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June 21, 2021

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via ECF

Ms. Catherine O'Hagan Wolfe
 Clerk, United States Court of Appeals for the Second Circuit
 Thurgood Marshall United States Courthouse
 40 Foley Square
 New York, New York 10007

Re: Case No. 20-1162; *BlackBerry Limited v. Pearlstein*

Dear Ms. Wolfe:

Plaintiffs-Respondents write in response to Defendants-Petitioners' Rule 28(j) Letter regarding *Goldman Sachs Group, Inc., v. Arkansas Teacher Retirement System*, No. 20-222 (U.S. June 21, 2021).

Unlike in *Goldman*, there is no dispute here about whether the district court took "into account *all* record evidence relevant to price impact," Slip Op. 9, including Defendants' evidence that spoke directly to "correctiveness." It did. After considering all evidence relevant to price impact, as *Goldman* now mandates, the district court found that "all three partial disclosures *were corrective of the alleged fraud.*" Appx31 (emphasis added).

Nevertheless, recognizing the district court applied the test required by *Goldman*, Defendants again resort to plucking a single sentence (out of context) from the district court's opinion to argue it instead "fashioned a relaxed correctiveness test[.]" Rule 28(j) Letter at 1. But that argument simply cannot be squared with the plain language in the district court's opinion. *Cf.* Rule 28(j) Letter at 1 (Defendants arguing the district court held "it 'inappropriate at the Rule 23 stage' to consider whether 'the disclosures were not *in fact* 'corrective.'") with Appx31 ("[A]ll three partial disclosures were corrective of the alleged fraud."); *see also* Appx33, Appx33-35, Appx36-37.

Second, *Goldman* affirmed controlling Second Circuit law, and held, as the district court did here (Appx25), "that the defendant bears the burden of persuasion to prove a lack of price impact." Slip Op. 11 (citing *Waggoner v. Barclays PLC*, 875 F.3d 79, 99–104 (CA2 2017)). Thus, that aspect of *Goldman* has no impact on Defendants' Rule 23(f) Petition.

Lastly, no guidance is needed from this Court to address the "type of 'mismatch between' the alleged misrepresentation and disclosure" highlighted by Defendants, because it is merely another way of asking what constitutes correctiveness. But "[t]his Court's decisions in *Vivendi* and



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NewLink [already] address the question of *how* a corrective disclosure can reveal the truth underlying false statements and omissions (*i.e.*, what makes a disclosure actually corrective).” Opposition 4-5.

Accordingly, because the district considered all evidence relevant to price impact, and found each disclosure to be corrective, *Goldman* provides no support for Defendants’ Rule 23(f) Petition.

Respectfully submitted,

/s/ Kim E. Miller

Kim E. Miller

Cc: Counsel for all parties (via ECF)