CONSOLIDATED AMENDED CLASS ACTION COMPLAINT
FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS
Plaintiffs, by their attorneys, make the following allegations upon information and belief, except as to those allegations specifically pertaining to Plaintiffs themselves and their own acts, which are made on personal knowledge. The allegations herein are based upon the investigation conducted by and through counsel. This investigation included, inter alia, a review of press releases issued by eSpeed, Inc. (“eSpeed” or the “Company”); transcripts of conference calls; United States Securities and Exchange Commission (“SEC”) filings; analysts’ reports; articles published in the financial press; information provided by former eSpeed employees; and data obtainable through Internet services. Plaintiffs believe that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE CASE

1. This is a securities class action brought on behalf of purchasers of eSpeed securities from November 20, 2002 through July 1, 2004 (the “Class Period”), alleging violations of the Securities Exchange Act of 1934 (the “Exchange Act”).

2. Defendant eSpeed was formed in 1999 to provide large institutions with a way to trade government bonds electronically, a method that is represented to be quicker, more efficient and less costly than traditional means of trading. eSpeed became a public company in December 1999, when it was partially spun-off from the well-known bond trading firm, Cantor Fitzgerald Securities, Inc. (“Cantor”). Today, the Company is a subsidiary of Cantor. Defendant Howard Lutnick (“Lutnick”), eSpeed’s Chairman and Chief Executive Officer (“CEO”), also serves as Cantor’s CEO and President. Cantor Fitzgerald has long been a dominant player in the field of government bond trading and it sought to dominate electronic government bond trading through its eSpeed subsidiary.

3. During the late 1990’s many new bond trading firms emerged and all promised speedy electronic trading. By early 2002, eSpeed and BrokerTec Global LLC (“BrokerTec”) were
the dominant players in that market. BrokerTec began operations in July 2000 and was formed by a consortium of 14 major financial service companies as a joint venture.

4. On August 5, 2002, BrokerTec announced that it was being purchased by Garban-Intercapital PLC (“ICAP”), another large bond broker, which specialized in voice-brokered transactions. The ICAP and BrokerTec combination presented a new risk to eSpeed as the combination of the companies would enable BrokerTec to better compete with eSpeed. Prior to the BrokerTec/ICAP transaction, none of eSpeed’s competitors could rival eSpeed in terms of technological sophistication and “market depth,” a measure of how many users traded through eSpeed. eSpeed’s market depth provided bidders with the liquidity that they needed to effectively trade. Now, given the BrokerTec/ICAP transaction, it was only a matter of time before BrokerTec would be able to match eSpeed in terms of technological sophistication and market depth.

5. In mid-2002, eSpeed’s stock price languished as the market was disappointed with a lackluster foray by eSpeed into the field of energy futures trading. In order to reinvigorate the stock price and eSpeed’s business, Defendant Lutnick’s solution was to introduce a new commission pricing structure called “Price Improvement.” Price Improvement was purportedly a software-based system which ostensibly enabled bidders to obtain a better price on their trades and pay a higher brokerage commission for that privilege. In or about the end of 2002, Price Improvement was demonstrated to eSpeed’s key clients and was slated to be introduced in January 2003. Press reports at the time reported that eSpeed’s customers initially reacted negatively to Price Improvement when it was announced. In response, Defendant Lutnick assured the market that this “initial” reaction was due to ignorance regarding how Price Improvement worked and that with education and exposure to the system, customers would embrace it.
6. Unbeknownst to investors, however, throughout the Class Period, many eSpeed customers complained that the system hiked commissions considerably, provided little or nothing in the way of price improvement, did not work well, slowed executions, and was tantamount to a form of “blackmail” since those who did not opt for Price Improvement saw their trades fall behind in priority. Furthermore, the more Price Improvement was used by bidders, the less advantage it provided since numerous traders who agreed to pay for Price Improvement now all “stood at the front of the line,” negating any possibility of meaningful “price improvement.” Based on its customers’ reactions, it was clear to eSpeed that Price Improvement was a failure and would cause customer defections as soon as BrokerTec expanded its operations.

7. Nonetheless, throughout the Class Period, Defendants described Price Improvement in a falsely positive light, claiming that it was providing satisfied customers who used it and “understood” it with a service that substantially benefited them. In truth and in fact, Defendants knew that customers almost uniformly detested Price Improvement, were constantly complaining about it, were being forced to use Price Improvement over their objections, and (when the opportunity arose) were moving their business to eSpeed’s competitor, BrokerTec. For its part, BrokerTec was slashing commissions, providing superior customer service, and building market share. As BrokerTec’s technological capacity and market depth increased, the trickle of angry customers it was attracting away from eSpeed grew into a flood.

8. Furthermore, during the Class Period, Defendants falsely attributed BrokerTec’s success to BrokerTec’s built-in client base consisting of the companies who founded BrokerTec. In truth and fact, BrokerTec was gaining market share, in material part because of eSpeed’s broken pricing model and eSpeed’s refusal to abandon Price Improvement. Indeed, throughout the Class
Period, Defendants knew that eSpeed’s market share would continue to erode as soon as BrokerTec built up enough trading volume and liquidity to satisfy the trading demands of eSpeed’s customers.

9. Then, on July 1, 2004, after the close of trading, eSpeed stunned investors announcing that the Company had suffered, in defendant Lutnick’s words, an “erosion of our market position from competitive pricing pressure . . . .” Although Lutnick refused during the course of a July 2, 2004 public conference call to admit that the problems were attributable to Price Improvement, the truth was that this “erosion” was in fact due to rejection by customers of Price Improvement and their migration to BrokerTec, which offered a better and more fair pricing model. In reaction to this announcement, the price of eSpeed stock fell over the next two days to a price of $11.39 per share, a 35% decline, and a loss to shareholders of over $300 million in market value.

10. Following eSpeed’s announcement, on July 2, 2004, an article on CBS Marketwatch reported:

[eSpeed], a pioneer in electronic bond trading, warned Thursday that it’s losing market share at an alarming rate amid a price war with competitor ICAP BrokerTec.

Analysts indicate eSpeed is losing market share and income because of ICAP’s commission limits. As bond trading volume rose in the quarter, those fee caps kicked in earlier in each of the three months in the quarter, driving business to ICAP.

Also, eSpeed has initiated new fees in the last year to pay for added value for customers, but it’s far from clear these are as attractive as the company expected. ICAP’s pricing, with its fee caps, may be attracting high volume customers, while eSpeed’s new charges may be hurting the company’s volumes. [Emphasis added.]

11. Price improvement was discontinued on January 4, 2005. Following this development, Forbes magazine reported that: “Clients hated ‘improvement.’ In the 18 months after introducing the gimmick, eSpeed lost an estimated 20 percentage points of market share.” The same article quoted eSpeed Chief Operating Officer Paul Saltzman as stating: “When we had the time and the resources to listen to our customers, we removed it.” In truth and in fact however, Defendants knew that Price Improvement had been a failure since its introduction, and that, throughout the Class
Period, eSpeed had received a barrage of complaints about Price Improvement and, as a result, was continually losing market share.

**JURISDICTION AND VENUE**

12. The claims asserted herein arise under and 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 (17 C.F.R. §240.10b-5).

13. This Court has jurisdiction over the subject matter of this action pursuant to §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1331.

14. Venue is proper in this District pursuant to §27 of the Exchange Act, (15 U.S.C. §78aa) and 28 U.S.C. §1391(b). Many of the acts and transactions alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District, and eSpeed maintains its principal offices in this District.

15. In connection with the acts, conduct and other wrongs alleged in this complaint, 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 the national securities exchange.

**PARTIES**

16. By Order dated July 13, 2005, the Court appointed Mike Weber, Shabbir Adib, Ruby Adib, Hatim Adib and Murtuza Tofafarosh as Lead Plaintiffs (“Lead Plaintiffs”). Lead Plaintiffs purchased eSpeed securities during the Class Period, as evidenced by their certifications, which were previously filed with the Court and are incorporated herein by reference, and were damaged thereby.

17. Plaintiff The Greater Pennsylvania Carpenters Pension Fund (together with Lead Plaintiffs, referred to as “Plaintiffs”) purchased eSpeed securities during the Class Period, as evidenced by its certification, which was previously filed with the Court and is incorporated herein by reference, and was damaged thereby.
18. Defendant eSpeed develops and deploys interactive vertical electronic marketplaces and related trading technology which offers traders access to liquid, efficient and neutral financial markets. eSpeed operates multiple-buyer, multiple-seller, real-time electronic marketplaces for the global capital markets, including government bond markets and other fixed income and equities marketplaces. The Company has organized its business in four categories across multiple liquid and commoditized industries in the financial services markets. As of September 3, 2004, eSpeed had 32,484,164 shares of Class A common stock and 23,889,270 shares of Class B common stock outstanding. The eSpeed Class A common shares trade on the NASDAQ National Market System (“NASDAQ”). The eSpeed Class B shares do not trade. The Class B shares have 10 votes per share and the Class A shares 1 vote per share.

19. Defendant Howard W. Lutnick (“Lutnick”) is the Company’s Chairman and Chief Executive Officer. Defendant Lutnick joined defendant Cantor Fitzgerald, L.P. (“Cantor”) in 1983 and has served as President and CEO of Cantor since 1991. Cantor owns all of the eSpeed Class B shares. Defendant Lutnick’s company, CF Group Management, Inc., is the managing general partner of Cantor. Thus, defendant Lutnick controls eSpeed through his control of Cantor.

20. Defendant Lee M. Amaitis (“Amaitis”) is the Vice Chairman, Global Chief Operating Officer of eSpeed and a director. Defendant Amaitis has been Executive Managing Director of eSpeed International Limited since December 1999. Defendant Amaitis has been President and Chief Executive Officer of Cantor Fitzgerald International and Cantor Fitzgerald Europe since March 1995.

22. Defendant Joseph Noviello (“Noviello”) has served as the Company’s Executive Vice President and Chief Information Officer since September 2001. Prior to that, he had served as the Company’s Senior Vice President and Chief Technology Officer since December 1999. Before joining eSpeed, Noviello was a managing director at Cantor.

23. Defendants Lutnick, Amaitis, Chertoff and Noviello are collectively referred to herein as the “Individual Defendants.”

24. During the Class Period, Defendants Lutnick, Amaitis, Chertoff and Noviello, as senior executive officers and directors of eSpeed, were privy to non-public information concerning eSpeed’s business, finances, products, markets and present and future business prospects via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.

25. As officers and controlling persons of a publicly-held company whose securities were and are registered with the SEC pursuant to the Exchange Act, and which were publicly traded and governed by the provisions of the federal securities laws, Defendants Lutnick, Amaitis, Chertoff and Noviello had a duty to disseminate accurate and truthful information promptly with respect to the Company’s financial condition and performance, and product development, and to correct any previously-issued statements which had become materially misleading or untrue, so that the market price of the Company’s publicly-traded securities would be based upon truthful and accurate information. The material misrepresentations and omissions by Defendants Lutnick, Amaitis, Chertoff and Noviello during the Class Period violated these specific requirements and obligations.

PLAINTIFFS’ CLASS ACTION ALLEGATIONS

26. 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, consisting of all those who purchased or otherwise
acquired the publicly-traded securities of eSpeed during the Class Period, and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company, 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.

27. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, eSpeed’s securities were actively traded. 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 of members in the proposed Class, if not thousands. Record owners and other members of the Class may be identified from records maintained by eSpeed 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.

28. 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.

29. Plaintiffs 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.

30. 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;
whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations and products of eSpeed; and

to what extent the members of the Class have sustained damages and the proper measure of damages.

31. 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.

SUBSTANTIVE ALLEGATIONS

eSpeed is Formed by Cantor Fitzgerald

32. Cantor was formed in 1945 by Bernard Cantor and John Fitzgerald as a specialty brokerage firm, handling the burgeoning trade between dealers in government securities. Over the years, Cantor grew to be one of the dominant players in this “inter-dealer” market. Although it eventually branched out to offer trading in other types of fixed income securities, its bread and butter has remained U.S. treasury securities with an emphasis on “new issues.” In the jargon of the treasury markets, “new issues” are referred to as “on the run” bonds. Older, existing issues are dubbed “off the run” bonds. Until recent years, trading in large blocks of treasury securities was inefficient and lacked automation and certainty. Trades were often made through “voice brokers” and other middlemen, and consummated at central locations known as “trading pits.” Information regarding prices was difficult to obtain, and execution of trades often proved to be a slow process. In the early 1990’s, Cantor and other similar broker-dealers commenced efforts to create fully
automated electronic trading systems. It was believed that such systems would provide customers with real time price information and quicker and cheaper trades.

33. Cantor’s electronic trading project was closely overseen by defendant Lutnick, who has served as Cantor’s President since 1991, and as its Chairman since 1996. Lutnick was assisted in this endeavor by defendant Amaitis, who joined Cantor in 1995. Amaitis has served in a variety of executive roles with both Cantor and eSpeed, and was eSpeed’s “Global Chief Operating Officer” during the Class Period.

34. Cantor spent $200 million to develop eSpeed, which officially commenced operations in March 1999. On December 10, 1999, eSpeed completed an initial public offering, selling seven million shares of stock at a price of $22 per share. The Prospectus for the IPO stated that eSpeed’s goal was to “introduce and distribute a broad mix of products and services more quickly, cost effectively and seamlessly than competitors.” The Prospectus advised that eSpeed would face competition from a variety of competitors, including a proposed electronic trading network known as BrokerTec. The Prospectus described BrokerTec as a fixed income securities broker which would be owned by some of eSpeed’s existing customers, such as Citigroup, Credit Suisse First Boston, Deutsche Bank AG, Goldman Sachs Group, Lehman Brothers, Merrill Lynch & Co., Dresdner Kleinwort Benson, ABN-AMRO and Morgan Stanley Dean Witter (hereinafter, “the BrokerTec Consortium”).

35. With the proceeds of its public offering, eSpeed moved toward positioning itself as a dominant player in the nascent electronic bond trading marketplace, just as Cantor Fitzgerald had been a major force using traditional trading methods for many years prior.

**eSpeed Begins Successful Operations and Experiences Rapid Growth**

36. eSpeed’s first full year of operations as a public company ended on December 31, 2000. Revenues for the year, $118.9 million, far exceeded earlier projections. In the fourth quarter
alone, total electronic volume exceeded $9.9 trillion, 26% higher than the volume in the previous quarter. In a press release issued January 31, 2001, defendant Lutnick commented on the Company’s performance, stating, in pertinent part, as follows:

Our technology has created a frictionless, digital environment that is attracting more users, generating more volume and drawing further liquidity from other markets. Looking ahead, our business shows even more promise. We are excited about being the leader in the electronic trading arena and are committed to further enhancing our trading technology to ensure that we remain on the cutting edge of today’s – and tomorrow’s – marketplace needs.

37. In the first half of 2001, eSpeed continued to report rapid growth. eSpeed and Cantor suffered tragic losses, however, as a result of the events of September 11, 2001. Many of the victims worked at Cantor as voice brokers. The companies were able to continue in business following these devastating events largely due to the electronic trading capabilities that had been developed at eSpeed.

38. On February 12, 2002, eSpeed issued a press release entitled, “eSpeed Achieves Profitability Despite Tragic Events of September 11th; First Profitable Quarter in Company History.” The press release stated, in pertinent part, as follows:

eSpeed reported its first profitable quarter in Company history. For the fourth quarter ended December 31, 2001, eSpeed reported net operating income of $4.5 million, or $0.08 per share, compared to a net operating loss of $5.2 million, or ($0.10) per share for the same period last year. In accordance with U.S. Generally Accepted Accounting Principles (GAAP), eSpeed reported net income of $7.8 million, or $0.14 per share for the fourth quarter 2001, compared to a net loss of $5.2 million, or ($0.10) per share in the same period last year.

*   *   *

eSpeed’s revenue for the fourth quarter 2001 was $28.1 million, an increase of 4.7 percent versus $26.9 million in the same period in 2000. Fourth quarter 2001 fully electronic revenue grew 4.6 percent year-over-year to $17.7 million. Total revenue from Software Solutions in the fourth quarter 2001 increased 36.0 percent to $4.1 million versus the comparable period last year.
In addition to the growth in electronic bond trading, eSpeed also announced promising results from its new foray into electronic energy futures trading, a business a number of companies entered in the wake of the collapse of Enron. eSpeed’s energy trading operation was known as “Tradespark.”

39. eSpeed’s profitability continued in the first two quarters of 2002, but at a level that failed to impress Wall Street. By mid-2002, the stock was trading at approximately $10 per share as the market expressed dissatisfaction with the performance of Tradespark. On June 13, 2002, TheStreet.com published an article entitled “eSpeed: Potential Energy Shortage” that highlighted the problems with Tradespark. The article stated, in pertinent part, as follows:

Investors were counting on Tradespark to deliver powerful earnings growth at eSpeed after a strong showing in the fourth quarter. When Enron collapsed, trading platforms like Tradespark and ICE got a significant boost as they poached volume from Enron’s platform: Tradespark recorded an 81% jump in transaction revenue in the fourth quarter vs. a year earlier.

eSpeed’s courageous fight back from Sept. 11 is well-known, and the company has posted solid profits the last two quarters on the strength of its robust government bond trading business. But management conspicuously reduced the already limited disclosure it makes about Tradespark concurrent with its most recent earnings report. Shares of eSpeed have lost almost a third of their value since then, falling to $10.01 recently from a six-month high of $13.97 on May 13.

* * *

At least one industry executive thinks the trading market isn’t likely to pick up from here in the near term. At a conference in New York, Dan Gordon, president of Allegheny Energy (AYE:NYSE) unit Allegheny Energy Global Markets, said creditworthy counterparties are too few and balance sheets too weak, and that increasing regulatory scrutiny is adding too many political risks for energy trading volumes to make a comeback anytime soon.

“I don’t see why these markets would have a reason to rebound in the very, very near future, absent some sort of dramatic change,” Gordon said.

At about $10, eSpeed trades below the halfway point of its 52-week range of $4.60-$22.90. But with an earnings multiple of 22, the stock probably isn’t impervious to more bad news.
40. With eSpeed’s stock in the doldrums, and the new energy trading business a
disappointment, Defendants searched for new strategies and/or businesses to reinvigorate eSpeed’s
growth rate. In or about the fall of 2002, eSpeed prepared to launch “Price Improvement” – a new
trading option that was purportedly designed to help bidders get better trade executions in exchange
for payment of considerably higher commissions.

**The Rise of BrokerTec as a Competitor to eSpeed**

Initially, its only customers were its owners – the members of the BrokerTec Consortium. However,
these customers alone provided BrokerTec with a healthy share of the treasury bond trading market
and, as BrokerTec improved its technology and the breadth of its offerings, it sought new customers.

42. At about this same time, London-based ICAP was also getting started in electronic
treasury trading. In August 2000 ICAP reported that its electronic trading placed it second to eSpeed
(albeit far behind eSpeed), and well ahead of BrokerTec.

43. By early 2001, BrokerTec had grown its business somewhat, but was struggling to
gain traction on competitors like eSpeed. BrokerTec’s competitive position was noted in the
February 5, 2001 edition of *Financial News*:

> BrokerTec received a significant boost recently when a number of non-shareholders
also joined, giving the lie to the belief that non-participants would feel they were the
underdogs and therefore be unwilling to join the system. However there are still
some gaps in the product areas covered by BrokerTec, and with only 17 participants
today, it is still well behind the several hundred counterparties that an ETC, GFInet
or Espeed can bring to the table.

44. By August 2001, BrokerTec was still having trouble building liquidity on its systems,
although its technology was much improved. The August 1, 2001 issue of *The Banker* reported on a
poll of traders who rated the various electronic brokers, and noted BrokerTec’s poor grades: “the
system scored less than five out of 10 for liquidity, by far the worst of the three main inter-dealer bond trading platforms.”

45. Although the events of September 11, 2001 shocked the electronic trading markets, the Bergen Record reported on November 12, 2001 that eSpeed was able to hold onto “its dominant position.” And, the January 14, 2002 issue of Securities Week reported that “eSpeed still holds the dominant position in the fixed-income markets . . . .” In March 2002, BrokerTec was dealt a blow when two top executives left the firm for a rival. Then, on May 15, 2002, BrokerTec announced a development that further impacted its ability to grow as planned: BrokerTec’s consortium structure (whose members controlled a large percentage of the global dealer market) had aroused the suspicions of the U.S. Justice Department, which launched an antitrust inquiry. Accusations were made that BrokerTec’s market share was being artificially maintained by business directed to BrokerTec by the BrokerTec Consortium members.

46. This legal uncertainty led BrokerTec’s owners to negotiate a sale to its London-based competitor, ICAP. ICAP maintained a network of “voice brokers,” whereas BrokerTec and eSpeed had largely abandoned voice brokers in favor of electronic execution. Merging these two different types of service would make BrokerTec a formidable competitor. Nonetheless, BrokerTec continued to lag eSpeed in terms of liquidity, and ICAP ranked even lower. In the July 2002 survey conducted by The Banker, eSpeed remained by far the dominant electronic broker in terms of this important measure of market depth, scoring an 8.2 on a scale of 10. BrokerTec scored 6.2, while ICAP scored only 5.0. Plainly, BrokerTec and ICAP had a distance to go before they would be able to close the gap with eSpeed. And, with eSpeed’s liquidity so extensive, many traders felt it was necessary to direct business to eSpeed if they were to get the trades and prices they desired.
47. On August 5, 2002, ICAP and BrokerTec announced their transaction. The ICAP-BrokerTec business combination involved an up front payment to the members of the BrokerTec Consortium, with additional payments possible based upon BrokerTec’s future earnings. As set forth herein in further detail, defendants would later attribute eSpeed’s accelerating loss of market share to BrokerTec to this “earn out,” which incentivized the members of the BrokerTec Consortium to continue to direct business to BrokerTec, when in truth, eSpeed’s loss of market share was the result of customers’ dissatisfaction with Price Improvement.

48. Analysts reacting to the ICAP-BrokerTec deal predicted it would increase liquidity, and create a stronger competitor to eSpeed, as BrokerTec had been hobbled by its lack of voice brokers. As the September 2002 edition of *Euromoney* noted:

Steve McDermott, CEO of global electronic broking at ICAP, argues that the merger will improve liquidity and give dealers greater freedom to select the most suitable way to trade. “Our clients are showing more and more evidence of wanting a choice between the different trading methods,” he says. “It’s too simplistic just to say that electronic trading is for liquid markets and voice-broking for illiquid ones. Even some illiquid markets have benchmark bonds that could lend themselves to electronic trading, and clients might choose to trade in liquid markets over the phone for a number of reasons. Dealers will choose which method is best for them.”

The consortium of banks selling BrokerTec to ICAP also thinks the move will enhance competition and improve liquidity. Ian Rosen, head of electronic global markets at Deutsche Bank and until recently a member of the BrokerTec board, says: “Having two players in US treasuries should improve the market. It should make for narrow margins and strong competition, which is obviously what we want as dealers. There’s been a sea-change in the industry’s cost structure since we set BrokerTec up, as there seems to be every decade or so.”

Gianluca Garbi, CEO of Europe-based interdealer system MTS, agrees, arguing that “this is an excellent step for the market. It should re-establish competition between the two largest voice-brokers in the treasury market.”

ICAP’s McDermott adds that the trading platform will be able to achieve more when combined with a traditional voicebroker. “I believe BrokerTec realized that pursuing a pure electronic strategy was causing them to hit a glass ceiling,” he says. “By combining the advantages of both voice and electronic trading, this deal should eliminate that.”
Andy Nybo, an analyst covering electronic trading at the Tower Group, is also convinced of the deal’s benefits. “Strategically, the merger makes a great deal of sense,” he says. “It combines BrokerTec’s large pool of electronic liquidity with Icap’s large pool of voice liquidity. The result should be a very strong competitor to eSpeed in the US treasury market.”

49. The ICAP-BrokerTec deal was subject to review by the U.S. Department of Justice, which resulted in a lengthy delay in its consummation. Finally, on May 7, 2003 the companies announced that they had been given governmental approval to close the deal, and work toward the full integration of their operations. These operations would not be fully integrated until in or about the end of 2003. The opportunity to seize market share from eSpeed was significant because for the past year, at least, a substantial number of eSpeed’s customers were in revolt over being subjected to the ineffectual and oppressive Price Improvement system, and were eager to jump to an alternative dealer that offered good service and sufficient market depth.

**Materially False and Misleading Statements Made During the Class Period**

50. The Class Period begins on November 20, 2002. In the fall of 2002, eSpeed began to advise its customers about the general contours of its brand new value-added Price Improvement feature, due to be put in place in early 2003. The November 20, 2002 edition of *Dow Jones Capital Markets Report* carried a story on some customers’ impressions entitled, “Traders Cry Foul Over eSpeed's New Bond Broking Service.” The article, based on interviews with a small number of eSpeed’s 700 customers, stated, in pertinent part, as follows:

*eSpeed Inc. (ESPD), Cantor Fitzgerald LP's online bond trading unit, is facing harsh criticism from some of its biggest Wall Street customers over a new feature that allows traders to trump the bids and offers of other market participants in return for a higher commission.*

The controversial feature, named "Price Improvement," is part of eSpeed's new software release, Version 5.0. It allows traders to leapfrog - as many as three times - past competing traders in a lineup of bids and offers. The trader who does so pays an incrementally higher commission with each jump if the trade is completed.
eSpeed then shares some of the excess commission with the buyer and seller, but a spokesperson declined to specify the proportions that go to each.

In some ways, the changes to eSpeed's platform evoke some of the conditions that have traditionally existed in voice-brokered interbank fixed-income markets, where big banks or other large clients can use their influence and deep pockets to get preferential treatment from brokers.

eSpeed is the market leader in online Treasury bond broking and a true pioneer in the field, having almost entirely supplanted Cantor's voice broking service in the market for U.S. government securities. Even over the past year since the World Trade Center attacks killed 658 Cantor employees, 180 of them from eSpeed, the company has expanded its volumes and profits at a rapid pace.

In recent years, eSpeed has been aggressively challenged by the bank-owned electronic bond-broker consortium BrokerTec Global LLC, which is awaiting U.S. regulatory approval to be acquired by UK voice-broking giant ICAP PLC (U.IAP). The negative response to eSpeed's price improvement feature suggests the company may have overestimated the strength of its competitive position vis-a-vis BrokerTec.

Changing The Rules?

Though the new feature in Version 5.0 promises bigger per-trade commissions for eSpeed on those trades where it is used, the strategy could ultimately backfire for the company. eSpeed's dominant position in online bank-to-bank bond broking is not under immediate threat, but traders and managers at several large Wall Street bond desks say the new feature has made them less apt to trade on eSpeed because of the higher cost of accessing the best prices. Filling orders in the bond market, they say, should be governed entirely by the market's long-standing protocol where the first bidder gets the best offer, rather than by a pay-to-play rule that furthers the interests of the broker.

"eSpeed is trying to change the rules of trading for their own benefit by forcing people to pay higher commissions to get liquidity. It's not fair, and I have moved almost all of my business off eSpeed," said a trader in two-year Treasury notes.

Nine traders and fixed income managers at primary dealer banks were interviewed for this story, five of which were not members of the BrokerTec consortium. Primary dealer banks are those banks that facilitate the transfer of nearly all U.S. government debt from the Treasury to the market. They are the biggest players in the interbank market serviced by eSpeed and other interdealer brokers. All of these people spoke critically of the changes to eSpeed.

In an interview with Dow Jones Newswires, eSpeed Chief Executive Officer Howard Lutnick attributed such criticism to a natural resistance to change that he believes will pass once traders discover how the new feature improves their access to prices.
But many who have seen it say that even if it does provide some traders with a lower price on some trades, "price improvement" is a misnomer, asserting that the service ultimately makes the market more opaque and less efficient.

There is no indication that eSpeed's new feature is illegal or that it violates any regulatory protocol for bond trading. eSpeed maintains that the so-called "right of first refusal" - which specifies which traders' bids have first dibs on a matching offer - remains intact.

But many traders and industry observers argue that the "right of first refusal" protocol is indeed compromised by the new feature. In that sense, they say, the changes mark a step backward in the evolution of electronic bond trading.

Computers' ability to work chronologically - to line up all the bids and offers in the market in the order in which they were received - has been a cornerstone of the transparency promised by electronic bond trading systems. In the eyes of many observers, eSpeed is now getting away from the level playing field that this system once promised: in order to charge some customers for access to information - in this case, the best bid or offer available - it necessarily must withhold that information from others who would otherwise have had the right to see it.

Experts say there is nothing implicitly wrong with a system containing underlying execution prices that are different from those seen on screens by all participants. Below-market offers of Treasurys have always existed, most often stemming from multi-leg trades, where the price of one component of the trade comes in better than expected, allowing the other component to be bought or sold at a better price than the market currently shows.

"Traders always have the option of hiding orders by keeping them out of the trading system completely, so it might be better for overall liquidity to offer this kind of anonymity to get those orders out of their heads and into the system" where they can be executed said Charles Jones, associate finance professor at Columbia University.

But Jones added that there is little precedent for trading platforms to charge for access to hidden orders with a sliding commission scheme.

"The fee model is a different story," he said. "It gives eSpeed a bigger fee for that last bit of liquidity. As an economist, I don't see why the rest of the players should agree to incentive pricing like this, and I guess they don't want to, based on the complaining."

eSpeed says that much of the initial aversion to the new system among traders most likely stems from a lack of understanding of how it works, and equates their current complaints with the initial distaste shown for electronic trading when it emerged in the late 1990s.
"Price improvement, by its definition, will create better opportunities for traders to get a better price than they initially put into the system," said eSpeed CEO Lutnick. "In time, traders will wonder how they ever lived without this."

51. Defendant Lutnick was intimately familiar with how Price Improvement was expected to work; as such, his published November 20, 2002 statements were materially false and misleading. The customers surveyed did not, as Lutnick claimed, lack understanding with regard to the primary features and “benefits” of Price Improvement, but rather understood the system perfectly well, and detested it. Lutnick had no reasonable basis to believe that customers would “wonder how they lived without” Price Improvement, as the system was: (i) adverse to their interests; (ii) increased their costs; (iii) did not provide much if anything in the way of “price improvement;” (iv) complicated and slowed trades; and (v) was viewed as an extortionate method of raising commissions without providing a concomitant benefit. Since eSpeed had much greater liquidity in the bond market than its competitors, it was abusing its market power to force customers to use a feature which enriched eSpeed but did not provide a real benefit to the customer. In the three trading days after Lutnick’s statements were published in Dow Jones Capital Markets Report (and then repeated the next day in The Wall Street Journal), eSpeed’s stock price rose approximately 15%. Defendants thereafter embarked upon a sustained scheme of misrepresentation, the essence of which was that Price Improvement, having been introduced and explained, was winning customer acceptance and providing considerable customer benefits. In fact, just the opposite was true.

52. A Confidential Witness (“CW-1”) confirms that customer reaction to Price Improvement was materially misrepresented during the Class Period. CW-1 was employed as a customer account executive throughout the Class Period. In late 2002 or early 2003, he was asked to explain Price Improvement to approximately 40 customers and gauge their reactions. CW-1 was in a position to report the facts he gathered directly to defendant Lutnick, and did so.
53. CW-1 reports that customer reaction was uniformly negative from the beginning, and that this did not change later on. The customers told CW-1, in sum, that they viewed Price Improvement as a nearly useless system that was merely a subterfuge for raising commissions. Larger customers complained that, under Price Improvement, they often had to pay triple the usual commission merely to stay even with other market players. Customers also felt that they often had to use Price Improvement because if they did not do so their orders would receive discriminatory treatment. CW-1 and others personally told Lutnick that Price Improvement was not successful, was not being accepted by customers, and that customers would leave eSpeed as soon as a viable alternative dealer became available. CW-1 reports that, after being advised of the negative customer reactions, Lutnick nevertheless repeatedly misrepresented the benefits of Price Improvement and the level of customer acceptance on public conference calls. Lutnick also misrepresented throughout the Class Period that customers were opting to use Price Improvement of their own volition, when, in fact, they were often coerced into using it through the threat of disadvantageous executions. CW-1 also reported that eSpeed management ordered trading screens altered such that a “diamond” appeared on trades as an indication that they had been placed in the Price Improvement pool, even when this was not the case. Customers were thus often manipulated into using Price Improvement due to the misimpression created by eSpeed that others were using it, and they would be financially disadvantaged if they did not do the same.

54. A second Confidential Witness (“CW-2”) confirms that Price Improvement often failed to work in the manner described to customers and the press. CW-2 was, from the beginning of the Class Period, employed in the area of Desktop Support and as a Field Technician. In his position, CW-2 handled customer complaints about Price Improvement on a daily basis. CW-2 observed Price Improvement to be an “unmitigated disaster from day one” and that customers
expressed that they had been “subjected” to Prime Improvement, and had not opted to use it of their own volition. Complaints regarding trade executions under Price Improvement were made on such huge volume on a daily basis that up to 100 calls could be received on an “average bad day.” Field technicians such as CW-2 had not been given the tools to explain how particular trades had been executed under Price Improvement (or why they were done at a particular price), and this fed customer anger. CW-2 confirmed that, by early 2004, BrokerTec had become a viable alternative to eSpeed, and that many customers began migrating some or all of their business to this competitor due, in substantial part, to resentment over being coerced into using the ineffectual and expensive Price Improvement software. CW-2’s duties included visiting customers, and he personally observed in or about the beginning of 2004 the installation at client sites of hardware needed to use BrokerTec instead of eSpeed.

55. On February 11, 2003, eSpeed held a conference call to discuss results for the fiscal year that ended on December 31, 2002. Defendants represented that Price Improvement had been formally put into use in January 2003. In response to a question about how Price Improvement was being received, defendant Amaitis stated:

The price improvement product; we launched as I said before early in January and basically it was launched at the strong post holiday trading volume. It is new technology. It has been out for just over a month and the marketplace is growing accustomed to it. All the traders are learning to use it, they are learning how to improve their business on using the new software. We’re excited about the prospects. So far, so good. Everybody has been anxiously using it and learning how to use the technology. [Emphasis added.]

56. During that same telephone conference, the following exchange took place between a securities analyst and defendant Chertoff:

COLIN CLARK: Okay. Thank you. One more question. On getting back to the price improvement, you provided details on your revenue projections up 15%. And off of treasury volume up 5% to 7%. Can you provide anymore specifics with regard to the potential impact on your revenues of the price improvement functionality? Is it
significant? Is it fair to say it will be pretty material in ‘03 in terms of the contribution of the future?

JEFFREY CHERTOFF: Well, price improvement has two features to it. One, it increases the revenue with respect to the current traders and current transactions. So, it’s a revenue per million traded improvement. So that it has no marginal cost associated with it. And it should not only increase revenue on transactions that are utilized, but should over time be a competitive benefit in that it shows that we have better prices on our screen than alternative marketplaces have because price improvement is shown for those of you who have seen our product, with a diamond therefore when you see a diamond on an offer you know that that bid is better than the alternative marketplaces could possibly have. That should be a magnet and drawing card for new competitive business to come our way. We especially see it in the early days and products only been out for a month, early days of computer trading programs or those that trade electronically with us, portfolio trades or program trades, tend to go directly to the price improved price most quickly because computers realize they have a better price and a better opportunity. So, we think – you know, it is still early days. I can’t put more color on it. It is one of the many factors that allows us to guide a 15% top line revenue into 5% to 7% treasury volumes. Our earnings are growing by 40%.

COLIN CLARK: Okay. I know it has been on the price improvement has been out for a short period of time. Is it fair to say that the feature is being actively used at present?

JEFFREY CHERTOFF: It is fair to say the feature is being actively used. We have many clients using it. As I said, we think that these things will together help us reach our expectations. But, we think that price improvement will become over time, a natural way and part of the treasury trading business, but with only one month under our belt, I think Lee expressed it well, one month gone and so far, so good. [Emphasis added.]

The statements made in ¶¶55 and 56 were each materially false, misleading and omissive for the following reasons:

(a) Having sent eSpeed personnel to educate customers about Price Improvement in conjunction with its launch, defendants knew that customer reaction was overwhelmingly negative, angry, and resentful. In the view of the overwhelming majority of customers, the system hiked commissions considerably, provided little or nothing in the way of price improvement, did not work well, slowed executions, and was tantamount to a form of “blackmail” since those who did not opt for Price Improvement saw their trades fall behind in priority. In addition, the more Price
Improvement was used by bidders, the less advantage it provided since numerous traders who felt forced to pay for Price Improvement now all “stood at the front of the line,” negating any possibility of real “price improvement”;

(b) Customers were not opting to use Price Improvement but were often forced to do so by eSpeed whether they liked the system or not, and whether or not they felt it created any real benefit;

(c) Any increase in revenues and profits that could be attributed to the use of Price Improvement did not reflect its added value to eSpeed’s customers, but rather the fruits of defendants’ scheme to raise commissions by subterfuge, and to force customers to use a product they perceived as providing little or no benefit. Thus, Price Improvement’s business model was aimed at producing temporal revenues that could not be sustained over time because such revenues were achieved through methods customers deemed inappropriate and unfair;

(d) Price Improvement did not work as represented, and was the subject of a never-ending barrage of complaints from customers. Even field technicians delegated to handle customer concerns could not describe how it worked on particular trades when confronted with a steady stream of disgruntled clients;

(e) eSpeed was able to introduce Price Improvement and force its use only because of its dominant position in treasury bond trading, and the market depth it had built up over the years. Defendants knew, but did not disclose, that Price Improvement could be imposed on unwilling customers only for so long as no other trading firm had sufficient market depth to draw these customers away; and

(f) The descriptions of the introduction and performance of Price Improvement to this date as “so far, so good” by both defendants Amaitis and Chertoff were materially false and
misleading. In truth and in fact, the debut of Price Improvement was a disaster from the clients’ perspective, and it would remain so throughout the Class Period.

58. On May 13, 2003 eSpeed held a conference call to discuss its financial results for the first quarter of 2003, the period ended on March 31, 2003. Defendant Lutnick was effusive regarding the purported success of Price Improvement. He stated, in relevant part:

We study our clients’ technological needs and we provide solutions that help them trade faster and smarter. Price improvement, PI, began rolling out in the first quarter. *We have hundreds of traders enjoying the benefits of PI and dozens of traders using PI literally for every single trade they do.* We are pleased with the transaction [sic] that PI has generated so far.

* * *

We are pleased to report that our technology releases are doing well. And the fourth quarter of 2002 conference call we discussed the roll out of price improvement. PI. We released our PI software January of 2003 and it continues to gain great traction. [Emphasis added.]

59. The statements referenced above in ¶58 were materially false and misleading for the reasons set forth in ¶57. In addition, it was materially false and misleading to state that Price Improvement was “doing well” or continuing to “gain great traction” when it was substantially unworkable and despised and resented by eSpeed’s client base.

60. On August 12, 2003 eSpeed issued a press release announcing its financial results for the quarter ending June 30, 2003. In the press release, Defendant Lutnick boasted of the performance of Price Improvement stating, in pertinent part, as follows:

The tremendous growth in the US Treasury market and the success of our price improvement (PI) software in the second quarter resulted in a 15 percent sequential increase in both eSpeed’s revenues and fully-electronic volume. Our increased guidance for the third quarter is based on our expectation that we will improve our market position by outperforming the Federal Reserve US Treasury volumes and by realizing continued traction in our price improvement business, and we have already seen these improvements during the month of July. *We believe our unique leadership position,* at an unprecedented time of record issuance in the US Treasury markets, coupled with our ability to leverage our technology enhancements, *leave us*
extremely well-positioned for growth throughout the remainder of 2003 and beyond.

61. The statements referenced above in ¶60 were materially false, misleading, and omissive for the reasons set forth in ¶57. In addition, eSpeed’s reported revenue increase was not due to the “success of [the] price improvement software” as the software itself did not perform as promised or provide the represented benefits. Rather, the Price Improvement software had the effect of artificially and temporarily inflating revenue and alienating eSpeed’s customers who felt they were being blackmailed and coerced into paying higher commissions with little or no corresponding benefit.

62. On August 13, 2003, eSpeed held a conference call to discuss its second quarter 2003 financial results. On the call, defendant Amaitis stated, in pertinent part, as follows:

As many of you may remember, the rollout of Price Improvement, or PI began in January of 2003. Price Improvement creates additional trading opportunities for our clients and allows eSpeed to share a small portion of these trading executions. Extremely encouraged by the transaction in the early stages of PI’s introduction into the market. And look forward to growing this business as more and more users recognize the tremendous benefit of this product. In fact, already many users have opted for system level PI which means that eSpeed’s computers maximum our customers participation in each trade while minimizing the cost of such participation.

As volume increases over the eSpeed platform the more likely it is that our customers will use the price improvement feature. Simply put, increased usage in PI means more trading, revenue, and profits for eSpeed. PI increases the revenue generated per million. [Emphasis added.]

Defendant Lutnick echoed the positive statements made by defendant Amaitis. He stated, among other things:

An important part of our growth strategy has been to extend and enhance our core products and that was something Lee touched on.

Price improvement is an example of these product enhancements. Lee just mentioned how successful our price improvement product has become and how it continues to gain traction . . . . With sequential revenues and fully electronic volume each increasing 15% in the second quarter, it is obvious that eSpeed
benefited from both the enormous growth in the U.S. treasury market, as well as successful introduction of our price improvement software.

As Lee said, we saw our volumes outpace the market’s in July. And we think both the improvement in market position and the continued strength of our price improvement enhancement success and usage in the market both from producing a revenue a share when we improve those prices for our customers, as well as the attraction that that product brings, making it easier in trade and improve the profitability of the company within the same market size.

So if treasury volumes remain generally consistent that’s where we think our profitability – increased profitability will come from, increased market position and increased success of our price improvement power. [Emphasis added.]

63. The statements referenced above in ¶62 were materially false, misleading, and omissive for the reasons set forth in ¶57. In addition, references to the “tremendous benefit of the product” by defendant Amaitis, and the “continued strength of our price improvement enhancement success” were contrary to defendants’ knowledge that Price Improvement created little or no benefit, and that customers were clamoring for its discontinuance. Usage of Price Improvement was only at the level it reached because eSpeed was able to force customers to use Price Improvement due to eSpeed’s market power.

64. On October 1, 2003, eSpeed hosted a conference call to discuss its recently introduced product offerings, which featured presentations by members of senior management. Defendant Noviello spoke glowingly of Price Improvement, stating, in pertinent part, as follows:

I think one of the measures for how well we do is really the market acceptance of some of our technology initiatives, and during the past year the technology team was really focused on a couple of things and you have heard about them today. Price Improvement is clearly one of those, and I think the widespread adoption that has really been used by our customers is kind of a clear indication of the advantage it brings to them and of the kind of innovative solutions that the collaboration between our product development teams and our software engineering teams really produce. [Emphasis added.]

65. The statements referenced above in ¶64 were materially false, misleading, and omissive for the reasons set forth in ¶57. In addition, references to the “widespread adoption” of
Price Improvement by eSpeed customers, and the “advantage” it created were contrary to defendants’ knowledge that Price Improvement created little or no benefit, and that customers were clamoring for its discontinuance. Usage of Price Improvement was only at the level it reached because eSpeed forced customers to use Price Improvement over customer objections, and defendants were employing it as part of a scheme to artificially inflate revenues and earnings.

66. On November 12, 2003, eSpeed issued a press release announcing its financial results for the third quarter of 2003, the period ending September 30, 2003. Defendant Lutnick commented on the financial results stating, in pertinent part, as follows:

Our strong results this quarter were primarily based on our unmatched position as the leading electronic platform in the US Treasury market. eSpeed’s market position dramatically improved as evidenced by both our volume growth outpacing that of the Federal Reserve US Treasury average daily volumes as well as the success and continued traction of our Price Improvement (PI) product enhancement. During the third quarter, we saw increases in both the number of PI users as well as the number of transactions executed using Price Improvement.

67. On November 13, 2003 eSpeed held a conference call to further discuss its third quarter financial results. During the call, Defendant Lutnick represented that Price Improvement was being used by an increasing number of customers, stating, in pertinent part, as follows:

I just explained how growth in our core business was a driver of our success for the third quarter. Now I’d like to focus your attention on another one of our growth drivers, product enhancements, which also contributed to our record results for the third quarter. In the third quarter price improvement continued to gain traction with both the number of users and amount of usage per trader.

Almost 25% of our customers use PI, which is represents almost 10% of all treasury trades on the eSpeed platform. PI is already an integral part of the way traders trade. [Emphasis added.]

68. During the course of this call, analyst Rich Repetto of the brokerage firm Sandler O’Neill asked whether Price Improvement was propping up eSpeed’s increasing revenues and market share, which without Price Improvement would have been stagnant. Lutnick confirmed that this was the case, stating: “I would say it this way, which is without price improvement, our average
price per million would not have maintained its level from the first quarter to now . . . so that price improvement has mitigated the entire, effectively, the entire volume discounts that would have been seen in the market over the last two quarters.”

69. The statements referenced above in ¶¶66-68 were materially false, misleading, and omissive for the reasons set forth in ¶57.

70. During the fourth quarter of 2003, BrokerTec began to develop into a more formidable competitor in terms of technology and market depth. At a September 23, 2003 press conference, BrokerTec discussed how quickly it was gaining ground on eSpeed. For comparable periods, the volume of electronic trading at eSpeed was $82 trillion, while BrokerTec booked $48 trillion in volume. eSpeed had 700 clients, compared with BrokerTec’s 184 clients. Thus, eSpeed still had 70% more electronic volume and greater market depth than BrokerTec, but BrokerTec was moving closer than it ever had been, and customers were growing more comfortable with using BrokerTec for trades. This rendered eSpeed increasingly vulnerable to competitive forces because eSpeed had adopted the odious Price Improvement system to artificially boost revenues, while BrokerTec simply set reasonable prices for trades. Investors were not informed about the true nature of eSpeed’s reported financial performance, as defendants consistently painted Price Improvement as an invaluable tool that gave eSpeed a competitive advantage when, in truth, Price Improvement placed eSpeed at a disadvantage.

71. On February 10, 2004, eSpeed held a conference call to discuss its financial results for the fourth quarter and fiscal year ending December 31, 2003. Although overall volume in the treasury markets had declined, eSpeed’s volume fell even further, suggesting possible erosion in eSpeed’s market share. Defendants, however, insisted that this was a one-quarter event, and that the fourth quarter only seemed disappointing because it was being compared with extraordinary third
quarter results. When one analyst requested confirmation that this slippage represented a one-quarter phenomenon, eSpeed CFO Chertoff stated he believed this was so, and claimed that eSpeed was actually enjoying “an improved market position.” Chertoff also predicted the continued growth of Price Improvement. With regard to Price Improvement, on that same conference call, defendant Lutnick stated:

_We do have going forward the growth of Price Improvement, which we expect to continue to grow_, albeit we do not expect it to completely mitigate the volume growth and volume discounts we offer. [Emphasis added.]

72. The statements referenced in ¶71 were materially false, misleading, and materially for the reasons set forth in ¶57. In addition, eSpeed was finding itself in a deteriorating market position, in large part because of the beginning of a customer exodus to BrokerTec, spurred by customer resentment of eSpeed’s Price Improvement scheme, and threats of discrimination against them if they did not use it. Adding to this dissatisfaction were the delays and inaccuracies eSpeed had introduced into its trading system when it imposed Price Improvement on its customers. Defendants received regular reports regarding customer complaints about Price Improvement and its effect on eSpeed’s competitive position, and knew that their positive statements about the success of Price Improvement were not true.

73. On May 3, 2004, eSpeed issued a press release announcing its financial results for the first quarter of 2004, the period ending March 31, 2004. In commenting on the Company’s financial results, defendant Amaitis highlighted Price Improvement, stating, in pertinent part, as follows:

_The continued success of our Price Improvement product enhancement was illustrated in the solid growth we saw this quarter in both revenues and volumes. We will continue to add value to our clients’ execution capabilities with the introduction this quarter of our product enhancement Better Fill. We are excited to be able to offer additional proprietary trading tools that can improve the quality of our customers’ trade executions and their profitability._ [Emphasis added.]
74. During a May 4, 2004 conference call to discuss these results, analysts again expressed concern about eSpeed’s market share position. The overall trading in the treasury securities market measured by volume during the first quarter of 2004 was similar to the level of trading in the third quarter of 2003. Using the third quarter of 2003 as a benchmark, analyst Rich Repetto of Sandler O’Neill noted that eSpeed’s relative market share had declined by 12%. Lutnick responded that regardless of the fluctuations in the market, eSpeed could maintain a healthy financial performance through its differentiated products like Price Improvement (and a modification of Price Improvement known as “Better Fill”). Defendant Lutnick denied that eSpeed was slipping in market share, claiming that extraordinary volume was flowing to BrokerTec because the terms of BrokerTec’s sale provided more consideration to the sellers if they directed business to BrokerTec for a certain period of time, an “earnout” which Lutnick claimed was now ending. Lutnick described this phenomenon as “a short-term dislocation which results from the acquisition related volume earnout from our competitor. We think that, therefore, you might want to look to the post this period or post-May would create a better comparative environment.”

75. The statements referenced above in ¶¶73 and 74 were false, misleading, and materially omissive for the reasons set forth in ¶57. In addition, eSpeed was finding itself in a deteriorating market position, in large part because of a customer exodus to BrokerTec spurred by resentment of eSpeed’s Price Improvement scheme, and threats of discrimination against them if they did not use it. Adding to this dissatisfaction were the delays and inaccuracies eSpeed had introduced into its trading system when it imposed Price Improvement on its customers. The attempt to paint the BrokerTec “earnout” as an aberrational cause of eSpeed’s market share decline was materially false and misleading. In truth, BrokerTec was gaining market share because eSpeed had alienated many of its best customers via the imposition of Price Improvement. Defendants received
regular reports regarding customer complaints and eSpeed’s competitive position, and knew that the statements to the contrary were false.

76. On May 10, 2004, the Company issued a press release announcing the interim appointment of Jay Ryan as Chief Financial Officer, replacing Jeffrey Chertoff who was resigning to “pursue other opportunities.” The press release stated, in relevant part, as follows:

“eSpeed has experienced tremendous growth since its inception, and we believe our future growth into new products and services is best served with a CFO who is exclusively responsible for the Company’s financial operations. We are fortunate to have an experienced and accomplished financial manager of Jay Ryan’s caliber join our executive team in the interim,” said Chairman and CEO Howard W. Lutnick. He added, “We’d like to sincerely thank Jeff for his work and contributions over the past two years, and wish him the best in his future endeavors.”

77. On May 11, 2004, eSpeed shares closed at $18.75 per share, up from the close on May 10, 2004, of $17.58 per share, on volume of 584,000 shares traded.

The Truth Is Disclosed

78. On July 1, 2004, after the close of regular trading of the market, the Company issued a press release in which it finally disclosed that eSpeed’s business was not progressing as previously represented. Characterized as an “update” of financial expectations for the second quarter ended June 30, 2004, the Company announced that it expected to report net income in the range of $0.15 to $0.16 per share for the second quarter of 2004, and revenue in the range of $42 to $43 million. Fully electronic revenue was expected to be in the range of $28 to $29 million, and fully electronic volume was expected to be $8.0 trillion. Defendant Lutnick commented on the expected financial results, stating, in pertinent part, as follows:

Our weaker than expected performance during the second quarter was due to erosion of our market position from competitive pricing pressure and lower than expected market volumes in Europe. We are proactively addressing our market position, by offering tailored and flexible solutions that have the effect of driving down the marginal costs of trading on eSpeed. We are focusing on a revenue growth strategy that offers our customers the combination of variable and fixed commissions and value-added trading tools. [Emphasis added.]
The market reacted swiftly to eSpeed’s about face. On July 2, 2004, the next trading day, share of eSpeed stock dropped 25%, from $17.46 per share to close at $13.01 per share, on volume of over 6 million shares traded. The stock continued to decline on July 3, 2004, as the stock fell to close at $11.39 per share, on volume of 2.8 million shares traded.

During a July 2, 2005 conference call, analyst Rich Repetto sounded a skeptical note regarding defendants’ repeated touting of Price Improvement as a customer success. He asked Lutnick whether “on the market share issue” the losses were due to “animosity” customers had toward Price Improvement. While Lutnick denied this, the market now understood the truth: eSpeed’s slavish adherence to a system detested by its customers might have produced artificial short-term gains, but had finally resulted in a material decline in eSpeed’s financial performance. Indeed, the “competitive pricing pressure” referred to by defendant Lutnick was actually the reality of customers stating their preference for BrokerTec’s user-friendly pricing system versus the unworkable and unpopular Price Improvement system.

In the aftermath of the telephone conference on July 2, 2004, it was reported on CBS Marketwatch that analysts were unconvinced that eSpeed’s explanations made sense, or that BrokerTec’s market share advantage had ended. The article stated, in relevant part:

If eSpeed is to fight off rivals in electronic bond trading, Chairman and Chief Executive Howard Lutnick must find a way to grow the company’s market share without trimming profits, analysts said Friday.

“At this point, it’s a problem in search of a solution,” according to Jeffries and Co. analyst Charlotte Chamberlain.

The company, a pioneer in electronic bond trading, warned Thursday that it’s losing market share at an alarming rate amid a price war with competitor ICAP BrokerTec.

What’s more, Lutnick’s attempt to calm investors’ distress appeared to fall on deaf ears, as eSpeed (ESPD) shares slipped more than 25 percent Friday.

“With respect to our market share, as we mentioned on our last conference call, during the second quarter we were impacted by one-time acquisition-related volume
incentives paid to the former owners of our competitor,” the chief executive said in a statement Thursday. “These incentives had a greater impact than we anticipated in May, and although our market share improved in June, we were still below our expectation.”

Lutnick, who is also chairman and chief executive of Cantor Fitzgerald, frustrated some analysts in a conference call Friday, saying he failed to lay out a feasible plan to aggressively compete with ICAP on pricing and product offerings.

“The challenge to the company’s market share in recent quarters was cause for concern, but we believed this was only minor if [eSpeed] was able to maintain a smaller piece of a growing market with innovative and higher-margin products,” Keefe Bruyette and Woods analysts wrote in a research report Friday.

But apparently that’s not what’s happening.

Analysts indicate eSpeed is losing market share and income because of ICAP’s commission limits. As bond trading volume rose in the quarter, those fee caps kicked in earlier in each of the three months in the quarter, driving business to ICAP.

Also, eSpeed has initiated new fees in the last year to pay for added value for customers, but it’s far from clear these are as attractive as the company expected. ICAP’s pricing, with its fee caps, may be attracting high volume customers, while eSpeed’s new charges may be hurting the company’s volumes.

“The magnitude of the market share deterioration was more than expected. There’s been more clarity surrounding the issue of fee caps, and [on] the need to address that issue and possibly adopt similar pricing structures,” Merrill’s Clark said. [Emphasis added.]

82. On August 5, 2004, eSpeed formally reported its disappointing revenues and earnings for the second quarter of 2004. The Company reported revenue of $42.8 million. Second quarter 2004 fully electronic revenues were $29.2 million. eSpeed also reported net income of $9.0 million, or $0.16 per share. Fully electronic volume was $8.0 trillion.

83. On August 6, 2004, the Company held a conference call with investors. The Company admitted that it was revamping its pricing structure to a mostly fixed pricing model, from the prior structure consisting of a low fixed price component and a higher variable pricing component. In addition, the Company advised that it would custom tailor its pricing to each
customer. In addition, the Company stated that it would hire more experienced sales personnel with a greater component of fixed compensation, and, as a result, marketing costs would rise.

84. On November 4, 2004, eSpeed announced its financial results for the third quarter of 2004, the period ending September 30, 2004. It reported revenues of $39.8 million and fully electronic revenue of $25.5 million, and earnings per share of $0.10. Fully electronic volume was $6.9 trillion, down significantly from previous quarters.

85. On January 4, 2005, the Company announced that it would remove Price Improvement from its system. In a Business Wire press release that day, Paul Saltzman, eSpeed’s Chief Operating Officer (“COO”), said:

As a result of extensive discussions and feedback from our clients, we have decided to remove Price Improvement from the eSpeed marketplace. Removing Price Improvement clears the way for our singular focus on speed of execution, liquidity, and on client service that is second to none.

86. The January 17, 2005 edition of Securities Industry News, discussed the true nature of Price Improvement, and contained a telling admission from COO Saltzman concerning pitfalls that were concealed or denied during the Class Period:

Paul Saltzman, eSpeed’s chief operating officer, says that removing price improvement from the system “demonstrates we’re listening to customers.” Users have complained that the system, initiated in 2002, was expensive, provided little benefit, and slowed down execution. “By making the system simpler and faster, it will draw liquidity to the system,” Saltzman says. “Speed and certainty of execution will be made more definitive. Over time, we expect our market share to increase.” [Emphasis added.]

87. In a conference call on March 1, 2005, new eSpeed CFO Jay Ryan stated: “Removal of Price Improvement has been very well-received by our customers.”

88. In a May 10, 2005, conference call, eSpeed President Kevin Foley admitted that: “We believe our overall volumes grew because of our new customer pricing and the removal of price improvement.” [Emphasis added.]
89. The August 15, 2005 edition of Forbes magazine contained a detailed analysis of eSpeed’s business in an article entitled, “On the Run.” With respect to Price Improvement, the author noted, in relevant part:

It gave buyers a chance to jump in front of other bidders on a given block of bonds — not by bidding higher but by paying up to three extra fees on a trade. Each price improvement fee cost buyers $9 per $1 million in bonds traded versus about $2.50 per $1 million for a large firm’s standard trade. (Sellers paid nothing.) **Clients hated “improvement.” In the 18 months after introducing the gimmick, Espeed lost an estimated 20 percentage points of market share.**

In June 2004 Lutnick hired the Bond Market Association’s general counsel, Paul Saltzman, as chief operating officer, giving Espeed a more reasonable public face. **Traders credit Saltzman with persuading Lutnick (after seven months of pleading) to drop price improvement. “When we had the time and the resources to listen to our customers, we removed it,” Saltzman says.** [Emphasis added.]

90. The claim that eSpeed lacked the time and resources to listen to its customers during the Class Period is an absurdity. The truth was that eSpeed was daily receiving a barrage of complaints about Price Improvement, knew it was eroding market share, but chose to falsely represent that the product was being well-received, causing serious damages to shareholders who purchased at inflated prices, and who were damaged when eSpeed’s market share eventually collapsed.

**Additional Scienter Allegations**

91. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws.
92. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information which they caused to be disseminated to the investing public. The ongoing fraudulent scheme described in this Complaint could not have been perpetrated over a substantial period of time, as has occurred, without the knowledge and complicity of the personnel at the highest level of the Company, including the Individual Defendants.

93. Defendants were further motivated to engage in the wrongful conduct alleged herein in order to enable defendant Amaitis to complete two unusual sales of a combined 93,750 of his shares of eSpeed stock for gross proceeds of $2,207,000 on December 12, 2003 and December 15, 2003 (his only trades over the past two years and leaving him with a balance of 103,512 shares of eSpeed stock) and for defendant Noviello to complete an unusual sale of 25,000 of his shares of eSpeed stock for gross proceeds of $593,000 on December 30, 2003 (his only trades over the past two years and leaving him with a balance of 2,331 shares of eSpeed stock).

**Fraud on the Market Allegations**

94. At all relevant times, the market for eSpeed securities was an efficient market for the following reasons, among others:

- **a.** eSpeed stock met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

- **b.** As a regulated issuer, eSpeed filed periodic public reports with the SEC and the NASDAQ;

- **c.** eSpeed regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major news wire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
(d) eSpeed was followed by several securities analysts employed by major brokerage firms who wrote reports which 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.

95. As a result of the foregoing, the market for eSpeed securities promptly digested current information regarding eSpeed from all publicly-available sources and reflected such information in the prices of eSpeed securities. Under these circumstances, all purchasers of eSpeed securities during the Class Period suffered similar injury through their purchase of eSpeed securities at artificially inflated prices and a presumption of reliance applies.

**No Safe Harbor**

96. The statutory safe harbor provided for forward-looking statements under certain circumstances 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 who knew that those statements were false when made.

**Loss Causation/Economic Loss**

97. The introduction of Price Improvement and its implementation was intended to create the false impression that eSpeed customers were being provided with a value-added method of
trading which would both benefit them and increase trading revenues for eSpeed. The positive representations had the effect of artificially inflating and maintaining the price of eSpeed stock throughout the Class Period. Defendants’ misrepresentations and omissions masked the true situation and prevented a collapse in the stock price until the end of the Class Period.

98. The decline in the stock price at the end of the Class Period and immediately thereafter resulted from the adverse effects of the undisclosed negative features of Price Improvement, and this decline was attributable to those facts misrepresented or concealed by defendants. The loss in market share announced at the end of the Class Period and the stock price decline was proximately caused by the failure of Price Improvement, and its inability to continue artificially inflating revenue in the face of competition. At this point, the artificial inflation that had affected the stock throughout the Class Period dissipated.

COUNT I

Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Against All Defendants

99. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

100. During the Class Period, defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiffs and other Class members, as alleged herein; and (ii) cause Plaintiffs and other members of the Class to purchase eSpeed securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

101. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not
misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company’s securities in an effort to maintain artificially high market prices for eSpeed securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

102. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of eSpeed as specified herein.

103. These defendants employed devices, schemes, and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of eSpeed’s value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about eSpeed and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of eSpeed securities during the Class Period.

104. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants’ material misrepresentations and/or omissions were done knowingly or recklessly and for
the purpose and effect of concealing eSpeed’s operating condition and future business prospects from the investing public and supporting the artificially inflated price of its securities.

105. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market prices of eSpeed securities were artificially inflated during the Class Period. In ignorance of the fact that the market prices of eSpeed publicly-traded securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, Plaintiffs and the other members of the Class acquired eSpeed securities during the Class Period at artificially inflated prices and were damaged thereby.

106. At the time of said misrepresentations and omissions, Plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiffs and the other members of the Class and the marketplace known the truth regarding the problems that eSpeed was experiencing, which were not disclosed by defendants, Plaintiffs and other members of the Class would not have purchased or otherwise acquired their eSpeed securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

107. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5.

108. As a direct and proximate result of defendants’ wrongful conduct, Plaintiffs and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company’s securities during the Class Period.
COUNT II

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

109. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

110. Defendant eSpeed committed a primary violation of Section 10(b) of the Exchange Act. The Individual Defendants acted as controlling persons of eSpeed within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and knowledge of the Company’s operations and knowledge of the false statements disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiffs contend are false and misleading. The Individual Defendants had unlimited access to copies of the Company’s reports, press releases, public filings and other statements alleged by Plaintiffs to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

111. As set forth above, defendants eSpeed and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, and knowledge of the alleged misrepresentations and omissions, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants’ wrongful conduct, Plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company’s securities during the Class Period.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:
(a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;

(b) Awarding compensatory damages in favor of Plaintiffs and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants’ wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding Plaintiffs 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.
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: September 27, 2005

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
SAMUEL H. RUDMAN (SR-7957)
DAVID A. ROSENFELD (DR-7564)

[Signature]

SAMUEL H. RUDMAN

200 Broadhollow Road, Suite 406
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)

PASKOWITZ & ASSOCIATES
LAURENCE D. PASKOWITZ (LP 7324)
60 East 42nd Street, 46th Floor
New York, NY 10165
Telephone: 212/685-0969
212/685-2306 (fax)

Plaintiffs’ Co-Lead Counsel

ROY JACOBS & ASSOCIATES
ROY L. JACOBS (RLJ 0286)
60 East 42nd Street
46th Floor
New York, NY 10165
Telephone: 212-867-1156
212-504-8343 (fax)

LAW OFFICES OF CHRISTOPHER J. GRAY, P.C.
CHRISTOPHER J. GRAY
460 Park Avenue
21st Floor
New York, NY 10022
Telephone: 212-838-3221
212-937-3139 (fax)
MURRAY FRANK & SAILER LLP
ERIC J. BELFI
275 Madison Avenue
New York, NY 10016
Telephone: 212-682-1818
212-682-1892 (fax)

GLANCY BINKOW & GOLDBERG LLP
LIONEL GLANCY
1801 Avenue of the Stars
Suite 311
Los Angeles, CA 90067
Telephone: 310-201-9150
310-291-9160 (Fax)

*Attorneys for Plaintiffs*
CERTIFICATE OF SERVICE

I, David A. Rosenfeld, hereby certify that on September 27, 2005, I caused a true and correct copy of the attached:

Consolidated Amended Class Action Complaint For Violations of the Federal Securities Law,

to be served via overnight delivery to:

Dennis P. Orr, Esq.
Joseph DeSimone, Esq.
Matthew Ingber, Esq.
Mayer, Brown, Rowe & Maw LLP
1675 Broadway
New York, NY 10019; and

via first-class mail to all additional counsel on the attached service list.

[Signature]
David A. Rosenfeld
Counsel For Defendant(s)

Dennis P. Orr
Joseph De Simone
Matthew Ingber
Mayer, Brown, Rowe & Maw LLP
1675 Broadway
New York, NY 10019
212/506-2500
212/262-1910 (Fax)

Counsel For Plaintiff(s)

Lionel Z. Glancy
Michael Goldberg
Glancy Binkow & Goldberg LLP
1801 Avenue of the Stars, Suite 311
Los Angeles, CA 90067
310/201-9150
310/201-9160 (Fax)

Samuel H. Rudman
David A. Rosenfeld
Mario Alba, Jr.
Lerach Coughlin Stoia Geller Rudman & Robbins LLP
200 Broadhollow Road, Suite 406
Melville, NY 11747
631/367-7100
631/367-1173 (Fax)

Eric J. Belfi
Paul T. Curley
Murray, Frank & Sailer LLP
275 Madison Avenue, Suite 801
New York, NY 10016
212/682-1818
212/682-1892 (Fax)

Christopher J. Gray
Law Office of Christopher J. Gray, P.C.
460 Park Avenue, 21st Floor
New York, NY 10022
212/838-3221
212/508-3695 (Fax)

Louis F. Burke
Louis F. Burke, P.C.
460 Park Avenue, 21st Floor
New York, NY 10022
212/682-1700
212/808-4280 (Fax)

Laurence D. Paskowitz
Paskowitz & Associates
60 East 42nd Street, 46th Floor
New York, NY 10165
212/685-0969
212/685-2306 (Fax)
eSPEED
Service List - 9/27/2005    (05-0087)
Page 2 of 2

Roy L. Jacobs
Roy Jacobs & Associates
60 East 42nd Street, 46th Floor
New York, NY 10165
212/867-1156
212/504-8343(Fax)