

COPY

**WECHSLER HARWOOD HALEBIAN
& FEFFER LLP**

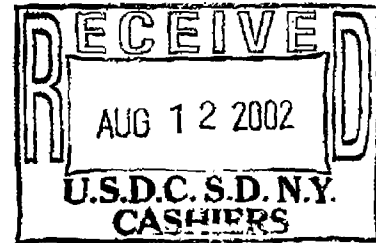
Robert I. Harwood (RH-3286)
488 Madison Avenue, 8th Floor
New York, NY 10022
(212) 935-7400

02 CV 6385

BERGER & MONTAGUE, P.C.

Sherrie R. Savett
Carole A. Broderick
Barbara A. Podell
1622 Locust Street
Philadelphia, PA 19103
(215) 875-3000

Attorneys for Plaintiff



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

-----X
**COLLEEN DODI, On behalf of Herself
and All Others Similarly Situated,**

Plaintiff,

vs.

**VIVENDI UNIVERSAL, S.A.,
JEAN-MARIE MESSIER and
GUILLAUME HANNEZO,**

Defendants.
-----X

: Civil Action No.
:
:
: **CLASS ACTION**
:
: **COMPLAINT FOR VIOLATION OF**
: **THE SECURITIES EXCHANGE**
: **ACT OF 1934**
:
: **DEMAND FOR JURY TRIAL**

Plaintiff, by and through her attorneys, alleges the following upon information and belief, except as to those allegations concerning plaintiff, which are alleged upon personal knowledge. Plaintiff's information and belief are based upon, among other things, this and her counsel's investigation, which included without limitation: (a) review and analysis of filings made by Vivendi Universal, S.A. ("Vivendi" or the "Company") with the Securities and Exchange Commission

(“SEC”); (b) review and analysis of securities analysts’ reports concerning Vivendi; (c) review and analysis of press releases and other publications disseminated by certain of the defendants; (d) review of news articles and shareholder communications concerning Vivendi; and (e) review of other publicly available information concerning Vivendi or the other defendants. Plaintiff believes that further substantial evidentiary support will exist for the allegations herein after a reasonable opportunity for discovery. Many of the facts supporting the allegations contained herein are known only to defendants or are within their control.

1. This is a class action on behalf of purchasers of the ordinary shares and American Depository Receipts (“ADRs”) of Vivendi between April 23, 2001 and July 2, 2002 (the “Class Period”) for violations of the federal securities laws. Vivendi operates music, television and film, publishing, Internet, telecommunications, and environmental services businesses. Vivendi’s ADRs are traded on the New York Stock Exchange and its ordinary shares were traded on the EuroNext Paris S.A. (The “Paris Bourse”).

NATURE OF THE ACTION

2. Prior to and during the Class Period, defendant Jean-Marie Messier (“Messier”) took Vivendi on an acquisition binge that, according to published reports, resulted in the Company amassing approximately \$18 billion in debt as he turned the Company from a water concern into an entertainment powerhouse. During the class period, defendants made misrepresentations and/or omissions of material fact, including the following:

- (a) Misstating Vivendi’s cash position and ability to service its debt obligations;
- (b) Misstating Vivendi’s earnings in its public filings with the SEC and elsewhere as a result of failing to record write-downs of goodwill and other intangible assets associated with,

inter alia, the merger among Vivendi, Seagram and Canal+ long after it had become apparent that such assets were being carried at values vastly higher than their true values;

(c) Failing to disclose that the exchange ratio for the merger between MP3.com, Inc. and Vivendi was distorted due to artificial inflation in the price of Vivendi American Depositary Shares (“ADSEs”);

(d) Affirmatively misstating the value of goodwill and other intangible assets associated with, *inter alia*, the merger among Vivendi, Seagram and Canal+ by carrying such assets at the cost of acquiring them long after it had become apparent that Vivendi had overpaid to acquire such assets; and

(e) Failing to disclose that Vivendi had significant off-balance-sheet liabilities in the form of its undisclosed sale of put options on tens of millions of dollars worth of Vivendi shares during 2001 in order to pay for stock options it awarded to executives.

3. Under Messier’s flamboyant leadership, Vivendi completed \$77 billion in takeovers, including a \$30 billion buyout of Canada’s Seagram and a \$10.3 billion purchase of USA Networks Inc., the cable and entertainment company owned by Hollywood mogul Barry Diller. Concomitantly, Messier orchestrated a scheme to conceal the severity of Vivendi’s liquidity problems stemming from the massive debt load incurred as a result of these, and other, transactions. In fact, only days before his ouster by Vivendi’s Board, Messier caused the Company to issue several press releases that falsely stated that Vivendi did not face an immediate and severe cash shortage that threatened the Company’s viability going forward absent an asset fire sale. It was only after Vivendi’s Board dislodged Messier that the Company’s new management disclosed the severity of the crisis and that the Company would have to secure immediately both bridge and long-term financing or default on

its largest credit obligations. As detailed below, Messier failed to disclose the true contours of Vivendi's cash crisis and his affirmative misrepresentations to the contrary have given rise to an investigation by French authorities concerning whether Messier disclosed in a timely fashion that the Company was in dire financial straits. Published reports also indicate that Vivendi is engaged in urgent discussions with lenders to secure financing and is both considering and negotiating the sale of assets.

4. During the Class Period, defendants' false statements artificially inflated Vivendi ADRs to as high as \$68.80 per ADR. Defendants reported favorable, but misleading, financial results to the market and represented that Vivendi was not as susceptible to economic problems as competitors and that the Company had the "highest resiliency and lowest sensitivity to recessionary environment." The defendants also represented that Vivendi was successfully implementing recent mergers which were being reorganized quickly to generate synergies. These positive but false statements allowed the Company to complete additional acquisitions in its \$100 billion buying spree between 1998 and 2001. Late in June 2002, news leaked from Vivendi that its debt was at alarming levels, causing Vivendi's ADRs to decline in price from \$28 to \$20. Vivendi's ordinary shares declined in similar fashion. Nonetheless, Messier reassured the market that liquidity was not a problem. However, as ratings agencies continued to downgrade the Company's debt, the ADRs continued to decline. On July 2, 2002, Vivendi's debt was downgraded again and the Company was in danger of default. On July 3, 2002, Messier was forced to resign. Vivendi ADRs collapsed upon these revelations, falling to \$15-21/32 on July 3, 2002, on huge volume of 8 million shares. This collapse wiped out billions of dollars in Vivendi shareholder value, compared to the end of 2001. Later, on July 9, 2002, *Bloomberg* reported that the Commission des Operations de Bourse was

reviewing statements released by Vivendi to ensure “they abide by our rules.” The regulators had raided Vivendi’s Paris headquarters as part of an investigation into whether Vivendi had disclosed relevant information to investors in the prior 18 months.

JURISDICTION AND VENUE

5. (a) The claims asserted arise under §§10(b) and 20(a) of the Securities Exchange Act of 1934 (“1934 Act”), 15 U.S.C. §§78(j)(b) and 78(t), and Rule 10b-5.

(b) Jurisdiction is conferred by §27 of the 1934 Act, and 28 U.S.C. §1331.

(c) Venue is proper in this District pursuant to §27 of the 1934 Act.

(d) Vivendi is headquartered in Paris, France but conducts business and maintains operations in this county. Vivendi’s Universal division is headquartered in this District, defendant Messier maintains a residence in New York City, false statements were made in this District and acts giving rise to the violations complained of occurred here.

THE PARTIES

6. Plaintiff Colleen Dodi purchased ADRs of Vivendi as described in the attached certification, and was damaged thereby.

7. Defendant Vivendi is headquartered at Paris, France with significant operations in the U.S. Vivendi’s ADRs trade in an efficient market on the NYSE. Vivendi’s ordinary shares trade in an efficient market on the Paris Bourse.

8. (a) Defendant Messier was Chief Executive Officer and Chairman of Vivendi until he was forced out on July 3, 2002. Messier received compensation of \$4.8 million in 2001, despite the Company’s record loss, in addition to a \$17 million apartment the Company acquired for him in New York.

(b) Defendant Guillaume Hannezo (“Hannezo”) was Chief Financial Officer of Vivendi until his rumored resignation on July 9, 2002. Hannezo was considered, according to *Associated Press*, a “close collaborator” of Messier.

9. The individuals named as defendants in ¶8(a)-(b) are referred to herein as the “Individual Defendants.” The Individual Defendants are liable for the false statements pleaded herein because those statements were each “group-published” information, the result of the collective action of the Individual Defendants.

10. Defendants Messier and Hannezo were controlling persons of Vivendi and are liable under §20(a) of the 1934 Act. The Individual Defendants are liable as direct participants in, and co-conspirators with respect to the wrongs complained of herein. The Individual Defendants, as a senior officer and/or director, were “controlling persons” within the meaning of Section 20(a) of the Exchange Act and had the power and influence to cause the Company to engage in the unlawful conduct complained of herein. Because of their positions of control, they were able to and did, directly or indirectly, control the conduct of Vivendi’s business.

11. Each defendant is liable for making false statements or for failing to disclose adverse facts and for participating in a fraudulent scheme which permitted Vivendi to maintain credit ratings so that Vivendi could incur more debt to make acquisitions on favorable terms.

BACKGROUND

12. Vivendi was created in the nineteenth century as a water utility. In June of 1996, Messier became chairman of Generale des Eaux, the predecessor to Vivendi, which was primarily a water utility company. By the time Messier became CEO in 1996, Vivendi’s ADRs were trading in the \$30 to \$35 range. Messier’s goal was to turn the Company into one of the world’s largest

media companies. In March of 1998, Generale des Eaux purchased the remaining interest in Havas S.A. (a publishing company), and a month later changed its name to Vivendi. In March of 1999, Vivendi bought United States Filter for \$6.2 billion. Messier's growth strategy required the acquisition of large companies through which Vivendi accumulated large amounts of debt. In June of 2000, Vivendi announced the acquisition of Seagram Company (which owned Universal Studios and Polygram Records) for \$34 billion. The principal owner of Seagram was Edgar Bronfman, Jr. (and his family) who then became the largest shareholder of Vivendi. By the beginning of 2001, Messier was under tremendous pressure to produce favorable financial results. Bronfman, who was vice-chairman of the Company, was particularly critical of the strategy and the debt load. Messier knew that his strategy, and ultimately his job, depended on favorable financial results. Thus, while Messier continued the acquisitions in 2001, it was important the Company report favorable results. On June 1, 2001, Vivendi announced the acquisition of Houghton Mifflin Company for \$1.7 billion. In December of 2001, Vivendi bought 10% of Echostar, a satellite TV operator, and announced the acquisition of USA Networks for \$10.3 billion.

13. These acquisitions ultimately saddled Vivendi with \$27 billion in debt and required that Vivendi maintain favorable credit ratings and maintain a strong stock price.

14. On March 9, 2001, Vivendi issued a press release reporting its "better than expected" 4thQ and 2000 results. The press release stated:

Vivendi Universal announced today that on a pro forma basis for calendar 2000, the Company reported 7.2 billion euros in EBITDA (earnings before interest, taxes, depreciation and amortization) for the period ending December 31, 2000, up 48 percent and 1999. Results reflect strong performance across the Company's business units - Media and Communication and Environmental Services. Actual ABITDA for the 12 months ended December 31, 2000, was 6 billion euros versus 4.3 billion euros in 1999.

The pro forma results were driven by growth in all business segments with the exception of Internet, in which development costs related to business expansion continued to have a negative impact on earnings.

* * *

Jean-Marie Messier, Chairman and Chief Executive Officer of Vivendi Universal, stated: “The strong results that Vivendi Universal has generated for calendar 2000 provide a very solid foundation for the Company’s growth prospects in 2001. The robust performance of Vivendi Universal’s business segments clearly reflects the fact pace and clear momentum that we have established as Vivendi Universal enters 2001. The Company’s unique combination of content and distribution assets paves the way for enormous growth opportunities. We have our management teams and plans in place as we moves [sic] to execute the growth strategies. The management team, in particular, has been focused on the day-to-day operational performance and increased productivity of each of the Company’s business units.. I am very confident that, for Media and Communications, we will reach our revenue growth target of 10 percent and our aggressive EBITDA growth target of 35 percent for the period 2000-2002 and achieve superior returns for Vivendi Universal shareholders.”

Jean-Marie Messier continues: “We are ideally positioned to provide the global consumer with seamless connectivity and competitively superior content and services -- anywhere, any time and over any device or platform. Our businesses are strong, our management is focused and growth prospects are real and immediate.”

15. At the beginning of the Class Period, Vivendi’s ADRs were trading in the \$60 range.

If the Company’s fragile financial structure had been revealed, its ADRs would have collapsed, its credit ratings would have been downgraded and the Company’s ability to continue acquisitions would have been eliminated.

FALSE AND MISLEADING STATEMENTS

16. On April 23, 2001, Vivendi announced “Very Strong” 1stQ 01 results in a press release which stated in part:

Highlights For All Media and Communications Businesses

- Revenues increased 13.4% to 5.0 billion euros, excluding Universal Studios Group (USG) Filmed Entertainment, for media and communications businesses. Total revenues grew approximately 10% to 5.9 billion euros;
- EBITDA grew 112% to 900 million euros for media and communications businesses;
- The Company is ahead of cost-saving target of 200 million euros for 2001, with early wins in the quarter representing an annual impact of more than 140 million euros;
- Management reiterates its confidence in meeting its 2001 revenue growth target of 10% (excluding USG Filmed Entertainment) and 35% EBITDA growth.

Highlights By Business

- Music EBITDA 15% to 180 million euros reflecting strong market share and a revenue increase of 3%;
- Telecoms EBITDA increased more than 3 fold to 433 million euros and revenues were up 30%;
- TV and Film EBITDA more than doubled to 284 million euros. Revenues were up 3%, excluding USG Filmed Entertainment;
- Publishing EBITDA increased 16% with revenues up 5.5%.

* * *

“I am very pleased with Vivendi Universal’s outstanding performance in our first quarter as a new company. All our results meet or exceed our key operating targets. We created significant momentum by delivering solid first quarter 2001 results in EBITDA, which more than doubled, and by generating double digit revenue growth,” said Jean-Marie Messier, Chairman and Chief Executive Officer of Vivendi Universal.

“These results show the focus and dedication of all our management teams, in executing the unique promise of Vivendi Universal around its global strategy. This is a great beginning. With our momentum, our targets and the drive of our executive team, I am extremely confident that, for Media and Communications, we will reach our annual EBITDA and revenue growth targets of 35% and 10%, respectively in 2001 and 2002 and achieve superior returns for Vivendi Universal shareholders.”

“Finally, Jean-Marie Messier added, “We are also ahead of targets for the synergies which indicate that the path of integration between our teams is great. My only focus is and remains execution of this compelling media merger.”

17. Subsequent to issuing its results, Vivendi hosted a conference call to discuss the results and the Company’s business and prospects. During the call, Messier and others in Vivendi management stated:

- Vivendi’s favorable financial results were due to strength across all business lines.
- Vivendi was on track for full year sales growth of 10%, excluding Universal Studios.
- The Company was on track to report EPS of \$1.22+ in 2001 and \$1.74+ in 2002.

18. Analysts subsequently issued reports on Vivendi, based on defendants’ statements, rating the Company and forecasting earnings as follows:

<u>Firm</u>	<u>Analyst</u>	<u>Rating</u>	<u>2001 EPS</u>	<u>2002 EPS</u>
Deutsche Banc	L. Francoy	Market Perform	€1.22	€1.74
Societe Generale	T. Cota	Buy		

19. The analysts also wrote:

- Deutsche Banc Alex Brown:

These robust Q1 numbers led to confident comments by the company on full-year targets.

- Societe General:

The Q1 2001 results reported yesterday morning by Vivendi Universal for its media and telecommunications divisions confirm the group’s good growth in all its business segments. Based on this performance, management is confident about meeting the

objectives it announced when Vivendi merged with Universal: 10% growth in sales
35% growth in EBITDA.

20. In fact, Vivendi's financial statements were misleading as described in ¶¶63, 69-80, and defendants' statements were false and misleading because the Company was not on track to achieve the earnings growth forecast. Moreover, the Company had billions of dollars worth of goodwill that was impaired for which Vivendi had not recorded impairment charges. The Company was not nearly as resilient in the face of recession as defendants had represented and would suffer just as much as its competitors, and in fact more so, due to its excessive debt levels.

21. On May 20, 2001, Vivendi announced an agreement to purchase MP3.com in a combined cash and stock transaction.

22. On July 22, 2001, Vivendi announced "Very Strong" 2ndQ 01 results in a press release which stated in part:

- In the course of the first half of 2001, Vivendi Universal achieved three quarters of its full-year target of incremental EBITDA (nearly 800 million euros excluding Maroc Telecom, relative to the company's target of slightly more than 1 billion euros).
- in the first half of 2001, revenues increased to 12.4 billion euros (up 15%), and EBITDA grew to 2.2 billion euros (up 77% over 2000 comparable period).
- During a strong second quarter, revenues increased 16% to 6.6 billion euros, and EBITDA grew 57% to 1.3 billion euros.
- Excluding Maroc Telecom, revenue growth was 8%, and EBITDA growth was 35% for the second quarter. For the first half of 2001, revenues were up 11% and EBITDA was up 62%.

* * *

"The results produced by Vivendi Universal in the second quarter are well ahead of market consensus," said Jean-Marie Messier, Chairman and Chief Executive Officer

of Vivendi Universal. “They confirm the robustness of our businesses, with limited exposure to advertising; the benefits of a truly global position; and the fast progress of the reorganization and implementation of our recent merger.

“With three quarters of the ‘aggressive’ incremental EBITDA target for the full year 2001 already achieved in the first half of the year, I can only re-emphasize our confidence. We will at least meet our stated targets.

“Obviously, our current stock price does not fully reflect this situation in terms of EBITDA multiples or Enterprise Value to EBITDA to growth. With the highest growth rates of the industry and the lowest multiples, our stock is definitely an attractive investment today.

“The first half has been a period of total operational focus in each of our businesses, while completing significant achievements in the implementation of the merger, reorganization and execution of our strategy.”

(Footnotes omitted.)

23. Subsequent to issuing its results, Vivendi hosted a conference call to discuss the results and the Company’s business and prospects. During the call, Messier and others in Vivendi management stated:

- Vivendi was able to achieve strong results even in a down market and was in fact gaining market share.
- The Company was still on track to achieve strong growth in revenues and earnings in 2001, including EBITDA growth of 35%.

24. Analysts subsequently issued reports on Vivendi, based on defendants’ statements, which rated the Company as follows:

<u>Firm</u>	<u>Analyst</u>	<u>Rating</u>
Merrill Lynch	N. Blackley	Buy
Robertson Stephens	M. Graham	Buy

25. The analysts also wrote:

- Merrill Lynch:

Company re-confirmed its targets for 2001. In a down music market, Universal is gaining share and is confident of double digit EBITDA growth.

- Robertson Stephens:

We expect the company to perform well through a sluggish economy and to emerge strategically well-positioned.

26. In fact, Vivendi's financial statements were misleading as described in ¶¶63, 69-80, and defendants' statements were false and misleading because the Company was not on track to achieve the earnings growth forecast. Moreover, the Company had billions of dollars worth of goodwill that was impaired for which Vivendi had not recorded impairment charges. The Company was not nearly as resilient in the face of recession as represented and would suffer just as much as its competitors, and in fact more so, due to its excessive debt levels.

27. In the combined proxy statement for MP3.com and prospectus for the proposed stock-swap merger between MP3.com and Vivendi dated July 23, 2001, Vivendi offered to exchange each MP3.com share (subject to certain limitations) for either \$5.00 cash or \$5.00 worth of Vivendi ADSes based on an exchange ratio equal to \$5.00 divided by the average per share closing price of Vivendi ADSes on the New York Stock Exchange for the five consecutive trading days ending on the day before the special meeting to vote on the MP3.com/Vivendi merger, or August 26, 2001. Based on such calculation, the transaction went forward at an exchange ratio of .0904 on August 28, 2001. Based on such calculation, the transaction went forward at an exchange ratio of .0904 on August 28, 2001. The Vivendi ADSes issued in connection with the MP3.com merger were registered pursuant to a Registration Statement on Form F-4 MEF ("the Registration Statement")

filed with the SEC on or about August 28, 2001, which incorporated by reference the Registration Statement on Form F-4/A previously filed with the SEC on or about July 26, 2001. Such July 26, 2001 Registration Statement listed Vivendi's total assets as of the end of 2000 as approximately 151,818,000,000 euros and stated as follows:

Under French GAAP, goodwill may be recorded as a reduction of shareholders' equity when the acquisition has been paid for with equity securities, whereas goodwill is recognized as an asset under U.S. GAAP. Significant mergers that do not meet the U.S. GAAP criteria for pooling have been accounted for in Vivendi Universal's consolidated financial statements using a method pursuant to which goodwill is computed as the difference between the consideration paid and the net historical book value acquired. For U.S. GAAP purposes, these transactions are considered purchases. (7/26/01 F-4/A p. 158-89)

28. On August 2, 2001, Vivendi announced it had completed the acquisition of Boston-based Houghton Mifflin Company:

The cash tender offer at \$60 per share expired on July 6, at which time approximately 90% the Houghton Mifflin shares were tendered and purchased by Vivendi Universal at the \$60 per share tender offer price. Now, with the completion of the merger, the remaining 10% of the shares have been acquired at the same price.

* * *

Commenting on today's closure of the acquisition, Jean-Marie Messier, chairman and chief executive officer of Vivendi Universal said: "We now have worldwide leadership positions in music, film, games, and education. The acquisition of Houghton Mifflin catapults Vivendi Universal Publishing to the No. 2 position worldwide in education publishing and significantly enhances its position in the U.S. textbook market."

Mr. Messier continued: "This very strategic acquisition is another step in Vivendi Universal's plan to achieve world leadership in key content segments. It puts us in an extremely competitive position to capitalize on the growth of the education sector by leveraging the content and technologies of both companies across all of Vivendi Universal. Thanks to our ability to finance this deal through the sale of other valuable, yet non-strategic assets in our publishing portfolio, the acquisition will not impact our balance sheet and will accretive to our shareholders."

29. In early September, 2001, Vivendi's ADRS declined from the mid-\$50s to the mid-\$40s per share, as rumors circulated Vivendi's earnings would be disappointing. In response, Messier categorically denied any problems. Vivendi, after the market closed on September 5, 2001, reiterated its targets for 2001 and 2002. In an interview with *Reuters*, Messier was quoted as stating that "no profit warning of any kind needs to be feared coming from Vivendi Universal."

30. On September 25, 2001, Vivendi issued a release announcing "Strong first Half 2001 Results" and "Solid Outlook for 2002":

Strong Operating Results in First Half 2001 Reflect Strength of Businesses, Limited Exposure to Advertising, Leadership Positions in Key Businesses and Rapid Progress of Integration and Implementation of Merger

* * *

Despite the slowdown in the economy, particularly in the U.S., which has negatively impacted all U.S. activities that are focused on industrial clients, such as water and waste management, the company has seen growth in these segments, and the results are in line with the company's expectations. For the first half of 2001, revenues were up 11% to 13.9 billion euros; EBITDA was up 12% to 1.76 billion euros; operating income was up 13% to 0.97 billion euros.

* * *

"Should the recent tragedy result in further period of uncertainty and maybe recession, Vivendi Universal will continue to deliver growth and will benefit from strong defensive qualities:

- very limited exposure to advertising revenues (1%)
- huge portion of subscription revenues (44%)
- restructuring benefits (Canal +)
- non-cyclical content activities (education)
- income from its environment business"

31. On October 20, 2001, Vivendi issued a press release trumpeting 24% revenue growth for 3Q 01 (year-over-year) to \$7.3 billion euros and 90% EBITDA growth to 1.5 billion euros. The

foregoing figures were supposedly based on U.S. GAAP, except for the figures from Canal+. In such release, Vivendi reaffirmed plans to begin reporting all quarterly earnings in U.S. GAAP beginning with 1Q 02.

32. On October 30, 2001, Vivendi announced its 3rdQ 01 results in a press release which stated in part:

- Strong third quarter results with revenues up 24% to 7.3 billion euros and EBITDA (earnings before interest, taxes, depreciation and amortization) up 90% to 1.5 billion euros, versus 2000 comparable results of Vivendi Universal, including Seagram and Canal+.
- Organic revenue growth, which excludes the impact of 2001 acquisitions and disposals, was 8% in the third quarter and 10% year-to-date, in line with 2001 growth target.
- EBITDA organic growth is very strong, reaching 36% in the third quarter and 52% year-to-date. It represents the achievement in nine months of close to 100% of the full year 2001 incremental EBITDA growth target.
- On a pro forma basis, third quarter revenue growth was 8%, and EBITDA growth was 30%. Year-to-date revenues increased 9%, and EBITDA increased 46%.
- Company reaffirms confidence in achieving its growth targets: 10% revenue growth and 35% organic EBITDA growth in 2001.

* * *

“Our third quarter results for the media and communications businesses, with 24% revenue and 90% EBITDA growth, including organic growth of 8% and 36% respectively, are obviously strong despite the tough environment,” said Jean-Marie Messier, Chairman and Chief Executive Officer of Vivendi Universal. “They reflect both our higher potential for growth and greater resiliency to recessionary environments compared to many of our peers.

“Indeed Vivendi Universal’s media and communications businesses have achieved higher growth rates and have a greater potential for growth than most of our peers for two major reasons:

- Our strong creative and market leadership positions allow us to increase or maintain our market share in all of our content businesses, including music, movies, education and games.
- Our distribution activities position us on the forefront of the interactive technologies of the future – digital TV, mobile, and Internet. These activities are still significantly below their maximum penetration rates and provide a huge potential for significant double-digit growth of our subscriber base in the coming years.

“Additionally, Vivendi Universal’s media and communications businesses are presently less vulnerable to recessionary environments than many of our peers because of our strong defensive qualities, including:

- Our truly global presence: 60% of our revenues are generated in Europe, 30% in North America and 10% in the rest of the world (52%, 40% and 8%, respectively, including USA Networks);
- Over 44% of our revenues are generated from subscriptions, which have the highest resiliency to a recession. This is a higher stake than any of our peers.
- A very small proportion of our revenues are generated from advertising and theme parks, activities that are the most vulnerable to an economic downturn. Advertising generates approximately 1% of our revenues (after adjusting for recent acquisitions and divestitures), and theme parks generate less than 3% of our revenues. This is a lower stake than any of our peers.”

“Having the highest resiliency and lowest sensitivity to a recessionary environment explains our ability to outperform most of our peers.”

“Even so, Vivendi Universal’s media and communications businesses are not immune to the effects to [sic] a recession. But, in challenging and uncertain environments, which can negatively impact businesses in all industries, Vivendi Universal offers within the media and communications industry both the highest potential for growth going forward and the best ability to resist a difficult economic environment.”

“An early look at the fourth quarter indicates that we are on track to meet our targets. I continue to express my confidence in achieving 10% revenue growth and 35% EBITDA growth in 2001 at a constant asset base. This, combined with some expansions in the company’s asset base (*i.e.*, Maroc Telecom and Houghton Mifflin), should result in full-year Media and Communications EBITDA slightly above 5 billion euros.”

(Footnotes omitted.)

33. Subsequent to issuing its results, Vivendi hosted a conference call to discuss the results and the Company's business and prospects. During the call, Messier and others in Vivendi management stated:

- Vivendi was able to achieve strong results even in a down market and was in fact gaining market share.
- The Company was still on track to achieve strong growth in revenues and earnings in 2001.

34. Based on defendants' statements, including those made on the conference call, on October 31, 2001, Morgan Stanley, Dean Witter issued a report on Vivendi rating the Company "OutPerform," forecasting EBITDA for 2001 and 2002 of €8.77 billion and €10.1 billion, respectively, and stating:

We continue to accord Vivendi Universal on OutPerform-V rating with a Euro62 twelve-month price target. Our investment thesis is based on VU's valuation, lack of sensitivity to economic recession, and diversity of revenue sources. In a quarter in which all its peers were forced to revise their 2001 and 2002 outlooks downward to reflect continued US economic weakness exacerbated by the events of Sept. 11, Vivendi Universal outperformed expectations and reiterated its full year guidance. The divergence between VU and its peers reflects the company's high level of financial predictability, a direct function of owning a number of internationally diversified, market share-leading businesses that have a low dependence on advertising.

35. In fact, Vivendi's financial statements were misleading as described in ¶¶63, 69-80, and defendants' statements were false and misleading because the Company was not on track to achieve the earnings growth forecast. Moreover, the Company had billions of dollars worth of goodwill that was impaired for which Vivendi had not recorded impairment charges. The Company

was not nearly as resilient in the face of recession as represented and would suffer just as much as its competitors, and in fact more so, due to its excessive debt levels.

36. At the end of 2001, Vivendi was forced to slightly lower its EBITDA targets for 2002. The Company's ADRs declined in price on this news but continued to be artificially inflated due to the Company's misleading financial practices and inadequate disclosures described in ¶¶63, 69-80.

37. On February 5, 2002, J.P. Morgan issued a report on Vivendi by Mark Harrington based on Harrington's meeting with Vivendi management. The report rated Vivendi a Buy and stated in part:

Preview of 2001 Results Following Meeting With Management
VU to Report March 5; Media and Communications
EBITDA Likely to Meet Guidance

We expect the Film and Games divisions to remain the key drivers of growth, but foresee relative weakness from the Music and Theme Parks divisions. VU's Media and Communications division should report 2001 revenue of €27,646 million and EBITDA of €5,009 million. Importantly, if VU meets our estimates, it will be one of the few global media players to meet its previous (unadjusted) guidance at the EBITDA level in the last year. These results will be preceded by revenue for the VU group in mid-February.

38. On February 11, 2002, Vivendi issued a press release announcing its 4thQ 01 results.

The release stated in part:

Vivendi Universal today announced that the company's Media and Communications businesses reported proforma revenue growth of 9% for the year ended December 31, 2001, reaching 28.9 billion euros. Revenue growth was 10% using the 2000 perimeter excluding Universal Film, exactly in line with management estimates given 12 months ago.

Jean-Marie Messier, Chairman and CEO of Vivendi Universal, stated, "I am pleased that we achieved our ambitious target of 10% organic revenue growth in 2001, for the businesses resulting from Vivendi's merger with Seagram and Canal+. Organic growth is, more than ever in today's markets, the most important strength of Vivendi Universal. Achieving the highest level of growth in our industry is a big

differentiation of Vivendi Universal, and the operating management deserves recognition for fulfilling their growth objectives and outperforming their peers in a difficult year. Our 2001 results give us confidence that we can achieve our growth targets again in 2002.”

39. On March 5, 2002, Vivendi reported its full 2001 results. While the press release indicated a €13 billion charge for impairment to goodwill, the release also made several positive statements about Vivendi’s liquidity:

Vivendi Universal has reached or exceeded all of its operational targets in 2001:

– For Media and Communications

Revenues: – 28.115 billion euros, representing 10% pro forma revenue growth

EBITDA: – 5.036 billion euros, representing 34% pro forma EBITDA growth

Operating Income of 1.838 billion euros representing 89% pro forma growth

Operating Free Cash Flow of 2.026 billion euros, ahead of guidance (1.2 to 1.5 billion euros) and up 2 billion euros over 2000

Synergies for costs alone reached more than 500 million euros cash savings, ahead of guidance, including 293 million euros of EBITDA savings, 114 million euros of CAPEX savings both recognized in 2001 and 173 million euros of treasury savings on a 12-month basis.

* * *

– Debt

– Debt in French GAAP was 14.6 billion euros for the Media and Communications activities as of December 31, 2001.

– In U.S. GAAP, it was 19.1 billion euros at the same time.

– The Company’s 2002 goal is to sustain its current triple-B rating of the group which under U.S. GAAP, would be equal to or less than three times EBITDA, and to reach a 2.5 times EBITDA ratio by the mid-term.

(Footnotes omitted.)

40. As a result of these positive statements, Vivendi's ADR's increased in price on March 6, 2002.

41. Subsequent to issuing its results, Vivendi held a conference call to minimize the importance of its \$13 billion write-down and assure investors that its business was still strong. Lehman Brothers issued a report on March 6, 2002, based in part on the statements made by Vivendi management in this call:

* In its post results conference call, management confirmed that the value adjustments to the US assets (see further detail below) reflected largely a change in accounting treatment and did not signal a negative outlook for the US water business. The 2000 outsourcing backlog of \$700m increased by 40% to \$1.1bn of new outsourcing backlog in 2001. In the equipment business, there is 50% more backlog in equipment than there was at the start of 2001, signaling some recovery in the US economy.

* Management confirmed it is in the final bidding stages for Indianapolis water privatization in the US, which could deliver \$40-50m pa of revenue. In the industrial outsourcing sector it is confident it will continue to maintain its 70-80% market share.

42. Bear Stearns issued a report on March 6, 2002, based on the same conference call which stated in part:

The company disclosed that the EUR19 billion of net debt has an average maturity of 4-years and an average cost of 4.1%. Management pointed out that the strength of the group's finances is underlined by a recently negotiated 5-year credit facility at 45 basis points over LIBOR.

* * *

2002 Guidance. For 02, Management reiterated their guidance of 10% organic sales growth for all the Media Communications businesses. Vivendi also expects EBITDA of close to EUR6 billion (pre-USA Networks and pre-Stream).

43. By the spring of 2002, it was clear that Messier's acquisitions would have to stop, as debt levels were getting so enormous (not including the off-balance sheet debt) that further debt from

acquisitions would not be supportable. It then became Messier's most important message to assure the markets that Vivendi's debt levels were manageable. At this point, he realized his job was in danger.

44. On April 29, 2002, Vivendi announced its results for the 1stQ 02:
- Consolidated revenue grew 12% pro forma to 13.2 billion euros.
 - Consolidated Operating Income grew 11% pro forma to 781 million euros, excluding goodwill amortization.
 - Earnings Per Share (EPS) before the cumulative effect of an accounting change was 0.5 euros.

* * *

The consolidated financial results for the quarter demonstrate that Vivendi Universal is delivering on the strategy, goals and targets that we have articulated to our shareholders. In the first quarter of 2002, both Media & Communications and Vivendi Environment delivered their targets.

The Media & Communications financial results released last week, coupled with our consolidated results issued today, are testimony to our ability and conviction to deliver strong results in operations, cash flow, EBITDA and net income. As I said last week, because of our strong performance in the quarter, we are lowering our estimate of Media & Communications year-end Debt/EBITDA ratio to less than 3x by December 31, 2002.

In a very difficult economic environment, characterized by many market uncertainties, Vivendi Universal's global business gained market share. In addition, strong improvement was achieved in cash management, debt reduction, synergies, management development and revenue growth.

"I reiterate that Vivendi Universal's 2002 priorities are: no significant acquisition activity; an aggressive plan for debt reduction; a clear focus on operations and cash management; a focus on developing new synergies to create operating free cash flow. These priorities should contribute to creating greater value for our employees and shareholders."

45. The press release further touted the Company's allegedly strong cash flow position:

As highlighted in the company's press release of April 24, 2002, located to Vivendi Universal's web site t <http://www.vivendiuniversal.com/vu2/en/news/00000913.cfm>, the Media & Communications segment (which includes the strong financial results. On a pro forma basis, excluding Vivendi Universal's publishing businesses whose sale is expected to be completed in the second quarter), Media and Communications reported:

- (a) A strong surge of operational free cash flow, up 159% to 1.4 billion euros, well ahead of expectations;
- (b) Strong operating results in the first quarter: revenue organize growth of 13% to 6.8 billion euros; EBITDA growth, up 18% to 1.1 billion euros; and solid operating income growth, up 37% to 408 million euros. All were significantly ahead of budget;
- (c) Net debt fell from approximately 19 billion euros to approximately 17 billion euros.

46. Following the Company's April 29, 2002 release, Merrill Lynch Capital Markets issued a research report dated April 30, 2002 that rated the Company a "strong buy" premised on the Company's allegedly strong financial position. Specifically, the Merrill Lynch report stated that the "strong buy" recommendation was based, in part, on that "Vivendi has now stated its net debt/EBITDA objective is less than 3x by the end of 2002"

47. On May 3, 2002, Moody's lowered the Company's long-term debt rating to Baa3 – the lowest investment guide – one notch above "junk" status assigned to speculative investments. According to Moody's, "the Ratings Action reflects Moody's continuing concerns that Vivendi ... might not be able to reduce debt as quickly and comprehensively as planned."

48. Later on May 3, 2002, the Company criticized Moody's decision to downgrade the Company's senior debt:

The company believes that this decision does not fully take into consideration the currently poor market conditions and the fact that the agency does not take into

account immediately the whole of the debt reduction program planned by Vivendi Universal.

The decision has no impact on Vivendi Universal's cash situation. It does not trigger any renegotiation clauses or advance repayments of bank credit lines. In addition, Vivendi Universal's use of commercial paper in the current amount of 1.6 billion euros is well covered by back-up lines of more than 3 billion euros, the availability of which will not be affected by the rating change.

Vivendi Universal affirms that it has every confidence in its ability to meet its operating targets for 2002, as proved by its first-quarter results. The company is totally determined to carry through its debt reduction program in order to make a rapid return to a comfortable position with a Baa2 rating.

49. On May 28, 2002, the Company filed its Annual Report on Form 20-F with the SEC for the fiscal year ended December 31, 2002. The Annual Report contained the following information:

Net Cash Flow from Operating Activities – Net cash flow provided by operating activities totaled £4.5 billion in 2001, an increase of £2 billion from 2000. The increase was attributed to operating earnings generating incremental cash flow of £1.1 billion and improvements in working capital of £1.5 billion, partially offset by approximately £600 million of cash payments made for the settlement of restructuring and merger-related liabilities. Of the improvements in working capital, £0.8 billion was generated by Vivendi Environment primarily due to the implementation of a receivables securitization program. In 2000, operating activities provided net cash of £2.5 billion compared to £0.8 billion in 1999. The significant improvement was primarily due to increased earnings generated by our Telecoms, Publishing and Environmental Services businesses.

Net Cash Flow from Investing Activities – Net cash flow provided by investing activities was £4.3 billion in 2001 compared to net cash flow used for investing activities of £1.5 billion in 2000. Contributing to cash from investing activities was £9.4 billion from the sale of our spirits and wine business and £4 billion from the disposal of our investment in BSKyB, partially offset by capital expenditures for tangible and intangible assets net of sales proceeds of £4.9 billion and the acquisitions of Houghton Mifflin for £2.0 billion and Maroc Telecom for £2.4 billion. In 2000, net cash used for investing activities was £1.5 billion compared to £12.9 billion in 1999. The significant decrease primarily reflects fewer strategic acquisitions paid for in cash in 2000 compared to 1999. Proceeds from the disposal of investments and fixed assets were £6.9 billion in 2000 compared to £4.5 billion

in 1999, mainly attributable to the divestiture of non-core real estate, construction assets and GPU power generation plants.

Net Cash Flow from Financing Activities – In 2001, net cash flow used for financing activities was £7.5 billion, the principal components of which included a £5.9 billion repayment of long-term borrowings and other liabilities, a £1.7 billion decrease in short-term borrowings, the purchase of treasury stock for £4.3 billion and cash dividends paid of £1.4 billion, partially offset by £5.2 billion proceeds from the issuance of long-term borrowings and other liabilities and £0.6 billion net proceeds from the issuance of common stock. In 2000, net cash flow used for financing activities was £0.6 billion compared to net cash provided by financing activities of £13.7 billion in 1999. The year-on-year variance was primarily due to the Merger Transactions. In July 2000, the sale of 37% of Vivendi Environment through an IPO contributed to an increase in financing transactions of £3.8 billion.

50. On May 29, 2002, the Company issued a press release that stated the Company's board had convened and "carried out a detailed examination of [the Company's] operating and financial targets for 2002, and outlook for 2003. The strategy is based on the active continuation of the debt reduction program and the internal growth of the Company's businesses."

51. In late April 2002 and through mid-May, 2002, Vivendi's ADRs declined from the \$35 range to the \$29 range as concerns increased about its debt levels. To stop this decline, on May 30, 2002, Vivendi issued a release which indicated its cash position was "comfortable":

Vivendi Universal confirms having obtained agreement from the banks to delete the clauses that linked the availability of credit lines to a rating level. The Company's bank credit line is, therefore, no longer dependent on rating agencies' decision.

Additionally, the Company has no reason to anticipate or fear any further deterioration in its credit rating.

Vivendi Universal has also confirmed that, after payment of the dividend and the acquisition of USA Networks, its available credit lines that have not been used to date amount to almost 3.5 billion euros. Also, its use of commercial paper is limited to about 1 billion euros, and the reimbursement of expected debts during the coming months is limited.

This cash situation, which, the Company believes, is comfortable – even assuming an extremely pessimistic market – will enable the Company to continue its debt reduction program with confidence and with a view to creating the best possible value for its shareholders.

52. On June 25, 2002, the Company reiterated its prior statement concerning the positive steps it had taken to reduce debt and that its cash position was not precarious. The press release stated, in part, that:

The main points are as follows:

-- OPERATING TARGETS:

- Senior management confirmed the operating targets for 2002.

-- DEBT REDUCTION:

- The active implementation of a debt-reduction plan has enabled Vivendi Universal to collect over €5.1 billion during the first half of the year, to which can be added the disappearance of its financial risk on BSKyB shares (€2.5 billion) and the imminent sale of the B2B health activities
- As a consequence, net debt will be lowered in 2002 and senior management's target (under U.S. definition) is to bring it down from about €19 billion to €15 billion.
- That level represents a net debt-to-EBITDA ratio of below 2.5 times on a consolidated basis and of around 3 times on a proportional basis (to eliminate the impact of the minority interests in telecoms).

-- CASH SITUATION:

- Vivendi Universal has €3.3 billion available in unused credit lines, an amount that well exceeds its commercial paper of €912 million.
- Early repayment clauses in loan agreements apply to less than €170 million and the various bank covenants will all be complied with at both June 30 and December 31, 2002.
- The Company will also continue its policy of increasing the average length of its debt.

53. The Company further tried to quell concerns the market might have had concerning the Company by stating it would implement a month Q & A session to “end the constant negative rumors:”

– PERMANENT INFORMATION FOR THE MARKETS:

- In order to end the constant negative rumors about the company and to ensure that investors have the clearest knowledge possible of Vivendi Universal’s financial situation, a telephone conference call will be held every second and fourth Wednesday of the month at 5:30 p.m. (Paris time) until further notice. There will be no fixed agenda, and participants will be able to ask all questions about the company’s finance and operations.

54. Following this press release, Morgan Stanley issued a positive research report that stated the Company “has strong assets that are generating significant cash flow.” Moreover, Morgan Stanley stated the Company’s liquidity concerns were “overdone:”

We believe that fears regarding liquidity and accounting practices expressed many times in the press are overdone, especially with respect to Vivendi Universal’s formidable portfolio of assets that are performing well and generate cash flow. Exhibit 7 lays out our valuation of Vivendi Environment if it were forced to sell off all of its non-media assets (including publishing), which we believe is Euro36/share. Our sum of the parts and synthetic valuations both imply a fair value of Euro45/share (see Exhibits 8 and 9). On the basis of our belief in the underlying value in VU’s media assets, we are reiterating our Overweight rating and our price target of Euro45.

55. On June 26, 2002, the Company issued a press release over *Business Wire* entitled “Vivendi Universal Offers Details of Deleveraging and Liquidity.” The press release falsely touted the Company’s cash position.

II. CASH SITUATION

1) At this point in time, Vivendi Universal has available around €3.3 billion in unused credit lines. This is available to back up its commercial paper outstanding of nearly €1 billion.

The cash situation has greatly improved since the beginning of the year. However, it should be emphasized that, even while waiting to collect the remaining proceeds from the sale of Seagram's spirits and wine business in the fourth quarter of 2001, Vivendi Universal regularly maintained an amount of unused credit lines about the value of its commercial paper.

a. The sale of 15.6% of VE (for €1.5 billion) and the other planned disposals are expected to more than cover Vivendi Universal's anticipated commitments over the coming months, which include:

- Making available to Cegetel cash to enable the company to buy Telecom Development (TD) if Societe Nationale des Chemins de Fer Francais (SNCF) decides to exercise its put option during the summer;

- The cost in cash of paying for put options to VU relating to 15 million shares. Spread over the next seven months, this cost represents an amount at each payment date equal to the difference between the share price the day when the options are exercised and their average strike price of €69;

- The cost of the price guarantee given by Seagram on Rondor, in the amount of \$230 million to be paid in March 2003.

b. The VUE bridge loan put in place at the beginning of 2002 is expected to be refinanced by a VUE bond issue, and €1.7 billion in repayments of bank loans with maturities of less than 12 months are expected to be consolidated and/or refinanced by a planned VU bond issue.

c. When the time comes, the company will decide on how to maintain the 2006 due date of the issue of bonds convertible into VE shares, which has an early redemption option for March 2003 for holders willing to relinquish the bond's option value.

2) Furthermore, since the beginning of the year, Vivendi Universal has renegotiated a number of bank clauses, in particular those that placed it in the situation of certain loans being called if its credit ratings fell below BBB- /Baa3. These clauses originally involved €5.5 billion in debt, and now apply to less than €170million. The renegotiations have led to a reduction in the average length of financing for marginal amounts of around €200 million. The cost of these unused back-up lines has increased by 110 basis points, only if used, depending on the amount drawn.

Following the renegotiations, Standard & Poor's removed Vivendi Universal from its list of companies exposed to rating triggers.

The Financial undertakings made by the company in the back-up lines are the same as those made for the give-year syndicated loan of €3 billion. Vivendi Universal is projecting for June 30 and December 31 that its financial ratios will meet or exceed the ratios required in these contracts.

56. Merrill Lynch was also impressed by the Company's purportedly positive June 25 and 26, 2002 press releases and coupled with a "reassuring conference call on debt and liquidity" issued a "strong buy" recommendation for the Company's stock. With respect to "valuation and investment conclusion," Merrill Lynch stated on June 26, 2002:

We believe the rapid share price fall of some 25% in the last two weeks is unwarranted and expect ongoing deleveraging and improving confidence in the company's short term liquidity position should begin to revive interest in the shares.

57. However, as ratings agencies continued to downgrade the Company's debt, the stock continued to decline. On July 2, 2002, Vivendi's debt was downgraded again and the Company was in danger of default. On July 3, 2002, Vivendi's CEO was forced to resign. Vivendi stock collapsed upon these revelations, falling to \$15-21/32 on 7/3/02 on huge volume of 8 million shares. This collapse wiped out billions of dollars in Vivendi shareholder value, compared to the end of 2001.

58. On July 9, 2002, *Bloomberg* reported that the Commission des Operations de Bourse was reviewing statements released by Vivendi to ensure "they abide by our rules." The regulators had raided Vivendi's Paris headquarters as part of an investigation into whether Vivendi had disclosed relevant information to investors in the prior 18 months.

59. Vivendi's ADRs declined to as low as \$13.40 on July 3, 2002.

**VIVENDI'S MISLEADING
FINANCIAL RESULTS**

60. During the Class Period, Vivendi reported the following financial results:

	1stQ01	2ndQ01	3rdQ01	2001	1stQ02
Revenues	€5.0 B	€6.6 B	€7.3 B	€58.7 B	€13.2 B
EBITDA	€900 M	€1.3 B	€1.5B	€1.87 B	€1.1 B

	First Half 2001	2001
Net Income (Loss)	€22 M	€13.6 B

61. The above results were materially misleading when made, as Vivendi's financial statements included in its Form 6-Ks and Form 20-Fs and in the Company's press releases were not a fair presentation of Vivendi's results and were presented in violation of the principles of fair reporting, as well as International Accounting Standards, International Generally Accepted Accounting Principles ("GAAP") and SEC rules. In fact, Vivendi had grossly overvalued goodwill on its books which it failed to write-down until late in the Class Period, and the Company had billions of euros in debt it was improperly excluding from its balance sheet. The Company also recorded excessive increases to goodwill for operating expenses and, in the fourth quarter of 2001, recorded income from a transaction involving a subsidiary wherein Vivendi purportedly sold part of its interest but retained the same ownership ratio – yet Vivendi recognized €116 million in gain on the transaction. Ultimately, the Company has recorded a €13 million charge for goodwill which Vivendi admitted had declined over "the last two years." The Company is also being investigated

by French authorities as to the adequacy of its disclosures over the prior 18 months and its Paris headquarters have been raided.

62. Tensions between Messier, the Vivendi Board, and shareholders had been mounting for months to both reverse the slide in the Company's stock and address the Company's growing debt. It was later disclosed, however, that the Vivendi Board forced Messier's resignation because it had lost confidence in his leadership.

63. The Company's statements concerning its cash position and its ability to service its debt obligation were false at the time they were issued for the following reasons:

(a) The Company had \$1.8 billion in debt repayments due that required credit extensions in order to satisfy these obligations;

(b) By the end of 2002, Vivendi must refinance \$6 billion of debt repayments, bond maturities, and put-option obligations. Absent securing new lines of credit, which, as of July 7, 2002 had not yet been secured, the Company would default;

(c) According to the Sunday Telegraph (London), Standard & Poor's believes that there is a "hole in Vivendi's current account of 'several billion' which must be shored up 'within the next few weeks' if the Company is to avoid a crisis. The situation is all the more urgent because the hole in Vivendi's finances was something discovered by the rating agencies in the past few days."

(d) According to Standard & Poor's, Messier's May 30 and June 26, 2002 statements that Vivendi had almost \$3.5 billion in available credit and that the Company "has no reason to anticipate or fear any further determination in its credit rating" was misleading because Standard & Poor's had discovered, following a detailed review that, the undrawn credit facilities are in fact \$1 billion less than Messier represented.

64. Messier's purported comfort with the Company's cash position is further demonstrated as being a false claim because Vivendi faces a myriad of put options falling due between July 7 and September 2002. In short, the Company will have to deliver between \$800 million and \$900 million in cash to cover the options.

THE TRUTH EMERGES

Vivendi's Actual Cash Flow Problems Are Revealed

65. On July 3, 2002, the Company, through its new management, published a press release that *The Wall Street Journal* characterized as a "very different statement [from the June 26 statement] that, among other things, acknowledged a short-term liquidity issue." The statement revealed that Vivendi must repay creditors 1.8 billion euros by the end of July 2002 and further disclosed that 3.8 billion euros in credit lines were up for renegotiation.

66. Premised on this information, *The Wall Street Journal* reported that credit analysts "surmised that Vivendi could face a cash shortfall of 2.7 billion euros by year end."

67. More information concerning the Company's true financial condition has continued to emerge. On July 10, 2002, *The Wall Street Journal* reported that the Commission des Operation de Bourse (the "COB"), France's equivalent of the SEC, raided Vivendi's corporate headquarters in Paris as part of a formal investigation into the Company's financial disclosures dating back to the beginning of 2001. According to COB authorities in Paris, the probe's purpose was to determine whether Vivendi properly disclosed all material information with respect to its finances as reported by *The Wall Street Journal*:

The COB is keen to determine when Vivendi's board became aware of the company's short-term liquidity problems and whether it communicated that information in a timely manner to investors, according to one person familiar with

the matter. “It’s not an accounting issue, it’s a disclosure issue,” this person said. Vivendi disclosed its cash problems only last Wednesday, after its board met to formally accept Mr. Messier’s resignation and appoint Mr. Fourtou in his place.

68. *The Wall Street Journal* further reported that Messier’s June 26, 2002 statement did not comport with the Company’s new management’s assessment of the Company’s cash position that was released on July 3, 2002. Specifically, *The Wall Street Journal* stated:

As recently as June 26, Mr. Messier and Vivendi’s board insisted that the company’s cash situation was comfortable. In a news release issued that day, the board emphasized that it had access to 3.3 billion euros in untapped backup bank credit lines to complement one billion euros in funds raised through treasury bills. “This treasury security, combined with asset sales and possible bond issues, enables the company to approach its repayment deadlines over the next 12 months with confidence,” the news release said.

But last Wednesday, after the management shuffle, Vivendi’s board put out a very different statement that, among other things, acknowledged “a short-term liquidity issue.” In the statement, the board revealed that Vivendi must repay creditors 1.8 billion euros by the end of the month and disclosed that 3.8 billion euros in credit lines were up for renegotiation. Based on the detailed statement, credit analysts immediately surmised that Vivendi could face a cash shortfall of 2.7 billion euros by year end. Moody’s Investors Service already has cut its ratings on some of Vivendi’s 19 billion euros in debt to junk status.

VIOLATIONS OF INTERNATIONAL ACCOUNTING STANDARDS

69. International Accounting Standards are those principles recognized by the international accounting profession as the conventions, rules and procedures necessary to define accepted accounting practices at a particular time. SEC 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, despite footnote or other disclosure. Regulation S-X requires 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).

70. Financial results should represent what they purport to represent. FASB Statement of Concepts No. 2, ¶63, states in part:

Representational faithfulness is correspondence or agreement between a measure or description and the phenomenon it purports to represent.

71. SFAS No. 5, Accounting for Contingencies, provides that losses from uncollectible receivables should be accrued when the loss is probable and the amount can be reasonably estimated, even if the particular receivable which will not be collected can not be identified. *See* SFAS No. 5, ¶22.

72. International Accounting Standards, §9036, “Impairment of Assets,” require that goodwill be tested for impairment and any impairment written down to the recoverable amount.

.79 Goodwill arising on acquisition represent a payment made by an acquirer in anticipation of future economic benefits. The future economic benefits may result from synergy between the identifiable assets acquired or from assets which, individually, do not qualify for recognition in the financial statements. Goodwill does not generate cash flows independently from other assets or groups of assets and, therefore, the recoverable amount of goodwill as an individual asset cannot be determined.. As a consequence, if there is an indication that goodwill may be impaired, recoverable amount is determined for the cash-generating unit to which goodwill belongs. This amount is then compared to the carrying amount of this cash-generating unit and any impairment loss is recognized in accordance with paragraph .88.

73. Vivendi failed to record impairment for goodwill even as the market declined over two years prior to the time it recorded a €13 billion charge in March 2002.

74. Vivendi also made inadequate disclosures about its €17 billion in off-balance sheet liabilities which distorted its liquidity. These liabilities, which were not adequately disclosed included: Broadcasting Rights (€2.8B); Creative Talent and Employment Agreements (€0.9B); Operating Leases (€4.7B); Real Estate Defeasances (€0.7B); Potential Vendor Financing at Xfera

Joint Venture (€1.9B); Public Service Contracts (€0.2B); Liability to Rondor Music (€0.3B); Cegetal Buyback of Telecom Development (€0.1B); Bank Facility and Theatre Rental Guarantees at Cinema Corporation (€0.4B); Put Option on Vivendi Shares (as much as €1.2B); and Replacement Cost of Fixed Assets at Vivendi Environment (€2.4B). These totaled more than €17 billion. The Company's securities have now declined in value as investors are extremely concerned that the Company will default and the Company's ability to repay its outstanding debt is in doubt.

75. Vivendi also inflated its earnings and obtained over €1 billion in proceeds as the result of a transaction involving the sale of an interest in Vivendi Environment ("VE"). Specifically, in December of 2001, Vivendi sold 32.4 million shares of VE for €1.2 billion, generating pre-tax capital gains of €116 million. However, according to Vivendi's Form 6-K filed with the SEC in April of 2002, VE issued one free warrant for each share held, with every seven warrants giving holders the right to a new share of VE at €55/share until March of 2006. As a result of the warrant issue, Vivendi's consolidated equity interest in VE remained steady at 63%, both before and after the transaction. Absent this transaction, Vivendi's 2001 income before exceptional items, income taxes, goodwill amortization, equity interest and minority interest would have been €1,751 million as compared to the reported €1,867 million.

76. Vivendi also boosted reported earnings in 2001 and future periods as a result of creating excessive reserves for closure, exit and consolidation activities and making related payments via adjustments to the goodwill attributable to the companies acquired during 2000 rather than to expenses. In conjunction with the Company's 2000 acquisitions of Seagram and Canal+, in 2001 Vivendi increased its reserves for exit activities by €400 million by increasing the goodwill attributable to these acquisitions. These excess reserves can be used to inflate future earnings.

77. Typically, when a company increases a reserve or makes payments for severance or other costs, the company records an expense on its profit and loss account (*e.g.*, provision for restructuring) and credits (increases) the reserve account by a like amount. However, in this case, the increase in Vivendi's accruals for exit costs was achieved without any reported effect on the Company's reported profits. Instead of reporting an expense, Vivendi increased the goodwill attributable to the Company's 2000 acquisitions and increased the Company's reserves by a like amount.

78. Although it is not unusual for companies to make accounting adjustments to acquired assets and liabilities, the magnitude of Vivendi's adjustments in 2001 were enormous.

79. Due to these accounting improprieties, Vivendi presented its financial results and statements in a manner which violated International Accounting Standards, 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 (See 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 decision was violated (See 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 (See 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 (See 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 (See 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 in a notion that is central to accounting (See 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 ensure that it validly represents underlying events and conditions was violated (See 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 (See FASB Statement of Concepts No.2, ¶¶95, 97).

80. 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

CLASS ACTION ALLEGATIONS

81. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons who, during the period from April 23, 2001 through July 2, 2002, purchased Vivendi securities (the "Class"). Excluded from the Class are the defendants, all of the officers, directors, employees and partners thereof, members of their immediate families and their legal representatives, heirs, predecessors, successors and assigns and any entity in which any of the foregoing has a controlling interest.

82. The members of the Class are so numerous that joinder of all members is impracticable. As of July 11, 2002, the Company had more than 1 billion shares of its securities outstanding. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiffs believe there are, at a minimum, thousands of members of the Class located throughout the United States. Throughout the Class Period, Vivendi securities were actively traded on the New York Stock Exchange and the Paris Bourse.

83. 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. Among the questions of law and fact common to the Class are:

(a) Whether the federal securities laws were violated by defendants' acts and omissions as alleged herein;

(b) Whether statements made by defendants to the investing public during the Class Period misrepresented and/or omitted material facts about the financial condition of Vivendi;

(c) Whether defendants acted knowingly or recklessly in making materially false and misleading statements during the Class Period;

(d) Whether the market prices of the Company's securities were artificially inflated or distorted during the Class Period because of defendants' conduct complained of herein; and

(e) Whether the members of the Class have sustained damages and, if so, the proper measure of damages.

84. Plaintiff's claims are typical of the claims of the members of the Class as they and members of the Class sustained damages arising out of the defendants' wrongful conduct in violation of federal securities laws as complained of herein.

85. Plaintiff will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

86. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members of the Class is impracticable. Furthermore, because the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for the Class members

individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

**PRESUMPTION OF RELIANCE:
FRAUD ON THE MARKET DOCTRINE**

87. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

(a) Defendants made false and misleading statements of material fact, and failed to disclose material facts, during the Class Period;

(b) The misstatements and omissions were material;

(c) The securities of the Company traded in efficient and open markets (excluding the effects of fraud); the Company was followed by numerous major analysts; the Company's securities met the requirements for listing, and was listed and actively traded on the NYSE and the Paris Bourse; and

(d) The misstatements and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities.

88. Plaintiff and members of the Class purchased their Vivendi securities between the time defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the omitted facts.

89. Based upon the foregoing, Plaintiff and other members of the Class are entitled to a presumption of reliance upon the integrity of the market price for the Company's securities.

SCIENTER

90. The Individual Defendants acted with scienter in that they knew that the financial statements issued and disseminated by Vivendi were materially false and misleading, or that the statements therein were made and distributed with reckless disregard for facts that Vivendi either knew or should have known. The Individual Defendants knew or recklessly disregarded the fact that such misleading statements would be distributed and disseminated to the investing public, and knowingly substantially participated in and/or acquiesced in the issuance and dissemination of such statements in violation of the federal securities laws. The Individual Defendants either knew that such statements were false and misleading or acted with reckless disregard of such falsity since, as officers and directors of Vivendi, the Individual Defendants knew of (or alternatively had free and unfettered access to materials that would have revealed) the improper accounting with respect to Vivendi's goodwill and other intangible assets and resultant earnings inflation. If the Individual Defendants did not have actual knowledge of the misrepresentations and omissions alleged, then they were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether statements disseminated by Vivendi were true.

91. The Individual Defendants also had substantial economic motives to conceal the true facts regarding Vivendi's accounting and options sales, including the following. By concealing such facts, the Individual Defendants enabled themselves to increase Vivendi's executive compensation via stock options by financing Vivendi's stock option plan via the sale of put options on Vivendi shares. In addition, defendants were motivated to maintain Vivendi's share price at an artificially high level so as to complete the MP3.com acquisition in August 2001 at a favorable exchange ratio.

COUNT I
Violation of Section 10(b) of the Exchange Act and
Rule 10b-5 of the Securities and Exchange Commission

92. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

93. This Count is asserted against defendants and is based upon Section 10(b) of the 1934 Act, 15 U.S.C. §78j(b), and Rule 10b-5 promulgated thereunder.

94. During the Class Period, defendants directly engaged in a common plan, scheme, and unlawful course of conduct, pursuant to which it knowingly or recklessly engaged in acts, practices, and courses of business which operated as a fraud and deceit upon plaintiff and the other members of the Class, and made various deceptive and untrue statements of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to plaintiff and the other members of the Class. The purpose and effect of said scheme, plan, and unlawful course of conduct was, among other things, to induce plaintiff and the other members of the Class to purchase Vivendi securities during the Class Period at artificially inflated prices.

95. During the Class Period, defendants, pursuant to said scheme, plan, and unlawful course of conduct, knowingly and recklessly issued, caused to be issued, participated in the issuance of, the preparation and issuance of deceptive and materially false and misleading statements to the investing public as particularized above.

96. As a result of the dissemination of the false and misleading statements set forth above, the market price of Vivendi securities was artificially inflated during the Class Period. In ignorance of the false and misleading nature of the statements described above and the deceptive and

manipulative devices and contrivances employed by said defendants, plaintiff and the other members of the Class relied, to their detriment, on the integrity of the market price of the stock in purchasing Vivendi securities. Had plaintiff and the other members of the Class known the truth, they would not have purchased said shares or would not have purchased them at the inflated prices that were paid.

97. Plaintiff and the other members of the Class have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proved at trial.

98. By reason of the foregoing, defendants directly violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that it: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon plaintiff and the other members of the Class in connection with their purchases of Vivendi securities during the Class Period.

COUNT II
For Violation of Section 20(a) of the Exchange Act
Against the Individual Defendants

99. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

100. Defendants Messier and Hannezo acted as controlling persons of the Company within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, participation in and/or awareness of the Company's operations, and/or intimate knowledge of the Company's products, sales, accounting, plans and implementation thereof, they had the power

to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements that plaintiff contends are false and misleading. Defendants Messier and Hannezo were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

101. In particular, defendants Messier and Hannezo had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, are presumed to have had the power to control or influence the particular statements giving rise to the securities violations as alleged herein, and exercised the same.

102. By virtue of their positions as controlling persons, defendants Messier and Hannezo are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of the wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

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

A. Declaring this action to be a proper class action and certifying plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of plaintiff and the other members of the Class against the defendants for the damages sustained as a result of the wrongdoings of the defendants, together with interest thereon;

C. Awarding plaintiff the fees and expenses incurred in this action, including reasonable allowance of fees for plaintiff's attorneys, and experts; and

D. Granting such other and further relief as the court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: August 12, 2002
New York, NY

**WECHSLER HARWOOD HALEBIAN
& FEFFER LLP**

By:



Robert Harwood (RH-3286)
488 Madison Avenue
New York, NY 10022
212/935-7400

BERGER & MONTAGUE, P.C.

Sherrie R. Savett
Carole A. Broderick
Barbara A. Podell
1622 Locust Street
Philadelphia, PA 19103
215/875-3000

Attorneys for Plaintiff