Complaint for Violation of the Federal Securities Laws (Rose v. Nextcard, Inc., et al., Case No. C-01-4705-CRB)

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ROSE, On Behalf of Himself and All Others Similarly Situated,	)	No. C-01-4705-CRB
	)	<u>CLASS ACTION</u>
Plaintiff,	)	
	)	COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS
vs.	)	
NEXTCARD, INC., JEREMY R. LENT, YINZI CAI, JOHN V. HASHMAN and SAFI U. QURESHEY,	)	
Defendants.	)	
	)	<u>DEMAND FOR JURY TRIAL</u>

INTRODUCTION

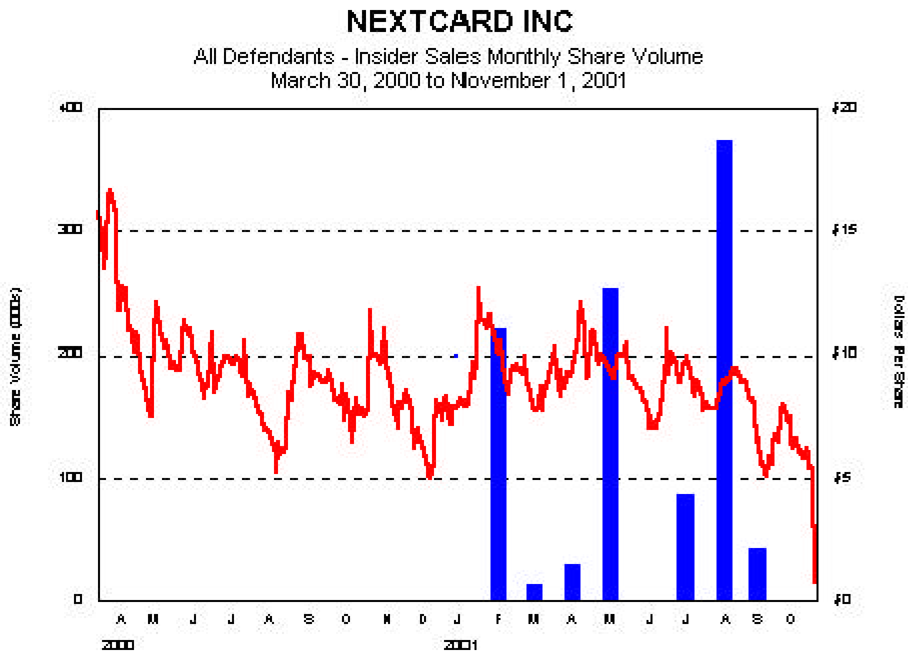
1. This is a securities class action on behalf of persons who purchased the publicly traded securities of NextCard, Inc. ("NextCard" or the "Company") between March 30, 2000 and October 30, 2001 (the "Class Period"), against NextCard and one of its directors and its Chairman, CEO and President for violations of the federal securities laws arising out of defendants' dissemination of false and misleading statements concerning the Company's operations and prospects for 2000 and 2001. NextCard provides Internet-based consumer credit. The Company offers an online credit approval system for a Visa card, as well as provides interactive, customized offers for credit card applicants. In fact, defendants knew NextCard's reserves were materially underfunded and that as a result, its 2000 and 2001 projections and/or results were false. During the Class Period, taking advantage of the inflation in NextCard stock, defendants Lent, Cai, Qureshey and Hashman dumped almost $9 million worth of their own NextCard stock at artificially inflated prices of as much as $10.89 per share. These sales were out of line with their prior trading history.

SUMMARY OF THE ACTION

2. NextCard is an Internet-based provider of consumer credit. The Company offers an online credit approval system for a Visa card and provides interactive, customized offers for credit card applicants.

3. At the beginning of the Class Period, defendants represented that NextCard would achieve profitability by Q4 2001. Defendants assured investors that NextCard's reserves were adequate, its key metrics were on track, its underwriting standards had been modified so as to be more conservative, its delinquencies would decline over fiscal 2001 and that its securitizations qualified for "low level" capital recourse. However, defendants actually knew that the quality of NextCard's portfolio was eroding. Throughout June, July and August 2001, defendants repeatedly stated that NextCard's Q3 and Q4 estimates were easily achievable.

4. In addition to having actual knowledge of the falsity of these statements, defendants had the motive and the opportunity to perpetrate the fraudulent scheme and course of business described herein, in order to sell nearly $9 million worth of their own NextCard shares at prices as high as $10.89 per share, or 12 times the price to which NextCard shares dropped as NextCard's true prospects began to reach the market, as depicted in the chart below:



5. On October 31, 2001, the Company issued a press release entitled, "NextCard Retains Goldman Sachs to Pursue Sale of the Company; The Company also reports Operating Results for Third Quarter 2001 and New Regulatory Limitations." The press release stated in part:

> Company Provides Additional Reserves and Limits Certain Operating Activities
>
> The Company announced that it is taking several steps to increase reserves and limit certain lending activities of its wholly owned banking subsidiary, NextBank, N.A. (the "Bank"). These steps are being taken as a result of discussions with the Bank's regulators, the Office of the Comptroller of the Currency (the "OCC") and the Federal Deposit Insurance Corporation (the "FDIC," collectively with the OCC, the "Regulators"), as well as in consideration of the worsening economic situation. The Regulators are currently completing an examination of the Bank.
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> The increase in the Allowance for Loan Loss amount was developed in consultation with the Regulators to give full consideration to changes in economic conditions and the impact those effects may have on the portfolio. The Bank has increased the Allowance for Loan Losses by increasing its reserves to provide coverage for 12 months of projected losses, which is a more conservative approach to reserving for losses inherent in the portfolio.
>
> As an additional result of the discussions with the Regulators, the Company has further tightened its underwriting criteria to limit new account originations to FICO scores above 680, suspended originations of secured credit cards, and suspended or limited certain line management programs, re-pricing programs, and fee-based product strategies.
>
> ***The Bank also established a valuation reserve during the third quarter in the amount of $5.6 million to recognize the estimated uncollectible portion of accrued finance charges and fees on certain on-balance sheet loans that are more than 30+ days delinquent.***

Historically, and consistent with certain industry practice, these finance charges and fees were reversed against certain revenue upon charge-off of the related account.

The Bank has determined that, effective in the third quarter of 2001, it will classify as credit losses certain loan losses which were previously recognized as fraud losses and reflected as other expenses in the Company's financial statements. The Company believes that a substantial portion of these losses are related to fraudulent account origination activity specific to the Internet channel. As a result of discussions with the Regulators, the Company is developing an account level classification system to identify each fraudulent account in this category. Until such time that this classification system is fully developed, the Company will continue to classify these losses going forward as credit losses, and include them in its calculation of loan loss reserves.

In addition, the Regulators have notified the Bank that, as a result of the change in treatment of certain losses on loans sold through the Bank's securitization activities as fraud losses rather than credit losses, as described above, they have determined that the Company's securitization activities do not qualify for "low-level recourse treatment" under applicable regulations. ***The impact of the Regulators' decision to disallow low-level recourse treatment on the securitized assets was to increase the Bank's risk-weighted assets by approximately $537.5 million, to $2.1 billion as of September 30, 2001***. The Bank is appealing this matter, which it does not believe is supported by regulatory guidelines. The Company cannot give any assurances as to whether this appeal will be favorably decided or the timing of any action on the appeal.

Finally, during the third quarter of 2001 the Bank expensed $35.7 million in certain capitalized intercompany acquisition costs previously expensed by the Company but still capitalized on the Bank's books. This change reduced the Bank's regulatory capital on a dollar-for-dollar basis but did not have any effect on the Company's consolidated financial statements.

Capital Ratios and the Bank

As a result of the increase in loan loss reserves, the elimination of low-level recourse treatment for securitized assets, the write-off of deferred acquisition costs and the Bank's reported loss for the third quarter 2001, the Bank's total risk-based capital ratio decreased to 5.38 percent of total risk-weighted assets as of September 30, 2001, as compared to 17.35 percent as of June 30, 2001. The Bank's Tier 1 risk-based capital ratio was 4.11 percent as of September 30, 2001, as compared to 15.69 percent, as of June 30, 2001, and the Bank's leverage ratio was 10.79 percent as of September 30, 2001, as compared to 18.55 percent as of June 30, 2001.

The Bank is now considered "significantly undercapitalized" under applicable federal banking regulations because its risk-based capital ratio has dropped below 6%. The Bank's Tier 1 and leverage capital ratios remain at amounts consistent with requirements for "well capitalized" banks. As a "significantly under-capitalized" institution, the Bank will be subject to Prompt Corrective Action (a "PCA") under applicable federal banking law. Under PCA provisions, the Bank must promptly submit an acceptable capital restoration plan to the OCC. In addition, the Bank is prohibited from increasing its average asset position above that established in the third quarter of 2001, will be prohibited from accepting or renewing any "brokered" deposits and must limit certain payments from the Bank to any affiliated entity. The Bank will also be subject to heightened regulatory scrutiny and prior approval requirements. Additional restrictions could be imposed on the Bank at the discretion of the OCC, without prior notice.

The Bank had previously agreed with OCC to maintain total capital of not less than 12 percent of risk-weighted assets, a level that exceeds the regulatory requirements for well-capitalized institutions. As of September 30, 2001, the Bank would have required approximately $140 million in additional regulatory capital to reach the 12 percent capital level committed to the OCC.

6. These disclosures shocked the market, causing NextCard's stock to decline to $0.84 per share before closing at $0.87 per share on October 31, 2001, on volume of more than 43 million shares, inflicting millions of dollars of damage on plaintiff and the Class. Defendants' misconduct has wiped out over $800 million in market capitalization as NextCard stock has fallen 95% from its Class Period high of over $16 per share as the truth about NextCard, its operations and prospects began to reach the market.

JURISDICTION AND VENUE

7. The claims asserted herein arise under §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("1934 Act"), 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5. Jurisdiction is conferred by §27 of the 1934 Act, 15 U.S.C. §78aa.

8. Venue is proper here pursuant to §27 of the 1934 Act. The acts and transactions giving rise to the violations of law complained of occurred here.

THE PARTIES

9. Plaintiff Michael Rose purchased NextCard publicly traded securities as detailed in the attached certification and was damaged thereby.

10. Defendant NextCard is an Internet-based provider of consumer credit. The Company offers an online credit approval system for a Visa card and provides interactive, customized offers for credit card applicants. NextCard operates in the United States. During the Class Period, NextCard had approximately 53 million shares of common stock outstanding, which shares traded in an efficient market on Nasdaq.

11. Defendant Jeremy R. Lent ("Lent") is Chairman of the Board and Chief Strategy Officer of the Company. During the Class Period, defendant Lent was in possession of confidential adverse information concerning NextCard. Lent took advantage of his false statements and the artificial inflation caused thereby and sold 855,000 shares of NextCard stock at artificially inflated prices as high as $10.89 per share for proceeds of more than $7.5 million.

12. Defendant Yinzi Cai ("Cai") is the President of the Company. During the Class Period, defendant Cai was in possession of confidential adverse information concerning NextCard. Cai took advantage of his false statements and the artificial inflation caused thereby and sold 47,637 shares of NextCard stock at artificially inflated prices as high as $9.63 per share for proceeds of more than $422,000.

13. Defendant John V. Hashman ("Hashman") is Chief Executive Officer of the Company. During the Class Period, defendant Hashman was in possession of confidential adverse information concerning NextCard. Hashman took advantage of his false statements and the artificial inflation caused thereby and sold 35,800 shares of NextCard stock at artificially inflated prices as high as $10.00 per share for proceeds of more than $320,000.

14. Defendant Safi U. Qureshey ("Qureshey") is a director of the Company. During the Class Period, defendant Qureshey was in possession of confidential adverse information concerning NextCard. Qureshey took advantage of his false statements and the artificial inflation caused thereby and sold 82,510 shares of NextCard stock at artificially inflated prices as high as $10.54 per share for proceeds of more than $622,000.

15. Defendants are liable for the false statements pleaded herein at ¶¶26-33, as those statements were each "group-published" information for which they are responsible. Defendants Lent, Cai, Hashman and Qureshey (the "Individual Defendants"), by reason of their stock ownership and positions with NextCard as officers and/or directors, were controlling persons of NextCard. NextCard in turn controlled the Individual Defendants. The Individual Defendants and NextCard are liable under §20(a) of the 1934 Act.

BACKGROUND, SCIENTER AND SCHEME ALLEGATIONS

16. NextCard is an Internet-based provider of consumer credit. The Company offers an online credit approval system for a Visa card and provides interactive, customized offers for credit card applicants. NextCard operates in the United States.

17. The Company's banking subsidiary, NextBank, N.A., is subject to capital adequacy guidelines adopted by the Office of the Comptroller of the Currency (the "OCC"). The capital adequacy guidelines and the regulatory framework for prompt corrective action require NextBank to maintain specific capital levels based upon quantitative measures of its assets, liabilities and off-balance sheet items. Core capital (Tier 1) consists principally of stockholders' equity less goodwill. Total risk-based capital (Tier 1 + Tier 2) includes a portion of the allowance for loan losses. Based on these classifications, the capital adequacy regulations establish three capital ratios that are used to measure whether a financial institution is "well capitalized." During the Class Period, NextBank was "well capitalized" in all regulatory ratio categories.

18. In addition to the above capital ratios, the OCC has required that for the first three years of operations NextBank maintain a ratio of stockholders' equity plus the allowance for loan losses to total managed assets of no less than 6.5%. During the Class Period NextBank claimed it was in compliance with this capital requirement.

19. NextBank is subject to risk-based capital guidelines adopted by the OCC. Risk-based capital ratios are determined by allocating assets and specified off-balance sheet commitments to several weighted categories, with higher levels of capital being required for the categories perceived as representing greater risk.

20. Under current guidelines, institutions are required to maintain a minimum total risk-based capital ratio (total Tier 1 and Tier 2 capital to risk-weighted assets) of 8%, and a Tier 1 risk-based capital ratio (Tier 1 capital to risk-weighted assets) of 4%. The OCC may, however, set higher capital requirements when an institution's particular circumstances warrant. The OCC has established guidelines prescribing a minimum "leverage ratio" (Tier 1 capital to adjusted total assets as specified in the guidelines) of 3% for institutions that meet certain criteria, including the requirement that they have the highest regulatory rating, and a minimum of 4% for institutions that do not meet the criteria. Institutions experiencing or anticipating significant growth are expected to maintain capital ratios well above the minimum. The Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") expanded the powers of federal bank regulatory authorities to take corrective action with respect to banks that do not meet minimum capital requirements. For these ***purposes***, FDICIA established five capital tiers: ***well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized and critically undercapitalized***. Under regulations adopted by the OCC, an institution is generally considered to be "well capitalized" if it has a total

risk-based capital ratio of 10% or greater, a Tier 1 risk-based capital ratio of 6% or greater, and a leverage ratio of 5% or greater; "adequately capitalized" if it has a total risk-based capital ratio of 8% or greater, a Tier 1 risk-based capital ratio of 4% or greater and, generally, a leverage ratio of 4% or greater; and "undercapitalized" if it does not meet any of the "adequately capitalized" tests. An institution is deemed to be "significantly undercapitalized" if it has a total risk-based capital ratio under 3% and "critically undercapitalized" if it has a ratio of tangible equity (as defined in the regulations) to total assets that is equal to or less than 2%.

21. An "adequately capitalized" institution is permitted to accept brokered deposits only if it receives a waiver from the FDIC and pays interest on deposits at a rate that is not more than 75 basis points higher than the prevailing rate in its market. Undercapitalized institutions cannot accept brokered deposits, are subject to growth limitations and must submit a capital restoration plan. "Significantly undercapitalized" institutions may be subject to a number of additional requirements and restrictions. "Critically undercapitalized" institutions are subject to appointment of a receiver or conservator and, beginning 60 days after becoming "critically undercapitalized," may not make any payment of principal or interest on their subordinated debt (subject to certain exceptions).

22. During the Class Period, NextBank claimed it was "well capitalized" in all regulatory capital ratio categories. As a result, the Company achieved favorable treatment resulting in favorable adjustments to its at-risk accounts. This in turn entitled NextCard to a lower cost of funds and created the fiction of lower losses than defendants had led the public to believe. The Company obtained this favorable "well capitalized" status by falsifying the value of its receiveables and manipulating its credit losses.

23. In addition to the above capital ratios, the OCC requires that for the first three years of operation NextBank maintains a ratio of shareholders' equity plus the allowance for loan losses to total managed assets of no less than 6.5% in accordance with the national bank dividend provisions.

24. Defendants include NextCard's Chairman, President and CEO. They ran NextCard as a "hands-on" managers, dealing with important issues facing NextCard's business, *i.e.*, its customer base, and the eroding value of its receivables and its need to increase reserves, NextCard's market share position, and its ability to achieve growth in its business in fiscal 2001 in light of the dramatic adverse developments which had been affecting NextCard's core business since Q1 2001.

25. Defendants were also keenly aware that their ability to achieve NextCard's 2000 and 2001 projections was contingent upon their ability to manipulate the necessary reserves for NextBank.

FALSE AND MISLEADING STATEMENTS DURING THE CLASS PERIOD

26. On March 30, 2000, NextCard filed its Form 10-K with the SEC which stated, in part:

> NextBank was "well capitalized" in all regulatory capital ratio categories ....

27. On April 19, 2000, NextCard issued a press release entitled, "Company Expects To Generate Over $1 Billion In New Loans Via The Internet This Year; Loans Under Management and Customer Accounts Increase 53% Over Previous Quarter." The press release stated in part:

> NextCard, Inc., the leading issuer of consumer credit on the Internet, today announced extremely strong results for the first quarter ended March 31, 2000.

* * *

> Total managed loans as of March 31, 2000 rose 53 percent to $638.8 million, compared with $416.3 million in managed loans as of December 31, 1999, and rose 563 percent over the $96.3 million in managed loans as of March 31, 1999. Total customer accounts as of March 31, 2000 increased 53 percent to approximately 337,000, from approximately 220,000 as of December 31, 1999.
>
> "***This quarter has been another outstanding achievement for us, maintaining our excellent track record of consistent positive news on growth in balances, customers, revenues and the key economic drivers of the business***," said Jeremy Lent, Chairman and CEO of NextCard. "***With our Internet-based profiling and customization capabilities, NextCard is continuing to build the foundation of a highly profitable business at a dramatic growth rate***."
>
> "***NextCard's continued success***," added Lent, "***is based in both our solid execution and our strategic positioning***. The credit card business has long been established as one that thrives on direct marketing, and the Internet is the ultimate direct marketing channel. NextCard has used the power of the Internet to reinvent the credit card product and build an industry leading position in technology and online marketing. Our first quarter results and expectations to originate one billion dollars in new loans this year demonstrate that our historic market opportunity continues to increase."
>
> NextCard reported a first quarter net loss of $17.7 million, or a net loss per share of $0.34, which is six cents better than the First Call consensus net loss estimate of $0.40. This compares to a net loss price per share of $0.53 in the fourth quarter and a $0.30 pro forma net loss per share in the first quarter of 1999.
>
> Managed net interest margin for the loan portfolio was 5.89 percent in the first quarter of 2000, up from 5.50 percent in the fourth quarter 1999.

28. On July 27, 2000, the Company issued a press release entitled, "NextCard Reports 843% Growth in Second Quarter Operating Revenue; NextCard Has Added Over 300,000 New Customers and $500 Million in New Loans This Year; Loans Under Management and Customer Accounts Increase Over 400% in Second Quarter; Company Expects Profitability by Late 2001." The press release stated in part:

> Total managed loans as of June 30, 2000 rose 408 percent to $829.7 million, compared to $163.4 million as of June 30, 1999, and rose 30 percent to over $638.8 million in managed loans as of March 31, 2000. Total customer accounts as of June 30, 2000 increased 421 percent to 443,000, compared to approximately 85,000 customer accounts as of June 30, 1999, and increased 31 percent over the approximately 337,000 customer accounts as of March 31, 2000.
>
> NextCard reported a second quarter net loss of $24.5 million, or a net loss per share of $0.46, beating First Call consensus estimates for the fifth consecutive quarter as a public company. This compares to a $0.45 pro forma net loss per share for the same period in 1999 and a net loss per share of $0.50 prior to a one-time gain for the quarter ended March 31, 2000. The net loss per share in the first quarter included a one-time gain of $8.3 million, or $0.16 per share, from the Company's $300.0 million off-balance sheet securitization completed in the first quarter 2000.

* * *

> "***We demonstrated another excellent quarter of consistent execution across all areas of our business***," said Jeremy Lent, Chairman and CEO. "The key economic drivers of our business model continue to progress ahead of schedule. With a higher than expected yield and strong growth at a favorable acquisition cost, our business fundamentals drove another outstanding quarter for the Company."
>
> "NextCard has used the power of the Internet to reinvent the credit card product and build an industry leading position in technology and online marketing," continued Lent. "Given the strength of our business model, and our consistent execution and performance, we are bringing in the break-even date for the Company once again. We now expect to achieve profitability by late 2001, a full year earlier than the break-even date anticipated when NextCard went public last spring."
>
> The net charge-off rate for managed loans increased to 2.2 percent for the second quarter 2000, compared to 1.9 percent in the first quarter 2000. The delinquency rate (30+ days) on total managed loans increased 2.7 percent as of June 30, 2000, compared to 1.7 percent as of March 31, 2000. The delinquency and charge-off rates are in-line with the Company's expectations given the natural seasoning of the loan portfolio over time.
>
> NextCard continues to build strength on its balance sheet and maintains a very strong cash position. The allowance for loan losses as a percentage of on-balance sheet loans increased to 3.2 percent as of June 30, 2000, compared to 3.0 percent as of March 31, 2000. ***The increase in the allowance reflects the Company's conservative approach to loan reserves***.

29. On October 25, 2000, the Company issued a press release entitled, "NextCard Reports 515% Growth In Third Quarter Operating Revenue; Total Yield on Portfolio Reaches 19 Percent; Loans Under Management and Customer Accounts Increase Over 300% In Third Quarter." The press release stated in part:

> Total managed loans rose 308 percent to $1.093 billion as of September 30, 2000, compared to $268.0 million as of September 30, 1999, and rose 32 percent over the $829.7 million in managed loans as of June 30, 2000. Total customer accounts increased 331 percent to 577,000 as of September 30, 2000, compared to approximately 134,000 customer accounts as of September 30, 1999, and increased 30 percent over the approximately 443,000 customer accounts as of June 30, 2000.
>
> NextCard reported a third quarter net loss of $20.3 million, or a net loss per share of $0.38, beating First Call consensus estimates for the sixth consecutive quarter as a public company. Excluding a $1.8 million investment to develop the U.K. technology an operations platform, NextCard's net loss was $18.5 million, or $0.35 per share, four cents better than consensus estimates. This compares to a $0.50 net loss per share for the same period in 1999 and a net loss per share of $0.46 for the quarter ended June 30, 2000.
>
> Total yield on the managed loan portfolio for the third quarter 2000 increased to 19.0 percent from 15.9 percent in the second quarter of 2000. Risk adjusted margin on the managed loan portfolio for the third quarter 2000 increased to 9.1 percent from 6.8 percent in the second quarter of 2000. The strong increases in yield and risk adjusted margin were driven by

> NextCard's marketing of fee-based products and a general increase in its fee structure in conjunction with locating NextBank's domicile in Arizona. In addition, the increases were attributed to NextCard's ability to uniquely customize each customers' offer in real time through the Company's proprietary Profile Based Pricing technology.
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> "We demonstrated another excellent quarter of consistent execution across all areas of our business," said John Hashman, President and CEO. "The key economic drivers of our business model continue to progress ahead of schedule. We are especially satisfied with the growth in revenues and the yield in our portfolio. Our revenue yield was 19 percent for the third quarter reflecting success in our Profile Based Pricing and new fee initiatives, and it is further evidence that we are building the platform for a profitable business."
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> * * *
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> Hashman continued, "We have made great progress in building the foundation for our U.K. business, which is consistent with our strategy for the year 2000. We continue to believe the U.K. market represents a huge opportunity for online credit card lending. Internet usage is increasing and the dynamics of the U.K. credit card market are extremely favorable. We believe NextCard can become a dominant online consumer credit brand in the U.K., as it has for the U.S."
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> The net charge-off rate for managed loans increased to 2.7 percent for the third quarter 2000, compared to 2.2 percent in the second quarter 2000. The delinquency rate (30+ days) on total managed loans increased to 3.3 percent as of September 30, 2000, compared with 2.7 percent as of June 30, 2000. The delinquency and charge-off rates are in-line with the Company's expectations given the natural seasoning of the loan portfolio.

30. On January 24, 2001, the Company issued a press release entitled, "NextCard Reports 346 Percent Growth In Fourth Quarter Operating Revenue; NextCard Added Over $1 Billion in New Loans During 2000; Loans Under Management and Customer Accounts Increase Over 200 Percent In Fourth Quarter." The press release stated in part:

> Total managed loans rose 215 percent to $1.312 billion as of December 31, 2000, compared to $416.3 million as of December 31, 1999, and rose 20 percent over the $1.093 billion in managed loans as of September 30, 2000. Total customer accounts increased 222 percent to 708,000 as of December 31, 2000, compared to approximately 220,000 customer accounts as of December 31, 1999, and increased 23 percent over the approximately 577,000 customer accounts as of September 30, 2000.
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> NextCard reported a fourth quarter net loss of $19.4 million, or a net loss per share of $0.37, beating First Call consensus estimates for the seventh consecutive quarter as a public company. This compares to a net loss per share of $0.53 in the fourth quarter of 1999 and a net loss per share of $0.38 in the third quarter of 2000.
>
> Total yield on the managed loan portfolio for the fourth quarter 2000 increased to 19.6 percent from 19.0 percent in the third quarter of 2000. Risk adjusted margin on the managed loan portfolio for the fourth quarter 2000 increased to 9.4 percent from 9.1 percent in the third quarter of 2000. The strong increases in yield and risk adjusted margin were driven by NextCard's marketing of fee-based products and its ability to customize each customer's offer through the Company's proprietary Profile Based Pricing technology.

"Our fourth quarter results demonstrate that we are consistently scaling the business ahead of expectations, and we are on-track to achieve profitability by the end of the year," said John Hashman, President and CEO. "We continue to see increasingly strong demand for our core product. The key drivers of our business, including our risk-adjustment margin and acquisition cost per account, have never been better."

"We originated over a billion dollars in new loans through the Internet during 2000, solidifying our leadership position in the fastest growing channel of the credit card market," continued Hashman. "Our ability to grow rapidly and efficiently is a testament to both our industry leading technology platform and our strong execution. As pioneers in technology-based-lending, we look forward to providing real-time, customized products and services to millions of new customers over the next few years."

The net charge-off rate for managed loans increased to 3.1 percent for the fourth quarter of 2000, compared to 2.7 percent in the third quarter 2000. The delinquency rate (30+ days) on total managed loans increased to 3.9 percent as of December 31, 2000, compared with 3.3 percent as of September 30, 2000. The delinquency and charge-off rates are in-line with the Company's expectations given the natural seasoning of the loan portfolio.

During the fourth quarter, NextCard completed its first terms securitization of $482.5 million in credit card receivables. The securitization featured four classes of asset-backed notes, which were privately placed under Rule 144A. The term structure serves as an additional funding source and provides and opportunity for enhanced capital efficiency for NextCard.

31. On April 25, 2001, Company issued a press release entitled, "NextCard Reports 210 Percent Growth In First Quarter Operating Revenue; Loans Under Management and Customer Accounts Increase Over 150 Percent In First Quarter." The press release stated in part:

NextCard, Inc. today announced strong results for the first quarter of 2001. Total managed revenue, which includes the impact of securitization activities, increased to $81.7 million. Operating revenue on a managed basis increased to $70.5 million for the quarter ended March 31, 2001, compared to $22.7 million for the quarter ended March 31, 2000, and $62.0 million for the quarter ended December 31, 2000. This represents an increase of 210 percent over the same period in 2000 and an increase of 14 percent over the previous quarter.

* * *

NextCard reported a first quarter net loss of $16.6 million, or a net loss per share of $0.31, beating First Call consensus estimates for the eighth consecutive quarter as a public company. This compares to a net loss per share of $0.34 in the first quarter of 2000 and a net loss per share of $0.37 in the fourth quarter of 2000.

"Our first quarter results show improvement in the key metrics and demonstrate that we are on track to meet our goal of reaching profitability by the end of this year," said John Hashman, Chief Executive Officer. "We continue to see increasingly strong demand for our core product. Our acquisition cost per account reached another record low, and our net interest and risk-adjusted margins remain strong."

"Our ability to grow rapidly and efficiently can be attributed to our industry-leading

> technology platform and our strong execution. As leaders in technology-based lending, we look forward to providing more exciting customized products and services to both new and existing customers," continued Hashman.
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> * * *
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> The net charge-off rate for managed loans increased to 3.99 percent for the first quarter 2001, compared to 3.10 percent in the fourth quarter 2000. The delinquency rate (30+ days) on total managed loans increased to 4.75 percent as of March 31, 2001, compared with 3.92 percent as of December 31, 2000. The delinquency and charge-off rates are in-line with the Company's expectations given the natural seasoning of the loan portfolio.
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> ***"We have seen positive results from the implementation of our next generation risk scorecard which utilizes more conservative underwriting standards,"*** said Yinzi Cai, President and Chief Operating Officer. "The results from our new scorecard, in conjunction with increased productivity in our collections operations, leads us to believe that delinquencies should increase at a slower rate in the second quarter compared to recent quarters."
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> NextCard continues to build strength on its balance sheet and maintains a very strong cash position. The allowance for loan losses as a percentage of on-balance sheet loans increased to 5.08 percent as of March 31, 2001, compared to 4.76 percent as of December 31, 2000. Consolidated cash and liquid investments were $215.7 million as of March 31, 2001.
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> * * *
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> ***NextCard completed the sale of the $17.5 million subordinated Class D notes that had been retained by the company in its December 2000 term securitization. The sale of the Class D notes qualify the entire $500 million term securitization for "low-level capital recourse" treatment under bank regulatory capital guidelines. The $17.5 million Class D notes were rated Ba2 and BB (Moody's, S&P) and were privately placed under Rule 144A***. With the sale of the Class D notes completed, NextCard has achieved its target level of capital efficiency for the term securitization program. ***This, along with other diversified funding sources, keeps the Company well on track to meet its growth targets without raising additional equity capital***.

32. On June 26, 2001, the Company issued a press release entitled, "NextCard Exceeds One Million Customers; Growth Reaffirms Strength of Online Credit Card Business Model." The press release stated in part:

> "We intend to remain the premier choice for consumers who prefer to select a credit card through the Internet," said Hashman. "NextCard remains focused on building a truly differentiated and valuable customer experience. We are very happy that these million customers have chosen the NextCard Visa, and we will continue to innovate to provide them with even greater value."
>
> "***The Company is on track to meet our stated goal of break-even by the fourth quarter of this year. Our continued focus on our core business strategy and leadership position in Internet-based credit card lending is allowing us to build the foundation for a large and profitable business," he added***.

> NextCard has the greatest share of online credit card applications, at 26 percent, according to Brittain Associates. NextCard is also benefitting from the growth in consumer preference to obtain a credit card through the Internet. Eleven percent of all adults who use the Internet have applied for a credit card online and seven million credit card holders will look for a new credit card online over the next six months, up from six million in the last two years, according to Gomez Inc.

33. On July 25, 2001, the Company issued a press release entitled, "NextCard Reports 144 Percent Growth In Second Quarter Operating Revenue; Company Reaffirms Guidance for Fourth Quarter 2001 Profitability." The press release stated in part:

> NextCard, Inc. today announced strong results for the second quarter of 2001. Total managed revenue, which includes the impact of securitization activities, increased to $87.1 million. Operating revenue on a managed basis increased to $80.6 million for the quarter ended June 30, 2001, compared to $33.0 million for the quarter ended June 30, 2000 and $70.5 million for the quarter ended March 31, 2001. This represents an increase of 144 percent over the same period in 2000 and an increase of 14 percent over the previous quarter.
>
> Total managed loans rose over 115 percent to $1.789 billion as of June 30, 2001, compared to $829.7 million as of June 30, 2000, and rose 12 percent over the $1.595 billion in managed loans as of March 31, 2001. Total customer accounts increased over 129 percent to 1.016 million as of June 30, 2001, compared to approximately 443,000 customer accounts as of June 30, 2000, and increased 15 percent over the approximately 881,000 customer accounts as of March 31, 2001.
>
> NextCard reported a second quarter net loss of $14.4 million, or a net loss per share of $0.27, beating First Call consensus estimates for the ninth consecutive quarter as a public Company. This compares to a net loss per share of $0.46 in the second quarter of 2000 and a net loss per share of $0.31 in the first quarter of 2001.
>
> "Our second quarter results prove once again that the key drivers of our business are progressing ahead of expectations," said John Hashman, Chief Executive Officer. "We reported notably strong yield and margins, and solid growth as we surpassed the one millionth customer milestone during the quarter. As we grow, we are also very focused on continuing to build the industry's leading Internet-based risk management capabilities, including the introduction earlier this year of a new version of our proprietary credit scorecard. We are quite pleased with the delinquency trends coming from this new scorecard, as compared to prior versions of the model."
>
> "As NextCard's business gains scale and margins improve, we expect our third quarter net loss will narrow to roughly one-half of the second quarter number," continued Hashman. ***"Today's results, combined with our third quarter expectations, demonstrate that we are clearly on track to meet our goal of profitability in the fourth quarter of this year***. Our focus on our core business strategy and leadership position in technology-based credit card lending is allowing us to build the foundation for a large and profitable business."
>
> * * *
>
> The net charge-off rate for managed loans increased to 4.92 percent for the second quarter 2001, compared to 3.99 percent in the first quarter 2001. The delinquency rate (30+ days) on

total managed loans increased to 5.25 percent as of June 30, 2001, compared with 4.75 percent as of March 31, 2001. The delinquency and charge-off rates are in-line with the Company's expectations given the natural seasoning of the loan portfolio and the general economic environment.

The Company continues to build its Internet-based risk management capabilities. The Company earlier this year implemented a new generation of its proprietary credit risk scorecard. The new scorecard is leading to substantially better credit quality, in terms of expected delinquency and loss rates, as compared to earlier versions of the model. The Company also enhanced its collections and recovery capabilities during the quarter.

NextCard continues to build strength on its balance sheet and maintain a strong cash position. The allowance for loan losses as a percentage of on-balance sheet loans increased to 6.10 percent as of June 30, 2001, compared to 5.08 percent as of March 31, 2001. Consolidated cash and liquid investments were $198.4 million as of June 30, 2001.

During the second quarter, NextCard completed the sale of $700 million of three-year floating rate asset-backed notes backed its credit card receivables. The securitization from the NextCard Credit Card Master Note Trust featured four classes of asset-backed notes, which were privately placed. The asset-backed securities provide NextCard with both a low-cost source of funding and the ability to achieve greater capital efficiency.

34. Then, on October 31, 2001, the Company issued a press release entitled, "NextCard Retains Goldman Sachs to Pursue Sale of the Company; The Company Also Reports Operating Results for Third Quarter 2001 and New Regulatory Limitations." The press release stated in part:

Company Provides Additional Reserves and Limits Certain Operating Activities

The Company announced that it is taking several steps to increase reserves and limit certain lending activities of its wholly owned banking subsidiary, NextBank, N.A. (the "Bank"). These steps are being taken as a result of discussions with the Bank's regulators, the Office of the Comptroller of the Currency (the "OCC") and the Federal Deposit Insurance Corporation (the "FDIC," collectively with the OCC, the "Regulators"), as well as in consideration of the worsening economic situation. The Regulators are currently completing an examination of the Bank.

The increase in the Allowance for Loan Loss amount was developed in consultation with the Regulators to give full consideration to changes in economic conditions and the impact those effects may have on the portfolio. The Bank has increased the Allowance for Loan Losses by increasing its reserves to provide coverage for 12 months of projected losses, which is a more conservative approach to reserving for losses inherent in the portfolio.

As an additional result of the discussions with the Regulators, the Company has further tightened its underwriting criteria to limit new account originations to FICO scores above 680, suspended originations of secured credit cards, and suspended or limited certain line management programs, re-pricing programs, and fee-based product strategies.

The Bank also established a valuation reserve during the third quarter in the amount of $5.6 million to recognize the estimated uncollectible portion of accrued finance charges and fees on certain on-balance sheet loans that are more than 30+ days delinquent. Historically, and consistent with certain industry practice, these finance charges and fees

were reversed against certain revenue upon charge-off of the related account.

The Bank has determined that, effective in the third quarter of 2001, it will classify as credit losses certain loan losses which were previously recognized as fraud losses and reflected as other expenses in the Company's financial statements. The Company believes that a substantial portion of these losses are related to fraudulent account origination activity specific to the Internet channel. As a result of discussions with the Regulators, the Company is developing an account level classification system to identify each fraudulent account in this category. Until such time that this classification system is fully developed, the Company will continue to classify these losses going forward as credit losses, and include them in its calculation of loan loss reserves.

In addition, the Regulators have notified the Bank that, as a result of the change in treatment of certain losses on loans sold through the Bank's securitization activities as fraud losses rather than credit losses, as described above, they have determined that the Company's securitization activities do not qualify for "low-level recourse treatment" under applicable regulations. ***The impact of the Regulators' decision to disallow low-level recourse treatment on the securitized assets was to increase the Bank's risk-weighted assets by approximately $537.5 million, to $2.1 billion as of September 30, 2001***. The Bank is appealing this matter, which it does not believe is supported by regulatory guidelines. The Company cannot give any assurances as to whether this appeal will be favorably decided or the timing of any action on the appeal.

Finally, during the third quarter of 2001 the Bank expensed $35.7 million in certain capitalized intercompany acquisition costs previously expensed by the Company but still capitalized on the Bank's books. This change reduced the Bank's regulatory capital on a dollar-for-dollar basis but did not have any effect on the Company's consolidated financial statements.

Capital Ratios and the Bank

As a result of the increase in loan loss reserves, the elimination of low-level recourse treatment for securitized assets, the write-off of deferred acquisition costs and the Bank's reported loss for the third quarter 2001, the Bank's total risk-based capital ratio decreased to 5.38 percent of total risk-weighted assets as of September 30, 2001, as compared to 17.35 percent as of June 30, 2001. The Bank's Tier 1 risk-based capital ratio was 4.11 percent as of September 30, 2001, as compared to 15.69 percent, as of June 30, 2001, and the Bank's leverage ratio was 10.79 percent as of September 30, 2001, as compared to 18.55 percent as of June 30, 2001.

The Bank is now considered "significantly undercapitalized" under applicable federal banking regulations because its risk-based capital ratio has dropped below 6%. The Bank's Tier 1 and leverage capital ratios remain at amounts consistent with requirements for "well capitalized" banks. As a "significantly under-capitalized" institution, the Bank will be subject to Prompt Corrective Action (a "PCA") under applicable federal banking law. Under PCA provisions, the Bank must promptly submit an acceptable capital restoration plan to the OCC. In addition, the Bank is prohibited from increasing its average asset position above that established in the third quarter of 2001, will be prohibited from accepting or renewing any "brokered" deposits and must limit certain payments from the Bank to any affiliated entity. The Bank will also be subject to heightened regulatory scrutiny and prior approval requirements. Additional restrictions could be imposed on the Bank at the discretion of the

OCC, without prior notice.

The Bank had previously agreed with OCC to maintain total capital of not less than 12 percent of risk-weighted assets, a level that exceeds the regulatory requirements for well-capitalized institutions. As of September 30, 2001, the Bank would have required approximately $140 million in additional regulatory capital to reach the 12 percent capital level committed to the OCC.

* * *

Third Quarter Operating Results

The Company today also announced operating results for the third quarter of 2001. Total managed revenue, which includes the impact of securitization activities, increased to $95.7 million. Operating revenue on a managed basis increased to $95.5 million for the quarter ended September 30, 2001, compared to $49.3 million for the quarter ended September 30, 2000. This represents an increase of 94 percent over the same period in 2000 and an increase of 19 percent over the previous quarter.

* * *

The Company's net loss for the third quarter of 2001 was $53.1 million, or $1.00 per share. This compares to a net loss per share of $0.38 in the third quarter of 2000 and a net loss per share of $0.27 in the second quarter of 2001.

* * *

Total loan charge-offs for the third quarter of 2001 were 7.89 percent. Excluding the change in fraud classification discussed above, loan charge-offs would have been 6.13 percent, compared to loan charge-offs of 4.92 percent for the second quarter of 2001. The delinquency rate (30+ days) on total managed loans increased to 5.90 percent as of September 30, 2001, compared to 5.25 percent as of June 30, 2001.

35. The true facts, which were known by defendants during the Class Period, were as follows:

(a) Due to the deteriorating quality of NextCard's portfolio, the Company would need to dramatically increase its reserves for loan losses in fiscal 2000 and Q1, Q2 and Q3 2001 and as a result its reported value of its loans for fiscal 2000 and Q1 and Q2 2001 was overstated.

(b) The Company had improperly recorded "credit losses" as "fraud losses" and as a result the Company's "securitization activities" during the Class Period did not qualify for "low level recourse treatment." Defendants knew that as a result, such would dramatically increase the Company bank division's risk weighted assets, and would decrease the Company's "risk based capital ratio" below federal banking guidelines - rendering the Company "significantly undercapitalized."[(1)]

(c) Because the Company's risk-based capital ratio had plummeted below acceptable levels, it had been technically subject to a Prompt Correction Action Order and thereby restricted from accepting or reviewing any brokered deposits.

(d) As a result of (a)-(c) above, and as described in detail at ¶¶36-44, the Company's 2000 and 2001 results and projections were materially false and misleading.

FALSE FINANCIAL STATEMENTS

36. In order to overstate its earnings in 2000 and 2001, NextCard violated Generally Accepted Accounting Principles ("GAAP") and SEC rules by failing to properly report the value of its loans and accrued finance charges to reflect the large amounts of uncollectible assets in NextCard's balance sheet.

37. NextCard reported the following financial results for 2000 and 2001:

	3/31/00	**6/30/00**	**9/30/00**	**12/31/00**	**3/31/01**	**6/30/01**
Net Loss	($17.7) M	($24.5) M	($20.3) M	($19.4) M	($16.6) M	($14.4) M
Loss Per Share	(.34)	(.46)	(.38)	(.37)	(.31)	(.27)
Allowance for Loan Losses	2.84%	3.16%	3.9%	3.16%	5.08%	6.10%

NextCard included these "reported" results in press releases and Form 10-Qs filed with the SEC.

38. These financial statements and the statements about them were false and misleading, as such financial information was not prepared in conformity with GAAP, nor was the financial information a fair presentation of the Company's operations due to the Company's improper accounting for its investment in NextBank, in violation of GAAP and SEC rules.

39. GAAP are those principles recognized by the accounting profession as the conventions, rules and procedures necessary to define accepted accounting practice at a particular time. Regulation S-X (17 C.F.R. §210.4-01(a) (1)) states that financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading and inaccurate. Regulation S-X requires that interim financial statements must also comply with GAAP, with the exception that interim financial statements need not include disclosure which would be duplicative of disclosures accompanying annual financial statements. 17 C.F.R. §210.10-01(a).

40. According to GAAP, as set forth in FASB Statement of Financial Accounting Standards ("SFAS") No. 114, Accounting by Creditors for Impairment of a Loan, a loan is impaired when it is probable that a creditor will be unable to collect all amounts under contract. SFAS No. 114, ¶8 (amended by SFAS No. 118). GAAP, as described by FASB Statement of Concepts No. 5, requires that a loss be recorded for assets where expected benefits of an asset have been eliminated.

41. During the Class Period, NextCard failed to record adequate reserves for uncollectible loans and accrued finance charges even as its risk of non-recovery increased. Because of NextCard's extension of credit through the Internet and its lack of history with its customers, it needed to use conservative estimates when valuing its extremely risky portfolio of credit card loan receivables and interest receivables. During the Class Period, it was experiencing increasing delinquencies and charge-offs, with charge-offs increasing to $13.2 million in the first six months of 2001 from $4.4 million in the first six months of 2000.

42. Ultimately, NextCard has written off $5.6 million for uncollectible accrued finance charges and fees and reclassified fraud losses as credit losses. The Company has also written off $35.7 million in deferred acquisition costs.

43. Due to these accounting improprieties, the Company presented its financial results and statements in a

manner which violated GAAP, including the following fundamental accounting principles:

(a) The principle that interim financial reporting should be based upon the same accounting principles and practices used to prepare annual financial statements was violated (APB No. 28, ¶10);

(b) The principle that financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit and similar decisions was violated (FASB Statement of Concepts No. 1, ¶34);

(c) The principle that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and effects of transactions, events and circumstances that change resources and claims to those resources was violated (FASB Statement of Concepts No. 1, ¶40);

(d) The principle that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it was violated. To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general (FASB Statement of Concepts No. 1, ¶50);

(e) The principle that financial reporting should provide information about an enterprise's financial performance during a period was violated. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance (FASB Statement of Concepts No. 1, ¶42);

(f) The principle that financial reporting should be reliable in that it represents what it purports to represent was violated. That information should be reliable as well as relevant is a notion that is central to accounting (FASB Statement of Concepts No. 2, ¶¶58-59);

(g) The principle of completeness, which means that nothing is left out of the information that may be necessary to insure that it validly represents underlying events and conditions was violated (FASB Statement of Concepts No. 2, ¶79); and

(h) The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered was violated. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (FASB Statement of Concepts No. 2, ¶¶95, 97).

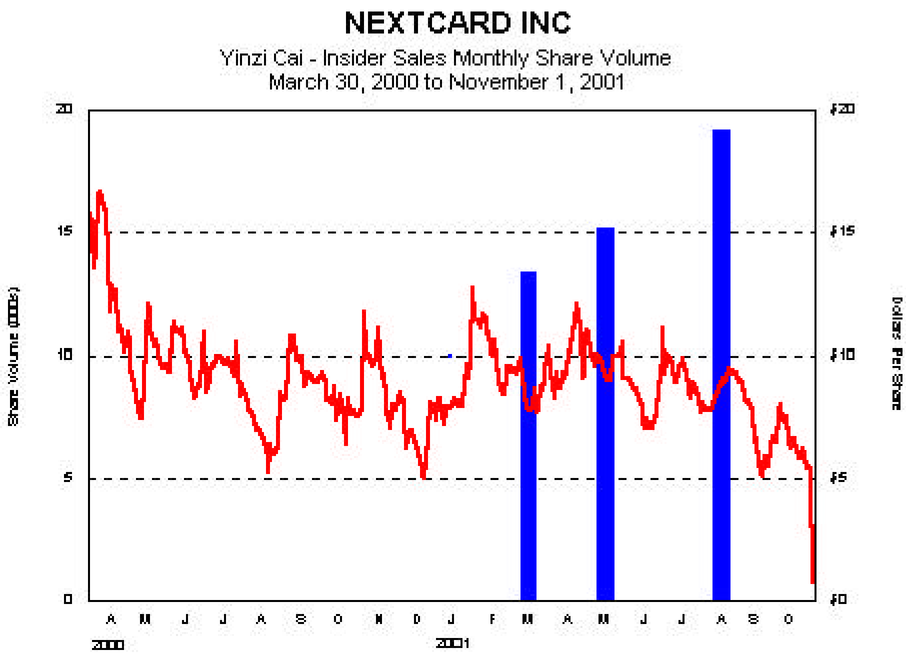
44. Further, the undisclosed adverse information concealed by defendants during the Class Period is the type of information which, because of SEC regulations, regulations of the national stock exchanges and customary business practice, is expected by investors and securities analysts to be disclosed and is known by corporate officials and their legal and financial advisors to be the type of information which is expected to be and must be disclosed.

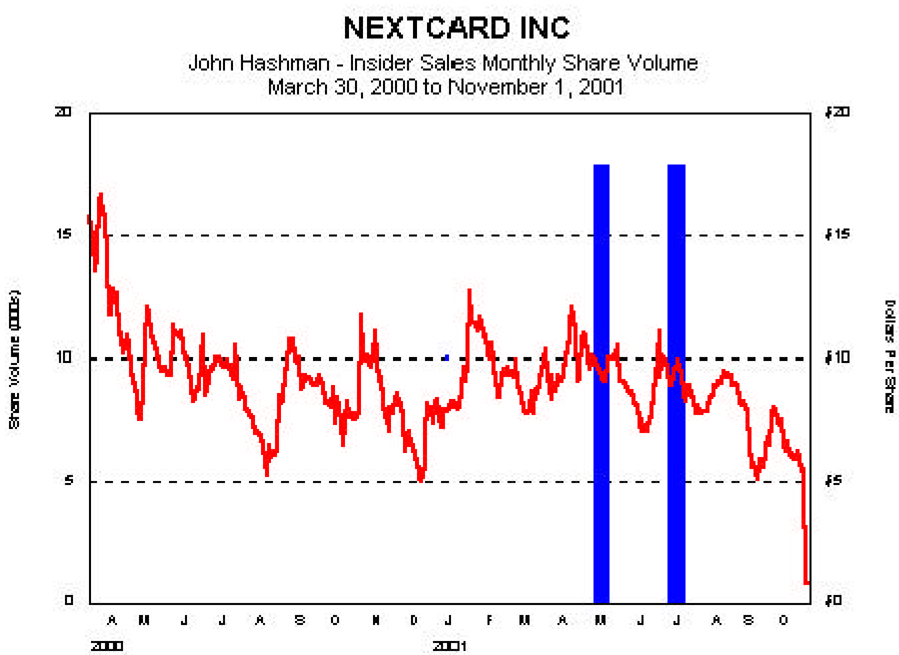
DEFENDANTS' INSIDER TRADING

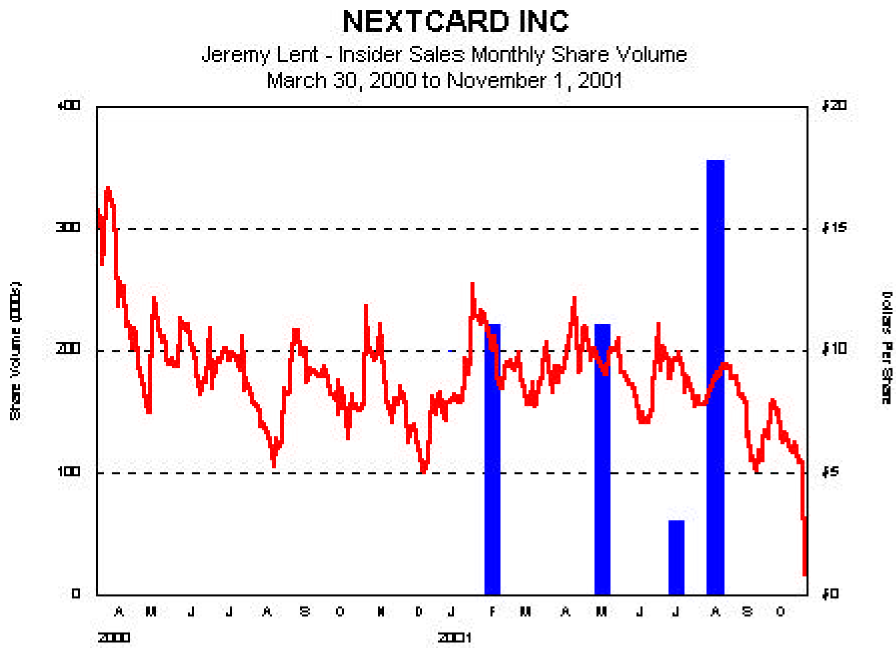
45. During the Class Period, defendants Cai, Lent, Hashman and Qureshey sold shares of their NextCard stock for proceeds of nearly $9 million, despite their possession of adverse information about NextCard's business which they knew had not been disclosed to the public.

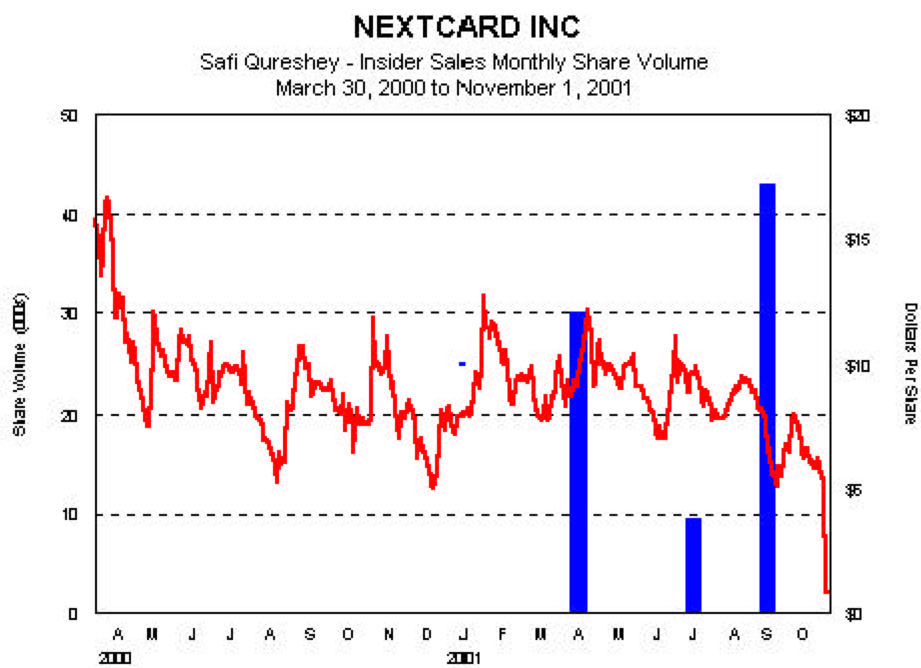
46. Defendants' insider sales during the Class Period were highly suspicious given their proximity to the date of the bad news and the fact that they occurred before the stock had dropped and while defendants were making positive statements.

47. As depicted in the charts below, defendants' stock sales were suspicious in timing and amount. Moreover, the amount of shares sold dwarfed any other sale in their history with the Company:









CLASS ACTION ALLEGATIONS

48. This is a class action on behalf of purchasers of NextCard publicly traded securities during the Class Period (the "Class"). Excluded from the Class are officers and directors of the Company, as well as their families and the families of the defendants. Class members are so numerous that joinder of them is impracticable.

49. Common questions of law and fact predominate and include whether defendants: (i) violated the 1934 Act; (ii) omitted and/or misrepresented material facts; (iii) knew or recklessly disregarded that their statements were false; and (iv) artificially inflated the prices of NextCard's publicly traded securities and the extent of and appropriate measure of damages.

50. Plaintiff's claims are typical of those of the Class. Prosecution of individual actions would create a risk of inconsistent adjudications. Plaintiff will adequately protect the interests of the Class. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

CLAIM FOR RELIEF

51. Defendants violated §10(b) and Rule 10b-5 by:

(a) Employing devices, schemes and artifices to defraud;

(b) Making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(c) Engaging in acts, practices and a course of business that operated as a fraud or deceit upon the Class in connection with their purchases of NextCard publicly traded securities.

52. Class members were damaged as they paid artificially inflated prices for NextCard's publicly traded securities in reliance on the integrity of the market.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of himself and the Class, prays for judgment as follows:

A. Declaring this action to be a class action properly maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding plaintiff and other members of the Class damages together with interest thereon;

C. Awarding plaintiff and other members of the Class costs and expenses of this litigation, including reasonable attorneys' fees, accountants' fees and experts' fees and other costs and disbursements; and

D. Awarding plaintiff and other members of the Class such equitable/injunctive or other and further relief as may be just and proper under the circumstances.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: December 4, 2001

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Attorneys for Plaintiff

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

____
ATTORNEY OF RECORD FOR

PLAINTIFF MICHAEL ROSE

1. A bank is considered "significantly undercapitalized" under federal banking regulations when its risk-based capital ratio drops below 6%.