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**SUPERIOR COURT OF NEW JERSEY  
COUNTY OF MIDDLESEX**

JONATHAN CROWELL, On Behalf of	)	
Himself and All Others Similarly Situated,	)	
	)	
Plaintiff,	)	
	)	<u>CIVIL ACTION</u>
vs.	)	
	)	DOCKET NO.:
ARBINET-THEXCHANGE, INC., MERRILL	)	
LYNCH & CO., INC., J. CURT HOCKEMEIR,	)	<u>CLASS ACTION COMPLAINT</u>
ANTHONY L. CRAIG, WILLIAM G.	)	<u>JURY TRIAL DEMANDED</u>
KINGSLEY, MATHEW J. LORI and	)	
ROLAND A. VAN DE MEER,	)	
	)	
Defendants.	)	
	)	

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Plaintiff, individually and on behalf of all other persons and entities similarly situated, by its undersigned attorneys, for its complaint against the above-captioned defendants, alleges upon personal knowledge as to itself and its own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation made by and through its attorneys, which investigation included, among other things, a review of the public documents, Securities and Exchange Commission (“SEC”) filings, analyst reports, news releases and media reports concerning Arbinet-thexchange, Inc. (“Arbinet” or the “Company”), as follows:

## **NATURE OF THE ACTION**

1. This is a class action brought on behalf of persons and entities that purchased Arbinet securities traceable to the Company's Initial Public Offering on December 14, 2004 ("IPO") seeking to pursue remedies under Section 11 of the Securities Act of 1933, 15 U.S.C. § 77k (the "Securities Act").

2. On December 14, 2004, the Company completed its IPO of approximately 6.54 million shares, raising approximately \$114.37 million in proceeds. 2.30 million of the shares offered were issued on behalf of selling stockholders, including Company insiders and officers and directors.

3. As outlined below, the Registration Statement filed on Form S-1 with the SEC on December 16, 2004, in conjunction with that offering, (the "Registration Statement") was materially untrue and/or omitted to state material facts necessary to make the statements therein not misleading. As a result, Plaintiff and other members of the class, who purchased Arbinet securities pursuant to the Registration Statement, suffered damages.

## **JURISDICTION AND VENUE**

4. The Company's principal place of business is 120 Albany Street, Tower II, Suite 450, New Brunswick, New Jersey, 08901. This Court has jurisdiction over the defendants pursuant to Section 22 of the Securities Act, 15 U.S.C § 77v(a). The allegations and claims for relief set forth herein arise out of acts committed in large part in this State. Venue is proper in this judicial circuit pursuant to Section 22 of the Securities Act, 15 U.S.C. § 77v(a) and N.J. R. Super. Tax. Surr. Cts. Civ. R. 4:3-2(A)(3).

## PARTIES

5. Plaintiff, Jonathan Crowell, as set forth in the accompanying certification, purchased Arbinet shares and traceable to the Company's December 14, 2004 IPO, and has been damaged thereby.

6. Arbinet is a Delaware corporation with its principal executive offices located in New Brunswick, New Jersey. Arbinet is an electronic market for trading, routing, and settling communications capacity. Members of the exchange buy and sell, through a web-based interface, voice calls and Internet capacity based on route quality and price through a centralized and liquid marketplace.

7. Merrill Lynch & Co., Inc. ("Merrill Lynch") was an underwriter and book-running manager for Arbinet's IPO. Additionally, Merrill Lynch facilitated the distribution by ComVentures III LP ("ComVentures") of Arbinet shares on June 15, 2005, as described below, via the Merrill Lynch Venture Services Group.

8. J. Curt Hockemeir ("Hockemeir"), was at all relevant times President, Chief Executive Officer, and Director of the Company. Defendant Hockemeir signed the Registration Statement referred to herein.

9. Anthony L. Craig ("Craig"), was at all relevant times, Chairman of the Board of Directors of the Company. Defendant Craig signed the Registration Statement referred to herein.

10. William G. Kingsley ("Kingsley"), was at all relevant times, a Director of the Company. Defendant Kingsley signed the Registration Statement referred to herein.

11. Mathew J. Lori ("Lori"), was at all relevant times, a Director of the Company. Defendant Lori signed the Registration Statement referred to herein.

12. Roland A. Van der Meer (“Van der Meer”), was at all relevant times, a Director of the Company. Defendant Van der Meer was also a founder and general partner of ComVentures, Arbinet’s largest shareholder. As described below, ComVentures’ partners were able to sell their Arbinet shares just days before Arbinet announced it would not meet expectations on June 21, 2005. Defendant Van der Meer also signed the Registration Statement referred to herein.

13. Defendants Hockemeir, Craig, Kingsley, Lori, and Van der Meer, are hereinafter referred to as Individual Defendants. Each of the Individual Defendants signed the Registration Statement, and was a director of the Company at the time of its issuance, and is therefore liable to Plaintiff and other members of the Class under Section 11 of the Securities Act, 15 U.S.C. § 77k(1) and (2).

### **CLASS ACTION ALLEGATIONS**

14. Plaintiff brings this action as a class action pursuant to N.J. R. Super. Tax. Surr. Cts. Civ. R. 4:32-1 on behalf of a class consisting of all persons who purchased Arbinet securities traceable to the Company’s December 14, 2004 IPO, and who were damaged thereby (the “Class”). Excluded from the Class are the Company, its officers and directors, employees, affiliates, legal representatives, heirs, predecessors, successors and assigns, and any entity in which the Company has a controlling interest or of which the Company is a parent or subsidiary.

15. The members of the Class are located in geographically diverse areas and are so numerous that joinder of all members is impractical. While the exact number of Class members is unknown to the plaintiff at this time, and can only be ascertained through appropriate discovery, plaintiff believes there are, at a minimum, thousands of members of the Class.

16. 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 defendants engaged in acts or conduct in violation of Section 11 of the Securities Act as alleged herein;

b. Whether defendants had a duty to disclose certain information in the registration statements that are herein alleged to contain untrue statements of material fact or to have omitted material facts necessary to make the statements therein not misleading; and

c. Whether members of the Class have sustained damages and, if so, the proper measure of damages.

17. Plaintiff's claims are typical of the claims of the members of the Class because plaintiff and members of the Class sustained damages arising out of defendants' wrongful conduct in violation of federal law as complained of herein.

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

19. 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 impractical. 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.

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

20. The Company was established in 1996 as a private company. In 1999, it began to focus more exclusively on its Internet-based exchange for long-distance voice calls. In the second quarter of 2004, the Company introduced its exchange-based system for buying and selling Internet capacity as well.

21. For 17 consecutive quarters before its IPO, Arbinet reported growth and improving financials. During the year before its IPO, it repeatedly referred to its trading platform in press releases as follows:

***Arbinet-thexchange has created the liquid market and designed and built the world's most advanced routing system to automate anonymous minutes trading between telecom companies.*** More than 300 Members use theexchange to reduce their cost of service, improve route quality and expand revenues by reaching new markets without extensive network build out.

22. On January 13, 2004, the Company announced it had posted its "14th consecutive quarter of growth." The Company stated:

Trading was up 57%, at 7.9 billion minutes in 2003, compared to 5.0 billion minutes in 2002. In addition, Membership on theexchange has grown to 298 Members, currently trading at an annual rate of more than 9 billion minutes, powered by the company's record of 775 minutes in December.

23. On March 22, 2004, Arbinet announced the opening of its Hong Kong office. The Company stated:

Since the launch of its Los Angeles Exchange Delivery Point (EDP) in 2002, theexchange has experienced a dramatic increase in participation by major Asian carriers seeking to take advantage of price improvement and liquid supply from its more than 300 Member carriers, without the need for significant capital investment. Connection at any EDP provides a carrier with access to all Members on theexchange, regardless of where it is connected.

Defendant Hockemeier added, "our presence in Hong Kong will enable us to increase liquidity in these markets and create new buy and sell opportunities for all Members."

24. On July 9, 2004, the Company announced it had filed a registration statement with the SEC relating to a proposed offering of its shares to the public.

## The IPO

25. On December 14, 2004, the Company completed its IPO of 6,535,405 shares, for \$17.50 per share, raising \$114,369,587 million in proceeds. 2,301,556 of the shares offered were issued on behalf of selling stockholders, including Defendants Van der Meer, and related entities, as well as Defendants Craig, Lori, and Kingsley. Defendant Merrill Lynch was an underwriter and sole book-running manager for the IPO.

26. The Registration Statement issued in conjunction with the offering incorporated the Company's reported financial results for the fiscal years 2001, 2002, 2003, and for the first three quarters of fiscal 2004, ended September 30, 2004. The Registration Statement also contained the following statements concerning the Company's business prospects:

***We are the leading electronic market for trading, routing and settling communications capacity.*** Members of our exchange, consisting primarily of communications services providers, anonymously buy and sell voice calls and Internet capacity through our ***centralized, efficient and liquid marketplace.*** Communications services providers that do not use our exchange generally individually negotiate and buy access to the networks of other communications services providers to send voice calls and Internet capacity outside of their network. We believe that we provide a cost-effective and ***efficient*** alternative to these direct connections. With a single interconnection to our exchange, members have access to all other members' networks. Members place orders through our easy-to-use web-based interface. Sellers on the exchange post sell orders to send voice calls and Internet capacity for specific destinations, or routes, at various prices. We independently assess the quality of these routes and include that information in the sell order. Buyers enter buy orders based on route quality and price and are matched to sell orders by our fully automated trading platform and our proprietary software. When a buyer's order is matched to a seller's order, the voice calls or Internet capacity are then routed through our state-of-the-art facilities. We invoice and process payments for our members' transactions and manage the credit risk of buyers primarily through our credit management programs with third parties.

Through our exchange, members have access to communications capacity in every country in the world. ***Our exchange has achieved increased liquidity, as we have continued to add new members and experience growth in the number of minutes of wireline and wireless voice calls traded on our exchange through both traditional communications networks and voice over Internet protocol, or VoIP, facilities.*** As of September 30, 2004, we had 343 members who subscribed

to our voice trading services, including eight of the world's ten largest communications services providers....

\* \* \* \*

Shift to Wireless. According to Ovum, the number of global wireless phones will surpass global wireline phones for the first time in 2004. Ovum estimates that through 2007, wireless voice traffic will increase by 55% compared to 6% for wireline voice traffic. By 2007, wireless traffic will account for over 30% of global voice traffic. In many countries, the per minute cost of a wireless call is up to ten times higher than the per minute cost of a wireline call. According to Ovum, in 2003 revenues of wireless carriers accounted for approximately 43% of the world's telecommunications revenues on only 25% of the world's calling minutes.

27. When Cowen and Co. initiated coverage of Arbinet on January 26, 2005,

it stated, in part:

...ARBX has established the leading position in the electronic exchange of international voice traffic...ARBX is the #1 exchange for international long distance minutes...With much of its operating expenses fixed, we project high incremental EBITDA margins, enabling 74% of incremental revenue to fall to the EBITDA line. EBITDA margins should rise from 39% in 2004 to 48% in 2005 and 52% in 2006...***Like a stock exchange, or an Internet-based exchange for goods such as eBay, Arbinet's exchange for international long-distance minutes has characteristics that lead to natural monopolies. These include having all important buyers and sellers as part of the exchange, having substantial liquidity in the market for the market in long distance minutes, having a rapid and robust trading platform that is difficult to replicate, and having stable credit and clearing operations. Because of these advantages, we expect Arbinet to continue to dominate the market for the exchange of international long-distance voice minutes....***

28. Similarly, when William Blair & Company initiated coverage on the same

day, the firm stated, in part:

We are initiating coverage of Arbinet-theexchange, Inc. with an Outperform rating and an Aggressive Growth company profile. Arbinet is an electric marketplace for trading, routing, and settling communications capacity. Members of the exchange anonymously buy and sell voice calls and Internet capacity. It provides an easy-to-use Web-based interface through one connection resulting in lower administration, working capital, and bad-debt expenses for its clients.

***We are attracted to Arbinet's financial model, increasing deep liquidity pools, strong competitive position, and experienced management team.*** The

company's business model is highly scalable. It has largely fixed costs, as expenses do not change significantly with changes in trading volumes. As such, there is substantial operating leverage as higher trading volumes correspond closely to higher profits. We are also attracted to the company's potential to generate superior margins (we project roughly 50% EBITDA margin in 2005) and strong cash flows.

*Arbinet's competitive position is supported by its core strengths – innovation, technology, the exchange's liquidity, and clearinghouse functions. This creates significant barriers to entry. Arbinet, importantly, adds value for participants – meeting the fundamental need for a centralized, efficient, neutral, transparent, and anonymous means of handling trading, routing, and selling...It generates among the lowest prices in the industry, because of its anonymous, neutral, and transparent market. This creates unmatched liquidity....Our EPS estimates for 2005 and 2006 are \$0.78 and \$1.15 respectively...We forecast EBITDA rising from \$17 million in 2004, to \$30 million in 2005 and \$41 million in 2006. We forecast revenue growth to exceed 25% in the next two to three years, with continued growth in new members and higher utilization among existing members...*

29. Unbeknownst to investors, however, the Company's Registration Statement and public statements had overstated the maturity, liquidity, and efficiency of its business model. In truth, the Company lacked the ability to match sellers' supply with buyers' demand. Therefore, contrary to the Company's statements, the Company's trading platform was illiquid.

30. In an effort to mask the truth concerning the Company's illiquid business model, the Registration Statement omitted to state that the Company was actually offering incentives to sellers to do business on the exchange.

31. The Registration Statement also omitted information concerning a shift from land-line minutes to cell-based minutes (including increasing cellular usage for long-distance and cell-to-cell calls), and its material impact on the Company's business prospects. The Registration Statement omitted to state that the shift from land-line minutes to cell-based minutes also meant a shift to shorter-duration calls, which would negatively impact the Company's business.

32. As a result, with respect to the Company's business prospects, finances, and market, the Registration Statement was materially untrue and/or omitted to state material facts necessary to make the statements therein not misleading.

### **The Truth Begins to Emerge**

33. On May 4, 2005, the Company surprised investors with poor earnings numbers. The Company announced first-quarter 2005 fee revenues of \$12.3 million, and net income of \$1.3 million. Earnings per share were \$0.05, far below analysts expectations of \$0.10.

34. During the Company's May 5, 2005 earnings conference call, analysts raised questions about the fundamental underpinnings of the exchange. Tom Watts, an analyst with SG Cowen & Co. indicated in a research report on May 5, 2005 that:

“With its second quarterly miss since its December IPO, Arbinet has made a poor debut as a public company. Despite this, we continue to think that Arbinet has a great business idea. However, two developments during the quarter suggest the model is less mature than we previously thought:

*...Management indicated that in January buyers of minutes failed to find any sellers on the exchange and had to go elsewhere. This development picks away at one of the most important elements of any exchange: LIQUIDITY. If buyers cannot find sellers on the exchange and must go elsewhere, the exchange will lose its natural monopoly characteristics.”...*

35. In a William Blair research report on May 5, 2005, analyst Joel Gomberg stated:

“Management explained that sellers raised prices during the quarter, causing buyers to transact less given the higher prices. *To offset the decline in minutes volume, the company offered incentives to sellers, which helped increase volume but also had a modest adverse impact on net revenue per minute.*”

36. On these disclosures (between May 4 and May 5, 2005), the Company's stock dropped from \$18.71 to \$13.99, or 25%.

37. The Company, however, attempted to ease investors' concerns. In the May 4, 2005 announcement, the Company *reaffirmed* its year 2005 outlook of fee revenues between \$58 million and \$64 million, and net income between \$19 million and \$23 million. And during the May 5, 2005 conference call, the Company stated as follows:

Thank you all for joining Arbinet's first-quarter call. Arbinet is a growth story, and our growth story continued, actually, in the first quarter. First-quarter 2005 fee revenues were \$12.3 million, an increase of 22% over the \$10.1 million in the first quarter of 2004. First-quarter 2005 net income was 1.3 million, an increase of 55% over the \$800,000 in the first quarter of 2004.

As we mentioned in our February call, Arbinet's sequential growth typically occurs in step functions. As we look back over the last three year's results, we have experienced positive quarter-over-quarter minutes growth rates, which are either above 10% or below 5% but never between these numbers. The fourth-quarter growth rate was 11%, and this quarter was won% [sic], so you can see this trend has continued. Adjusting for two fewer days in the first quarter, our average daily minutes volume grew 3.1% in the first quarter versus the fourth quarter of 2004. This variance in our quarterly growth rate, as supply and demand adjust in our market, has caused Arbinet to focus on longer-term full-year results, and that is how we try to run our business, focused on the long term....

\* \* \* \*

I want to say a few words about our IPO lockup. We received many questions from investors relating to the upcoming lockup expiration. As many of you know, and as is stated in our IPO prospectus, the majority of our outstanding shares are subject to a 180-day post-IPO lockup period. This 180-day period ends in the middle of June. While we obviously cannot control what our investors do with their shares, we want to assure you that we are doing all that we can to assist our investors who may be interested in selling. This may come in the way of an organized secondary offering if the market conditions are right, although we do not have any announced plans for that right now. ***I also want to give some assurance that our larger investors are committed to the long-term growth prospects of the Company, as evidenced by the relatively minor selling they did at the time of the IPO.***

\* \* \* \*

Questions and Answers:

\* \* \* \*

**Operator**

Jane Chiang, William Blair.

**Jane Chiang** - *William Blair - Analyst*

Could you talk a little bit about volumes in April and what you're seeing?

**Curt Hockemeier** - *Arbinet-thexchange, Inc. - President, CEO*

What we saw in April was a lot more solid start to the quarter than we had in the first quarter. And as we took a snapshot here at the end of the month, those minutes in April in 2005 were up 34% over last year, the same month.

**Jane Chiang** - *William Blair - Analyst*

Do you attribute the growth in the minutes to business or the environment, or would you talk about that?

**Curt Hockemeier** - *Arbinet-thexchange, Inc. - President, CEO*

Well, I think, as we have reflected in the past, most of that growth is coming from organic growth, existing members. But we are, in fact, adding the target members that we have discussed on probably the last call, including companies like COTAS and Telecom Malaysia, et cetera, et cetera -- the companies that actually have a big role in the commerce in Asia, Latin America and Africa that have been our targets. So most of it organic, some of it from new members.

\* \* \* \*

**Operator**

Jonathan Schildkraut, Jefferies & Co.

**Jonathan Schildkraut** - *Jefferies & Co. - Analyst*

Curt, if you could take a second and just talk about the constriction of supply again -- I know you have answered a bunch of questions on it, but I'm trying to understand where those minutes went.

**Curt Hockemeier** - *Arbinet-thexchange, Inc. - President, CEO*

Let me say simply that the minutes were still parked there, but they were at prices that did not match the buyers' expectations or wishes at the point. So let's assume that Mexico had been selling at the end of the year on December 31<sup>st</sup> at -- call it \$0.07. It is quite possible that Mexico was still offered on the exchange, but it had moved up to 7.25 in the first week of January, and the buyers still had buy orders in at \$0.07. That would dramatize what happened, we think, most typically in the exchange, where in fact prices had moved up, and it took the buyers a while to figure out that they couldn't get those prices anymore.

**Jonathan Schildkraut** – *Jefferies & Co. – Analyst*

So this imbalance in supply and demand -- is this something that happens occasionally? Granted, when I look back at your historicals, the times where I see the slower-growth quarters are times which correspond with the trading revenue per minute seems to either stay flat to go up. In this quarter, the trading revenue per minute obviously came down, maybe as a result of your incentives, but yet the minutes stayed flat. So I'm just trying to understand how we might keep an eye out for when these imbalances could occur.

**Curt Hockemeier** – *Arbinet-thexchange, Inc. – President, CEO*

Well, again, the January phenomenon was a little unusual. And we had kind of figured out in the fourth quarter that certain people were making numbers, and we actually thought that the fourth quarter was a little artificially high toward the end there, because people were trying to make their numbers. We expected some modest adjustment, but it did appear to us that there was almost a universal attitude that the prices were too low, they needed to be raised, people were starting a new year – very uncommon but still not unheard of. It was just a little more robust than we've ever seen before.

38. Despite defendant Hockemeier's above-referenced assurance that the Company's long-term investors were committed to stay in the Company, on June 15, 2005, at the first opportunity available following a 180-day lock-up period, ComVentures, Arbinet's largest shareholder (a founder and general partner of which is Defendant Van der Meer) distributed *all of its approximately 5.4 million shares* of Arbinet stock to its partners, through a distribution facilitated by Defendant Merrill Lynch. In turn, some of those individuals were able to dump their Arbinet shares just days before it became public that Arbinet would dramatically miss expectations, as described below.

39. On June 15, 2005, knowing that the Company would not meet expectations, and before the information became public, Defendant Kingsley sold approximately 857,760 of his personal Arbinet shares for proceeds of approximately \$10,293,120.

### **Arbinet Shocks the Market**

40. Just seven days after ComVentures' partners and Defendant Kingsley were able to sell their Arbinet shares, on June 21, 2005, after the market closed, Arbinet announced that it had in fact lowered its outlook for 2005, predicting second-quarter 2005 net income of \$500,000 to \$1,000,000, on fee revenue of \$11 million to \$11.5 million. The Company also stated:

Arbinet-thexchange, Inc. (Nasdaq: ARBX), the world's leading electronic market for trading, routing and settling communications capacity, today announced revised outlook for the full year 2005.

*Over the last six weeks*, Arbinet has experienced several changes in Member trading on its exchange. Specifically, Arbinet has experienced a shift in the mix of geographic markets traded by its Members. *During the same period, there was an increase in the mobile traffic minutes traded on Arbinet's exchange.* Traffic to some markets, like Mexico as an example, is characterized by long average call durations and ranges from twelve to nineteen minutes per call. *This contrasts with the relatively shorter length of mobile calls, which frequently average fewer than three minutes per call. The combination of the shift in the traffic mix and increase in mobile minutes has led to a decrease in the average number of minutes per call transacted on Arbinet's exchange. As a result of the shift to shorter calls, minutes growth did not keep pace with the 30% growth in completed calls Arbinet experienced in the period January through May, 2005 compared with the same period of 2004.* In addition, in May, two large buyers reduced their trading after their credit lines were suspended by Arbinet.

*Assuming these same trends for the remainder of 2005, the Company now expects that fee revenues for the full year 2005 will be in the range of \$46 million – \$50 million, with net income in the range of \$3 million – \$6 million.*

Based on preliminary information, the Company expects fee revenues for the second quarter 2005 will be in the range of \$11.0 million – \$11.5 million, with net income in the range of \$0.5 million – \$1.0 million. Arbinet said it expects average daily completed calls in the second quarter will be the highest of any quarter in its history and through May, completed calls were 30% greater than the same period in 2004. The Company completed 591 million calls during the first five months of 2005 compared to 456 million for the comparable period of 2004. *The average call duration on the exchange is expected to be 3.9 minutes per call in the second quarter of 2005, compared to 4.2 minutes per call in the second quarter of 2004 and 4.4 minutes per call in the first quarter of 2005.*

The DirectAccess<sup>SM</sup> branded trading service, introduced on May 17, is expected to represent 2% of average daily trading volume by the end of the second quarter. The average call duration for DirectAccess<sup>SM</sup> has averaged 7.2 minutes in the

second quarter, which is 85% more than the expected overall average call duration for the second quarter of 3.9 minutes.

Curt Hockemeier, President and Chief Executive Officer of Arbinet, commented, “While we are pleased that Arbinet achieved a record for average daily completed calls in April and May 2005, *the average number of minutes per call transacted on the exchange declined due to a change in the mix of geographic markets traded and an increase in mobile traffic minutes traded by Members*. Our exchange is a spot market and fluctuates with geographic shifts as certain regions are characterized by longer call durations than other regions. *When there is a shift in the geographic mix it can have a sudden effect on the average number of minutes per call transacted*. With regard to mobile traffic, this has been one of the fastest growing communications segments worldwide for the past few years. This is a primary focus for Arbinet and our exchange members. *From a trend standpoint, mobile calls transacted are typically higher in volumes with shorter call durations*. The record call volumes we achieved in April and May reflect this trend and Arbinet’s increasing penetration of this segment.”

41. This news shocked the market. The Company’s share price plummeted 34.7%, from \$11.50 to \$7.50 on unusually heavy trading.

42. But it was not until June 30, 2005, when Merrill Lynch analyst Gregory Smith finally dropped his rating on Arbinet stock to “Neutral,” citing a need for “more clarity” on “the exact drivers of declining revenues.”

### Conclusion

43. As stated above, Arbinet had billed itself as a growth story, and its Registration Statement had overstated the liquidity and efficiency of its exchange. In reality, the Company lacked the ability to match sellers’ supply with buyers’ demand, such that the Company’s trading platform was illiquid, and its statements otherwise were untrue. Additionally, the Company had failed to disclose the known impact that shorter-duration calls would have on its financials. As the below stock chart shows, Arbinet was substantially overvalued at the time of its IPO, and its stock price has plummeted during the short six months following the issuance of the Registration Statement:



44. Plaintiff and other members of the Class purchased Arbinet securities pursuant to the Registration Statement, which was materially untrue and/or omitted to state those material facts necessary to make the statements therein not misleading, and they were damaged thereby. As a result, the price of Arbinet's securities was artificially and materially inflated when Plaintiff and other class members purchased them. As the market became aware that Arbinet's business prospects were not what it appeared in the Registration Statement, the prior artificial inflation came out of Arbinet's stock price and the stock price plummeted. As a result of their purchases of Arbinet securities traceable to the Registration Statement, Plaintiff and other members of the Class suffered damages.

### COUNT I

#### **Violations of Section 11 of the Securities Act Against All Defendants**

45. Plaintiff realleges each allegation set forth in the paragraphs above, as if set forth fully herein, except to the extent that such allegations sound in fraud. This claim is not based on fraud and is not meant to sound in fraud.

46. This Count is brought pursuant to Section 11 of the Securities Act on behalf of those members of the Class who purchased or otherwise acquired securities pursuant to or traceable to the Registration Statement issued in connection with the Company's initial public offering.

47. The Registration Statement contained untrue statements of material fact and omitted material facts necessary to make the statements not misleading, as described above.

48. At the time the securities were purchased, neither Plaintiff nor any member of the Class knew, or by the reasonable exercise of care could have known, of the facts concerning the inaccurate and misleading statements and omissions alleged herein.

49. Each defendant, by virtue of his/her/its position as a director at the time of the offering, signatory on the registration statement, or underwriter of the offering, is liable to Plaintiff and other members of the class under Section 11 of the Securities Act.

50. In connection with the offering and sales of the securities, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce and the U.S. mails.

51. By reason of the foregoing, defendants have violated Section 11 of the Securities Act.

52. As a result of the foregoing, Plaintiff, and other members of the Class, were damaged.

WHEREFORE, Plaintiff prays for relief and judgment, as follows;

- (a) Determining that this action is a proper class action;

(b) Awarding compensatory damages in favor of Plaintiff and the other Class members against defendants for all damages sustained as a result of defendants' violations of Section 11 of the Securities Act, in an amount to be proven at trial, including interest thereon;

(c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

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

**JURY TRIAL DEMANDED**

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

Dated: August \_\_\_\_, 2005

**LITE DePALMA GREENBERG  
& RIVAS LLC**

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