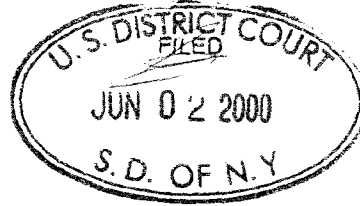


DOC # 12

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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

TONY H. HOFFMAN, individually and on)	AMENDED COMPLAINT
behalf of all others similarly situated,)	
)	
Plaintiff,)	NO. 00 CIV. 0958(MBM)
)	
vs.)	
)	
TD WATERHOUSE INVESTOR)	
SERVICES, INC. and JOHN H. CHAPEL,)	<u>JURY TRIAL DEMANDED</u>
)	
Defendants.)	
)	

Lead Plaintiffs Tony H. Hoffman, Reuben Hekmat, Thomas E. Maddux and Eileen S. Leung ("Plaintiffs") allege the following facts upon their personal knowledge with respect to all facts concerning Plaintiffs, their counsel or the actions undertaken by Plaintiffs or their counsel. All facts concerning the actions undertaken by the defendants and other persons are alleged based upon Plaintiffs' information and belief. Plaintiffs' information and belief is based upon the

investigation undertaken by their counsel, including, *inter alia*: (a) the review and analysis of publicly-available information related to defendant TD Waterhouse Investor Services, Inc., including newspaper articles, press releases, Internet Web page disclosures, contractual forms, regulatory filings and media reports; and (b) the review and analysis of documents concerning Plaintiffs' securities transactions with TD Waterhouse Investor Services, Inc.

SUMMARY OF CLAIMS

1. Plaintiffs' claims are brought on behalf of themselves and a class of investors (the "Class") who maintained on-line trading accounts with Waterhouse Securities, Inc. and/or its successor, TD Waterhouse Investor Services, Inc. (collectively, "Waterhouse" or the "Company") and who: (a) instructed Waterhouse to cancel securities purchase or sales orders made through Waterhouse's Internet trading system (the "On-Line System"); (b) received electronic confirmation from Waterhouse that those instructions had been accepted; and (c) suffered damages as a result of Waterhouse's execution of the transactions with respect to which it had issued cancellation confirmations.

2. Based upon those facts, Plaintiffs allege claims for violations of §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), SEC Rules 10b-3 and 10b-5 promulgated thereunder, the consumer protection provisions of § 349 of the New York General Business Law and the common law.

3. Defendant Waterhouse is a defendant with respect to all causes of action alleged by Plaintiffs. Defendant John H. Chapel, who has served as the President of Waterhouse since 1995, is a defendant exclusively with respect to Plaintiffs' claim under § 20(a) of the Exchange Act. Waterhouse and Chapel are collectively referred to herein as Defendants.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa), 28 U.S.C. § 1331 and 28 U.S.C. § 1367. The claims asserted herein arise under §§ 10(b) and 20(a) of the Exchange Act (15 U.S.C. § 78j(b) and 78t(a)), Rules 10b-5 and 10b-3 promulgated thereunder by the SEC (17 C.F.R. §§ 240.10b-5 and 240.10b-3) and New York law.

5. Venue is proper in this District pursuant to § 27 of the Exchange Act and 28 U.S.C. § 1391(b). Defendant Waterhouse is headquartered in this District at 100 Wall Street, New York, New York 10005, and many of the acts complained of herein originated and occurred in this District.

6. In connection with the acts alleged in this Complaint, Defendants directly or indirectly used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, the Internet, interstate telephone communications and the facilities of the national securities markets.

PARTIES

7. Plaintiff Tony H. Hoffman is a resident of Albuquerque, New Mexico.

8. Plaintiff Reuben Hekmat is a resident of Los Angeles, California.

9. Plaintiff Thomas E. Maddux is a resident of Groesbeck, Texas.

10. Plaintiff Eileen Leung is a resident of Bridgewater, New Jersey.

11. All of the Plaintiffs have suffered damages as a result of the fraudulent and unlawful course of conduct engaged in by Defendants that is alleged herein.

12. Defendant TD Waterhouse Investor Services, Inc. is a member of the New York Stock Exchange. TD Waterhouse Investor Services, Inc. is the successor corporation of Waterhouse Securities, Inc.

13. At all times relevant to this action, Waterhouse maintained an Internet Web site through which the Company acted as a brokerage that executed securities trades for its customers. The Company is the second-largest "on-line" brokerage and maintains over 3.6 million accounts.

14. Defendant John H. Chapel has served as the President of Waterhouse since 1995. According to filings made by Waterhouse's parent company with the SEC, in his role as the Company's President, Chapel has "responsibilities for all areas of brokerage operations" engaged in by Waterhouse. Accordingly, Chapel controls the actions of Waterhouse within the meaning of § 20(a) of the Exchange Act.

PLAINTIFFS' CLASS ACTION ALLEGATIONS

15. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined in ¶ 1.

16. The following persons are excluded from membership in the Class: Waterhouse; its officers and directors; the members of the immediate families of all such persons; the legal representatives, heirs, successors and assignees of all such persons; and any entity in which Waterhouse has or had a controlling interest.

17. The members of the Class are so numerous that joinder of all members is impracticable, although the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery.

18. The following facts, among others, demonstrate that the members of the Class are easily identifiable and satisfy the numerosity requirement:

a. The identities of the members of the Class and the amount of damages suffered by each Class member are verifiable through the computerized and paper records maintained by Waterhouse. Internal Waterhouse documents show when Class members entered trade cancellation orders, when Class members received confirmation of that those cancellation instructions had been accepted, and when the canceled orders were ultimately executed by Waterhouse on behalf of Class members. Examples of such documents are attached hereto as Exhibits A and B.

b. In particular, the members of the Class are identifiable through the review of: (i) "Advanced Order Management Order Activity" reports, such as the ones concerning Plaintiff Hoffman that are attached hereto as Exhibit A; and (ii) "Advanced Order Management History" reports, such as the one concerning Plaintiff Hekmat that is attached hereto as Exhibit B.

c. Numerous members of the Class have also posted complaints on Internet Web sites regarding Waterhouse's failure to honor confirmed cancellations of purchase and sale orders. For example, Plaintiff Hoffman has reviewed approximately twenty-five complaints written by Waterhouse clients who have been victimized by the unlawful conduct that Plaintiffs allege.

d. Accordingly, Plaintiffs believe that there are hundreds, if not thousands, of members of the Class.

19. Numerous common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class.

20. The common questions of law and fact affecting all Class members include the following:

a. whether Defendants violated the federal securities laws by engaging in the actions alleged herein;

b. whether Defendants violated § 349 of the G.B.L. by engaging in the actions alleged herein;

c. whether Waterhouse owed the members of the Class fiduciary obligations to make accurate disclosures regarding the status of Class members' orders and to follow the trading instructions delivered to Waterhouse by Class members;

d. whether Defendants participated in and pursued the common course of conduct complained of herein;

e. whether Waterhouse continually confirmed that members of the Class had successfully canceled purchase and sales orders, but, nevertheless, proceeded to execute the purportedly canceled purchases and sales;

f. whether it was materially misleading for Waterhouse to issue confirmations that purchase and sales orders had been successfully canceled and then proceed to complete those purchase and sales orders;

g. whether Waterhouse acted knowingly or recklessly by failing to disclose to the members of the Class that the On-Line System did not deliver accurate information concerning the status of requests to cancel orders;

h. whether defendant Chapel was a control person of Waterhouse at all times relevant to this action;

i. whether Plaintiffs and the members of the Class were damaged as a result of the conduct alleged by Plaintiffs herein; and

j. what is the appropriate means for determining the amount of the damages suffered by Plaintiffs and the members of the Class as a result of Defendants' unlawful conduct.

21. Plaintiffs' claims are typical of the claims of the members of the Class.

22. The following facts, among others, demonstrate that Plaintiffs' claims are typical of those possessed by all Class members:

a. All of the members of the Class placed orders with Waterhouse to cancel previous instructions to purchase or sell securities.

b. In response to those orders, all of the members of the Class received confirmations from Waterhouse that their previously-issued instructions to purchase or sell securities had been successfully canceled.

c. Nevertheless, all of the members of the Class were damaged when Waterhouse executed the same purchase or sales orders that it previously confirmed had been canceled successfully.

d. Plaintiffs are not aware of any conflict that exists between their interest in guaranteeing that this litigation is prosecuted successfully and the interests of other members of the Class in facilitating the same result.

23. Plaintiffs will fairly and adequately protect the interests of the members of the Class because they have suffered substantial losses as a result of Defendants' misconduct and

because they have retained counsel who are competent and experienced in class action, securities and consumer litigation. Plaintiffs are not aware of any interest that they possess that is antagonistic to the interests of the members of the Class.

24. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by many individual members of the Class may be relatively small, the expense and burden of individual litigation make it virtually impossible for the members of the Class to individually seek redress for the wrongful conduct alleged herein. As a result, a class action is the only practicable means to resolve the claims alleged by Plaintiffs.

25. Furthermore, this litigation may be efficiently managed as a class action. The documents necessary to prove the claims of all members of the Class, including the documents attached hereto as Exhibits A and B, are in Defendants' possession and may be obtained by Plaintiffs through reasonable discovery.

**THE FACTS AND CIRCUMSTANCES THAT SUPPORT
THE CLAIMS ALLEGED BY PLAINTIFFS AND THE CLASS**

A. Waterhouse's Fiduciary Obligations To The Members Of The Class

26. All of the members of the Class opened brokerage accounts at Waterhouse and deposited significant securities and/or cash in those brokerage accounts.

27. By virtue of its status as the stockbroker for the members of the Class, Waterhouse assumed certain fiduciary responsibilities with respect to the members of the Class.

28. In particular, because of the substantial trust that the members of the Class invested in Waterhouse to protect their interests and their assets, the Company was obligated:

a. to make complete and accurate disclosures to the members of the Class concerning matters impacting Class members' brokerage accounts, including Waterhouse's inability to provide investors with accurate information concerning the status of orders that the investors had attempted to cancel; and

b. to promptly comply with the instructions delivered by the members of the Class to cancel previously-delivered instructions to purchase or sell securities.

B. Waterhouse's Failure To Disclose That The Status Of Investors' Efforts To Cancel Transactions Was Not Accurately Reflected On The Company's Web Site

29. Waterhouse continually violated the fiduciary obligations that it owed to Plaintiffs and the members of the Class by failing to disclose that the Internet Web pages that provided information to Waterhouse customers concerning their securities transactions did not accurately reflect the status of their efforts to cancel purchase and sales transactions.

30. Specifically, Waterhouse was obligated to disclose the highly material facts that the Company's Web site frequently apprised investors that purchase or sales orders had been successfully canceled, although they had not, and did not reflect accurate information concerning the status of orders to cancel purchase or sale orders. One of the primary obligations of any fiduciary is to make truthful and complete disclosures concerning matters that fall within the fiduciary relationship.

31. Waterhouse's obligation to disclose that its Web site frequently did not reflect accurate information concerning the status of cancellation orders and the orders that were the subject of cancellation orders was also triggered by the descriptions of the information available to customers that Waterhouse included on its Web site.

32. In particular, Waterhouse's Internet Web pages made the following representations that triggered the obligation to disclose that the Company's Web pages frequently did not reflect accurate information concerning the status of efforts to cancel purchases and sales:

a. Waterhouse apprised investors that the Web page reflecting customers' "Execution Details" would show the execution status of their orders, including information regarding the date and time trades were executed, the price and quantity of the trades, and whether any orders remained pending. In particular, investors were apprised that, if the "Remaining Quantity" information on the "Execution Details" Web page indicated that there were no pending orders, their cancellation instruction had been accepted.

b. Waterhouse also apprised investors that the status of their efforts to cancel transactions would be reflected on the "Order Status" page of Waterhouse's Web site. That page purportedly informed investors of the number of shares or contracts which had been canceled, as well as the quantity of shares already traded, if any. Waterhouse also specifically informed investors that the "Cancel Quantity" data field on the "Order Status" page would show investors "the number of shares canceled."

c. Waterhouse also stated that the "Transaction History" page of its Web site would inform investors of the quantity of shares traded and any instructions received by Waterhouse in connection with those trades. In addition, Waterhouse represented that, if the Company had accepted an order, but not yet executed it, the status of that order would appear as "open" on Waterhouse's "Order Status" page.

d. In addition, Waterhouse informed investors of the purported status of their efforts to cancel transactions through the issuance of “confirmations” that transactions had been canceled.

33. Furthermore, Waterhouse regularly published written and televised advertisements that reported the purported ability of the On-Line System to promptly and accurately fill trade orders. For instance, a Waterhouse brochure distributed to potential customers states:

Who knew investing could be so easy?

* * *

Your investments are a reflection of you. We give you the tools to express yourself.

* * *

Investing has now become a part of everyone’s life. It’s everywhere you look — on television, in the newspaper and on-line. That’s why TD Waterhouse offers you the tools you need to make wise decisions and invest easily. TD Waterhouse offers you the best value in the industry. When you become a customer, you’ll benefit from the best mix of price, product and service . . .

34. A report concerning Waterhouse and other on-line brokerages published by the New York State Attorney General’s Office on November 22, 1999 criticized the accuracy of such disclosures. In particular, the Attorney General’s report stated:

For instance, in a recent Waterhouse television advertisement, famous former basketball coach Phil Jackson is asked, “You know anything about the trade?” He answers, “I’m going to make it right now.” In another Waterhouse advertisement, film actress Gina Davis announces, “I must trade, now!” and clicks on the “submit” button.

“Making a trade” or “trading now” in the context of the aforementioned advertisements does not mean that a trade is executed simultaneously with the click of the button. A click of the mouse will send a request for a trade to the on-line broker who, after putting the trade through the proper vetting criteria, will, in turn, route the order to the marketplace Once a trade request is sent to the marketplace, it is executed, and only then is a notice sent back to the investor that the order was successfully executed. Additionally, the notice itself may be delayed by minutes or hours, especially during periods of high volume or volatile markets. These intricacies of the on-line trading process should be, but are not always, communicated clearly to investors . . .

Indeed, as discussed more fully in the next section, an on-line investor who “makes a trade” by placing a “limit order” should be prepared that the order may not be filled immediately, based upon the investor’s requested price for a stock. Other orders, such as a “market order” may give the appearance of instant execution. However, although the process itself may take no more than a few seconds, it still must go through the same steps before it is executed. In other words, a click of the mouse represents a *request* for a trade, and should not be confused to mean an automatic and immediate execution. It is only more immediate than making a trade through a broker on the telephone in the sense that it cuts out the step of the broker placing the trade for the customer. Just like with a live broker, an investor may click on the mouse and then have to wait for an execution or be subject to delays, depending on market conditions and the availability of trading systems.

35. In tacit recognition of the materially misleading nature of its prior omissions regarding canceled trades, in or around June 1999, Waterhouse’s WebBroker Order Status page began to carry the following disclosure:

Please Note: Cancellation attempts will not appear on the “Order Status” page.

Waterhouse will attempt to cancel your open or partially filled order on a best efforts basis. Waterhouse has a responsibility to execute your order as promptly as possible following receipt. For this reason, we cannot guarantee that your order will be canceled before it is partially or fully executed. To avoid the possibility of

duplicate executions when canceling an order and reentering a new order on the same issue, please use the "Attempt to Change Order" feature or contact your account officer to confirm your cancellation.

36. This disclosure remained materially misleading, however, for the following reasons:

a. The disclosure suggested to investors that orders may be filled prior to cancellation due to Waterhouse's "responsibility to execute [a class member's] order as promptly as possible following receipt," but did not disclose that Waterhouse may fill orders even after the apparently successful entry of a cancel trade order;

b. Waterhouse continued to fail to disclose that, due to its inadequate computer system, manpower shortages and/or lack of internal controls, it was incapable of consistently matching canceled trade orders with the pending, and unfilled, prior orders that were the subject of the trade cancellation orders; and

c. Waterhouse continued to lead investors to believe that, if an order was deleted from the "Open Order(s)" entry on the "Order Status" page of the On-Line System, that trade had been canceled successfully.

C. Plaintiffs Were Victimized By Waterhouse's Failure To Disclose That The Company's Web Site Did Not Accurately Disclose The Status Of Efforts To Cancel Securities Transactions

37. As is alleged in detail in the succeeding paragraphs, all of the Plaintiffs were victimized by Waterhouse's failure to disclose that the Company's Web site did not accurately disclose the status of efforts to cancel securities transactions.

(1) Plaintiff Hoffman

38. As of the beginning of trading on February 9, 1999, Plaintiff Hoffman's Waterhouse account had a net asset value of approximately \$3,600.

39. At approximately 9:40 A.M. on that date, Hoffman placed a limit buy order for 400 shares of the common stock of Shop at Home, Inc. ("SATH") at a price of \$27 3/4 through the On-Line System ("Hoffman Order #1").

40. At approximately 9:44 A.M., as the price of SATH stock was declining, Hoffman instructed Waterhouse to cancel Hoffman Order #1 through the On-Line System.

41. As is reflected in Exhibit A, after Hoffman entered the cancellation order, Waterhouse issued Hoffman a confirmation that he had successfully canceled his purchase order at 9:44 A.M.

42. Like Hoffman, all of the members of the Class received order cancellation confirmations that are verifiable through the review of documents similar to Exhibit A. All of those order cancellation confirmations were materially misleading because Waterhouse failed to disclose that the confirmations did not mean that investors had successfully canceled transactions.

43. After entering his cancellation instruction for Hoffman Order #1, Hoffman viewed the account order status screen maintained by Waterhouse on its Web site for the purpose of informing customers of the status of their on-line orders and instructions.

44. Although the account order status screen previously indicated that Hoffman Order #1 had been placed, after Hoffman entered his cancellation instructions for the order, the status screen did not show any pending limit order. Thus, the order status screen was materially

misleading because Waterhouse failed to disclose that the screen did not accurately reflect the status of investors' efforts to cancel securities transactions.

45. Although Hoffman received confirmation that he had successfully canceled Hoffman Order #1 at 9:44 A.M., Waterhouse executed Hoffman Order #1 at 11:51 A.M., over two hours after the Company accepted Hoffman's instruction to cancel that order.

46. Having received confirmation that Hoffman Order #1 was canceled and having verified that Hoffman Order #1 was no longer listed as a pending order in his account, on February 9, 1999, at approximately 9:45 A.M., Hoffman placed a limit buy order for 400 shares of SATH at a price of \$26 3/4 through the On-Line System ("Hoffman Order #2").

47. At approximately 9:48 A.M., as the price of SATH stock was continuing to decline, Hoffman instructed Waterhouse through the On-Line System to cancel Hoffman Order #2.

48. As is reflected in Exhibit A, after Hoffman entered that cancellation order, Waterhouse electronically sent Hoffman a confirmation that his cancellation order had been accepted at approximately 9:48 A.M. Again, that cancellation confirmation was materially misleading because Waterhouse failed to disclose that the confirmation did not mean that Hoffman had successfully canceled Hoffman Order #2.

49. After entering his cancellation instruction for Hoffman Order #2, Hoffman viewed the account order status screen maintained by Waterhouse on its Web site for the purpose of informing customers of the status of their on-line orders and instructions.

50. While the account order status screen previously indicated that Hoffman Order #2 had been placed, after Hoffman entered his cancellation instructions for the order, the status

screen did not show any pending limit order. Thus, the order status screen was materially misleading because it failed to disclose that the screen did not accurately reflect the status of Hoffman's efforts to cancel Hoffman Order #2.

51. Although Waterhouse had confirmed that Hoffman had successfully canceled Order No. 2 at 9:48 A.M., Waterhouse executed Hoffman Order #2 at 11:18 A.M., one and one-half hours after Waterhouse had issued the cancellation confirmation to Hoffman.

52. Having received confirmation that Hoffman Order #2 was canceled and having verified that there were no longer any pending orders to purchase SATH stock in his account, at approximately 9:49 A.M., Hoffman placed a market buy order for 400 shares of SATH stock ("Hoffman Order #3").

53. Hoffman Order #3 was executed by Waterhouse on February 9, 1999, at 9:52 A.M., one hour and twenty-six minutes prior to the time Waterhouse executed Hoffman Order #2 and one hour and fifty-nine minutes prior to the time Waterhouse executed Hoffman Order #1.

(2) Plaintiff Hekmat

54. As is reflected in Exhibit B, on March 9, 1999, at approximately 9:40 A.M., Plaintiff Hekmat entered a purchase order for 1000 shares of IVC Industries, Inc. ("IVCO") common stock over the On-Line System.

55. Within minutes, Hekmat decided to cancel that order. As a result, he instructed Waterhouse to cancel the purchase of IVCO stock through the On-Line System.

56. By 9:46 A.M., Hekmat received confirmation that his cancellation instruction had been accepted by Waterhouse. *See Ex. B.*

57. Although Waterhouse had confirmed the cancellation of Hekmat's purchase of IVCO stock, the Company nevertheless proceeded to execute the canceled transaction at 11:08 A.M., an hour and twenty-two minutes after Waterhouse issued the confirmation that the transaction had been canceled. *See* Ex. B.

58. Because the price of IVCO stock fell significantly after Waterhouse placed that stock in Hekmat's account, Hekmat suffered significant damages in connection with his forced investment in IVCO stock.

(3) Plaintiff Maddux

59. On July 19, 1999, Plaintiff Maddux entered a purchase order for 1000 shares of the common stock of Audible, Inc. ("ADBL") over the On-Line System.

60. Soon after placing that purchase order, Maddux determined that he should cancel the order. As a result, Maddux instructed Waterhouse through the On-Line System to cancel his purchase order for ADBL common stock.

61. In response to that instruction, Maddux received an electronic confirmation from Waterhouse that his purchase of ADBL had been canceled successfully.

62. Although Waterhouse had confirmed the successful cancellation of Maddux's purchase of ADBL stock, Waterhouse proceeded to place 1000 shares of ADBL stock in his account.

63. By the time that Maddux realized that Waterhouse had executed the purchase of ADBL common stock despite confirming the cancellation of the transaction, the price of ADBL common stock had fallen from approximately \$21 per share to approximately \$16.50 per share.

64. As a result, Maddux suffered a significant loss on his forced investment in ADBL common stock.

(4) Plaintiff Leung

65. On March 13, 2000, Plaintiff Leung placed an order to sell 250 shares of CWON stock over the On-Line System at approximately 9:33 A.M.

66. Approximately ten minutes later, Leung decided to cancel her sell order. As a result, Leung ordered Waterhouse to cancel the sell order over the On-Line System.

67. Shortly after Leung transmitted that instruction over the On-Line System, she received a confirmation from Waterhouse that her order to sell CWON stock had been canceled.

68. Although Waterhouse had confirmed the cancellation of the order to sell CWON stock, Leung later received confirmation from Waterhouse that it had executed the sell order at 10:18 A.M., or approximately a half hour after Waterhouse confirmed that Leung had successfully canceled that sell order.

69. Because the price of CWON stock appreciated significantly after Leung received her confirmation that her attempt to cancel her sale transaction had been successful, she suffered significant damages as a result of Waterhouse's failure to honor its confirmation of the cancellation of the sale.

D. Plaintiffs And The Members Of The Class Relied On The Completeness Of Waterhouse's Disclosures Concerning The Status Of Their Efforts To Cancel Transactions

70. Plaintiffs and all of the members of the Class relied on the completeness of Waterhouse's representations concerning: (a) the Company's ability to effectively and promptly

execute orders; and (b) the status of the investors' efforts to cancel the transactions that Waterhouse executed after confirming their cancellation.

71. Plaintiffs' reliance is demonstrated by the fact that they did not immediately seek to reverse the trades that Waterhouse undertook after it had confirmed the cancellation of those trades.

72. Although Plaintiffs directly relied on the completeness of Waterhouse's representations concerning their efforts to cancel the transactions specified herein, the reliance of Plaintiffs and the other members of the Class can also be established through the presumption of reliance that arises when a defendant fails to disclose material facts.

73. As is alleged in detail above, Waterhouse failed to disclose the highly material fact that the On-Line System did not provide accurate information concerning the status of investors' efforts to cancel securities transactions. In addition, Waterhouse consistently failed to disclose that, due to its inadequate computer systems, manpower shortages and/or lack of internal controls, Waterhouse was incapable of consistently matching canceled trade orders with the pending, and unfilled, prior orders that were the subject of the canceled trade orders.

74. Accordingly, the reliance of Plaintiffs and all members of the Class upon the material facts omitted by Waterhouse may be presumed.

E. Waterhouse's Material Omissions Were Made With Scierter

75. In making the material omissions complained of herein, Waterhouse acted with knowledge of or severely reckless disregard for the falsity of its representations.

76. Waterhouse's scierter is demonstrated by the Company's own internal documents, including Exhibits A and B to this Complaint.

77. Indeed, documents similar to Exhibits A and B exist with respect to every trade that Waterhouse executed after confirming its cancellation. Accordingly, it is apparent that Waterhouse either knew or recklessly disregarded the fact that it was executing transactions after confirming that those transactions had been canceled successfully.

78. Nevertheless, Waterhouse failed to take any steps to reverse the transactions with respect to which it had issued cancellation confirmations or to correct the On-Line System's failure to provide investors with accurate information concerning efforts to cancel transactions until after the Company was investigated for its order cancellation procedures, among other things, by the New York Attorney General's Office.

79. The conclusion that Waterhouse's material omissions were made with scienter is also supported by the New York Attorney General's report concerning Waterhouse and several other on-line brokerages.

80. In that report, the Attorney General noted that many of the numerous complaints received by the Attorney General's Office concerning on-line brokerages concerned duplicate purchases of securities that resulted from failed efforts to cancel transactions.

81. The Attorney General's report stated that, "if 'order cancellation' procedures were clearly explained at the order entry screen it would reduce the frequency of order duplication or other needless order entry errors."

82. In light of the fact that the Attorney General's Office received numerous complaints regarding on-line brokerages' trade cancellation procedures, it is reasonable to conclude that Waterhouse was aware of numerous similar complaints because of the significant market share that Waterhouse commands in the on-line brokerage business.

83. Notably, the Attorney General's report did not even appear to contemplate the possibility that an on-line brokerage would attempt to stick an investor with a money-losing trade after the brokerage had confirmed the cancellation of the transaction. For example, the Attorney General's report stated:

Online investors may also face difficulties in attempting to cancel an order. In light of the potential reporting delays discussed above, an order may in fact have been executed despite the fact that the investor's account has not yet been updated to reflect that execution. In such an instance, it would be impossible to cancel the order since it would already have been executed. Moreover, having placed a cancellation order, an online investor should not proceed to place a second order until he or she has received confirmation that the first order has been canceled. Otherwise, the online investor may unintentionally purchase the same security twice. Many of the complaints received by this Office were of this type. [Emphasis added].

F. The Significant Damages Suffered By Plaintiffs And The Members Of The Class Were Caused By Waterhouse's Omissions

84. Waterhouse's failure to disclose that the On-Line System did not accurately reflect the status of investors' efforts to cancel securities transactions was the direct and proximate cause of the losses suffered by Plaintiffs and the members of the Class in connection with Waterhouse's execution of trades that it confirmed had been canceled.

85. Had Plaintiffs and the members of the Class known that Waterhouse's Web site did not provide accurate information concerning the status of their efforts to cancel transactions, Plaintiffs and the members of the Class could have refrained from placing orders through Waterhouse, reversed the unauthorized transactions entered into by Waterhouse, or minimized the risk of those transactions.

86. Plaintiffs and the members of the Class have suffered significant losses as a result of Waterhouse's failure to disclose that the On-Line System did not accurately report the status of efforts to cancel securities transactions.

87. The members of the Class who were charged with purchasing shares although Waterhouse had informed them that they had successfully canceled purchase orders lost money when those shares declined in value after Waterhouse placed the securities in the Class members' account.

88. Likewise, the members of the Class who were charged with selling shares although Waterhouse had informed them that they had successfully canceled sales orders lost money when those shares appreciated in value after Waterhouse had improperly sold them.

89. All of the members of the Class also suffered damages because Waterhouse's failure to honor its cancellation confirmations resulted in Waterhouse conducting unwanted transactions for which Waterhouse charged the members of the Class significant commissions.

90. Those additional commission payments would not have been made had Waterhouse honored its confirmations that Plaintiffs and other Class members had successfully canceled transactions.

91. Indeed, as the experience of Plaintiff Hoffman demonstrates, the commissions charged by Waterhouse to the members of the Class as a result of Waterhouse's execution of transactions that had been canceled frequently resulted in the Company generating commissions far in excess of the "discount" commissions that it promised to charge investors.

92. Soon after Hoffman recognized on February 10, 1999 that Waterhouse had placed 1200 shares of SATII stock in his account, rather than the 400 shares that he intended to

purchase, Hoffman telephoned Waterhouse and apprised it of what Hoffman believed was a “mistake” committed by the Company.

93. At that time, Hoffman had been charged with purchasing \$32,688.00 in SATH common stock although his account had a value of only approximately \$3600 and was not authorized to trade on margin. Moreover, because SATH stock had declined significantly in value since the time of the three purchases that Hoffman was charged with making, there were insufficient assets in Hoffman's account to cover those three purchases.

94. Concerned only that its failure to honor its trade cancellation confirmations would result in Waterhouse suffering a loss, the Company soon began to dismantle Hoffman's account in a series of high-commission trades.

95. On February 11, 1999, Waterhouse, without instructions from Hoffman, and consistent with its inequitable conduct towards other members of the Class, sold all 1,200 shares of SATH stock purchased by Waterhouse in Hoffman's account at a price of \$15 7/8 per share. That trade produced a total loss of \$13,681.62 in connection with all of the SATH trades conducted by Waterhouse in Hoffman's account.

96. Consistent with its inequitable treatment of other members of the Class, Waterhouse charged Hoffman a \$45.00 commission in connection with this liquidation trade, thereby renegeing on its promises to execute trades at discounted commissions. The \$45 commission on the liquidation trade was substantially higher than the commissions that Hoffman had previously been charged by Waterhouse.

97. Waterhouse did not stop merely at liquidating the SATH shares that it had placed in Hoffman's account. Without authorization from Hoffman, and consistent with its inequitable

treatment of other Class members, Waterhouse also liquidated all other securities held by Hoffman in his Waterhouse account on February 11, 1999.

98. The trades executed by Waterhouse at that time can be summarized as follows:

Stock Symbol	Gross Liquidation Amount	Commission	Net Liquidation Amount
PRWT	\$865.00	\$500.00	\$364.87
CHES	\$15.00	\$14.00	\$ 00.99
VTCO	\$300.00	\$45.00	\$254.99
TSATA	\$253.13	\$45.00	\$206.12
GGNC	\$871.41	\$45.00	\$825.38
BDE	\$105.00	\$45.00	\$59.99

99. Thus, while the gross liquidation value of these stocks amounted to \$2409.54, the ridiculously high commissions charged on these unauthorized trades amounted to \$694.00, or 25% of the value of the stocks sold.

100. The net proceeds of the sales conducted by Waterhouse without Hoffman's authorization were therefore only \$1,712.34. Thus, Waterhouse simultaneously bilked Hoffman for \$694.00 in commissions and reduced the amount of assets available to Hoffman to offset Waterhouse's claims for reimbursement in connection with the erroneous SATH trades by the same amount.

101. The commissions charged by Waterhouse in connection with the liquidation of Hoffman's account were not rationally related to any cost incurred by Waterhouse in conducting

the trades and greatly exceeded the discount commission rates that Waterhouse agreed to charge Hoffman and other members of the Class for securities transactions.

102. In instances when other members of the Class had their securities sold in order to satisfy “debts” purportedly owed to Waterhouse as a result of losses suffered in connection with the completion of trades that had previously been canceled, those Class members were charged similarly excessive commissions.

103. Thus, Waterhouse's failure to honor its cancellation confirmations not only resulted in the Company avoiding the significant losses resulting from its improper trades, but enabled the Company to generate significant commissions in connection with liquidation trades.

COUNT I

(Violations of § 10(b) Of The Exchange Act and Rules 10b-5 and 10b-3 Promulgated Thereunder)

104. Plaintiffs hereby repeat and reallege each of the foregoing allegations as if fully set forth herein.

105. This claim is alleged by Plaintiffs against Waterhouse on behalf of the Class.

106. Waterhouse carried out a plan, scheme and course of conduct which was intended to and did deceive the investing public and unjustly enrich Waterhouse by generating excessive trading commissions for the Company. In furtherance of that unlawful scheme, plan and course of conduct, the Company took the actions that Plaintiffs allege.

107. Waterhouse, by the use and means of instrumentalities of interstate commerce or of the mails, directly and indirectly engaged and participated in a continuous course of conduct

whereby the Company failed to disclose highly material information concerning the status of investors' efforts to cancel orders entered over the On-Line System.

108. In particular, Waterhouse repeatedly failed to disclose: (a) that the receipt of a cancel order confirmation did not necessarily mean that an order had been canceled.; and (b) that the Company's Web site frequently did not contain accurate information as to whether trades were still pending.

109. Plaintiffs and the members of the Class relied upon the accuracy and completeness of Waterhouse's disclosures concerning the status of their efforts to cancel securities transactions placed over the On-Line System.

110. Had Plaintiffs and the members of the Class known that Waterhouse's Web site did not provide accurate information concerning the status of their efforts to cancel transactions, Plaintiffs and the members of the Class could have refrained from placing orders through Waterhouse, reversed the unauthorized transactions entered into by Waterhouse, or minimized the risk of those transactions.

111. In failing to make accurate disclosures regarding the status of investors' efforts to cancel transactions, Waterhouse acted with knowledge of or with reckless disregard for the falsity of its representations.

112. As a direct and proximate result of Waterhouse's fraudulent omissions, Plaintiffs and the members of the Class suffered significant trading losses and were charged excessive commissions by the Company.

113. By virtue of the foregoing, Waterhouse has violated Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-3 promulgated thereunder.

114. Plaintiffs and the members of the Class are therefore entitled to an award of damages in an amount to be determined at trial.

COUNT II

(Violations of § 20(a) of the Exchange Act)

115. Plaintiffs hereby incorporate by reference each of the preceding allegations as though fully set forth herein.

116. This cause of action is alleged by Plaintiffs on behalf of themselves and the Class against Chapel.

117. As President of Waterhouse, defendant Chapel was a "controlling person" of the Company because he had the power to cause Waterhouse to engage in the unlawful conduct complained of herein and because he could have prevented the unlawful conduct that Plaintiffs allege.

118. Chapel cannot demonstrate that he acted in good faith in connection with the misconduct committed by Waterhouse that Plaintiffs alleges. Chapel directly or indirectly induced Waterhouse to commit the unlawful acts alleged herein.

119. Because Chapel was a "controlling person" of the Company, which is a person primarily liable to Plaintiffs and the Class under § 10(b) of the Exchange Act, Chapel is secondarily liable for those primary violations pursuant to § 20(a) of the Exchange Act.

120. Plaintiffs and the members of the Class are therefore entitled to an award of damages in an amount to be determined at trial.

COUNT III

(Breach of Fiduciary Duty)

121. Plaintiffs hereby incorporate by reference each of the preceding allegations as if fully set forth herein.

122. This cause of action is alleged by Plaintiffs on behalf of themselves and the Class against Waterhouse.

123. By virtue of its status as stockbroker for Plaintiffs and the members of the Class, Waterhouse owed Plaintiffs and the members of the Class fiduciary obligations of care, loyalty and candor.

124. Waterhouse breached those fiduciary obligations by, *inter alia*:

- a. failing to make accurate disclosures concerning the status of investors' efforts to cancel securities transactions;
- b. executing transactions after it had confirmed that those transactions had been canceled;
- c. failing to promptly implement investors' instructions to cancel orders;
- d. charging Plaintiffs and the members of the Class commissions in connection with unauthorized transactions executed by Waterhouse; and
- e. charging Plaintiffs and the members of the Class excessive commissions in connection with trades designed to reverse unauthorized transactions.

125. As a direct and proximate result of Waterhouse's breaches of the fiduciary obligations that it owed to Plaintiffs and the members of the Class, those investors have suffered significant damages.

126. Plaintiffs and the members of the Class are therefore entitled to an award of damages and punitive damages in an amount to be determined at trial.

COUNT IV

(Money Had and Received)

127. Plaintiffs hereby incorporate by reference each of the preceding allegations as though fully set forth herein.

128. This cause of action is alleged by Plaintiffs on behalf of themselves and the Class against Waterhouse.

129. As detailed above, Waterhouse has collected commissions to which it was not entitled from Plaintiffs and other Class members in connection with: (a) the execution of previously-canceled trades; and (b) the execution of trades necessary to unwind or generate the proceeds necessary to pay for such trades.

130. Accordingly, equity and good conscience dictate that the commissions paid by Class members in connection with those trades should be refunded to Plaintiffs and the members of the Class by the Company.

131. Plaintiffs and the members of the Class are therefore entitled to the restitution of all commissions paid to Waterhouse as a result of the Company's failure to honor confirmed trade cancellations.

COUNT V

(Breach of Contract)

132. Plaintiffs hereby incorporate by reference each of the preceding allegations as though fully set forth herein.

133. This cause of action is alleged by Plaintiffs on behalf of themselves and the Class against Waterhouse.

134. Plaintiffs and the members of the Class entered into contracts with Waterhouse calling for the Company to provide discount brokerage services. Those contracts required Waterhouse to faithfully execute the transactions ordered by Plaintiffs and the members of the Class.

135. Those contracts were also subject to the implied covenants that Waterhouse would conduct its business with Plaintiffs and Class members in good faith and would deal fairly with Plaintiffs and Class members.

136. Waterhouse has breached its contracts with Plaintiffs and the members of the Class by failing to honor confirmed trade cancellations placed by Plaintiffs and the members of the Class.

137. The Company has also breached its duties of good faith and fair dealing by charging Plaintiffs and other Class members excessive commissions in connection with: (a) the execution of previously-canceled trades; and (b) the execution of trades necessary to unwind or generate the proceeds necessary to pay for such trades.

138. Plaintiffs and the members of the Class are therefore entitled to an award of damages in an amount to be determined at trial.

COUNT VI

(Violation of New York G.B.L. § 349)

139. Plaintiffs hereby incorporate by reference each of the preceding allegations as if fully set forth herein.

140. This cause of action is alleged by Plaintiffs on behalf of themselves and the Class against Waterhouse.

141. Pursuant to § 349 of the New York G.B.L., “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are ... declared illegal.”

142. By providing Plaintiffs and other Class members discount brokerage services, Waterhouse engaged in business, trade or commerce and furnished services within the meaning of § 349 of the G.B.L.

143. Waterhouse continually committed deceptive acts or practices, as those terms are defined in § 349 of the G.B.L., by: (a) either recklessly or intentionally ignoring cancellation instructions received from customers; (b) failing to disclose to investors that the Company's Web site did not contain accurate information concerning the status of investors' efforts to cancel transactions; (c) charging Plaintiffs and the members of the Class commissions in connection with transactions that they had successfully canceled; and (d) charging excessive commission fees on occasions when Waterhouse elected to liquidate clients' accounts following the execution of previously-canceled trades.

144. As is alleged in detail above, Waterhouse's deceptive acts and practices were committed wilfully.

145. By virtue of the foregoing, Waterhouse violated § 349 of the G.B.L.

146. Pursuant to § 349(h) of the G.B.L., Plaintiffs and the members of the Class are therefore entitled to: (a) an Order prohibiting Waterhouse from engaging in the deceptive acts and practices alleged herein; (b) their actual damages; (c) treble damages; and (d) the payment of the attorneys' fees and expenses incurred in connection with this litigation.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

(i) An Order determining that this action is a proper class action, certifying Plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure and certifying Plaintiffs' counsel as class counsel;

(ii) Compensatory damages in an amount to be proven at trial, including interest thereon;

(iii) Punitive and statutory damages in an amount to be proven at trial;

(iv) An Order awarding Plaintiffs and the Class the reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and


(v) Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

DATED: May 30, 2000

SHALOV STONE & BONNER

By: 
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New York, New York 10001
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LAW OFFICES OF DENNIS J. JOHNSON

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South Burlington, VT 05403
(802) 862-0030

Attorneys for Plaintiffs

A

ACCT: 394 14000 16 RR: WEB
 NAME: TONY H HOFFMAN
 5480 WINCHESTER RD SW
 ALBUQUERQUE NM 87121-6964
 RELAY : COP 0604
 BUY/SELL : BUY
 ORIG QTY : 400
 SYMBOL : SATH
 ORIG PRC : 27 3/4
 GOOD TIL : DAY
 COM: T:12.00 R:
 QUOTE : 27 7/16

CC: US\$ PHONE:
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 AGENCY PCPL: DISCR ACCT: N DEL INST: 03
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 STRK: OC: CF: CVD:
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 TRAILER2:
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 B/D:

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ACCT: 394 14000 16 RR: WEB
 NAME: TONY H HOFFMAN
 5480 WINCHESTER RD SW
 ALBUQUERQUE NM 87121-6964

CC: US\$ PHONE:
 SECURITY DESC: SHOP AT HOME INC NEW

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 CXL G/T : DAY

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 TRAILER2:
 NOTE :
 CXL PRICE: 27 3/4
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CONFIRM WITH CUSTOMER:
 APPRVL:
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 CXL DATE/TIME:

ACCT: 357 14000 16 RR: WEB
 NAME: TONY H HOFFMAN
 5480 WINCHESTER RD SW
 ALBUQUERQUE NM 87121-6964

CC: US\$ PHONE:
 SECURITY DESC: SHOP AT HOME INC NEW

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 GOOD TIL : DAY
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 QUOTE : 26 3/4

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ACCT: 394 14000 16 RR: WEB
 NAME: TONY H HOFFMAN
 5480 WINCHESTER RD SW
 ALBUQUERQUE NM 87121-6964

CC: US\$ PHONE:
 SECURITY DESC: SHOP AT HOME INC NEW

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 QUOTE :
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 CXL G/T : DAY

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 TRAILER1:
 TRAILER2:
 NOTE : S/C: :
 B/D: CXL DATE/TIME:

ACCT: 394 14000 18 RR: WEB
 NAME: TONY H. HOFFMAN
 5480 WINCHESTER RD SW
 ALBUQUERQUE NM 87121-6964

CC: US\$ PHONE:
 SECURITY DESC: SHOP AT HOME INC NEM

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 ORIG PRC : MKT
 GOOD TIL : DAY
 COM: T:12.00 R:
 QUOTE : 27 3/4

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 CURRENT PRC : MKT HELD BY: H SOL: N
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 TRAILER2:
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ACCT: 394 14033 17 RR: WEB
 NAME: MUOI N RADER
 6917 WHITE PINE PL NE
 ALBUQUERQUE NM 87109-4065

CC: US\$ PHONE:
 SECURITY DESC: ADVANCED MICRO DEVICES INC

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 QUOTE : 16 3/4

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ADVANCED ORDER MANAGEMENT
HISTORY

NOTE

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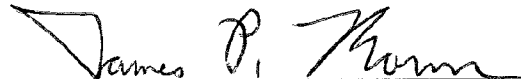
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		DAY	COK 951		25-WEB 0309/1016
SEL	50	TMCS	40		
		DAY	COK 951		25-WEB 0309/0958
XBY	1000	\ IVCO	MKT		
		DAY	COI 719		25-WEB 0309/0946
BUY	1000	\ IVCO	MKT		
		DAY	COI 719		25-WEB 0309/0940
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		MKT DAY	COK 2454		17-WEB 0226/1242
SEL	100	GBL	MKT		
		DAY	COK 2454		17-WEB 0226/1242

A1 NEXT PAGE PA2 PREV PAGE D DETAILS X EXPAND Y NOTIFIED I INFORMED MORE
 OTIFIED?

CERTIFICATE OF SERVICE

I, James P. Bonner, hereby certify that I served a copy of the foregoing Amended Complaint upon the following counsel for the defendants by first-class mail, postage pre-paid, this 30th day of May, 2000:

David E. Nachman
Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza
New York, New York 10111.


James P. Bonner