

that would accompany 'the first paragraph of any newspaper story'—that is, the 'who, what, when, where and how' of the events at issue." *In re Rockefeller Ctr. Props., Inc.*, 311 F.3d at 217 (quoting *In re Burlington*, 114 F.3d at 1422).

In Count I, plaintiffs allege that the defendants' conduct "constituted the making of fraudulent misrepresentations ... regarding the AIG investment" that the defendants knew were materially misleading "because of their failure to state or disclose the additional or qualifying information regarding the investment banking relationship" of SSB with AIG. (*Id.* ¶ 46.) Count II vaguely states that the defendants' "statements and conducts ... included the expression of opinions which [the defendants] did not, in fact, truthfully hold." (*Id.* ¶ 50.) Count III claims that the defendants are liable to the plaintiffs for their failure to disclose this information, "because they knew that their nondisclosure would justifiably induce the Plaintiffs to proceed with the proposed investment." (*Id.* ¶ 52.) Finally, Count VI again claims that the defendants' conduct "constituted the making of fraudulent misrepresentations to, and/or fraudulent concealment and non-disclosure of material facts." (*Id.* ¶ 63.)

I agree with the defendants' assertions that Counts I, II, III, and VI do not meet Rule 9(b)'s heightened pleading requirements. First, nowhere does the complaint state *who* made the alleged misrepresentations to the plaintiffs. See *In re Rockefeller Ctr. Props., Inc.*, 311 F.3d at 218 (finding that complaint failed to comply with Rule 9(b) because the allegation failed to identify the speaker, and "there is no indication that the speaker had the authority to speak on behalf of [the defendant] or that the employee was in regular contact with the [defendant]"). Second, the complaint fails to allege exactly *what* false statement or representation was made. Instead, it claims that the defendants' failure to inform them of SSB's relationship with AIG was fraudulent. This does not meet Rule 9(b)'s requirement that there be a false statement that the defendants *knew* was false. In addition, the plaintiffs' allegation that the defendants misrepresented their claims that they aspired to "the highest standards of moral and ethical conduct" is vague. Accordingly, I find that Counts I, II, III, and VI do not meet Rule 9(b)'s heightened pleading requirement, and, therefore, I will dismiss them. I shall, however, grant the plaintiffs thirty days within which to amend the complaint to comport with Rule 9(b).³ See *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d at 1434 (noting that ordinarily, when a complaint is dismissed under Rule 9(b) for failure to plead fraud with the requisite particularity, leave to amend the complaint is granted).

III. CONCLUSION

For the foregoing reasons, I will deny Citibank's and Citigroup's motions to dismiss for lack of personal jurisdiction, to dismiss for improper venue, and to transfer this matter to the United States District Court for the Southern District of New York. I find that the amended complaint adequately states claims of breach of fiduciary duty and negligent misrepresentation, and therefore, will deny the defendants' Rule 12(b)(6) motion to dismiss for failure to state a claim. Finally, because I find that Counts I, II, III, and VI fail to meet Federal Rule of Civil Procedure 9(b)'s heightened pleading standard for claims of fraud, I will dismiss these claims and grant the plaintiffs leave to amend the complaint.

ORDER

For the reasons given in the Memorandum Opinion of even date, it is HEREBY ORDERED that the defendants' motion to dismiss for lack of personal jurisdiction under Federal Rule 12(b)(2), motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), and motion to transfer this matter are DENIED. Counts I, II, III, and VI fail to meet Federal Rule of Civil Procedure 9(b)'s heightened pleading standard for claims of fraud and are hereby DISMISSED WITHOUT PREJUDICE. The plaintiffs, however, shall have THIRTY DAYS within which to file an amended complaint with respect to these counts.

FOOTNOTES

1. Sometime in 2000, Davison informed Epstein about a second, similar investment fund to be managed by Mass Mutual [the "Mass Mutual Fund"]. On June 15, 2000, Epstein borrowed an additional \$10 million from Citibank, that Epstein agreed to invest in the Mass Mutual Fund. (Mem. Of Law in Support of Defs.' Mot. To Dismiss, Ex. D.) Although the plaintiffs have stated an intent to seek to amend the complaint to include claims related to the Mass Mutual Fund, they have not yet done so. (See Pls.' Mem. Of Law in Opp'n to Mot. To Dismiss at 12 n. 12.)
2. The Martin Act is New York's blue sky law. General Business Law section 352-c prohibits various fraudulent and deceitful practices in the distribution, exchange, sale and purchase of securities. The Martin Act vests exclusive authority in the New York Attorney General to investigate and prosecute violations of the Act. The Martin Act does not, however, provide for a private cause of action. See *Nairobi Holdings Ltd. v. Brown Bros. Harriman & Co.*, Civ. No.2002-1230, 2002 WL 31027550, *4, 2002 U.S. Dist. LEXIS 16995 at *10 (S.D.N.Y. Sept. 10, 2002) ("[I]t is well established that there exists no private right of action for claims that are within the purview of the [Martin] Act."); *Granite Partners, L.P. v. Bear, Stearns, & Co., Inc.*, 17 F.Supp.2d 275, 291 (S.D.N.Y. 1998) (same); *Deutsch v. Integrated Barter Int'l, Inc.* 700 F.Supp. 194 (S.D.N.Y.1988); *CPC Int'l, Inc. v. McKesson Corp.* 70 N.Y.2d 268, 276, 519 N.Y.S.2d 804, 514 N.E.2d 116 (N.Y.1987) (noting that "[a] majority of this court now holds that there is no cause of action impliedly created under [the Martin Act]").