton S.p.A. acted with scienter, meaning that it either knew that their statements were false or misleading, or that it acted with reckless disregard as to whether the statements were false or misleading.

Also, with regard to omissions, the Plaintiff must prove by a preponderance of the evidence that Grant Thornton S.p.A. either knew the omitted statements were material and intentionally omitted them, or that Grant Thornton S.p.A. acted with reckless disregard in omitting material statements.

Knowingly means to act intentionally and deliberately, rather than negligently, mistakenly or inadvertently. Knowledge may be established either by direct or circumstantial evidence. If it appears that a certain condition has existed and that Grant Thornton S.p.A. had the regular opportunity to observe that condition, then you may draw the inference that Grant Thornton S.p.A. had knowledge of the condition.

Reckless conduct is highly unreasonable conduct involving an extreme departure from the standards of ordinary care, and which presents a danger of misleading that is either known to the defendant, or is so obvious that the actor must have been aware of it. Recklessness may be established by a showing of carelessness approaching indifference, or by showing that a statement was made with no regard for, and with a conscious purpose to avoid learning of the truth or falsity of a statement. Among other things, a person acts recklessly if the person had reasonable grounds to believe material facts existed that were misstated or omitted, but nonetheless failed to obtain and disclose such facts although he could have done so without extraordinary effort.

Reckless conduct could include, for example, a deliberate closing of the eyes, or turning of the back to the obvious; acting with a conscious purpose to avoid learning the truth; a gross refusal to investigate the doubtful or suspicious; or more generally, any denial of knowledge of certain facts by one who has such knowledge. Lack of an adequate belief in the truth or completeness of a representation constitutes recklessness.

In the context of securities law, a person acts recklessly if he, she or it makes a false statement with a reckless disregard for whether it is true or false. It is not necessary for you to find that Grant Thornton S.p.A. intended to injure Plaintiff. Plaintiff must prove that Grant Thornton S.p.A. acted in reckless disregard of a risk of whether there was a truthful basis for its representations or in the case of an omission, that they recklessly disregarded the material nature of those omissions.

Direct proof of state of mind or scienter is almost never available, and is not required. Circumstantial evidence, if believed, is of no less value than direct evidence. In either case, it is the Plaintiff's burden to prove all of the elements by a preponderance of the evidence.

I instructed you earlier that Grant Thornton S.p.A., as an entity, can act only through its

partners, directors, officers, employees and agents. Likewise, for purposes of the required state of mind, Grant Thornton S.p.A.'s knowledge or recklessness can only be described as a knowledge or recklessness of its partners, directors, officers, employees and agents. Therefore, Grant Thornton S.p.A. can be found to act with the required state of mind or scienter with respect to a misleading statement or material omission if any of its partners, directors, officers, employees or agents knew that the statement was misleading or omitted material information, or were reckless as to its truth or falsity. In other words, if partners, directors, officers, employees or agents of Grant Thornton S.p.A., even if they are not defendants, knew of material misrepresentations or omissions, you can find that the firm acted with scienter. In addition, if no single person knew of the misleading statement or material omission, you may still find that Grant Thornton S.p.A. acted with the required state of mind if the knowledge of all its partners, officers, directors, employees or agents together showed that they knew of the misleading statement or omission, or acted recklessly.

If you find that a Grant Thornton S.p.A. partner, director, officer, employee or agent knew of or recklessly disregarded facts which should have been disclosed, you may consider that scienter has been proven as to Grant Thornton S.p.A.

Authority: *Ernst & Ernst v. Hochfelder,* 425 U.S. 185, 206 (1976); *Teamsters Local 445 Freight Division Pension Fund v. Dynex Capital Inc.*, 531 F.3d 190, 195-96 (2d Cir. 2008); *Kalnit v. Eichler*, 264 F.3d 131 (2d Cir. 2001); *Honeyman v. Hoyt*, 220 F.3d 36 (2d Cir. 2000); *In re Carter-Wallace, Inc. Sec. Litig.*, 220 F.3d 36, 39 (2d Cir. 2000); *Novak v. Kasaks*, 216 F.3d 300, 308 (2d Cir. 2000), *Chill v. General Elec. Co.*, 101 F.3d 263, 269 (2d Cir. 1996); *In re Moody's Corp. Sec. Litig.*, 2009 WL 435323, *16 (S.D.N.Y. Feb. 23, 2009); *In re Atlas Air Worldwide Holdings, Inc. Sec. Litig.*, 324 F. Supp.2d 474, 497 (S.D.N.Y. 2004); MFJI Instruction 82-8; FJPI §§ 162.232, 162.284; American Bar Association, *Model Jury Instructions: Securities Litigation*, §§4.02[4], 4.02[4][a], 4.02[4][b] (modified).

INSTRUCTION NO. 49: NEITHER MOTIVE NOR INTENT TO VIOLATE THE LAW REQUIRED

In order to prove actual knowledge or recklessness, Plaintiff does not have to show that Grant Thornton S.p.A. intended to violate the law, nor does Plaintiff have to show any particular motive for Grant Thornton S.p.A.'s wrongful conduct. Although motive is not required to prove knowledge, evidence of motive may be a basis for inferring knowledge.

Authority: *Tellabs v. Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007); *Novak v. Kasaks,* 216 F.3d 300, 307 (2d Cir. 2000); *Chill v. Gen. Elec. Co.,* 101 F.3d 263, 268 (2d Cir. 1996); *In re Nortel Networks Corp. Sec. Litig.*, 238 F. Supp.2d 613, 630 (S.D.N.Y. 2003).

INSTRUCTION NO. 50: JUSTIFIABLE RELIANCE

The third element of the Plaintiff's claim under Section 10(b) and Rule 10b-5 requires proof by a preponderance of the evidence that the Plaintiff relied upon the alleged misrepresentations or omissions and that his reliance was reasonable or justified.

In this lawsuit, the Plaintiff claims the Milan Stock Exchange, the Luxembourg Stock Exchange, and the Mercato Telematico Azionario are open, developed, and efficient markets for Parmalat's securities. If you find that the Plaintiff has proven by a preponderance of the evidence that the Milan Stock Exchange, the Luxembourg Stock Exchange, and the Mercato Telematico Azionario were open, developed, and efficient markets for Parmalat securities, and that the investors relied "on the integrity of the market," then under the "fraud on the market" rule there is a presumption that the Plaintiff and all class members relied on Defendants' statements, and the Plaintiff does not have to prove reliance on the documents or statements or acts on which Plaintiff bases his claims. I will discuss the fraud-on-the-market rule in detail momentarily.

In addition, there is a second, independent presumption of reliance which the Plaintiff may take advantage of in this lawsuit. If a defendant omitted to inform a plaintiff of a material fact, as opposed to simply making an affirmative misrepresentation, then it would not be possible for a plaintiff to prove that he relied on that omission. In such a case, if you find that the defendant had a duty to disclose the information that was not disclosed, then the plaintiff's reliance must be presumed, since the law recognizes that a person cannot prove that he relied on a fact which was withheld from him and of which he therefore had no knowledge.

As I described earlier, a material fact is one that would have been significant to a reasonable person's investment decision. Put another way, a material fact is one which would have created a likelihood that the Plaintiff would have considered the fact significant in the total mix of information available to it.

Thus, if you find that Grant Thornton S.p.A. omitted to inform the Plaintiff of certain facts, and if you find that the omissions of fact were material, then reliance is presumed for the Plaintiff, and the Plaintiff has satisfied this element.

To rebut the presumption of reliance with respect to the Plaintiff and the Class, the Defendants must prove by a fair preponderance of the evidence that there was no link between any alleged misrepresentation and the price Plaintiff paid for the securities. The Defendants can rebut the presumption of reliance by proving that complete and truthful information had credibly entered the market so that the market price of the securities was corrected and did not respond to the Defendants' misrepresentations or omissions, by proving that the markets for Parmalat's ordinary shares were not efficient during the Class Period, or that the Plaintiff had specific knowledge that Grant Thornton S.p.A.'s statements to the market were false, yet purchased Parmalat shares anyway.]

Authority: *Basic, Inc. v. Levinson,* 485 U.S. 224, 243-47 (1988); *TSC Industries, Inc. v. Northway, Inc.,* 426 U.S. 438, 449 (1976); *Affiliated Ute Citizens v. United States,* 406 U.S. 128,

153-54 (1972); *In re Harcourt Brace Jovanovich, Inc. Sec. Litig.*, 838 F. Supp. 109, 112 (S.D.N.Y. 1993); FJPI §§ 162.233, 162.234; American Bar Association, *Model Jury Instructions: Securities Litigation*, §4.02[5][d] (modified).

INSTRUCTION NO. 51: RELIANCE – FRAUD-ON-THE-MARKET

If the Plaintiff proves by a preponderance of the evidence that Parmalat's ordinary shares traded in efficient markets, then the Plaintiff and all class members are presumed to have relied on the integrity of the market and on the belief that Grant Thornton S.p.A. did not make any material misstatements or omissions regarding Parmalat during the Class Period. This presumption of reliance is known as the fraud-on-the-market rule.

The fraud-on-the-market rule is based on the observation that, in an open and developed market for securities, the market price of a company's stock is determined by, and reflects, the available, relevant and credible information concerning the company and its business. The failure to disclose material negative information about such a company or its business, or the making of misleading or false positive statements about the company or its business, will cause a company's stock to sell at a higher price than that at which it would have sold if the true facts about the company or its business had been known.

Under the fraud-on-the-market rule, the law recognizes that members of the public are entitled to rely upon the price of a security to reflect its value accurately. An investor who buys or sells stock at the price set by the market relies on the integrity of that price; that is, he or she relies on that price to reflect only true information about the security.

To be entitled to the fraud-on-the-market presumption, the Plaintiff must show that the markets for Parmalat's ordinary shares were efficient. An efficient market is one where the market price of the stock fully reflects all publicly available information. This definition focuses on whether market prices respond rapidly to new information, such that prices impound all publicly available information (and misinformation). Efficiency does not depend on the accuracy of the market price and whether it mirrors the best possible estimates of the actual economic values of the securities.

Plaintiff can prove by a preponderance of the evidence that Parmalat's ordinary shares traded in active, open markets, by demonstrating a number of factors, such as: whether Parmalat's ordinary shares traded on a national exchange and there was an established market for Parmalat's securities; whether there were a large number of traders and volume during the Class Period; whether the Company was followed by analysts and commentators; whether there were market-makers contributing to efficiency; and whether there was cause-and-effect relationship between company disclosures and a rapid response in stock prices. Plaintiff does not need to prove all of these factors, but each factor is relevant to your determination of whether the market was efficient. The cause-and-effect relationship between company news and stock response is the most important factor.

If you find that Parmalat ordinary shares traded in efficient markets, then the Plaintiff is not required to prove that he actually relied upon or even had knowledge of any specific misstatement or omission. Instead, because the Plaintiff purchased in reliance upon the market price of the stock, if the Plaintiff proves that a misrepresentation or omission is material, it is presumed that the Plaintiff relied upon it.

Authority: American Bar Association, *Model Jury Instructions, Securities Litigation*,

§ 4.02[5][d] (modified); *Basic Inc. v. Levinson*, 485 U.S. 224, 243-47 (1988); *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 153-54 (1972); *In re PolyMedica Corp. Sec. Litig.*, 432 F.3d 1 (1st Cir. 2005); *In re Xcelera.com Sec. Litig*., 430 F.3d 503, 511-12 (1st Cir. 2005); *Unger v. Amedisys Inc*., 401 F.3d 316, 323 (5th Cir. 2005); *Binder v. Gillespie*, 184 F.3d 1059, 1065 (9th Cir. 1999); *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1425 (3d Cir. 1997); *Freeman v. Laventhol & Horwath*, 915 F.2d 193, 198-99 (6th Cir. 1990); *In re SCOR Holding (Switzerland) AG Litig.*, 537 F. Supp. 2d 556, 574 (S.D.N.Y. 2008); *In re Parmalat Sec. Litig.*, 375 F. Supp. 2d 278, 303 (S.D.N.Y. 2005); *Cromer Finance Ltd. v. Berger*, 205 F.R.D. 113, 130 (S.D.N.Y. 2001); *Cammer v. Bloom*, 711 F. Supp. 1264 (D.N.J. 1989).

INSTRUCTION NO. 52: DAMAGES - LOSS CAUSATION

With respect to the fourth element under Section 10(b) and Rule 10b-5, the Plaintiff is required to prove by the preponderance of the evidence that they suffered damages as a proximate result of the alleged misrepresentations or omissions and that the alleged misrepresentation or omission concealed something from the market that, when disclosed, negatively affected the value of the security. The event or events that release this previously concealed information is sometimes called the "materialization of the concealed risk." Therefore, Plaintiff must establish that the losses he suffered were foreseeable, in other words, that the risk of the loss-inducing event was within the zone of risk concealed by the alleged misrepresentations and omissions, and, that the losses they suffered were caused by the materialization of the risk. Courts refer to this element as "loss causation."

The Plaintiff contends that Grant Thornton S.p.A.'s allegedly false and misleading statements, and failure to correct those statements, caused Parmalat's securities to sell at higher prices in the open market than they would have sold if the statements had been accurate. He also contends that when the market found out the truth, the price of Parmalat's securities went down, causing damage to him. The Plaintiff contends that if the statements had been accurate and the investing public had been made aware of Parmalat's true financial condition, the price paid to purchase Parmalat's securities during the period January 5, 1999 through December 18, 2003 would have been lower.

Market responses, such as stock downturns, are often the result of many different, complex, and often unknowable factors. You may find that the Plaintiff has established loss causation as long as you can ascribe some rough proportion of the whole loss to the alleged fraudulent statements and omissions. Therefore, the Plaintiff need not show that the Defendants' acts were the only cause of the injury they suffered. The Plaintiff must demonstrate some connection between the materialization of the concealed risk and the share price declines. It is sufficient if the Plaintiff (1) shows a correlation between news of the materialization of the concealed risk and a decline in the share price and (2) disaggregates, or separates out, the declines in the share price or some rough percentage of the declines, from losses resulting from other, non-fraud-related events.

If you find that the Plaintiff has satisfied his burden of proving causation, the burden then shifts to the Defendants to sever the link between those misstatements and omissions and the market price of Parmalat's stock; in other words, Defendants then have the burden of proving that the misstatements and omissions had no effect on the market for Parmalat's stock. If you find that the Defendants have not carried that burden of proving that their conduct had no effect on the price of Parmalat's stock, then you must find that Defendants' misstatements and omissions caused losses to the Plaintiff, and you should proceed to the next element.

Authority: *Dura Pharmaceuticals, Inc. v. Broudo,* 125 S. Ct. 1627 (2005); *Affiliated Ute Citizens v. United States,* 406 U.S. 128, 153-54 (1972); *Lattanzio v. Deloitte & Touche LLP,* 476 F.3d 147, 158 (2d Cir. 2007); *Lentell v. Merrill Lynch & Co., Inc.,* 396 F.3d 161, 173 (2d Cir. 2005); *Castellano v. Young & Rubicam, Inc.,* 257 F.3d 171, 187 (2d Cir. 2001); *In re Parmalat Universal, S.A. Sec. Litig.,* 2009 WL 886222, at *9 (S.D.N.Y. Mar. 31, 2009); *In re Winstar Commc'ns,* 2006 WL 473885, at *13 (S.D.N.Y. Feb. 27, 2006); FJPI § 162.300 (modified);

American Bar Association, *Model Jury Instructions: Securities Litigation*, § 4.02[6] (modified).

INSTRUCTION NO. 53: DAMAGES UNDER SECTION 10(b)

The Plaintiff bears the burden of proving their damages by a preponderance of the evidence. If you find that the Plaintiff has met this burden and you decide to award damages, you should specify the total amount by which the Defendants' unlawful conduct artificially increased the price of Parmalat securities purchased during and held throughout the period January 5, 1999 to December 18, 2003, as compared to the price of that stock after the truth was revealed.

In this case, if you find that Defendants are liable under Section 10(b) and Rule 10b-5, the law permits you to make a reasonable estimate of the damages suffered by the Plaintiff, based on all the relevant evidence which has been placed before you either in the form of documents or testimony.

In this respect, you should award to the Plaintiff an amount of money shown, by a preponderance of the evidence, to be fair and adequate compensation for the Plaintiff's loss or damage as a result of the Defendants' wrongful conduct based on the rules I have given you.

If you find that Defendants committed a violation of the securities laws which made the stock ultimately go down, but due to the nature of their misconduct you cannot tell the exact amount of loss caused by Defendants' misconduct, you are entitled to make a just and reasonable estimate of damages based on the relevant data as you see it. Damages do not need to be proven to a mathematical certainty. You may consider expert testimony in assessing damages. But your determination must be based on the rules I have given you.

Authority: *Dura Pharmaceuticals, Inc.*, 125 S. Ct. 1627 (2005); *Rowe v. Maremont Corp.*, 850 F.2d 1226, 1243 (7th Cir. 1988); *Feldman v. Pioneer Petroleum, Inc.*, 813 F.2d 296, 301 (10th Cir. 1987); *Mihara v. Dean Witter & Co.*, 619 F.2d 814, 824 (9th Cir. 1980); *Meyers v. Moody*, 693 F.2d 1196, 1215 (5th Cir. 1982); *In re Prudential Ins. Co. Sales Practices Litig.*, 962 F. Supp. 450, 517 n.46 (D.N.J. 1997); 15 U.S.C. § 78u-4(b)4.

INSTRUCTION NO. 54: MEASURE OF DAMAGES UNDER SECTION 10(b)

I will now instruct you concerning the proper measure of damages under Section 10(b) and Rule 10b-5. In this type of case, the law permits you to make a reasonable estimate of the damages suffered by the Plaintiff and the Class, based upon all of the relevant data which has been placed before you, either in the form of documents or oral testimony.

In lawsuits such as this one, damages are computed according to the "out-of-pocket" rule. Under this rule, this is the difference between the fair market value of what the plaintiff paid at the date of the purchase of the securities, and the fair market value of what would have been paid if there had been no misconduct. As I instructed you before, you may refer to and rely upon the expert testimony on this issue, weighing for yourselves the force of the testimony of the different experts to determine an appropriate method for calculating damages and an actual damage amount.

The Plaintiff has provided testimony as to the damages he suffered if you find that the Defendants violated Section 10(b). You have heard testimony as to what the prices of Parmalat securities in question were during the period January 5, 1999 to December 18, 2003, and you have heard expert testimony as to when all the material facts became generally available to the investing public, what the price of Parmalat stock was at that time, and what the damages would be for the Plaintiff depending on when he bought and sold the stock, might be. If you find the Defendants violated Section 10(b) and Rule 10b-5, you must then decide whether the Plaintiff and the Class are entitled to an award of monetary damages and, if so, the amount of damages to be awarded to the them.

Authority: *Randall v. Loftsgaarden*, 478 U.S. 647 (1986); *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 155 (1972); *Elkind v. Liggett & Myers, Inc.*, 635 F.2d 156, 168 (2d Cir. 1980); *Sharp v. Coopers & Lybrand*, 649 F.2d 175, 190 (3d Cir. 1981); *Thomas v. Duralite Co., Inc.*, 524 F.2d 577, 586 (3d Cir. 1975); American Bar Association, *Model Jury Instructions: Securities Litigation 112* § 4.04[1].

INSTRUCTION NO. 55: INTERSTATE COMMERCE

The fifth and final element that the Plaintiff must prove by a preponderance of the evidence is that the Defendants knowingly used, or caused to be used, any facility of any national securities exchange, or any means or instrumentalities of interstate commerce in furtherance of the fraud.

It is undisputed in this lawsuit that Parmalat's stock was traded on the Milan Stock Exchange, the Luxembourg Stock Exchange, and the Mercato Telematico Azionario, that means or instrumentalities of interstate commerce were used, and that certain of the alleged misstatements were contained in documents required to be filed by Parmalat pursuant to governmental securities regulators. Accordingly, I instruct you that this fifth element is satisfied, and you may move on to consider the next issue.

Authority: 15 U.S.C. § 78j ; 4 MFJI Instruction 82-10; American Bar Association, *Model Jury Instructions*: *Securities Litigation,* 13 § 1.09.

INSTRUCTION NO. 56: AGENCY

Plaintiff alleges that Grant Thornton International and Grant Thornton LLP are liable for the alleged primary violation of Rule 10b-5 by Grant Thornton S.p.A. under principles of agency law. Plaintiff alleges that Grant Thornton S.p.A. was an agent for Grant Thornton International, and that, therefore, Grant Thornton International is to the same extent that Grant Thornton S.p.A. is liable. Plaintiff further alleges that Grant Thornton International was an agent for Grant Thornton LLP and that, therefore, Grant Thornton LLP is liable to the same extent that Grant Thornton International is liable, including for the violations allegedly committed by Grant Thornton S.p.A.

There is no rigid rule for determining whether a person is an agent, but the right to control the manner in which the work is performed is considered to be the predominant factor. An agency relationship exists when the principal has the right to control the manner and method in which the agent performs its work. An agent's actual authority may be either express or implied. The existence of an agency relationship may be established by direct or circumstantial evidence, including the situation of the parties, their acts, and other relevant circumstances.

The principal is liable for the conduct of its agent as long as the agent acted within the scope of its employment and regardless of whether the principal directed or caused the agent to engage in the activity.

If you find that Grant Thornton S.p.A. was the agent for Grant Thornton International, then you must find that Grant Thornton International is liable to the same extent as Grant Thornton S.p.A. for violations of Section 10(b).

If you find that Grant Thornton S.p.A. was the agent for Grant Thornton International and that Grant Thornton International was the agent for Grant Thornton LLP, then you must find that Grant Thornton LLP is liable to the same extent as Grant Thornton S.p.A. for violations of Section 10(b).

Authority: *In re Parmalat Sec. Litig.*, 598 F. Supp. 2d 569, 573, 575 (S.D.N.Y. 2009); *Amigo's Inn, Inc. v. License Appeal Comm. of City of Chicago*, 354 Ill. App.3d 959, 965, 822 N.E.2d 107, 113 (Ct. App. 2004); *Prodromos v. Everen Secs., Inc.*, 341 Ill. App.3d 718, 724-25, 793 N.E.2d 151, 156 (Ct. App. 2003); *Lang v. Silva*, 306 Ill. App.3d 960, 972, 715 N.E.2d 708, 716-17 (Ct. App. 1999).

INSTRUCTION NO. 57: SECONDARY LIABILITY UNDER SECTION 10(b)

I have just described to you what the Plaintiff must establish with respect to each Defendant to establish their claim that the Defendants committed a direct or primary violation of Rule 10b-5 (and Section 10(b)) of the federal securities laws. The Plaintiff also claims that even if Grant Thornton International or Grant Thornton LLP were not primary violators of the federal securities laws, they may be secondarily liable because they controlled the primary violator, here, Grant Thornton S.p.A. This is similar to but not exactly the same as the agency theory that I discussed a little while ago.

Authority: American Bar Association, *Model Instructions: Securities Litigation*, § 4.03 (modified).

INSTRUCTION NO. 58: CONTROL PERSON LIABILITY UNDER SECTION 20(a)

As I explained earlier, Plaintiff claims that Defendants are directly liable for violations of Section 10(b) of the Exchange Act and Rule 10b-5. In addition, Plaintiff contends, as a second basis for liability, that Grant Thornton International is liable because it was in a position of control and authority over Grant Thornton S.p.A. In addition, Plaintiff contends that Grant Thornton LLP is liable because it controlled Grant Thornton International which in turn controlled Grant Thornton S.p.A. These claims are brought under Section 20(a) of the Exchange Act of 1934.

As I mentioned earlier, Section 20(a) of the 1934 Act provides that "[e]very person who, directly or indirectly, controls any person liable under any provision of this chapter or any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable."

Thus, in order to prevail on its control person claims against Grant Thornton International, the Plaintiff must prove by a preponderance of the evidence that Grant Thornton International controlled Grant Thornton S.p.A. at the time of Grant Thornton S.p.A.'s violation of Section 10(b). In order to prevail on its control person claims against Grant Thornton LLP, the Plaintiff must prove by a preponderance of the evidence that Grant Thornton LLP controlled Grant Thornton International and that Grant Thornton International controlled Grant Thornton S.p.A. at the time of Grant Thornton S.p.A.'s violation of Section 10(b).

The United States Securities and Exchange Commission has defined "control" to mean "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract, or otherwise." The ability to exert influence, directly or indirectly, over the decision-making process of another person also constitutes control. It is not necessary that a defendant actually exercise control over a particular act, only that the defendant possesses the power to do so. Therefore, to prove that Grant Thornton International controlled Grant Thornton S.p.A., plaintiff need only prove that Grant Thornton International had the ability to control the manner and method of preparation of Grant Thornton S.p.A.'s audit reports, not that it actually did so.

Authority: 15 U.S.C. § 78t(a); 17 C.F.R. § 230.405, 240.12b-2; *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1472-3 (2d Cir. 1996); *In re Parmalat Sec. Litig.*, 598 F. Supp. 2d 569, 581 (S.D.N.Y. 2009); *In re Parmalat Sec. Litig.*, 594 F. Supp. 2d 444, 455-56 (S.D.N.Y. 2009); *Dietrich v. Bauer*, 126 F. Supp.2d 759, 764-65 (S.D.N.Y. 2001); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 352 F. Supp.2d 429, 458 (S.D.N.Y. 2005).

INSTRUCTION NO. 59: AFFIRMATIVE DEFENSE UNDER SECTION 20(a)

If you find that Defendant Grant Thornton International controlled Grant Thornton S.p.A., you must then determine whether Grant Thornton International is entitled to an affirmative defense. Similarly, if you find that Defendant Grant Thornton LLP controlled Grant Thornton International and that Grant Thornton International controlled Grant Thornton S.p.A., you must then determine whether Grant Thornton LLP is entitled to an affirmative defense. Section 20(a) provides a defense if the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting Grant Thornton S.p.A.'s violation of Section 10(b). The good faith defense under Section 20(a) depends on the facts and circumstances of the case, and each of the Defendants bears the burden of proving its entitlement to this defense by a preponderance of the evidence.

Authority: 15 U.S.C. § 78t(a); American Bar Association, *Model Jury Instructions: Securities Litigation* § 4.03[2] (modified).

INSTRUCTION NO. 60: DAMAGES UNDER SECTION 20(a)

Damages under Section 20(a) are measured in the same way as damages under Section 10(b). That is, damages are measured by the amount by which the price the Plaintiff paid for Parmalat shares was inflated as a result of the alleged false or misleading statements by Parmalat. You should not concern yourselves with whether any damages you may award on the Plaintiff's Section 20(a) claim may overlap with damages you may award on another claim. If necessary, I will adjust the awards at the end of the case to remove any double-counting.

Authority: 15 U.S.C. § 78t; American Bar Association, *Model Jury Instructions: Securities Litigation* § 4.03[2] (modified).

INSTRUCTION NO. 61: GRANT THORNTON INTERNATIONAL LIMITED

You have heard evidence that in 2008, which was long after this litigation began, Grant Thornton International transferred a significant portion of its assets to a new entity that was created in 2008, called Grant Thornton International Limited. The Plaintiff claims that by reason of this transfer, Grant Thornton International Limited is liable to the same extent as Grant Thornton International.

A corporation that purchases the assets of another may also become liable for the liabilities of the seller if (1) the purchaser agrees to assume the liabilities, or (2) the transaction amounts to a consolidation or merger of the two entities, or (3) the purchasing corporation is a mere continuation of the selling corporation, or (4) the transaction is entered into fraudulently to escape liability.

Plaintiff claims that Grant Thornton International Limited is a mere continuation of the business of Grant Thornton International. Among the factors that you may consider in deciding whether Grant Thornton International Limited is a mere continuation of Grant Thornton International are the nature and scope of the assets purchased, whether the trade name was transferred, and whether there is continuity of products, inventory, management and ownership.

Alternatively, Plaintiff claims that the transfer was entered into fraudulently to escape liability. A conveyance may be presumed fraudulent when a voluntary transfer is made for no or inadequate consideration and directly impairs the rights of creditors. This requires proof of (1) a voluntary transfer for inadequate consideration, (2) an existing indebtedness against the donor, and (3) retention by the donor of insufficient property to satisfy the indebtedness.

Authority: *Brandon v. Anesthesia & Pain Mgmt. Assoc., Inc.*, 419 F.3d 594, 599 (7th Cir. 2005); *Panther Pumps. & Equip. Co., Inc. v. Hydrocraft, Inc.*, 566 F.2d 8, 24, 25 (7th Cir. 1977); *Kennedy v. Four Boys Labor Serv., Inc.*, 664 N.E.2d 1088, 1092 (Ill. Ct. App. 1996); *Casey Nat. Bank v. Roan*, 668 N.E.2d 608, 611 (Ill. Ct. App. 1996).

INSTRUCTION NO. 62: PREJUDGMENT INTEREST

If you find in favor of the Plaintiff on any or all of his claims and that the Plaintiff is entitled to damages, then you must decide whether the Class is entitled to prejudgment interest on the amount of damages you award. This interest would be for the purposes of compensating the Class for the loss of use of their money between the time that they were damaged and the time of the verdict.

Under the federal securities laws, an award of prejudgment interest is generally available to compensate the injured party for being deprived of the monetary value of his or her loss from the time of the loss to the entry of the judgment. It is a matter of discretion based on considerations of fairness. If you find in favor of the Plaintiff, you must determine (1) whether an award of prejudgment interest would serve to compensate the injured party, and (2) whether it would be fair or equitable to grant prejudgment interest to the Plaintiff.

One consideration you may take into account is the conduct of the defendant whom you are considering. For example, was the conduct knowing? Did the defendant act in good faith? Another factor which you may consider is the length of time, or delay, involved in between the transactions complained and the time of the award of damages. Here, it has been more than five years since the Plaintiff's injuries, namely, the time when he purchased his shares and sustained monetary losses or damages.

The factors I have just mentioned are illustrative only and not exhaustive. The basic consideration is one of fairness. If, upon consideration of all that you have seen and heard by way of evidence in this case, you believe that an award of prejudgment interest is fair, then you should so find.

If you find that the Plaintiff should receive prejudgment interest, you need not do the mathematical calculations. You need only advise the court as to the date or dates from which you, in your discretion, have determined that such interest should run and on what amounts. The actual calculations will be done by the Court.

Authority: *Oesternick v. Ernst & Whinney,* 489 U.S. 169 (1989); *Rolf v. Blyth, Eastman Dillion & Co., Inc.,* 637 F.2d 77, 86-7 (2d Cir. 1980); *Norte & Co. v. Huffines,* 416 F.2d 1189, 1191 (2d Cir. 1969); *S.E.C. v. Musella,* 748 F. Supp. 1028, 1042-43 (S.D.N.Y., 1989); *S.E.C. v. Tome,* 638 F. Supp. 638, 639 (S.D.N.Y. 1986), *aff'd,* 833 F.2d 1086 (2d Cir. 1987); *Quintel Corp. N.V. v. Citibank, N.A.,* 606 F. Supp. 898, 914 (S.D.N.Y. 1985); *Riseman v. Orion Research, Inc.,* 749 F.2d 915, 921-22 (1st Cir. 1984); *Backman v. Polaroid Corp.,* 677 F. Supp. 50, 50-51 (D. Mass., 1987).

INSTRUCTION NO. 63: ALLOCATION OF FAULT/KNOWING VIOLATION OF THE SECURITIES LAWS

Once you have determined whether or not each of the Defendants is liable for each of the claims brought by the Plaintiff, and once you have determined the amount of damages, if any, to be awarded to the Plaintiff on each of those claims, you must determine how the responsibility for paying those damages should be divided among Grant Thornton S.p.A. and other persons or entities that may bear some responsibility for the losses. On the verdict sheet, you must assign a percentage of responsibility to each person or entity listed. The total of those percentages must equal 100%. The percentage of responsibility that you assign to a particular person or entity must equal what you find to be that person's or entity's percentage of the total fault of all persons who caused or contributed to the loss incurred by the Plaintiff. In making that determination, you should consider the nature of the conduct of each of the persons you find to have caused or contributed to the Plaintiff's loss, as well as the extent to which each of those persons' conduct was a cause of the Plaintiff's damages.

You have heard some testimony regarding activities by Credit Suisse First Boston, Banca Nazionale del Lavoro S.p.A., Pavia e Ansaldao, Gian Paolo Zini, and various entities affiliated with them. As a matter of law, none of those persons or entities can be deemed legally responsible for any of the losses claimed by Plaintiff or the Class. Therefore, you should put them out of your minds during any deliberations you may have regarding allocation of fault, and no percentage of fault may be assigned to them. The only persons or entities to whom you may assign any portion of fault, other than Grant Thornton S.p.A., are (1) Parmalat (including its officers and directors) and (2) Deloitte & Touche S.p.A.

When a violation of the securities laws consists of the making of an untrue statement of material fact or an omission of material fact, a person "knowingly commits a violation of the securities laws" if (a) that person makes an untrue statement of material fact with actual knowledge that the representation is false or omits a fact necessary in order to make the statement not misleading, with actual knowledge that, as a result of the omission, one of their material representations is false, and (b) persons are likely to reasonably rely on the misrepresentation or omission. When a violation of the securities laws consists of conduct other than making an untrue statement or omitting a material fact, a person "knowingly commits a violation of the securities laws" when they engage in the conduct with actual knowledge of the facts and circumstances that make the conduct a violation of the securities laws. Although reckless conduct may constitute scienter for purposes of Section 10(b), reckless conduct does not constitute a knowing commission of a violation of the securities laws.

Please note that the fact that you may be asked to determine whether a Defendant's conduct was "knowing" with respect to a particular claim does not mean that knowing conduct is a necessary element of that claim. In fact, each of the sections of the securities laws that are involved in this case allow for liability based on conduct that does not rise to the level of knowing conduct. Nevertheless, the law requires us to make a record of your findings as to whether each Defendant committed a knowing violation of the securities laws. Questions about whether a Defendant acted knowingly should be considered separate and apart from your determination of whether the defendant is subject to liability under the instructions I have given

you.

Authority: 15 U.S.C. §§ 78u-4(f)(3)(A)(iii), 78u-4(f)(10)(A) & (B).

III. THE VERDICT

INSTRUCTION NO. 64: JURY PROCEDURES

You must follow the following rules while deliberating and returning your verdict: First, when you go to the jury room, you must select a foreperson. The foreperson will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room and try to reach agreement.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of the other jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not make a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone--including me--how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law that I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be--that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. **[READ FORM].** You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

Authority: FJPI § 103.50.

Dated: June 15, 2009

Respectfully submitted,

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