IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP CO., STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, LAURA PENDERGEST-HOLT, GILBERTO LOPEZ, MARK KUHRT, and LEROY KING, Defendants, and STANFORD FINANCIAL GROUP CO. and THE STANFORD FINANCIAL GROUP BUILDING INC., Relief Defendants.	§	Case No.: 3-09-CV-0298-N

DEFENDANT R. ALLEN STANFORD'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

Although the case against R. Allen Stanford may have been overstated in the court of public opinion, in this Court, the Securities and Exchange Commission ("SEC") has failed to satisfy the basic pleading requirements necessary to proceed with a lawsuit against Mr. Stanford. Despite having had three bites at the apple, the SEC fails to establish federal jurisdiction over the certificates of deposit issued by an Antigua-based bank, does not allege facts against Mr. Stanford with the requisite specificity or that he acted with scienter, and provides no basis for venue in the Northern

District of Texas. Given these deficiencies, the Court should dismiss the Second Amended Complaint.

RELEVANT FACTS AND PROCEDURAL HISTORY

On February 17, 2009, the SEC filed suit in the Northern District of Texas against Mr. Stanford and five other individual defendants,[1] for allegedly violating federal securities laws. Dkt. 1.[2] Specifically, the SEC alleges that, "[f]or at least a decade, R. Allen Stanford and James M. Davis executed a massive Ponzi scheme through entities under their control, including Stanford International Bank, LTD. ('SIB'), and its affiliated Houston-based broker dealers and investment advisers . . . ."[3] 2d Am. Compl. ¶ 1. It further alleges that Mr. Stanford and others "misappropriated billions of dollars of investor funds and falsified SIB's financial statements in an effort to conceal their fraudulent conduct." *Id.*

The Complaint contains a number of broad-sweeping, generalized allegations, but, as to Mr. Stanford himself, it states he engaged in the following specific acts:

- Mr. Stanford was chairman of the board of SIB, a private bank based in Antigua. He was also the sole director of Stanford Group Holdings, Inc., which wholly owned SGC. *Id.* ¶¶ 13, 14, 16.
- SIB issued certificates of deposit ("CDs"), which were sold to investors worldwide. *Id.* ¶ 13.

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[1] Defendants include Stanford International Bank, Ltd. ("SIB"); Stanford Group Co. ("SGC"); Stanford Capital Management, LLC; James M. Davis, Director and Chief Financial Officer of SIB and Stanford Financial Group ("SFG"), 2d Am. Compl. ¶ 17; Laura Pendergest-Holt, Chief Investment Officer of SFG and member of SIB's investment committee, *id.* ¶ 18; Gilberto Lopez, Chief Accounting Officer of SFG and Stanford Financial Group Global Management, LLC ("SFGGM"), *id.* ¶ 19; Mark Kuhrt, Global Controller for SFGGM, *id.* ¶ 20; and Leroy King, Administrator and Chief Executive Officer of Antigua's Financial Services Regulatory Commission, *id.* ¶ 21. Relief Defendants are SFG and The Stanford Financial Group Building, Inc.

[2] Since then, the SEC has filed two amended complaints, including the First Amended Complaint, filed on February 27, 2009, Dkt. 48, and the Second Amended Complaint, filed on January 8, 2010, Dkt. 952 (hereinafter, the "Complaint"). 1st Am. Compl. ¶ 11; 2d Am. Compl. ¶ 12.

[3] All "facts" recited in this motion are solely the allegations of the Complaint and are not admissions of the veracity of those allegations.

- Mr. Stanford signed promissory notes to SIB totaling $720 million for loans to fund projects and activities, such as real estate deals, restaurants, and an annual cricket tournament. *Id.* ¶¶ 40-41.

- Mr. Stanford seemed to make few, if any, payments on these loans, and, instead, Mr. Stanford and Mr. Davis simply rolled these loans into new promissory notes. *Id.* ¶ 42.

- Mr. Stanford and Mr. Davis "typically" provided to SIB's accountants a pre-determined return on investment for the bank's portfolio, and the accountants reverse-engineered the bank's financial statements and booked false accounting entries. *Id.* ¶ 53.

- Mr. Stanford, along with his co-defendants Davis, Lopez, and Kurht, prepared and reviewed SIB's financial statements and annual reports sent to investors that contained this false information. *Id.* ¶ 54.

- Mr. Stanford and Mr. Davis participated in meetings with a core group of senior executives in Miami, Florida between February 2 and February 8, 2009 and "admitted the fact of these false financial statements during these meetings." *Id.* ¶¶ 43, 56.

- Mr. Stanford announced that, in an effort to assure investors that SIB was financially sound, he would contribute capital to the bank in two infusions of $200 million and $541 million. *Id.* ¶ 58.

- Mr. Stanford, along with his co-defendants Davis, Kuhrt and Lopez, falsified accounting records, which included overvaluing real estate and wiping out Mr. Stanford's "debt" owed to SIB, to reflect these capital contributions. *Id.* ¶¶ 60-66.

- Mr. Stanford, along with others, approved a December 2008 SIB Monthly Report announcing this capital infusion to investors. *Id.* ¶¶ 58-59.

- Mr. Stanford and others attended a SGC Top Performer's Club meeting in Miami, Florida on January 10, 2009, and no one corrected Mr. Davis's representation that SIB was stronger than ever, knowing that this information would be used to sell more CDs. *Id.* ¶¶ 72-78.

- Mr. Stanford and others knew, but did not correct, a representation in the December 2008 SIB Monthly Report that SIB did not have exposure to losses from Bernard Madoff's investments, when, in fact, SIB had invested in a hedge fund that had experienced some Madoff-related losses. *Id.* ¶¶ 79-83.

- Mr. Stanford provided his co-defendant, Leroy King, then-Antigua's Financial Services Regulatory Commission administrator and Chief Executive Officer, with cash, use of Stanford-company jets and corporate cars, Super Bowl tickets, and hired one of Mr. King's friends, in exchange for helping SIB avoid official scrutiny. *Id.* ¶¶ 84-91.

The SEC asserts that, by committing the above acts, Mr. Stanford: (1) violated Section 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5, *id.* ¶¶ 109-13; (2) aided and

abetted violations of the 1934 Act and Rule 10b-5, *id.* ¶¶ 114-16; (3) violated Section 17(a) of the Securities Act of 1933, *id.* ¶¶ 117-21; (4) violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, *id.* ¶¶ 122-24; and (5) aided and abetted violations of the Investment Advisers Act, *id.* ¶¶ 125-27.

The SEC filed suit in the Northern District, it claimed, because:

> Defendants have, directly or indirectly, made use of the means or instruments of transportation and communication, and the means or instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein. Certain of the transactions, acts, practices, and courses of business occurred in the Northern District of Texas.

Id. ¶ 12. Nowhere in this, or any of the previous filed complaints, however, does the SEC actually state which, if any, substantive acts occurred in this District.

In addition, although the Complaint alleges the CDs issued by SIB were "securities" under federal securities laws, *id.* ¶ 9, nowhere in this, or any of the previous filed complaints, does the SEC state the basis for this allegation.

ARGUMENT

I. THE SEC HAS FAILED TO ESTABLISH THAT THIS COURT HAS JURISDICTION TO HEAR THE CLAIMS REGARDING SIB CERTIFICATES OF DEPOSIT

Although the SEC devotes substantial attention to CDs issued by Antigua-based SIB, it fails to explain why this Court should overlook established precedent in this jurisdiction and elsewhere that CDs are not "securities." As the SEC is aware, CDs—whether offered by a bank headquartered in the United States *or* in a foreign country—are generally *not* subject to federal securities laws, and nothing in the Complaint justifies treating SIB's CDs differently. *See* James L. Rigelhaupt, *Certificate of Deposit as "Security" under Federal Securities Laws*, 82 A.L.R. Fed. 553 (1987) ("[M]ore often than not the courts have found that under the particular circumstances a CD did not constitute a security."). Put simply, the SEC has not met its basic obligation to show why SIB's CDs are within the SEC's

regulatory jurisdiction or the Court's subject matter jurisdiction. *See Wolf v. Banco Nacional De Mexico*, 549 F. Supp. 841, 843 (D. Cal. 1982), *overruled on other grounds*, 739 F.2d 1458, 1462 (9th Cir. 1984) ("If the deposits were securities, then Banamex is strictly liable under the 1933 Act for failing to register them. If the deposits were not securities, then this Court has no jurisdiction over any of plaintiff's claims.").

As the Supreme Court has made abundantly clear, the definition of "securities" for purposes of federal securities laws is deliberately limited. *See Marine Bank v. Weaver*, 455 U.S. 551 (1982). Specifically, "there is an important difference between a bank certificate of deposit and other long-term debt obligations." *Id.* at 557. This difference stems from the fact that a CD is generally "issued by a federally regulated bank which is subject to the comprehensive set of regulations governing the banking industry." *Id.* As such, "[i]t is unnecessary to subject issuers of bank certificates of deposit to liability under the antifraud provisions of the federal securities laws since the holders of bank certificates of deposit are abundantly protected under the federal banking laws." *Id.* at 559.

Building upon this basic premise that CDs issued by U.S. banks are not "securities" because they are regulated by U.S. banking laws, courts have held that CDs issued by foreign banks are not "securities" because they are regulated by the foreign county's banking laws. For example, the Fifth Circuit held that "purchasers of certificates of deposit issued by Mexican banks are adequately protected by Mexican banking law and consequently do not require the protections afforded by [American] federal securities laws." *Callejo v. Bancomer SA*, 764 F.2d 1101, 1125 n.33 (5th Cir. 1985). The Ninth Circuit reached a similar conclusion in *Wolf v. Banco Nacional de Mexico*, explaining:

> We think that the [Supreme] Court [in *Weaver*] found it significant that the issuing bank was regulated, and regulated adequately, not that it was the federal government that regulated it. Therefore, it was because repayment in full was "virtually guaranteed" and the certificate holders were "abundantly protected" that the certificates of deposit were outside the definition of "security" and the protection of the federal securities acts.

739 F.2d 1458, 1462 (9th Cir. 1984).[4]

The SEC presumably recognizes that SIB, an Antigua-based bank, was subject to Antigua's laws and regulations, but it has made *no* allegations, presented *no* facts, and made *no* arguments about the state of Antiguan banking regulation or Antigua's oversight of SIB. Even assuming that all allegations in the Complaint are true, this Court is left to simply assume that Antigua's regulatory regime is somehow inadequate and unworthy of the deference traditionally accorded to other foreign countries—which the Court absolutely cannot do.[5] Left with nothing more than "the bare words 'certificates of deposit'," "[i]t is difficult to . . . consider economic reality if no facts identifying the substance or reality of these certificates of deposit are alleged in the complaint." *Canadian Imperial Bank of Commerce Trust Co. v. England*, 615 F.2d 465, 469 (7th Cir. 1980).

Given the utter paucity of support for a necessary premise of the SEC's claims, this Court should dismiss the Complaint against Mr. Stanford as far as it relies on SIB CDs as the basis for the SEC's enforcement power or the Court's subject matter jurisdiction.

II. THE SECOND AMENDED COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM

Although the Supreme Court recently raised the bar for notice pleading under Federal Rule of Civil Procedure 8, *see generally Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), *Ashcroft v. Iqbal*,

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[4] Although the SEC will predictably argue, as it has in similar circumstances, that *Reves v. Ernst & Young*, 494 U.S. 56 (1990), loosened the jurisdictional standard discussed above, *Reves* did no such thing. The *Reves* Court simply examined whether certain notes—not CDs—were "securities." Indeed, the Court noted that, "unlike the certificates of deposit in [*Weaver*] . . . which were insured by the Federal Deposit Insurance Corporation and subject to substantial regulation under the federal banking laws . . ., the notes here would escape federal regulation entirely if the Acts were held not to apply." *Id.* at 69.

[5] Overgeneralized claims that foreign authorities were "not enforcing" foreign bank regulations are beside the point and should be disregarded. *See West v. Multibanco Comermex, S.A.*, 807 F.2d 820, 827 (9th Cir. 1987) ("[T]he scope of our inquiry into the actions of foreign governments is limited by the act of state doctrine. In this case, that doctrine prevents us from scrutinizing the alleged non-feasance or misfeasance of the Mexican officials charged with enforcing their country's banking laws.").

129 S. Ct. 1937 (2009), the bar the SEC must surmount in this securities fraud case is even higher—pleading with particularity under Rule 9, *see* Fed. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."). The Fifth Circuit "interprets Rule 9(b) strictly, requiring the plaintiff to specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent." *Flaherty & Crumrine Preferred Income Fund, Inc. v. TXU Corp.*, 565 F.3d 200, 207 (5th Cir. 2009) (internal quotation marks omitted).

In addition to the particularity requirements of Rule 9(b) for alleging fraud under the federal securities laws, the plaintiff must allege "scienter," which is "a mental state embracing intent to deceive, manipulate, or defraud." *Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980) (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n.12 (1976)). And, while the scienter requirement under the securities fraud provisions can be satisfied by proving "severe recklessness," "[s]evere recklessness is limited to those highly unreasonable omissions or misrepresentations that involve not merely simple or even inexcusable negligence, but an extreme departure form the standards or ordinary care, and that present a danger of misleading buyers or sellers which is either known to the defendant or is so obvious that the defendant must have been aware of it." *Broad v. Rockwell Intern. Corp.*, 642 F.2d 929, 961-62 (5th Cir. 1981).

Despite the mandate of Rule 9(b) and the scienter requirements, the specifics of what precisely Mr. Stanford, individually, is alleged to have done with respect to several of these matters, which the SEC alleges constituted fraud by him, are absent from the Complaint. *See Fin. Acquisition Partners LP v. Blackwell*, 440 F.3d 278, 287 (5th Cir. 2006) (holding that a district court must dismiss a securities fraud claim failing to satisfy Rule 9(b)'s pleading requirements).

A. The Complaint Does Not State a Claim Against Mr. Stanford Under the Securities Exchange Act (Counts I & II)

The SEC's claims under Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 do not satisfy Rule 9(b)'s heightened pleading requirements. A great many of the SEC's allegations regarding the Defendants' purported misrepresentations and fraud do not specify what Mr. Stanford is alleged to have done or said or to whom he allegedly said or did things. Rather, the Complaint quite often merely discusses the actions of the various corporate entities or alleges that "Stanford" generally said something or did something. *Cf. Indiana Elec. Workers' Pension Trust Fund IBEW v. Shaw Group, Inc.*, 537 F.3d 527, 531 n.1 & 533 (5th Cir. 2008) (noting that the Fifth Circuit has rejected the doctrine of group pleading). Moreover, the Complaint does not identify any individuals to whom Mr. Stanford's alleged misrepresentations were made.

For example, the Complaint alleges that Mr. Stanford took out loans to fund certain projects, such as real estate deals; that Mr. Stanford and Mr. Davis rolled these loans into new promissory notes; and that Mr. Stanford and Mr. Davis admitted the fact of these loans in a group meeting in Miami between February 2 and February 8, 2009. 2d Am. Compl. ¶¶ 40-43. Nowhere does the Complaint attribute any specific fraudulent activity to Mr. Stanford by his taking of these loans; explain the illegality of these loans; or describe the illegal particulars of what Mr. Stanford himself did or said with regard to these loans, to whom, and specific dates. The SEC is asking the Court to strain to find an inference favorable to the SEC with regard to these loans, which the Court cannot properly do. *R2 Invs. LDC v. Phillips*, 401 F.3d 638, 642 (5th Cir. 2005) (holding that, when deciding a motion to dismiss, the court cannot "strain to find inferences favorable to the plaintiffs") (internal quotation marks omitted).

Similarly, the Complaint alleges that Mr. Stanford and Mr. Davis "typically" provided to SIB's accountants a pre-determined return on investment for the bank's portfolio, and the accountants reverse-engineered the SIB's financial statements and booked false accounting entries.

2d Am. Compl. ¶ 53. Yet again, the SEC provides no dates as to when this happened, or which accountants Mr. Stanford spoke to and what was said.

While the Complaint is replete with generalized examples of what Mr. Stanford and others said or did, it is devoid of the necessary dates, names, locations, and references to specific conduct that Mr. Stanford himself allegedly undertook as is required under Rule 9(b). Accordingly, the Securities Exchange Act claims must be dismissed. *See, e.g.*, *TXU Corp.*, 565 F.3d at 207 (applying Rule 9(b) to claim under Section 10(b) and Rule 10b-5 of the Securities Exchange Act); *R2 Investments*, 401 F.3d at 641 ("Persons asserting claims will under section 10(b) and Rule 10b-5 must . . . satisfy the enhanced pleading requirements imposed by . . . Federal Rule of Civil Procedure 9(b)").

B. The Complaint Does Not State a Claim Against Mr. Stanford Under the Securities Act Or the Investment Advisers Act (Counts III, IV, & V)

The Section 17(a) of the Securities Act of 1933 and Section 206 of the Investment Advisers Act of 1940 claims suffer from the same deficiencies as the Section 10(b) and Rule 10b-5 claims. Because Section 17(a)(1) and Section 206(1) are nearly identical to Rule 10b-5,[6] these claims are also subject to Rule 9(b). *Cf. Aaron*, 446 U.S. at 695-96; *Landry v. All Am. Assurance Co.*, 688 F.2d 381, 386 (5th Cir. 1982). The remaining claims, Section 17(a)(2) and (a)(3) and Section 206(2) are also grounded in fraud and thus subject to Rule 9(b)'s pleading requirements. *See Melder v. Morris*, 27 F.3d

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[6] Rule 10b-5 states in relevant part: "It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, [t]o employ any device, scheme, or artifice to defraud . . . in connection with the purchase or sale of any security." 17 C.F.R. § 240.10b-5.

Section 17(a)(1) states: "It shall be unlawful for any person in the offer or sale of any securities . . . by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly . . . to employ any device, scheme, or artifice to defraud . . . ." 15 U.S.C. § 77q(a)(1).

Section 206(1) states: "It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly to employ any device, scheme, or artifice to defraud any client or prospective client." *Id.* § 60b-6(1).

1097, 1100 n.6 (5th Cir. 1994) (holding that Rule 9(b) applies to non-fraud claims under the Securities Act of 1933 where the complaint wholly adopted the same allegations for the non-fraud claim and as the securities fraud claim).[7] Nevertheless, the SEC devotes even less attention to providing a factual predicate for suing Mr. Stanford under these claims.

Instead, the SEC cursorily and insufficiently states, "Stanford, SGC and SCM, directly or indirectly, singly or in concert with others, knowingly or recklessly, through the use of the mails … while acting as investment advisers . . . have employed, are employing, or are about to employ devices, schemes, and artifices to defraud any client or prospective client . . . or have engaged, are engaging, or are about to engage in acts, practices, or courses of business which operates as a fraud or deceit upon any client or prospective client." 2d Am. Compl. ¶ 123. Moreover, "Stanford [and co-defendants] . . . knowingly or with severe recklessness provided substantial assistance in connection with the violations of the Advisers Act . . . alleged herein." *Id.* ¶ 126.

Yet, the SEC has not even gone so far as to explain how Mr. Stanford was acting as an investment advisor, let alone that he was assisting investment advisers violate the law. *See Polera v. Altorfer, Podesta, Woolard & Co.*, 503 F. Supp. 116, 119 (N.D. Ill. 1980) ("To state a claim under the Advisers Act, a plaintiff first must overcome the threshold limitation imposed by the statutory definition of 'investment adviser."). These types of cursory allegations are precisely what Rule 9(b) was intended to protect against. The SEC took on the heightened pleading requirements when it alleged that Mr. Stanford participated in a fraud. Having done so, the SEC must be required to

[7] *See also ACA Fin. Guar. Corp. v. Advest, Inc.*, 512 F.3d 46, 68 (1st Cir. 2008) (holding that non-fraud claims under the 1933 Securities Act subject to Rule 9(b) where the claims are nonetheless grounded in fraud); *Wagner v. First Horizon Pharm. Corp.*, 464 F.3d 1273, 1275 (11th Cir. 2006) ("[E]ven securities claims without a fraud element must be pled with particularity pursuant to [Rule 9(b)] when that nonfraud securities claim is alleged to be part of a defendant's fraudulent conduct."); *Biliouris v. Sundance Res., Inc.*, 559 F. Supp. 2d 733, 737 (N.D. Tex. 2008) (applying Rule 9(b) to non-fraud claim where it was based on the same alleged facts as the fraud claim). Notably, the SEC has not alleged negligence.

plead a proper complaint if its charges of fraud are to be heard by the Court. *See Apani Sw., Inc. v. Coca-Cola Enters., Inc.*, 300 F.3d 620, 624 (5th Cir. 2002) ("[D]ismissal is proper if the complaint lacks an allegation regarding a required element necessary to obtain relief.").

C. The Complaint Does Not Adequately Allege Scienter as to Any Claim

In addition to the who, what, where, when, and how, the SEC must also allege "scienter," defined as "an intent to deceive, manipulate, or defraud or that severe recklessness in which the danger of misleading buyers or sellers is either known to the defendant or is so obvious that the defendant must have been aware of it." *TXU Corp.*, 565 F.3d at 207. "Rote conclusory" allegations that the defendants "knowingly did this" or "recklessly did that" fail to meet the heightened pleading requirements of Rule 9(b). *Lovelace v. Software Spectrum*, 78 F.3d 1015, 1019 (5th Cir. 1996) (discussing *Melder*, 27 F.3d at 1104). Yet, this Complaint is rife with these types of broad-brushstroke statements, such as:

> SIB, SGC, SCM, Stanford, Davis, Pendergest-Holt, Lopez and Kuhrt made the referenced misrepresentations and omissions knowingly or with severe and gross recklessness.

2d Am. Compl. ¶ 112; *see also* ¶¶ 120, 115, 120, 123, 126.

In this Circuit, "[a] complaint can be long-winded, even prolix, without pleading with particularity. Indeed, such a garrulous style is not an uncommon mask for an absence of detail." *Williams v. WMX Techs.*, 112 F.3d 175, 177 (5th Cir. 1997). The Complaint's unsupported and generalized assertions that Mr. Stanford did (or failed to do) certain acts knowingly or with severe recklessness does not meet Rule 9(b)'s required specificity for scienter. The Court should therefore dismiss these claims.

III. THE SECOND AMENDED COMPLAINT SHOULD BE DISMISSED FOR IMPROPER VENUE

Finally, while there may be a number of reasons why the SEC brought this case in Northern District of Texas, the Complaint does not allege that Mr. Stanford committed a single act or

omission—let alone that a substantial part of the events or omissions giving rise to the claims occurred in this District—that justifies venue here. *See* Fed. R. Civ. P. 12(b)(3); 28 U.S.C. § 1406(a).

Typically when, as in this case, a plaintiff relies on transactional venue to establish that it is in the right courthouse, the plaintiff alleges that "a substantial part of the events or omissions giving rise to the claim occurred" in the judicial district in which it filed suit. 28 U.S.C. § 1391(b)(2). In fact, a plaintiff's failure to "identify any specific conduct giving rise to [the] lawsuit that allegedly took place in [the district]" may result in dismissal of the complaint under Rule of Civil Procedure 12(b)(3). *Davidson v. Grossman*, Civ. A. No. H-07-0471, 2007 WL 2008671, at *2 (S.D. Tex. July 5, 2007) (dismissing the complaint under Rule 12(b)(3)). In addition, even if the plaintiff alleges that some conduct occurred in the district, the complaint will be dismissed if that conduct is not "substantial." *McClintock v. School Bd. East Feliciana Parish*, 299 Fed. Appx. 363, 365 (5th Cir. 2008) (affirming district court's dismissal of the complaint for improper venue under Rule 12(b)(3) because, "[a]lthough the chosen venue does not have to be the place where the most relevant events took place, the selected district's contacts still must be substantial").

While the SEC makes the conclusory statement that "certain of the transactions, acts, practices, and courses of business occurred in the Northern District of Texas," 2d Am. Compl. ¶ 12, it does not allege a *single* fact to support this assertion—much less that *substantial* events or omissions giving rise to the claims occurred here. There is simply no excuse for the SEC not to live up to the minimum standards for bringing a lawsuit, and the Court should order the SEC to so do. *See Sampson Indus., Inc. v. Amega Indus., Inc.*, No. Civ. A. 3-98-CV-1440-P, 1998 WL 826907, at *3 (N.D. Tex. Nov. 18, 1998) (granting defendants' Rule 12(b)(3) motion to dismiss for improper venue because there was "no evidence whatsoever . . . that any, much less a substantial part, of the events giving rise to the claim occurred in the Northern District [of Texas]").

CONCLUSION

For the above stated reasons, the Court should dismiss the Complaint with prejudice.

Dated: February 18, 2010

Respectfully submitted,

/s/ Shannon W. Conway

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent those indicated as non-registered participants on February 18, 2010.

/s/ Shannon W. Conway