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Violation Of Section 20(a) Of The Exchange Act Against The Individual Defendants ................................................................. 177
Lead Plaintiffs Andover Brokerage, LLC ("Andover") and Herbert Steiger ("Steiger") (collectively, "Plaintiffs"), individually and on behalf of all other persons similarly situated, make the following allegations in this Second Amended Consolidated Class Action Complaint ("Complaint"): 1

1. INTRODUCTION

1. Plaintiffs bring this action on behalf of themselves and all other persons and entities who purchased or otherwise acquired the securities of CMS Energy Corporation ("CMS" or the "Company") 2 from May 1, 2000 through and including March 31, 2003 (the "Class Period"). Plaintiffs' allegations herein are based upon information and belief, except as to those allegations concerning Plaintiffs, which are alleged upon personal knowledge. Plaintiffs' information and belief are based upon, among other things, an extensive investigation conducted by and through their attorneys, which has included a review and analysis of a myriad of sources of information, including, inter alia, the following:

   (a) CMS's filings with the United States Securities and Exchange Commission ("SEC" or the "Commission");

   (b) CMS's press releases and other public statements disseminated by the Defendants during the Class Period;

   (c) Documents filed by the SEC in connection with its prosecution of federal securities law claims against CMS and certain of its officers and directors, including: (1) the March 17, 2004 SEC Order Instituting Cease-And-Desist Proceedings Pursuant To Section 8A Of The Securities Act of 1933 And Section 21C Of The Securities Exchange Act of 1934, Making Findings And

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1 An earlier Consolidated Class Action Complaint ("Consolidated Complaint") was filed with the Court on May 1, 2003. In connection with Plaintiffs' motion to amend their Consolidated Complaint, on March 31, 2004, the Court entered an Order instructing Plaintiffs to file a Proposed Amended Consolidated Class Action Complaint. On April 21, 2004 Plaintiffs' filed their Proposed Amended Consolidated Class Action Complaint ("Proposed Complaint"). Thereafter, on May 12, 2004, the Court entered an Order Granting in Part Denying in Part Plaintiffs' Motion to Amend Complaint, directing Plaintiffs to file the instant Complaint.

2 Unless otherwise indicated, the terms "CMS" and the "Company" refer collectively to CMS, its subsidiaries, including Defendant Consumers Energy Corporation, and the Individual Defendants (defined below).
Imposing A Cease-And-Desist Order against CMS and Terry Woolley, the former Controller of CMS Marketing, Services and Trading Company (“CMS-MST” or “MST”) (available at http://www.sec.gov/litigation/admin/33-8403.htm and attached as Exhibit B to the Proposed Complaint), (2) the March 17, 2004 SEC press release (“March 17, 2004 SEC press release”) announcing that the SEC had filed a complaint against Defendant Preston Hopper (“Hopper”), CMS’s former Chief Accounting Officer, and Defendant Tamela Pallas (“Pallas”), former Chief Executive Officer of CMS-MST (available at http://www.sec.gov/news/press/2004-38.htm and attached as Exhibit C to the Proposed Complaint), and (3) the November 25, 2003 Commodity Futures Trading Commission (“CFTC”) Order instituting proceedings against MST based upon its intentional reporting of false market information to manipulate the price of natural gas (available at http://www.cftc.gov/files/enf/03orders/enfmarketingensembleorder.pdf and attached as Exhibit E to the Proposed Complaint), each of which supports the allegations of this Complaint;

(d) Documents produced in this litigation by CMS’s former outside accounting firm, Arthur Andersen LLP (“Andersen”), which audited the Company’s financials during the Class Period;

(e) Reports, articles and discussions concerning CMS and the subject matter of this Complaint contained in print and electronic media and computer databases;

(f) Documents filed with and by the Federal Energy Regulatory Commission (“FERC”);

(g) Securities analyst reports and advisory opinions which refer to the Company, its businesses and markets;

(h) Interviews conducted with persons having first-hand knowledge of the facts alleged herein; and

(i) Complaints filed in other actions pending before FERC and in related litigation filed in other courts, as well as other materials filed in those actions.

II. SUMMARY OF THE ACTION

2. This action arises out of severe accounting improprieties committed by CMS and its wholly owned subsidiary CMS-MST. With the deregulation of the energy industry, utilities and other independent power producers started to trade energy, creating a national power market. While this approach would, in theory, create and promote market efficiencies and deliver power
where it was most needed, the unregulated trading market permitted opportunities for market
manipulation and exploitation by its participants. Many of these participants, including CMS,
increasingly relied upon "round-trip" or "wash" trades, which served no legitimate purpose, but
served to artificially increase the Company's reported revenues and trading volumes, and
misrepresent or overstate the current market price of certain forms of energy. Round-trip trades
in this context involve the simultaneous buying and selling of power at the same price and
quantity with the same counter-party.

3. As described more fully below, CMS engaged in a fraudulent scheme through the
use of round-trip trading, which artificially inflated the Company's stock price and ultimately led
to one of the largest financial losses inflicted on the investing public. Indeed, the events leading
up to this litigation and the alleged wrongdoing are considered to be among the most egregious
corporate accounting scandals since the Enron Corp. debacle. See Forbes Corporate Scandal
Sheet, Forbes.com, August 26, 2002. As part of the CMS scheme, the Company also failed to
disclose that it had failed to implement and maintain an adequate internal accounting control
system, or knowingly or recklessly tolerated the failure to use existing internal controls in a
manner that would ensure compliance with Generally Accepted Accounting Principles
("GAAP"). This failure resulted in severe inconsistencies with ledger balances, material balance
sheet accounts and other material aspects of CMS's accounting systems.

4. In addition to the Company's public filings, press releases and other publicly
available information, Plaintiffs' claims are directly supported by: documents recently produced
to Plaintiffs by CMS's former outside auditor, Andersen, pursuant to the Court's August 28,
2003 Order; admissions by CMS; as well as additional commentary, as described below.
5. Throughout the Class Period, CMS, Consumers (defined below) and the Individual Defendants issued a series of misstatements, and omitted to state material facts, concerning the Company's financial results and condition. Many of these statements concerned the operations of MST, which was purportedly making dramatic contributions to CMS's overall revenues quarter after quarter during the Class Period. Throughout the Class Period, CMS included its artificially inflated revenue and trading volume in filings with the SEC, press releases, earnings conference calls and investor presentations. By including the results of the round-trip trades in its financial statements during the Class Period, CMS was ultimately forced to restate downward its reported revenues by over $5 billion.

6. The Company continuously touted its MST division as an integrated element of its operations, stating, for example, in its 2001 Annual Report:

Few companies have the integrated energy asset base of CMS, and we believe that the earnings from the base can be further enhanced by our growing and very successful energy marketing, services and trading company. Our goal for CMS is simply to build our business to become one of North America's leading asset-based, integrated energy supply and services companies.

(Emphasis added). The Company's press release, dated June 26, 2002, further states that the MST division is one of CMS's "primary" businesses.

7. Additional press releases issued by the Company throughout the Class Period regularly emphasized the success of the MST division and its purported dramatic increases in revenues. The following statements represent just a few of the reported results issued by the Company during the Class Period:

[F]or the three months ended September 30, 2000... [t]he volumes of marketed natural gas and power traded increased 72 percent and over 1000 percent, respectively.
For the nine months ended September 30, 2000 . . . the volumes of marketed natural gas and power traded increased 65 percent and 546 percent, respectively.

(CMS Third Quarter 2000 10-Q, filed November 14, 2000 (emphasis added));

Fourth quarter operating revenue totaled $3.19 billion, compared to $1.77 billion in the fourth quarter of 1999, up 80% from $1.77 billion in the fourth quarter of 1999. Consolidated operating revenue for 2000 grew 47 percent to $9.0 billion, from $6.1 billion in 1999, due largely to significantly lower-margin energy marketing and trading transactions . . . [The Company's] energy marketing unit made the transition from a retail to wholesale business, with 614 billion cubic feet of natural gas marketed, an increase of 31 percent, and 37,781 gigawatt-hours of electricity marketed, up 919 percent, in 2000.

(CMS 2000 10-K, filed January 24, 2001 (emphasis added)); and

MARKETING, SERVICES AND TRADING RESULTS OF OPERATIONS . . .

The physical volumes of marketed and managed natural gas and power traded increased 17 percent and 1,783 percent respectively, due largely to significantly increased lower margin energy marketing and trading transactions.

(CMS First Quarter 2001 10-Q, filed May 11, 2001) (emphasis added).

8. MST's operating revenues and wholesale energy sales were clearly a key component of Company's overall financial performance and thus material to the Company's investors; indeed, the commencement of round-trip trading at CMS caused a dramatic increase in the Company's stock price and ultimately a severe drop in price when the truth about such trading was finally disclosed. As reported by Forbes.com on May 16, 2002:

In America, looking busy and productive is itself a status symbol. Some people at CMS, Dynegy [Inc. ("Dynegy") and Reliant [Resources] wanted to look even bigger, still busier. Thus the sham transactions . . . [T]he deception seems to have worked well, offering a motive for apparent nonsense. After CMS's share price took a dive in early 2000, it took a steady rise from $15 a share to $27 in early 2001.
9. Moreover, the recent securities fraud action instituted by the SEC against Dynegy -- one of CMS's round-trip trading partners -- further indicates that the SEC clearly considers a company's use of round-trip trading to be materially misleading when used to inflate revenues. Specifically, the complaint, filed by the SEC on September 25, 2002, alleges that:

_Dynegy failed to disclose that [its] resulting increases [in revenues] were materially attributable to the round-trip trades. Because the round-trip trades lack economic substance, Dynegy's press releases [announcing revenues that included round trip trading] were materially misleading._

Complaint, filed with the U.S. District Court, Southern District of Texas, September 25, 2002, ¶ 11.

10. CMS's trading performance played a significant role in the actual ranking of the Company among its peers in the energy trading business. Many of CMS's round-trip transactions during the Class Period were with Dynegy or Reliant Resources and/or its parent, Reliant Energy, Inc. (collectively, "Reliant"), as counter-party.

11. Platt's, a private news service which publishes industry publications and reports on electricity and natural gas spot and forward prices and volumes, periodically publishes rankings for the various participants in the energy trading industry, setting forth the volume of trades, revenues and gains. During the Class Period, these rankings were important in the energy trading industry because they allowed particularly large trading firms to attract larger clients (including public utilities), take on larger trading positions, and obtain larger amounts of unsecured debt. In the case of CMS, the Company's illicit use of round-trip trading elevated it to the top tier of energy companies. During the second quarter of 2000, for example, Platt's ranked CMS as 48th among its competitors in total power sales for the quarter. As the Company's round-trip trading increased, however, that rank increased to 20th for the third quarter of 2000 and 18th for the first quarter of 2001. This ranking was not only reported among the energy
industry, but was also reported directly to CMS investors in the Company's 2001 Annual Report, where the Company touted its ranking as among the "top 20 U.S. natural gas and power marketers."

12. Securities analysts also seized on the Company's energy trading business as part of a growth industry in an otherwise low growth sector. As a result of this false impression of energy trading as a growth industry, the common stock price of CMS rose to inflated levels, reaching a Class Period high of $31.75 per share on May 1, 2001.

13. The Company's materially false and misleading statements, contained in its public filings and press releases, resulted from a series of deliberate senior management and director decisions designed to conceal the truth regarding the Company's actual operating results. The Individual Defendants, by reason of their senior executive positions at the Company and attendance at meetings of the Board of Directors and committees thereof, particularly the Audit Committee, where the quarterly and annual financial results were reviewed at length by business segment, had direct knowledge of the illegal trading activities.

14. Although CMS conducted the round trip trades to boost its trading volume, the trades also had the effect of inflating artificially CMS's revenues and expenses. In fact, partially because of the inflated revenues, CMS moved from number 287 on the 1999 Fortune 500 list -- which is based on revenues -- to number 156 on the 2001 Fortune 500 list. Over the course of the round-trip trading, CMS referenced revenue and trading volume that included the trades in its periodic filings with the SEC, registration statements, press releases, earnings conference calls and investor presentations.

15. Indeed, the revenue growth at the CMS-MST subsidiary was so staggering and dramatic during the Class Period, solely by reason of the round-trip trading activities, that the
Individual Defendants, upon knowledge of these activities, countenanced the continuation of these trading activities for, among other reasons, the portrayal of the Company as an industry leader, to enhance the Company's ability to attract large energy customers, and to advance the Company's placement as a Fortune 500 company. Indeed, during the Class Period, revenues from round-trip trading constituted at least 35% of the consolidated revenues for 2000 and 2001.

16. According to a former CMS Enterprise International Auditor, on at least one occasion, Defendant Wright (the Company's Chief Financial Officer) directed the Company's division controllers to revise their 2001 year-end results upwards by a total amount of $2 to $5 billion. Moreover, periodic reports, including VAR (Value at Risk) reports, distributed to members of senior management and CMS's Board of Directors as part of the Company's self-proclaimed risk management policies, demonstrates these executives' knowledge of the Company's round-trip trading practices.

17. Moreover, Consumers had direct knowledge of the fraudulent round-trip trading practices by reason of, inter alia, its engagement in trading activities with MST, the interlocking officers and directors of CMS and Consumers, and joint meetings of the Audit Committees of Consumers and CMS throughout the Class Period. In addition, as discussed more fully herein, Consumers issued innumerable joint SEC filings with CMS which contained the false and misleading quarterly and yearly financial information.

18. CMS's financial statements during the Class Period were materially false and misleading and served to inflate the price of the Company's securities and defraud investors into purchasing them. Ultimately, the Company's false and misleading activities came to an abrupt halt when CMS's own trading partner, Dynegy, became the focus of an SEC investigation and was forced to disclose that it had engaged in extensive round-trip trading with CMS. Upon this
disclosure, CMS was forced to admit its own wrongdoing. Specifically, beginning on May 9, 2002, the Company announced that its MST division had "initiated" electricity trades with Dynegy in November 2001. The following day, May 10, 2002, the Company announced that the SEC had asked it to provide information in connection with an informal inquiry it was conducting into the Company's round-trip trading.

19. Shortly thereafter, on May 15, 2002, the Company admitted that it had "entered into 'round trip' electricity trades involving simultaneous purchases and sales with the same counterparties [including Dynegy, Reliant and others], at the same price from May 2000 through mid-January 2002." The Company also disclosed that an earlier restatement in its previously released 2001 10-K actually reflected the elimination of $3.4 billion of previously reported revenue and expenses for the first three quarters of 2001. CMS further disclosed, for the first time, that, with regard to 2000, an additional $1 billion would have to be restated to eliminate revenues and expenses associated with the Company's round-trip trading during that year.

20. Also on May 15, 2002, Kelly Farr, a spokesman for CMS stated: "[w]e admit the mistake, and decided to go to a more conservative method of accounting for 2001. We looked at the accounting treatment that we had for round-trip trades and decided that it would be better not to do those." Alejandro Bodipo-Memba, CMS Inc. Admits to Inflating Sales, Detroit Free Press, May 16, 2002.

21. Reaction to the foregoing disclosures was swift and severe. For example, a Reuters article, dated May 15, 2002, entitled, "CMS Admits to $4.4 billion Worth of Bogus Power Trades," stated that CMS admitted it had entered into the subject round-trip trades "in an attempt to become a leading energy trader." Another Reuters article, dated May 15, 2002, entitled, "For Accountants It's Clear, Wash Trades Are Illegal," stated:
"Recording revenues from round-trip trades would be a species of fraud because they’re overstating revenues," said Robert Waxman, a former partner at Deloitte & Touche.  

Accounting experts... said the illegality of wash trading boils down to the basic tenet of financial reporting: You don’t book revenue from a sale that lacks substance. (Emphasis added). Commenting on additional round-trip trading which took place between CMS and Reliant during the fourth quarter of 2000, Platt’s Power Market Week stated that such trades “accounted for 90% of CMS’s quarterly sales, boosting its sales volume from less than 3 million MWh to 22.1 million MWh. In that quarter, the CMS unit ranked 18th among wholesale power sellers; without the Reliant transactions, it would have ranked 50th.” (Emphasis added).

22. As further stated by William L. Massey, Commissioner of FERC, in a speech on August 19, 2002:

[T]he disclosure of sham round trip trading by several market participants, coupled with highly questionable accounting practices, has severely eroded investor confidence in many entities that engage in trading of gas or electricity.

All of this funny business has called into question the integrity of energy marketing and trading. Whether this is fair or not is the subject of debate, but damage has been done. Many states have backed away from their restructuring plans. Energy trading stocks have plummeted on Wall Street. (Emphasis added).

23. Moreover, on February 24, 2003, in the Congressional Record, Senator Dianne Feinstein (a member of the Senate Energy and Natural Resources Committee) made the following statement:

Dynegy, Duke Energy, El Paso, Reliant Resources, CMS, and Williams all admitted engaging in false “round-trip” or “wash” trades.

What is a “round-trip” or “wash” trade, one might ask? “Round-trip” trades occur when one firm sells energy to another and then the second firm simultaneously sells the same amount of energy back to the first company at exactly the same price. No commodity ever changes hands.
But when done on an exchange, these transactions send a price signal to the market and they artificially boost revenue for the company. Fraud again.

* * *

[C]MS Energy announced 80 percent of its trade[s] in 2001 were “round trip” trades. That means 80 percent of all their trades that year were bogus trades where no commodity changed hands, and yet the balance sheets added revenue. If that isn’t fraudulent, I do not know what is.


24. Subsequent admissions by the Company further support the allegations set forth herein. Specifically, on May 24, 2002, the Company announced that Defendant McCormick had resigned as Chairman and Chief Executive Officer of CMS. McCormick admitted that “[t]here have been significant mistakes in execution.” In the same announcement, the Company stated that it had set up a special committee to investigate the Company’s round-trip trades (the “Special Committee” or “Committee”) and that it had been served with a subpoena from the U.S. Attorney’s Office for the Southern District of New York in connection with such trading. The Company further announced that it was expecting a subpoena from the U.S. Attorney’s Office for the Southern District of Texas. Ultimately, the Special Committee concluded on November 4, 2002, that the Company’s round-trip trading was “undertaken to raise [CMS-MST]’s profile as an energy marketer with the goal of enhancing its ability to market its services” and “was an ill-considered, inappropriate marketing practice that is unacceptable.”

25. As a result of the round-trip trading activities described herein, the Company remains the subject of a criminal investigation by the United States Department of Justice.

26. As the close of the market on May 25, 2004, CMS common stock traded at $8.30 per share.
III. JURISDICTION AND VENUE

27. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1337 and 1367, and Section 27 of the Securities Exchange Act [15 U.S.C. § 78aa].

28. The claims asserted herein arise under and are pursuant to Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78t(a)], and Rule 10b-5 promulgated thereunder by the SEC [17 C.F.R. § 240.10b-5].

29. Venue is proper in this District pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] and 28 U.S.C. § 1391(b). Many of the acts alleged herein, including the preparation and dissemination to the investing public of the materially false and misleading statements at issue, occurred in substantial part in this District, where CMS has its principal place of business.

30. In connection with the acts, transactions and conduct alleged herein, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the United States mails, interstate telephone communications and the facilities of national securities exchanges and markets. The following charts indicate particularly significant Class Period events, including Defendants' false and misleading statements and subsequent disclosures, combined with a graph of the Company's stock price:
IV. PARTIES

1. Plaintiffs

31. At all relevant times, Lead Plaintiff Andover was one of the largest institutional trading firms in the country, with over 30 branch offices, and was a fully reporting member of the National Association of Securities Dealers, managed by seasoned professionals with over 60 years of collective experience in the securities industry. During the Class Period, Andover purchased shares of CMS common stock and was damaged thereby.

32. Lead Plaintiff Steiger purchased shares of CMS common stock during the Class Period and was damaged thereby.

33. By Order dated November 14, 2002, the Court appointed Andover and Steiger as Lead Plaintiffs for the Class.

34. At the time Plaintiffs acquired CMS securities, they were without knowledge of the facts concerning the false and misleading financial statements filed by Defendants with the SEC and otherwise published in the markets. Plaintiffs have sustained substantial damage as a direct and proximate result of Defendants' violations of the securities laws.

2. Defendants

35. Defendant CMS is a corporation organized under the laws of the State of Michigan, with its principal executive offices located in Dearborn, Michigan. CMS is an energy holding company operating through subsidiaries in the United States and in selected markets around the world. Its two principal subsidiaries are Consumers Energy Company ("Consumers") and CMS Enterprises Company ("Enterprises"). Enterprises, through subsidiaries, is engaged in several energy businesses in the United States and in
selected international markets. CMS trades on the New York Stock Exchange under the ticker symbol CMS.

36. Defendant Consumers is a public utility that provides natural gas and/or electricity to almost 6 million of Michigan’s 10 million residents and serves customers in all 68 of the state’s Lower Peninsula counties. As described more fully below, during the Class Period, Consumers (as well as CMS) issued materially false and misleading statements, including SEC filings, which explicitly bear Consumers’ name as the “Registrant.” Consumers is also a participant in the fraudulent scheme, acting with the requisite scienter, as described below.

37. Set forth below are individual persons who are named as Defendants herein.

38. Defendant William T. McCormick, Jr. (“McCormick”) was, at all relevant times, CMS’s Chairman of the Board of Directors, Chief Executive Officer (“CEO”) and President of the Company. McCormick also served as Chairman of the Boards of Directors of Consumers and Enterprises until May 24, 2002. McCormick resigned as President of CMS on May 24, 2001 and resigned as CEO on May 24, 2002, with a $4 million severance package. McCormick remains employed by the Company as a consultant until June 1, 2004. McCormick signed the following annual reports and additional documents which the Company filed with the SEC during the Class Period: September 11, 2000 Registration Statement, October 6, 2000 Registration Statement, December 15, 2000 Shelf Registration Statement, December 22, 2000 Shelf Registration Statement, 2000 10-K, 2000 Annual Report, December 12, 2001 Registration Statement, 2001 10-K, and 2001 Annual Report. During the Class Period, while in possession of
adverse undisclosed information about the Company, McCormick sold 40,000 shares of his CMS common stock for $1,002,768.00 in illegal insider trading proceeds.

McCormick's insider selling during the Class Period is shown below:

**CMS**

*Defendant William T. McCormick, Jr. Quarterly Shares Sold (Dollar Volume)*

*May 2000 – March 2003*

39. Defendant David W. Joos ("Joos") has been President and Chief Operating Officer ("COO") of CMS and Consumers since October 2001. Joos has also been President and COO of Enterprises from 2001 through the present. Prior to serving as President of CMS and Enterprises, Joos served as Executive Vice President of both companies since 2000. As Executive Vice President, President and COO of Enterprises, Joos has directly managed the electric utility, independent power production,
international energy distribution and marketing, services and trading operations of the Company. Joos has also served on the Boards of Directors of CMS and Consumers since 2001, and became Chairman of the Board of Enterprises in 2003. Joos signed the following annual report and additional documents which the Company filed with the SEC during the Class Period: December 12, 2001 Registration Statement, 2001 10-K, and 2001 Annual Report.

CMS common stock for $449,658.60 in illegal insider trading proceeds. Wright’s insider selling during the Class Period is shown below:

**CMS**

**Defendant Alan M. Wright Quarterly Shares Sold (Dollar Volume)**

May 2000 – March 2003

Summary of Insider Sales:
- Class Period Shares Sold: 32,740
- Proceeds from Sales: $449,658

41. Defendant Pallas was President and COO of CMS-MST from November 1999 until February 2002. She was subsequently promoted to President and CEO of CMS-MST, and served in that position until her resignation on May 16, 2002. At all relevant times, Pallas was in charge of energy trading at CMS. CMS hired Pallas while she was working at Reliant, where she served as Senior Vice President from 1997 until November 1999. Prior to that time, Pallas was employed by Basis Energy as Senior Vice-President since 1992. As set forth in the Company’s April 22, 2002 Proxy
Statement on Schedule 14A, Pallas received a bonus of $700,000 based upon the performance of the MST division in 2001.

42. Defendant Kenneth L. Way ("Way") has served as a director of CMS and Consumers since 1998 and served as Chairman of the Special Committee, which was organized on May 31, 2001 to investigate round-trip trades by the Company's CMS-MST division. Way currently chairs the Finance and Pension Committee and serves on the Audit, Organization and Compensation and Executive Committees of CMS and Consumers. Way signed the following annual reports and additional documents which the Company filed with the SEC during the Class Period: September 11, 2000 Registration Statement, October 6, 2000 Registration Statement, December 15, 2000 Shelf Registration Statement, December 22, 2000 Shelf Registration Statement, 2000 10-K, 2000 Annual Report, December 12, 2001 Registration Statement, 2001 10-K, and 2001 Annual Report.

43. Defendant Earl D. Holton ("Holton") has been a director of CMS and Consumers since 1989, and served on the Special Committee. In addition, he currently serves as the chair of the Governance and Nominating Committee, and serves on the Organization and Compensation Committees, the Environmental and Corporate Responsibility Committees and the Executive Committees of CMS and Consumers. Holton also serves as Chairman of the Board of Steelcase, Inc., of which Defendant Joos is also a board member. Holton signed the following annual reports and additional documents which the Company filed with the SEC during the Class Period: September 11, 2000 Registration Statement, October 6, 2000 Registration Statement, December 15, 2000 Shelf Registration Statement, December 22, 2000 Shelf Registration Statement,

44. Defendant Kathleen R. Flaherty ("Flaherty") has been a director of CMS and Consumers since 1995. Flaherty also served on the Special Committee, and currently serves on the Finance and Pension Committees, the Governance and Nominating Committees, and the Environmental Corporate Responsibility Committees of CMS and Consumers. Flaherty signed the following annual reports and additional documents which the Company filed with the SEC during the Class Period: September 11, 2000 Registration Statement, October 6, 2000 Registration Statement, December 15, 2000 Shelf Registration Statement, December 22, 2000 Shelf Registration Statement, 2000 10-K, 2000 Annual Report, 2001 10-K, and 2001 Annual Report.

45. Defendant Kenneth Whipple ("Whipple") has served as Chairman of the Board and CEO of CMS since 2002. Prior that time, he served as a director of CMS since 1993. Whipple has also served as a board member of Consumers since 1993 and was a member of the Special Committee. Whipple currently serves as Chair of the Executive Committees of CMS and Consumers. Whipple signed the following annual reports and additional documents which the Company filed with the SEC during the Class Period: September 11, 2000 Registration Statement, October 6, 2000 Registration Statement, December 15, 2000 Shelf Registration Statement, December 22, 2000 Shelf Registration Statement, 2000 10-K, 2000 Annual Report, December 12, 2001 Registration Statement, 2001 10-K, and 2001 Annual Report.

46. Defendant Dennis DaPra ("DaPra") served as Senior Vice President of Consumers from 2001 until 2002, and Vice President and Controller of Consumers from

47. Defendant John M. Deutch ("Deutch") has been a director of CMS and of Consumers since 1997. Deutch served on the Audit Committees of CMS and Consumers throughout the Class Period. Deutch signed the following annual reports and additional documents which the Company filed with the SEC during the Class Period: September 11, 2000 Registration Statement, October 6, 2000 Registration Statement, December 15, 2000 Shelf Registration Statement, December 22, 2000 Shelf Registration Statement, 2000 10-K, 2000 Annual Report, December 12, 2001 Registration Statement, and 2001 10-K.


51. Defendant John B. Yasinsky ("Yasinsky") has been a director of CMS and of Consumers since 1994. Yasinsky has served on the Audit Committees of CMS and Consumers from 2000 through the present. In addition, Yasinsky currently serves on the

52. Defendant Victor J. Fryling, ("Fryling") was a director of CMS from 1995 until his early retirement on December 4, 2000. At the time of his retirement, Fryling had served as Chief Operating Officer of CMS since 1996. Fryling also served as President of CMS from 1996 until 1990. Defendant Fryling signed the following documents which the Company filed with the SEC during the Class Period: September 11, 2000 Registration Statement, October 6, 2000 Registration Statement, December 15, 2000 Shelf Registration Statement and December 22, 2000 Shelf Registration Statement.

53. Defendant Hopper served during the Class Period as Senior Vice President, Chief Accounting Officer and Controller of CMS and Enterprises and was responsible for CMS's financial accounting and financial reporting. Hopper was later appointed to a non-officer position as Senior Vice President of Information Technology and Administrative Services for CMS and Consumers. Defendant Hopper signed the following annual reports and additional documents which the Company filed with the SEC during the Class Period: September 11, 2000 Registration Statement, October 6, 2000 Registration Statement, December 15, 2000 Shelf Registration Statement,
December 22, 2000 Shelf Registration Statement, 2000 10-K, 2000 Annual Report, December 12, 2001 Registration Statement, 2001 10-K, and 2001 Annual Report. During the Class Period, while in possession of adverse undisclosed information about the Company, Hopper sold 2,000 shares of his CMS common stock for $52,835.00 in illegal insider selling proceeds, as shown on the chart below. On March 17, 2004, CMS announced that Hopper would be released, effective immediately after the SEC announced it had filed a civil enforcement action against him. Throughout the Class Period, Hopper served as Senior Vice President, Chief Accounting Officer and Controller of CMS and Enterprises.
54. Defendants McCormick, Joos, Wright, Pallas, DaPra, Deutch, Duderstadt, Parfet, Picre, Yasnisky, Fryling, Hopper, Way, Holten, Flaherty and Whipple are collectively referred to herein as the “Individual Defendants.”

3. **Control Person Liability**

55. The Individual Defendants are liable as direct participants with respect to the wrongs complained of herein. In addition, the Individual Defendants, by reason of their status as senior executive officers and/or directors were “controlling persons” within the meaning of Section 20 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, the Individual Defendants were able to and did, directly or indirectly, control the conduct of CMS's business.

56. Specifically, because of their positions with CMS, the Individual Defendants possessed the power and authority to control the contents of CMS's annual and quarterly reports, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. Each of the Individual Defendants, by reason of their respective management or board positions, had the ability and opportunity to review copies of the Company's SEC filings, reports and press releases alleged herein to be misleading, prior to, or shortly after their issuance, and to prevent their issuance or cause them to be corrected.

57. By virtue of their positions, the Individual Defendants had access to the material adverse non-public information concerning the business and financial condition of the Company. Indeed, the Company's own risk management policies during the Class Period demonstrate that the Individual Defendants directly managed or, at a minimum, were aware of, the various risk levels associated with the Company's operations, including its round-trip trading positions in its MST division.

58. As set forth in the Company's 2000 Annual Report and repeated in every quarterly filing of CMS through the first quarter of 2002:

CMS's derivative [trading] activities are subject to the direction of the Executive Oversight Committee, consisting of certain members of CMS's senior management, and its Risk Committee, consisting of CMS business unit managers. The goal of the risk management policy is to measure and limit CMS's overall energy commodity risk by implementing an enterprise-wide policy across all CMS business units... The role of the Risk Committee is to review the corporate commodity position and ensure that net corporate exposures are within the economic risk tolerance levels established by the Board of Directors.
59. Moreover, as stated in the Company's quarterly reports for the first quarter of 2000 through the first quarter of 2002:

CMS and its subsidiaries rely on the experience and judgment of senior management and traders to revise strategies and adjust positions as they deem necessary.

In light of their senior positions with the Company and the policies set forth above, the Individual Defendants clearly had access to internal corporate documents, including CMS's general ledger and internal reports relating to the wholesale energy trading business' revenue and expenses. These materials included VAR Reports and other information regularly provided to senior management and the Board of Directors in connection therewith, in their capacity as the officers and/or directors of CMS. Indeed, as stated in the Company's First Quarter 2001 10-Q and repeated in the Second Quarter, Third Quarter and year-end 2001 reports, CMS, through its subsidiary [CMS-MST], engages in trading activities. [CMS-MST] manages any open positions within certain guidelines which limit its exposure to market risk and requires timely reporting to management of potential financial exposure. These guidelines include statistical risk tolerance limits using historical price movements to calculate daily value at risk measurements.

60. Based upon their respective positions and access to material non-public information, each of the Individual Defendants knew or recklessly disregarded that the adverse facts specified herein had not been disclosed to, and were being concealed from the public, and that the positive representations which were being made were then materially false and misleading.

4. **Group Pleading**

61. The Individual Defendants are also liable for the false statements in SEC filings and press releases as such statements represent "group-published" information, disseminated to the public as a result of the collective actions of the Individual
Defendants. It is appropriate to treat the Individual Defendants as a group and to presume that the false and misleading information conveyed in the public filings, press releases and other publications, as alleged herein, are the collective actions of the narrowly defined group of Individual Defendants identified above. The Individual Defendants, by virtue of their high level positions within CMS, directly participated in the management of the Company, were directly involved with the day-to-day operations and were privy to confidential non-public information concerning the wholesale energy trading operations of CMS, as alleged herein. The Individual Defendants were involved in drafting, reviewing and/or dissemination the false and misleading financial statements that were issued by CMS, approved or ratified these statements and, therefore, adopted them as their own.

5. Duties of the Individual Defendants

62. Each of the Individual Defendants had the duty to exercise due care and diligence and the duty of full and candid disclosure of all material facts relating to the financial reporting and results of operations of CMS. To discharge their duties, these Defendants were required to exercise reasonable and prudent supervision over the dissemination of information concerning the business, operations and financial reporting of CMS. By virtue of such duties, these officers and directors were required, inter alia, to:

a. conduct and supervise the business of CMS in accordance with federal laws;

b. supervise the preparation of the Company’s SEC filings and to approve any reports concerning the financial reporting and results of CMS;
c. ensure that CMS established and followed adequate internal controls;

d. create, enforce and comply with a corporate policy prohibiting misuse of proprietary corporate information by corporate officers and directors by trading in CMS stock based on material non-public information; and

e. refrain from obtaining personal benefit, at the expense of the public purchasers of CMS securities, by misusing proprietary non-public information.

63. As officers, directors and/or controlling persons of a publicly-held company which is registered with the SEC under the federal securities laws and whose common stock is traded on the New York Stock Exchange ("NYSE"), and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to promptly disseminate accurate and truthful information with respect to the financial reporting and the publicly reported quarterly annual results of operations of CMS, so that the market price of the Company's publicly traded securities would be based upon truthful, accurate and complete information.

64. Under the rules and regulations promulgated by the SEC under the Exchange Act, specifically Item 303 of Regulation S-K, the Individual Defendants also had a duty to report all trends, demands or uncertainties that were reasonably likely to impact CMS's (1) revenues; (2) expenses; and (3) previously reported financial information such that it would not be indicative of future operating results. As set forth more fully below, the representations of the Individual Defendants during the Class Period violated these specific requirements and obligations.
V. FRAUDULENT SCHEME

65. CMS, Consumers and the Individual Defendants are liable as participants in a fraudulent scheme and course of conduct that operated as a fraud or deceit on purchasers of CMS securities by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme involved: (i) deceiving the investing public regarding the business, operations and management of CMS, including its MST division; (ii) permitting CMS to engage in two secondary common stock offerings, pursuant to which CMS sold more than 21 million shares of common stock valued at $608.25 million; (iii) permitting CMS to offer various other securities to the investing public which incorporated by reference false and misleading statements valued at over $1.643 billion; (iv) permitting CMS to file two shelf registration statements with the SEC during the Class Period, pursuant to which CMS registered securities valued at $2.7 billion; (v) permitting Defendants McCormick, Wright and Hopper to sell a total of 74,740 shares of their CMS common stock for $2,001,161.60 in illegal insider trading proceeds; and (vi) causing Plaintiffs and members of the Class to purchase CMS’s common stock and other securities at artificially inflated prices. In April 2001, CMS scheduled a special meeting of its Board of Directors in Houston to showcase its operations there, including an informational session about MST presented by Defendant Pallas. Before the special meeting, Defendant Hopper participated in a conference call concerning the Company’s first quarter 2001 results with the Andersen engagement partner and the CMS Audit Committee chairman [Defendant Parfet]. During her presentation to CMS’s Board of Directors and members of CMS senior management at the April 2001 special meeting in Houston, Pallas confirmed to the Board and management that CMS’s round-trip trading was being implemented as a “ploy” to elevate
the Company's industry rankings. Pallas described the round-trip trades as a marketing ploy that would enable MST to scale the industry rankings and attract more business. Accordingly, at least as early as April 2001, all members of the Boards of Directors and Audit Committees of CMS and Consumers who were present at the April 2001 meeting were aware of and participated in the Company's fraudulent round-trip trading scheme.

VI. CLASS ACTION ALLEGATIONS

66. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class (the "Class"), consisting of all those who purchased the securities of CMS during the Class Period (May 1, 2000 through and including March 31, 2003) and who were damaged thereby. Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

67. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, CMS common shares were actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class and may be identified from records maintained by CMS or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

68. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.
69. Plaintiffs 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.

70. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting 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 as alleged herein; (b) whether statements made by Defendants to the investing public during the Class Period misrepresented or omitted material facts about the business and operations of CMS; (c) whether the Individual Defendants are liable as control persons under the federal securities laws; and (d) whether the members of the Class have sustained damages and, if so, the proper measure of such damages.

71. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

VII. FRAUD ON THE MARKET PRESUMPTION

72. At all relevant times, the market for CMS's publicly traded securities was an efficient market for the following reasons, among others:

a. the common stock of CMS met the requirements for listing, and were listed and actively traded on the NYSE, a highly efficient market;
b. as a regulated issuer, CMS filed periodic public reports with the SEC;
c. CMS regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;
d. the market reacted to public information disseminated by CMS;
c. CMS was followed by several securities analysts employed by major brokerage firms who wrote reports that were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace;
f. the material misrepresentations and omissions alleged herein would tend to induce a reasonable investor to misjudge the value of CMS securities; and without knowledge of the misrepresented or omitted material facts, Plaintiffs and the other members of the Class purchased or otherwise acquired CMS securities between the time Defendants made the material misrepresentations and omissions and the time the truth was fully revealed, during which time the price of CMS securities was inflated by Defendants' misrepresentations and omissions.

73. As a result of the foregoing, the market for CMS securities promptly digested current information regarding CMS from all publicly available sources and reflected such information in the price of CMS securities. Under these circumstances, all purchasers of CMS securities during the Class Period suffered similar injury through their purchase of CMS securities at artificially inflated prices and a presumption of reliance applies.
74. In addition to the foregoing, all Class members are entitled to a presumption of reliance because, as more fully alleged below, Defendants omitted, throughout the Class Period, to disclose material information regarding CMS's business, financial status, financial results and business prospects.

VIII. THE SAFE HARBOR PROVISION OF THE PSLRA IS INAPPLICABLE

75. The statutory safe harbor provided for forward-looking statements under the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which applies to forward-looking statements, does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of CMS who knew that those statements were materially false when made.

IX. BACKGROUND TO THE CLASS PERIOD

1. Description of CMS

76. Formed in Michigan in 1987, CMS is an energy holding company operating through subsidiaries in the United States and in selected markets around the world. The Company's two principal subsidiaries are Consumers and Enterprises.
Consumers is a public utility, which provides natural gas and/or electricity to almost 6 million of Michigan's 10 million residents. Enterprises, through subsidiaries, is engaged in several energy businesses in the United States and in selected international markets, including among others the marketing, services and trading operations of the Company.

77. Formed in Michigan in 1968, Consumers is the successor to a corporation which was organized in Maine in 1910 and conducted business in Michigan from 1915 to 1968. In 1997, Consumers, formerly named Consumers Power Company, changed its name to Consumers Energy Company to reflect its integrated electricity and gas businesses.

78. Based on its number of customers, Consumers' electric utility operations, if independent, would be the thirteenth largest electric utility company in the United States. Consumers' electric utility operations include the generation, purchase, distribution and sale of electricity. Consumers' current electric utility customer base includes a mix of residential, commercial and diversified industrial customers.

2. Marketing, Services and Trading [MST] Division

79. CMS-MST was formed in 1996 and is the surviving entity of a 1997 merger with CMS Gas Marketing Company, which was originally formed in 1987. CMS-MST was created in order to provide gas, oil, coal and electric marketing, risk management and energy management services to industrial, commercial, utility and municipal energy users throughout the United States and internationally. Its customers included, among others, the University of Utah, Illinois State University, EnerStar Power Corporation, as well as the Michigan South Central Power Agency.

80. Before 2000, MST was a small component of CMS's business. In the Fall of 1999, CMS decided to expand into wholesale energy trading and recruited a new chief
executive to head MST, Defendant Pallas. CMS, which operates the largest public utility in Michigan, was forecasting double-digit earnings growth at the time, based chiefly on the anticipated activities of CMS's unregulated business units, including MST. At the same time, CMS publicly promoted MST as the primary vehicle for CMS's future growth. After hiring the new chief executive to expand MST's business, CMS moved MST's trading operations from Michigan to Houston, the hub of the energy-trading industry. MST developed a strategy that emphasized marketing to cooperatives and municipalities in the hope of landing long-term contracts for the sale of electric power;

81. From its inception, MST has purportedly grown dramatically. In 1999, MST acquired an energy services company in Kansas City, Missouri and an independent energy consulting firm in Toronto, Canada. These acquisitions expanded MST's presence in 22 cities in the United States and in Oakville, Montreal and Vancouver, Canada. CMS has continually attempted to use MST to enhance performance of the Company's core assets, such as its gas reserves and power plants.

82. MST's operations, first and foremost, involved the trading of liquid natural gas and electricity derivative contracts. In fact, it was the purported success of the trading operations of MST that propelled CMS to the ranks of the top twenty U.S. natural gas and power marketers, a figure often highlighted by the Company. CMS looked to MST as one of the few sources of dynamic growth for the Company. Indeed, in a letter to CMS shareholders from Defendants McCormick and Joos, contained in the 2001 Annual Report, these Defendants state: "we believe that the earnings from [CMS's integrated asset] base can be further enhanced by our growing and very successful marketing, services and trading company." (Emphasis added).
3. **Background To Round-Trip Trading**

Round-trip or wash trades are generally defined as nearly simultaneous, pre-arranged buy-sell trades of energy with the same counter-party, at the same price and volume, and over the same term, resulting in neither profit nor loss to either transacting party. FERC staff has maintained that the intent to perform a round trip trade has to be present for an actual round trip trade to occur. The following are examples of how round trip trades can enhance a company’s position in the market:

- **Inflate Revenues**

  Since round-trip trades involve both a “buy” and a “sell”, the revenue that is received as a result of the “sell” part of the trade is reported as part of total revenues on a company’s earnings statement. While there is an offsetting expense that gets reported because of the “buy” part of the trade, there are definite benefits to a company demonstrating substantial increase in revenues even if there are offsetting expenses. Especially in a newly formed business, substantial increases in revenues can set investors expectations that the business model is successful. They make the company appear larger and more stable and can imply that the company has substantial borrowing power.

- **Increase Trade Volume**

  Round trip trades increase trade volume for energy trading companies. During the energy boom in 1999 and 2000 energy companies distinguished themselves by being able to show high trade volumes. Enron, for example, made continuous headlines by boasting that it had by far the largest trade volume of any energy marketer, and Wall Street acknowledged that fact when listing Enron as a “strong buy” in their ratings. High trade volumes during the 1999 through 2001
period were generally considered a sign of strength since they implied doing
business with a high number of counter parties and like increased revenues, were
a sign to Wall Street that the newly developed business model was working.

* Increase the Mark to Market Value of Existing Positions

When a round-trip trade is performed on an electronic exchange or with a
broker, the price the trade is executed forms a portion of the price data that the
exchange or broker will use to determine market prices and to potentially publish
market prices. In addition, the price of round-trip trades may be directly reported
to independent publications that would use these prices in developing their
forward price indices for that day. This influence is even greater in markets
where products are very illiquid. If a round-trip trade at a price opposite of the
trader’s current position, the trade can positively influence the value of the
trader’s current open position. For example if a trader bought a forward product
at $20/MWh on Monday and then the following day performs a round-trip trade
on the same forward product at $30, their open $20 position would have increased
in value by $10. If however, the trader sold a forward product at $20/MWh on
Monday and then the following day performs a round-trip trade on the same
forward product at $10, their open position would again have increased in value
by $10.

A company’s open positions are typically “marked to market” at the end
of each day based on available market information or trades they performed if
there were no trades in that market for a particular day. So even if the price of the
round-trip trade is not “published” it may serve to value the position.
To use another example, if an energy company is marking to market a ten million MWh long position, and a round trip trade was able to increase the market price reported at a visible reporting index by $2, the company will report a P&L gain of $20,000,000. Investors will see this gain on earnings statements with no offsetting loss. As a result, the company can increase its value using round-trip trades.

- **Manipulate Market Prices for Future Trades**

As discussed above, a round-trip trade can impact the prices being reported in a market, this impact can have more than just a mark to market value for the company. For instance, if the long or short position is sold or bought back after the round-trip trade affects the prices reported, then the mark to market profit can become realized profit. This is similar to an illegal insider trading practice where a broker buys or sells a commodity with his own money right before he is about to conduct a high volume trade for that same commodity for a client, knowing that the high volume trade will manipulate the market price one way or the other. In this case a trader manipulates the market price with a round trip trade to increase the profitability of a future trade.

4. **False Price Reporting**

False price reporting is essentially a more direct method of influencing published prices than conducting round-trip trades. False price reporting may involve the total fabrication of trades and prices or falsely providing prices for trades that actually happened. The false price reporting happens through publishers of trade publications, such as Platt's.
85. When a power trade is reported to Platt's, for example, Platt's will use the price that the power was traded at, as well as the volume of MW traded to construct an index price that will then be published in various Platt's publications, such as Energy Trader, Megawatt Daily, or Power Markets Week. Many energy companies use these index prices to settle on long-term contracts, as well as mark positions. If a company reports a fabricated high price to Platt’s, that high price will raise the Platt’s published index price and would benefit a company that either had a long term contract to sell power at the index price, or a company that held a long position in the market.

86. The impacts of false price reporting are the same as those indicated under the discussion concerning round-trip trading within the “Increase the Mark to Market Value of Existing Positions” and “Manipulate Market Prices for Future Trades” sections. Reporting false prices is illegal and can further deceive investors by falsely increasing the value of the company’s positions.

X. RECENTLY OBTAINED EVIDENCE DIRECTLY SUPPORTING PLAINTIFFS' CLAIMS

87. Since the filing of the Consolidated Complaint, Plaintiffs have obtained additional evidence strongly supporting their allegations of Defendants’ misconduct and scienter. Such evidence includes: documents prepared and/or produced by Andersen in this litigation over Defendants’ objections; public admissions by CMS; as well as additional commentary, as described in detail below.

Andersen Documents

88. By Order dated August 28, 2003, the Court permitted Plaintiffs to initiate discovery of Andersen. In response to Plaintiffs’ discovery requests, Andersen has produced documents that are highly relevant to the issues in this case, including scienter
and materiality. The recently-obtained documents constitute direct (i.e., non-circumstantial) evidence of Plaintiffs' allegations of scienter, materiality and other issues.

As set forth above, these documents, which are identified at Exhibit A hereto, provide further support for Plaintiffs' information and belief allegations and are incorporated by reference herein. See also ¶ 391, infra.

Additional Commentary

89. In reaction to disclosures concerning CMS's round-trip trading, portfolio manager Joshua Kennon stated that CMS's round trip trading activities made CMS "the poster child for accounting abuse." See "The Revenue That Wasn't, How CMS Fabricated $4.4 Billion in Revenue" (available at http://beginnersinvest.about.com/library/weekly/aa052102a.htm). As Kennon noted:

Wall Street has been up in arms recently over the disturbing amount of revenue inflating gimmicks companies have used to distort their financial statements. The practice has invaded every industry, but energy and power companies seem to be the worst perpetrators, with CMS standing out as the poster child for accounting abuse.

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How CMS Fabricated $4.4 Billion Dollars Out of Thin Air

... CMS management traded the same amount of energy with two of its competitors, Dynegy Inc., and Reliant Resources, on the same dates for the same price. These transactions (called "round-tripping") were executed solely to boost the revenue figure the companies reported to their shareholders. In 1999 and 2000 alone, CMS recorded more than $4.4 billion dollars in revenue from meaningless transactions.

Why is this a problem? Revenue is one of the most important numbers investors and analysts look at when valuing a company. It gives a general measure of the amount of growth a company is experiencing. Although revenue doesn't always equal profit, it is considered important because it is generally assumed that the more revenue a business earns, the more potential it has for profitability (through cost cutting initiatives, etc.).
SEC Press Release Issued March 17, 2004

90. On March 17, 2004, the SEC issued a press release announcing that the SEC had instituted civil enforcement proceedings against Defendants Hopper and Pallas seeking, “among other things, civil money penalties and court orders barring them from serving as officers or directors of public companies.” The March 17, 2004 SEC press release quotes SEC Administrator Harold J. Degenhardt, as stating:

The misleading presentation of the revenues and volumes generated by the sham round-trip trades distorted the public appearance of this company’s operations, making it falsely appear a revitalized powerhouse. CMS’s failure to ensure complete and accurate financial disclosures reflects a shameful indifference to the need for transparency in the public markets. Today’s action sends another clear message that such indifference will not go unpunished.

(Emphasis added).

91. As further explained by Spencer C. Barasch, Associate District Administrator at the SEC’s Fort Worth office: “The magnitude of [CMS’s] trading is quite significant, and it was quite deceptive to the investing public”; moreover, “[i]t made the company’s operation look much more successful than it was.” See Bloomberg.com, “SEC Accuses CMS, Three Ex-Executives of Sham Trades,” dated March 17, 2004 (available at http://quote.bloomberg.com/apps/news?pid=10000193&sid=asKKXjJuJzEo&refer=us).

Additional Admissions

92. The impropriety of CMS’s accounting practices has also been acknowledged by CMS’s own compliance officer, Michael D. VanHemert, Esq., who stated that CMS’s round trip trading “was a really stupid business decision. It was done to enhance our ability to market our company as a player.” See Jeff Bennett, “CMS makes its ethics longtime lawyer’s job,” March 25, 2003, Detroit Free Press website
As noted:

The Detroit Free Press noted:

The Dearborn-based natural gas and electric utility rocked shareholder confidence last year when it disclosed that some employees had participated in false energy trades known as round-trip trading and misled trade magazines when reporting gas prices.

Moreover, MST’s internal accounting control problems were well known to CMS’s senior management and Board of Directors during the Class Period. As revealed in CMS’s 2003 10-K, filed with the SEC on or about March 12, 2004:

CONTROL WEAKNESSES AT [CMS-MST]

In late 2001 and during 2002, we identified a number of deficiencies in [CMS-MST]’s systems of internal accounting controls. The internal control deficiencies related to, among other things, a lack of account reconciliations, unidentified differences between subsidiary ledgers and the general ledger, and procedures and processes surrounding our accounting for energy trading contracts, including mark-to-market accounting.

Senior management, the Audit Committee of the Board of Directors, the Board of Directors, and the independent auditors were notified of these deficiencies as they were discovered, and we commenced a plan of remediation that included replacing certain key personnel and deploying additional internal and external accounting personnel to [CMS-MST]. While a number of these control improvements and changes were implemented in late 2002, the most important ones occurred in the first quarter of 2003.

Although Defendant Pallas was a key culprit in the round-trip trading scam, she acted with the full knowledge of CMS. Indeed, according to James Munisteri, Defendant Pallas’ attorney in this action, the round trip trading “was fully disclosed to