In re CISCO SYSTEMS, INC. SECURITIES LITIGATION

This Document Relates To:

ALL ACTIONS.
I, Frank Partnoy, declare as follows:

INTRODUCTION

1. I submit this declaration to set forth the basis for the charges incurred by plaintiffs’ counsel for my work in connection with the action entitled In re Cisco Systems, Inc. Securities Litigation, No. C-01-20418-JW(PVT). I performed all work in connection with the Cisco litigation on an assignment basis. I did not delegate any of my work to any other persons.

2. The purpose of this declaration is to summarize my professional qualifications and the services I rendered in connection with the Cisco litigation.

QUALIFICATIONS

3. I am a Professor of Law at the University of San Diego School of Law, and a graduate of Yale Law School. Since 1997, I have taught various courses in the areas of corporate and securities law, including corporations, corporate finance, deals, international finance, and white collar offenses. I also have taught a course in regulation and innovation at the Rady School of Management at the University of California, San Diego, and have lectured on a range of corporate governance and securities law issues in the United States and abroad.

4. I am the author of several dozen articles and two books in these areas. My book, Infectious Greed: How Deceit and Risk Corrupted the Financial Markets (Henry Holt/Times Books 2003), discussed numerous issues related to corporate governance and federal securities disclosure, with a particular focus on the financial complexities of large public corporations. I am co-author of one of the leading corporate law casebooks, Corporations Law and Policy: Materials and Problems (2005 Supp.; 6th ed. forthcoming, with Jeffrey D. Bauman and Alan R. Palmiter), which covers, among other topics, corporate governance and federal securities disclosure. I also have written several articles addressing the areas discussed in my expert report in this action, including corporate governance, federal securities disclosure, and credit rating agencies.

5. Before 1997, I practiced law at Covington & Burling, and worked in investment banking at Morgan Stanley and CS First Boston. I have degrees in mathematics and economics,
and have done graduate work in economics and finance. I passed the Series 3, 7 and 63 registered securities, options, and futures licensing examinations, and am a member of the New York and District of Columbia Bars. I currently co-chair the American Bar Association Securities Litigation Subcommittee on Futures and Derivatives Litigation, and am a board member of the Business Law Committee of the Association of American Law Schools.

6. During the previous four years, I have given trial and deposition testimony as an expert in Rossco Holdings Inc., et al. v. Bank of America, No. 1220031401 (JAMS Los Angeles County, CA), Tustin Nissan, et al. v. Bank of America, No. 73 Y 181 00138 03 (AAA Orange County, CA), and Body Perfection, Inc. v. Fitness Warehouse, Inc., No. GIC 800781 (Superior Court, San Diego County), and I have given deposition testimony as an expert in Daehan Investment Trust Management Co., Ltd. and Daehan Global Bond II Investment (L) Limited v. J.P. Morgan Chase Bank, No. 02 Civ. 12175 (S.D.N.Y.), Federico Javier Duran Perez and Nora Franco de Duran v. Citibank, N.A., No. 02 Civ. 9793 (S.D.N.Y.), and R4 Holdings, LLC, and Hill International, Inc. v. General Atlantic Partners 46, L.P., et al., No. 02 CC 06740 (Superior Court, Orange County). I testified at trial, but not at deposition, in In re The Heritage Organization, L.L.P., No. 04-35574-SAF-11 (Bankr. N.D. Tex.). I also have submitted reports as an expert on various financial and securities matters, including numerous comments to the Securities and Exchange Commission, and sworn expert testimony on issues related to corporate governance and federal securities disclosure before committees of both the United States Senate and House of Representatives.

7. A summary of my qualifications is attached to this declaration as Exhibit A.

DESCRIPTION OF SERVICES RENDERED

8. I was retained as an expert in this matter by Lerach Coughlin Stoia Geller Rudman & Robbins LLP, counsel for plaintiffs, and was compensated at the rate of $650 per hour.

9. My assignment in this matter was to review and respond to Sections I through VII of the Expert Report of Ronald J. Gilson, dated November 30, 2005 ("Gilson Report"), and the
discussion of credit ratings at page 28 of the Expert Report of Roman L. Weil, dated November 30, 2005 ("Weil Report"). In preparing my report, I reviewed the relevant sections of the Gilson and Weil Reports, as well as the documents listed in Exhibit B attached hereto. Those documents included:

(a) The First Amended Consolidated Complaint for Violation of the Federal Securities Laws;

(b) The Expert Report of D. Paul Regan;

(c) A dozen transcripts of depositions taken in the litigation;

(d) A book about Cisco Systems, Inc. ("Cisco"); and

(e) Numerous internal documents produced by Cisco in discovery.

10. I began by describing my perspective on Professor Gilson’s view of corporate governance and voluntary disclosure. Professor Gilson’s central point is that these two concepts – governance and disclosure – cannot and should not be separated. From this, Professor Gilson concluded that “[t]he Federal Disclosure Rules requires the disclosure of facts; the corporate governance system assigns that role of determining the facts to senior executives.”

11. I pointed out that no cases, statutes, or rules – or even any scholarly or media articles – would support a conclusion that the corporate governance system actually operates to determine the substantive content of federal securities disclosure obligations. Finally, I refuted Professor Gilson’s suggestion that corporate governance matters in only one direction – as an excuse for a manager’s disclosure decisions – and demonstrated that information that managers learn from employees or reporting systems can be important in assessing whether disclosures were appropriate.

12. In performing my analysis of Professor Gilson’s view of corporate governance and voluntary disclosure, I reviewed the authority on which Professor Gilson relied and additional source material, including statutes, cases and casebooks, not cited by Professor Gilson.

13. I then analyzed Professor Gilson’s view of Cisco. At the outset, I analyzed Professor Gilson’s contention that “Cisco invested a great deal of resources in information
technology that moved information up the corporate governance hierarchy quickly and automatically.” After reviewing documents produced by Cisco in discovery and deposition testimony, I concluded that Cisco’s automated processes sent more real-time information to senior managers than the corporate governance system of virtually any other public company at the time.

14. While I agreed with Professor Gilson’s observations about the nature of Cisco’s corporate governance system, I disagreed with the implications he drew from those observations. Specifically, I concluded that the evidence Professor Gilson relied on did not support his conclusions about how Cisco’s corporate governance system brought information to senior managers.

15. I then assessed Professor Gilson’s view of particular allegations made by plaintiffs. Professor Gilson cited three particular allegations as evidence for his conclusion that plaintiffs have unfairly criticized the judgment of Cisco’s senior managers for making statements that in hindsight turned out to be inaccurate.

16. For example, Professor Gilson criticized plaintiffs’ allegation involving a public statement made by Kevin Kennedy, Senior Vice President of Cisco’s service provider line of business. On November 6, 2000, on a Cisco conference call, an analyst asked Cisco’s senior managers for a breakdown of the declining growth in Cisco’s cable and DSL business lines. Kevin Kennedy responded that “In terms of both cable and DSL, both have become very strong businesses.” Mr. Kennedy further noted that “So both are strong, DSL has picked up its strength more recently for us as we solve some of our lead-time challenges, and we’re watching the operators go through this generational shift, which has us watching the market very intently.”

17. Plaintiffs alleged that these statements were false or misleading based, in part, on the fact that Mr. Kennedy sent an e-mail to Cisco managers on November 3, 2000 – just three days before his statement to analysts and investors about the recent strong performance of DSL and cable – saying “got to get sales up. [T]hey suck. [D]ial, dsl and cable declined 30% in aggregate last qtr. hyping the market.”
18. Professor Gilson insisted that Mr. Kennedy was merely “managing” when he sent the e-mail on November 3, 2000. He also criticized plaintiffs for ignoring that “as a matter of corporate governance, it is senior management’s responsibility to determine the material facts concerning the business, which necessarily encompasses the responsibility to accept or reject conflicting views.”

19. I disagreed with Professor Gilson’s analysis. In my opinion, nothing in Cisco’s corporate governance system supports a conclusion that Mr. Kennedy’s statement on November 6, 2000, was proper under federal law. Whether or not Mr. Kennedy was “managing” has no bearing on how information was flowing to Mr. Kennedy based on Cisco’s corporate governance system.

20. In particular, I concluded that the question of whether Mr. Kennedy made improper disclosures on November 6, 2000, does not depend on Cisco’s process of filtering information. Professor Gilson’s argument that Cisco’s corporate governance system operated to filter out “noise” applies to information generated by lower-level employees, not to information generated by the speaker himself. A person can always hear his own “noise.”

21. I opined that regardless of the application of corporate governance practices to this allegation, the fact that a senior manager tells employees that the DSL and cable business lines “suck” and that they “got to get sales up” just three days before that same manager tells investors that these lines “have become very strong businesses” and that “DSL has picked up its strength more recently” is evidence that the latter statements were misleading. It would make little sense to conclude that Mr. Kennedy told his employees false information to motivate them when those employees had access to a conference call just three days later in which Mr. Kennedy revealed the opposite information. Moreover, it would be a bizarre perversion of the corporate governance system if senior managers were permitted to filter out their own contradictory statements to employees when speaking to investors, particularly when those earlier statements are not demonstrably false.
22. Finally, I addressed Professor Weil’s conclusion that Cisco’s accounting reserves for eight of its customers were “sound” and “appropriate,” because those customers had publicly rated debt and Cisco wrote down its receivables from these customers “soon after it received information that the individual customer’s credit rating had significantly deteriorated.”

23. I analyzed Professor Weil’s conclusions in the context of my academic research, where I have found overwhelming evidence that credit ratings issued by S&P and Moody’s are of scant informational value. I cited to numerous academic studies of corporate bond credit rating changes which have found that credit rating changes generate information of little or no value, and instead merely reflect information that is already publicly available. Some studies show that the lag between a change in stock market prices due to new information and the corresponding change in a bond credit rating has been as long as 18 months.

24. I also cited my testimony at hearings during the summer of 2005 before a subcommittee of the U.S. House of Representatives, where I demonstrated that the abysmal record of the major credit rating agencies, including S&P and Moody’s, continues. There have been multiple unexpected defaults and sudden credit downgrades in recent years, with the short-list including: Orange County, Mercury Finance, Pacific Gas & Electric, Enron, Parmalat, WorldCom, and most recently General Motors and Ford. Most notoriously, both S&P and Moody’s continued to give Enron an investment grade rating until just a few days before that company’s bankruptcy filing.

25. Next, I reviewed the two methodologies that Cisco used to determine the amount to reserve for exposure to individual customer leases, which required review of various internal documents. I then created charts demonstrating that under either of Cisco’s methodologies, Cisco’s reserves were not supported by public credit ratings of its customers.

26. I concluded that many of Cisco’s reserves appeared to be arbitrary. For example, although Cisco used much lower reserves for companies with bonds in the triple-C rated category than it did for companies in the double-C rated category, this distinction was not justified based on available expected default data. Indeed, Moody’s does not even distinguish
among the Caa-C categories in assessing ratings, and the differences in definitions of credit quality for the Caa rating and Ca ratings are not as stark as that implied by Cisco’s reserves.

27. Based on my analysis, I concluded that the credit ratings of customers at issue do not support a conclusion that Cisco’s reserves for these customers were “sound” or “appropriate.”

28. During the period of my assignment, I met several times with plaintiffs’ counsel to discuss my assignment, my deposition and Professor Gilson’s deposition. I also traveled to San Francisco and sat for a day-long deposition. In addition, I read Professor Gilson’s deposition transcript. Finally, I reviewed my deposition transcript for accuracy and made necessary corrections.

FEES AND EXPENSES

29. I spent 93 hours working on this matter at a rate of $650 per hour. The fee for my expert services totaled $60,450. Plaintiffs’ counsel has paid my fees and expenses related to this matter.

30. In addition, I incurred the following expenses directly related to my work as an expert in this matter:

   (a) Travel and hotel expenses for deposition in San Francisco, California $633.67

31. Attached hereto as Exhibit C is a summary further detailing my fees and expenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 8th day November, 2006, at San Diego, California.

[Signature]
FRANK PARTNOY
CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

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Manual Notice List

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Pensacola, FL 32501

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Master File No. C-01-20418-JW(PVT)

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Education

Yale Law School  
Thurman Arnold Prize, Potter Stewart Prize.

University of Kansas  
B.S. economics, 1989, summa cum laude.

Employment

University of San Diego School of Law, San Diego, CA, 1997-.  
Professor, 2001-; Associate Professor, 1999-2001; Assistant Professor, 1997-99.

Courses:  

Awards:  

Service:  
Chair, Appointments Committee (2001-2003); Chair, Faculty Colloquium Committee (2000-2001); Chair, Junior Faculty Roundtable (1997-2001); Director, Law Alumni Board of Directors (1999-2001); Treasurer, Law Alumni Faculty Golf League (1997-2001); Member, Self-Study Committee (2004-05); Member, Appointments Committee (2004-06); Member, Curriculum Committee (2000-2006); Member, Development Committee (1998-2001); Member, Graduate Programs Committee (1997-1999).

Rady School of Management, University of California, San Diego, San Diego, CA  
Visiting Professor, 2005.

Course:  
Regulation and Innovation.


Publications

BOOKS


Editions: Paperback (Henry Holt/Owl Books 2004); Australian, British, Hong Kong.
Translations: Korean, Spanish.

Editions: Paperback (Penguin 1999); Australian, British, Hong Kong.
Translations: Chinese, Japanese, German, Korean, Portuguese, Russian.
San Diego Union Tribune Author of the Year, 1997.

BOOK CHAPTERS


Enron and the Derivatives World, in ENRON: CORPORATE FIASCOS AND THEIR IMPLICATIONS (Foundation Press 2004, Nancy B. Rapoport and Bala G. Dharan, eds.).


PUBLISHED ARTICLES


The Promise and Perils of Credit Derivatives, __ UNIVERSITY OF CINCINNATI LAW REVIEW __ (forthcoming 2006) (invited symposium) (with David A. Skeel, Jr.).


WORKING PAPERS


Hedge Fund Activism (work in progress) (with Alon Brav, Wei Jiang, and Randall Thomas).

ESSAYS AND OTHER PUBLICATIONS

Credit Derivatives Play a Dangerous Game, Financial Times, Jul. 17, 2006, at 17.


When Disney Wishes upon a Pixar ..., Financial Times, Jan. 24, 2006, at 21.


The Case against Alan Greenspan, Euromoney, Sept. 1, 2005, at 90.


A Serious Question for All the Overpaid Bankers, Financial Times, Aug. 4, 2005, at 15.


Want to Vote? Answer This ..., NEW YORK TIMES, Jul. 28, 2003, at A17.


Reaping a Bitter Harvest from the Years of Greed, EVENING STANDARD, Apr. 23, 2003, at 34.


Unsound Advice from the Sage of Omaha, FINANCIAL TIMES, Apr. 3, 2003, at 19.


Enron and Derivatives, FUTURES & DERIVATIVES LAW REPORT, 2002.


Decoding Greenspan, OPEN COURT, AMERICAN LAWYER MEDIA, Apr. 1999


Invited Talks and Panels


Credit Derivatives and Correlation Risk, Rady School of Management Finance Department Seminar, University of California, San Diego, May 18, 2006.

Hedge Funds and Corporate Governance, University of Illinois Conference on Capital Markets and Corporate Governance, Chicago, IL, Apr. 25, 2006.


Corporate Voting and Corporate Governance, UCLA School of Law, Los Angeles, CA, Mar. 20, 2006.
Assessing the Current Oversight and Operations of Credit Rating Agencies, Sworn Testimony before the United States Senate Committee on Banking, Housing, and Urban Affairs, Washington, DC, Mar. 7, 2006.

Patents as Options, Washington University in St. Louis Conference on Commercializing Innovation, Washington University School of Law, St. Louis, MO, Nov. 4, 2005.


Financial Innovation and Corporate Law, University of Iowa College of Law, Iowa City, IA, Sep. 9, 2005.


Infectious Greed, Wilson Lecture in Law and Business, Wake Forest University School of Law and Babcock School of Management, Winston-Salem, NC, Mar. 29, 2005.

Encumbered Shares, University of Kansas School of Law, Lawrence, KS, Feb. 28, 2005.

Encumbered Shares, Boalt Hall School of Law, Berkeley, CA, Jan. 24, 2005.


Are the Markets Out of Control?, University of San Diego School of Law, San Diego, CA, Nov. 17, 2003.


Financial Innovation and Accounting, 57th Annual Conference of Accountants, University of Tulsa, Tulsa, OK, Apr. 29, 2003.


Conference on Financial Derivatives (Host and Moderator), University of San Diego School of Law, San Diego, CA, Nov. 10, 2000.


Adding Derivatives to the Corporate Law Mix, University of Georgia School of Law Corporate Law Conference, Athens, GA, Oct. 15-16, 1999.


The Siskel and Ebert of Financial Markets: Two Thumbs Down for the Credit Rating Agencies, University of San Diego School of Law Faculty Colloquium, San Diego, CA, Jan. 15, 1999.


Hundreds of media interviews, including The News Hour and NPR, 1997-date.

Professional Licenses and Affiliations

Co-Chair, American Bar Association, Futures and Derivatives Litigation Subcommittee.
Board Member, Association of American Law Schools, Business Law Committee.
Board Member, Futures and Derivatives Law Report.
Advisory Board Member, Financial Services Policy Institute.
Series 3, 7, and 63 registered securities, options, and futures examinations.
Member, New York and District of Columbia bars.
Exhibit B – Rule 26(a)(2)(B) disclosure of data or other information considered by Professor Frank Partnoy in forming his opinions:

First Amended Consolidated Complaint for Violation of the Federal Securities Laws, United States District Court, Northern District of California, San Jose Division, December 6, 2002.


Deposition of Joe Bass, September 15, 2005.

Deposition of Larry Carter, September 29-30, 2005, and exhibits.

Deposition of John Chambers, September 21-22, 2005, and exhibits.

Deposition of Douglas A. Dennerline, August 18, 2005.

Deposition of Rebecca Jacoby, June 24, 2005.

Deposition of Donald J. Listwin, August 4, 2005.

Deposition of Kevin Kennedy, September 15-16, 2005, and exhibits.

Deposition of Randy Pond, March 30, 2005.

Deposition of Carl Redfield, September 9, 2005.

Deposition of Carl Russo, September 30, 2005.

Deposition of Robert Irwin Slater, September 20, 2005, and exhibits.

Deposition of Michelangelo Volpi, September 27, 2005.


EXHIBIT C
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Sub-Total (Time) 37.00 $ 24,050.00

EXPENSES $ -

TOTAL DUE $ 24,050.00
PRIVILEGED AND CONFIDENTIAL

TO: Daniel Drosman, Esq.
Lerach Coughlin Stoia Geller Rudman & Robbins LLP
401 B Street, Suite 1700
San Diego, CA 92101

FROM: Frank Partnoy
DATE: 3/5/2006
RE: Invoice for Plumbers & Pipefitters Nat'l Pension Fund v. Cisco, Jan-Feb 2006

<table>
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<td>1/2/2006</td>
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Sub-Total (Time) 44.00 $28,600.00

EXPENSES

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<td>Hotel (SF 2/28)</td>
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<td>Cabs</td>
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Sub-Total (Expenses) $633.67

TOTAL DUE $29,233.67
TO: Daniel Drosman, Esq.
Lerach Coughlin Stoia Geller Rudman & Robbins LLP
401 B Street, Suite 1700
San Diego, CA 92101

FROM: Frank Partnoy
RE: Invoice for Plumber & Pipefitters Nat'l Pension Fund v. Cisco, Mar 2006

<table>
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Sub-Total (Time) 12.00 $7,800.00

**EXPENSES**

Sub-Total (Expenses) $-

**TOTAL DUE** $7,800.00