

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

STEVEN I. WEISSMAN (as Custodian Under
The Florida Uniform Transfers To Minors Act,
as Trustee and Individually),

Plaintiff

v.

THE NATIONAL ASSOCIATION OF
SECURITIES DEALERS, INC. (A
Delaware Not For Profit Corporation); and,
THE NASDAQ STOCK MARKET, INC.
(A Delaware Corporation organized For Profit),

Defendants /

Plaintiff, STEVEN I. WEISSMAN, as custodian under the Florida Uniform Transfers To
Minors Act, as Trustee and Individually, sues the Defendants, THE NATIONAL
ASSOCIATION OF SECURITIES DEALERS, INC. and THE NASDAQ STOCK MARKET,
INC., and alleges:

DIVERSITY JURISDICTION AND VENUE ALLEGATIONS

1. Every issue of law and fact in this action is wholly between citizens of different states.
Plaintiff is, and was at all times hereinafter mentioned, domiciled in and a citizen of the state of
Florida and residing in Broward County, Florida.

2. Defendant, The National Association of Securities Dealers, Inc. was, and is now, a
corporation duly organized, incorporated and existing under the laws of the State of Delaware
and its principal place of business is in Washington, D.C.

Case No. 03-61107

Florida Bar No. 022040 CIV-MARRA

MAGISTRATE JUDGE
SELTZER
COMPLAINT

PLAINTIFF
DEMANDS A
TRIAL BY JURY

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3. Defendant, The Nasdaq Stock Market, Inc. was, and is now, a corporation duly organized, incorporated and existing under the laws of the State of Delaware and its principal place of business is in New York City, New York.

4. Defendants hereinafter described Florida business activities have given rise to the action *sub judice*. Each Defendant has registered with the Florida Secretary of State to engage in business in Florida and has named a Florida registered agent. All of the newspaper, television and internet advertisements hereinafter described, which were relied on by Plaintiff, were published by Defendants and viewed by Plaintiff in the State of Florida; and, Plaintiff's stock purchases that are the subject of this action were all made in the State of Florida.

5. Plaintiff sues for damages in excess of \$600,000 (exclusive of interest, punitive damages, fees and costs).

**SATISFACTION OF PREREQUISITES - THE LACK OF ANY ADMINISTRATIVE
REMEDY**

6. This action is based solely on the for-profit commercial business activity of the Defendants in touting, advertising, promoting and selling shares of stock in WorldCom, Inc. This activity includes Defendants' approximately \$100 million dollar marketing and advertising campaign during the years 2000, 2001 and 2002 to promote and sell, among other companies, the shares of WorldCom, Inc. Plaintiff makes no claim based upon any failure of the Defendants to fulfill any duties as a self regulatory organization under the Exchange Act or otherwise. Likewise, Plaintiff's claims are not based upon any failure of the Defendants to properly regulate any aspects the securities markets, publicly traded companies, or any market participants whatsoever; or, in connection with enforcement of its rules and the performance of its regulatory or adjudicatory responsibilities or functions.

7. There are no administrative remedies available to Plaintiff to recover the damages sought in this action which arise solely from the private, for-profit commercial business activity

of the Defendants in touting, advertising, promoting and selling shares of WorldCom, Inc. The said private, for-profit commercial business activity of the Defendants in touting, advertising, promoting and selling shares of WorldCom, Inc. is completely unrelated, separate and apart from any duties or functions of either Defendant as a self regulatory organization under the Exchange Act or otherwise and is likewise unrelated to any responsibilities either Defendant may have to enforce its rules and perform regulatory or adjudicatory responsibilities as a self regulatory organization.

FACTS COMMON TO ALL COUNTS

Plaintiff's Purchase Of WorldCom Shares In Reliance On Defendants' False and Unlawful Advertising

8. Plaintiff purchased 82,800 shares of WorldCom, Inc. common stock (listed in paragraph 10, *infra*), in reliance upon false and unlawful advertisements and misleading promotion of WorldCom published and disseminated by the Defendants as hereinafter alleged.

9. The common stock of WorldCom, Inc. ("WorldCom") was traded on the Nasdaq [National Association of Securities Dealers Automated Quotation System] stock market at all times material to this action under the symbol "WCOM". At all times material to this action, WorldCom had over TWO BILLION shares of common stock outstanding which were actively traded on the NASDAQ and investors had access to information including "real time" prices at which transactions were actually executed which information is characteristic of, and ensures the development of, an efficient market for a company's stock. Research analysts prepared and disseminated numerous research reports on WorldCom each year and WorldCom disseminated numerous press releases and announcements to the investing public.

10. Plaintiff purchased 82,800 shares of WorldCom at artificially inflated prices as custodian for his children under the Florida Uniform Transfers To Minors Act, in his SEP individual retirement account and as trustee, as follows:

PLAINTIFF	DATE PURCH	No. OF SHARES	AMT. PER SHARE	COST (incl. Comm.)
Steven I. Weissman, SEP Account	02/05/02	2100	7.56	15,907.00
Steven I. Weissman, SEP Account	02/05/02	9900	7.57	75,096.45
Steven I. Weissman, SEP Account	03/07/02	10,000	8.50	85,154.95
Steven I. Weissman, Cust. For Daughter, Samantha	03/07/02	3000	8.53	25,579.95
Steven I. Weissman, Cust. For Son, Jared	04/12/02	1400	4.84	6773.95
Steven I. Weissman, Cust for Daughter, Jessica	04/12/02	1400	4.84	6773.95
Steven I. Weissman, Trustee	12/29/00	5000	13.06	65,275.51
Steven I. Weissman, Trustee	12/29/00	7000	13.11	91,794.61
Steven I. Weissman, Trustee	03/07/02	11,000	8.52	93,669.95
Steven I. Weissman, Trustee	04/10/02	27,000	5.04	135,949.95
Steven I. Weissman, Trustee	06/10/02	5000	1.68	8,424.95
TOTALS		82,800		610,401.22

11. Plaintiff's WorldCom stock presently has essentially no value.¹

12. Defendants touted, marketed, advertised and promoted WorldCom, falsely representing it as a good company and worthwhile investment and disseminating its fraudulent financial statements, without revealing that, *inter alia*:

(i) Defendants were engaged in a partnership with WorldCom to promote the sale of its securities in order to generate trading volume and income for the Defendants;

(ii) Defendants did not review the fraudulent WorldCom financial statements which they disseminated, thus assisting in the perpetration of the largest corporate fraud in U.S. history;

(iii) Defendants directly and indirectly profited from the sale of WorldCom shares to Plaintiff;

(iv) WorldCom was not in compliance with Nasdaq listing requirements; and

¹ On December 30, 2002, Plaintiff sold 6000 shares of WorldCom at 15 cents per share for a net, after commission, of \$849.27.

(v) In violation of Florida Statute 517.301, **The For Profit** undertook said advertising and promotion for a consideration received or to be received directly or indirectly from WorldCom, market makers and/or stock dealers without disclosing the receipt, whether past or prospective, of such consideration and the amount of the consideration.

The "Non-Profit" NASD

13. The National Association of Securities Dealers, Inc. (the "**NASD**") is organized under the laws of Delaware. It is a not-for-profit membership organization which has no stock and is owned by its members.

14. Pursuant to Delaware law governing not-for-profit corporations, the Certificate of Incorporation of the **NASD** states:

"The NASD is not organized and shall not be conducted for profit, and no part of its net revenues or earnings shall inure to the benefit of any individual, subscriber, contributor, or member."

The NASD Is A Registered Securities Association Which Advertises That It Protects Investors

15. The Exchange Act of 1934, 15 USC §78 ("Act"), began an era of extensive federal involvement in the securities industry. It established the Securities and Exchange Commission ("SEC") and recites the necessity for regulation "to insure the maintenance of fair and honest markets . . ." 15 USC §78b. In 1938, Congress amended the Act to authorize "national securities associations" to enforce securities laws under the SEC's supervision. 15 U.S.C. § 78o-3. This legislation became known as the Maloney Act and gave rise to the establishment of the **NASD**.

16. Pursuant to section 15A of the Act, an association of brokers and dealers may be registered as a "national securities association." See 15 U.S.C. § 78o-3(a) (1994). The **NASD**

has been a registered national securities association since 1939. The **NASD** has been the only registered securities association and all brokers and dealers are required to be members thereof.

17. As a registered national securities association, the **NASD** is required to adopt and enforce rules covering virtually every aspect of the securities business. See *id.* § 78(o)-3(b).

18. Section 15A(b)(6) of the Act states that a national securities association's rules must be: [D]esigned to prevent fraudulent and manipulative acts and practices . . . and, in general, to protect investors and the public interest. . ." 15 U.S.C. § 78o-3(b)(6).

19. The **NASD's** motto/slogan as emblazoned on its stationary and prominently headlining its web-site (www.nasd.com) is: "**Investor protection. Market integrity.**" In purchasing shares of WorldCom, Plaintiff relied on the **NASD's** advertised slogan that the **NASD** existed to pursue these public goals rather than to generate profit for its management.

20. The **NASD** is a Self Regulatory Organization ("SRO"), subject to oversight by the SEC. The use of self-regulation was employed by the framers of the 1934 Act by virtue of the fact that the federal government did not have the immediate resources or the expertise to carry out the task. See H.R. Rep. No. 75-2307, at 4-5 (1938) stating that congressional preference for regulating the over the counter markets is a program based on cooperative regulation "in which the task will be largely performed by representative organizations of investment bankers, dealers and brokers, with the Government exercising appropriate supervision in the public interest, and exercising supplementary powers of direct regulation."

The Nasdaq Stock Market

21. The Nasdaq Stock Market ("Nasdaq") is in essence a telecommunications/computer network which links thousands of geographically dispersed market participants. The network provides, *inter alia*, real-time last-sale trade information, computerized order routing and execution systems, and the ability to use generic desktop computers running appropriate software

as Nasdaq workstations. There is no central trading floor like, for example, The New York Stock Exchange.

22. The **NASD** owned and operated the Nasdaq Stock Market from inception of that market through July 9, 2000.

23. Pursuant to an agreement entitled Plan of Allocation and Delegation of Functions By NASD To Subsidiaries, effective July 9, 2000, the **NASD** transferred to Defendant, The Nasdaq Stock Market, Inc., a corporation organized **For Profit** under the laws of the State of Delaware (hereinafter "**The For Profit**"), the following responsibilities for operation of The Nasdaq Stock Market:

"a. To operate the Nasdaq Stock Market, automated systems supporting The Nasdaq Stock Market, and other markets or systems for non-Nasdaq securities.

b. To provide and maintain a telecommunications network infrastructure linking market participants for the efficient processing and handling of quotations, orders, transaction reports, and comparisons of transactions.

c. To collect, process, consolidate, and provide to NASD Regulation the information requisite to operation of the surveillance audit trail.

d. To develop and adopt rule changes (i) applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded on The Nasdaq Stock Market, on other markets operated by The Nasdaq Stock Market, in the third market for securities listed on a registered exchange, and in the over the counter market, (ii) for Nasdaq-operated trading systems for these securities, and (iii) establishing trading practices with respect to these securities.

e. To develop and adopt rules, interpretations, policies, and procedures and provide exemptions to maintain and enhance the integrity, fairness, efficiency, and competitiveness of The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.

f. To act as a Securities Information Processor for quotations and transaction information related to securities traded on The Nasdaq

Stock Market and other markets operated by The Nasdaq Stock Market.

g. To act as processor under the Nasdaq/Unlisted Trading Privileges Plan to collect, consolidate, and disseminate quotation and transaction reports in eligible securities from all Plan Participants in a fair and non-discriminatory manner.

h. To administer the Association's involvement in National Market System Plans related to Nasdaq/Unlisted Trading Privileges or trading in the third market for securities listed on a registered exchange.

i. To develop, adopt, and administer rules governing listing standards applicable to securities traded on the Nasdaq Stock Market and the issuers of those securities.

j. To establish standards for participation in the Nasdaq Stock Market and other markets or systems operated by Nasdaq, and determine in accordance with Association and Nasdaq procedures if (i) persons seeking to participate in any of such markets and systems have met the standards established for participants; and (ii) persons participating in any of the markets or systems continue to meet the standards established for participants.

k. To establish and assess listing fees upon issuers and fees for the products and services offered by Nasdaq.

l. To establish the annual budget and business plan for Nasdaq.

m. To determine allocation of Nasdaq resources.

n. To manage external relations on matters related to trading on and the operation and functions of The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market and systems operated by the Nasdaq Stock Market with Congress, the Commission, state regulators, other self-regulatory organizations, business groups, and the public.

o. To operate Stockwatch in conjunction with NASD Regulation.

24. Since July 9, 2000, **The For Profit** has been operating The Nasdaq Stock Market, subject to its agreement with the **NASD**.

25. **The For Profit** is not registered as a securities association under the Securities Exchange Act of 1934, which is required in order to operate any stock market. To avoid

violation of the Act, the July 9, 2000 Plan of Allocation and Delegation Agreement states that actions taken by **The For Profit** are subject to review and ratification by the **NASD**, which is the duly "registered securities association":

"Actions taken pursuant to delegated authority, however, remain subject to **review, ratification or rejection** by the NASD Board in accordance with procedures established by the Board. Any function or responsibility as a registered securities association under the Securities Exchange Act of 1934 ("Act"), or as set forth in the Certificate of Incorporation or the by-laws is hereby reserved, except as expressly delegated to the subsidiaries."

26. Because the Nasdaq was controlled by the **NASD**, the SEC found **The For Profit** exempt from the obligation to register as an exchange but ruled that it must do so before the **NASD** relinquishes control.²

27. On March 15, 2001, guided by the **NASD**, **The For Profit** completed an application for registration as a National securities exchange under the Act and submitted it to the SEC. As of the date hereof, that application remains pending and has not yet been approved or disapproved.

28. As of the date filing hereof, **The For Profit** continues to operate the Nasdaq market without SEC registration as an exchange, under the control of the **NASD**.

The Non-Profit NASD's Scheme To Generate Profit and Enrich Insiders

29. Near the peak of the bull market, in 1999, the directors of the **NASD** devised a scheme to evade the letter and spirit of the strictures contained within its Certificate of Incorporation (i.e. "no part of its net revenues or earnings shall inure to the benefit of any individual, subscriber, contributor, or member," *par. 14, supra*), so that they could participate like the executives of many Nasdaq listed companies who had become billionaires. As part of the scheme, the **NASD** transferred the responsibility for operation of the Nasdaq Stock Market to

² SEC Release No. 34-44396, June 7, 2001.

The For Profit and embarked on a program to personally obtain shares at pre-issuance, insider prices, and then to make it a publicly traded company.

30. The initial step in this scheme was to issue stock to **NASD** insiders, prior to and in anticipation of taking **The For Profit** public. Thus, in a May 17, 2000 letter accompanying the **NASD's** 1999 annual report, Frank G. Zarb, **NASD** Chairman and Chief Executive Officer states: "As I write this letter, the sale of up to 49 percent of Nasdaq to members of **NASD** and major market participants is going forward." The notes to the **NASD's** 1999 annual report describe the initial plan to sell shares to insiders before going public: "sell ownership interests . . . to key stakeholders such as key market makers, Nasdaq-listed companies, institutional investors and **NASD** members."

31. In June of 2000, the **NASD** sold shares of **The For Profit**, in a private placement, reducing **NASD's** common stock ownership interest from 100% to 60%.³

32. A second private placement of stock in **The For Profit** was completed January 18, 2001, reducing the **NASD's** common stock ownership in **The For Profit** to 40%.

33. During 2002 (while continuing to retain voting control through a voting trust), the **NASD** reduced its ownership of **The For Profit's** common stock to zero by, *inter alia*, selling 43.2 million shares of **The For Profit** back to **The For Profit** for \$440 million of cash and preferred stock.

³ The comments of the **NASD's** CEO, Frank Zarb, as reported in *The Industry Standard*, January 25, 2001, further explain the change to **The For Profit**, acknowledging that **The For Profit** is closely aligned with the companies it trades (i.e. WorldCom), and is not a quasi-governmental entity:

"By shifting the Nasdaq's ownership from the securities firms that belong to the **NASD** to a more balanced group of investors, Zarb said in a conference call Thursday afternoon, the exchange has restructured itself into an entity more closely aligned with the companies it trades. 'All top-market makers are now owners,' said Zarb. 'We raised \$516 million and are very pleased. We've effectively de-mutualized the Nasdaq part of the **NASD**. . . It went from a quasi-governmental entity a few years back, [to something that is] now dynamic and entrepreneurial.'"

34. The public sale of **The For Profit's** shares has been planned by Defendants for at least the past three years but has been held in abeyance pending approval of **The For Profit's** presently pending application for registration as a National securities exchange.

35. The **NASD** has caused **The For Profit** to issue shares of its stock privately to **NASD** members, companies listed on the Nasdaq Stock Market and other insiders at pre-public trading prices, including 535,000 shares of Common Stock to members of **The For Profit's** and **NASD's** Boards of Directors on November 12, 2001.

36. As of May 2002, the **NASD** and **The For Profit** had a number of common officers and directors. Hardwick Simmons was both chairman of **The For Profit** and a member of the **NASD** board. In addition, Messrs. Sodhani, H. Furlong Baldwin, John D. Markese, and Richard Romano were members of both boards. Further, the **NASD** and **The For Profit** board meetings are generally held back to back in the same location to facilitate attendance by the interlocking directors.

37. As part of a plan and scheme by the **NASD** to enrich its officers and directors, in May of 2001, the **NASD** directors, exercising voting control of **The For Profit's** shares, without seeking SEC approval, ratified an equity incentive plan which allows grants of stock options of up to 1,000,000 shares per officer/director in a calendar year (2,000,000 in the first year of the plan). The plan provides for the discretionary award of stock options and other equity incentives to any " . . . officer, director, employee, consultant or advisor of the [**For Profit**] or of any affiliate."

38. As of April 25, 2001, **The For Profit** had awarded options to purchase 9,659,290 shares of Common Stock to its officers and directors and others. As an example of the type and nature of the enrichment of the directors and officers of the **NASD** as a result of them transferring The Nasdaq Stock Market to **The For Profit**: Frank G. Zarb, Chairman of the

Board of **NASD** in 2000, had been granted 1,014,000 stock options by **The For Profit** as of September 26, 2001; and, Richard G. Ketchum, the President of the **NASD** in 2000, was awarded 360,000 stock options and 40,000 shares of restricted stock in 2001.

39. The directors of the **NASD** who voted to transfer The Nasdaq Stock Market to **The For Profit**, have assumed positions on the board which allow them to further enrich themselves by controlling, in their own discretion, the award of stock options. For example, as of the year 2002, all three members of **The For Profit's** Employee Equity Plan Committee (Messrs. Baldwin, Romano and Sodhani) were directors of the **NASD** in the year 2000 when they voted to transfer the operation of The Nasdaq Stock Market to **The For Profit**.⁴

40. **The For Profit's** policy is to make bonus payments and option awards based primarily on its financial performance. As set forth in **The For Profit's** Report of its Management Compensation Committee on Executive Compensation (2002): ". . .the Committee believes that **the most important measure of Nasdaq performance is the increase in long-term stockholder value, attained through operating income, revenue growth and market share.**"

41. As expressly acknowledged in **The For Profit's** filings with the SEC: "**Nasdaq's growth and operating results are directly affected by the trading volume of Nasdaq-listed securities and the number of companies listed on the Nasdaq Stock Market.**" It also disclosed in its 2001 SEC registration statement, that a loss of even one of its major stock issuers "would result in a significant decrease in revenues" (April 30, 2001 registration statement):

"Nasdaq faces competition for listings from other primary exchanges, especially from the NYSE. In addition to competition for initial listings, Nasdaq also competes with the NYSE to maintain listings. In the past, a number of issuers listed on Nasdaq have left Nasdaq for NYSE each year. The largest 50 Nasdaq-listed issuers . . . accounted for approximately 51%

⁴ It is also noted that at that time, Harvey L. Pitt, the past chairman of the SEC, was a member of the **NASD's** Legal Advisory Board.

of total dollar volume traded on Nasdaq for the year ended December 31, 2000. **The loss of one or more of these issuers would result in a significant decrease in revenues. . .**

* * *

Every year, a number of Nasdaq-listed companies leave Nasdaq for the NYSE. For the year ended December 31, 2000, 25 companies moved from Nasdaq to the NYSE while one switched from the NYSE to Nasdaq."

42. During all or most of the period 2000 through May of 2002, Worldcom was a high volume Nasdaq traded stock and among the Nasdaq's top companies.

43. Having tied the earnings of the management of **The For Profit** to "operating income, revenue growth and market share", *supra* at par. 40, the **NASD** has created an ownership and management structure for The Nasdaq Stock Market which is inimical to the **NASD's** duties as the National registered securities association. Since the bulk of **The For Profit's** income is derived from the listing and volume of Nasdaq traded securities, its officers and directors have a strong personal incentive to promote and sell Nasdaq traded securities.

44. The **NASD**, purely for the personal gain of its directors, officers and members, has created an institutionalized irreconcilable conflict of interest between its duty to protect the investing public and the stated goal of maximizing **The For Profit's** revenue.

45. **NASD** Working Paper 98-01, drafted at a time when the Nasdaq was owned by the **NASD** and prior to the re-structuring which gave its management equity incentives to maximize profit, presciently recognized the conflict between listing more companies to maximize revenue and protecting the public from undesirable companies:

"As a business matter, establishing listing standards therefore requires balancing the desire for more listed companies with the potential deterioration of the "brand image" of the market caused from the listing of undesirable companies."

**The Defendants' Advertisements and Promotions Concealed and Withheld
The Fact That WorldCom Was In Violation of The Nasdaq Independent
Audit Committee Certification Rule**

46. The **NASD** adopted new requirements for audit committees of companies listed on the Nasdaq. These new rules were approved by the SEC on December 14, 1999. Plaintiff makes no claim based upon any failure of the Defendants to fulfill any duty of as a self regulatory organization in connection with enforcement of its rules and the performance of its regulatory or adjudicatory responsibilities or functions, including the delisting of companies. The following allegations regarding WorldCom's failure to comply with the new requirements for audit committees of companies listed on the Nasdaq are included solely to demonstrate that the Defendants knew, or should have known, that their private, commercial advertisements and marketing efforts touting that company as a good investment were false and misleading and that it should not, as part of these marketing efforts, have disseminated WorldCom's fraudulent financial statements.

47. Under the new audit committee rules, companies listed on the Nasdaq as of December 14, 1999 had until June 14, 2000 to adopt a formal written audit committee charter and until June 14, 2001 to meet the new committee structure and membership requirements.

48. As of July 9, 2000, the **NASD** delegated to **The For Profit**, the responsibility (see par. 23 (i), *supra*):

"(i) To develop, adopt, and administer rules governing listing standards applicable to securities traded on the Nasdaq Stock Market and the issuers of those securities."

49. As the **NASD** set forth in its Statement of Statutory Basis (Federal Register Vol. 64, No. 197, October 13, 1999, pg. 55513), the purpose of the new audit committee rules is to prevent fraudulent practices (exactly like those practiced by WorldCom):

"Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act which requires, among other things, that the Association's rules to be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the

public interest. As noted above, Nasdaq's proposed rule change is aimed at improving the effectiveness of audit committees of Nasdaq Issuers, which is consistent with these goals.

Accordingly, this proposal is properly within the discretion of the Association."

While the new audit committee rules were promulgated by the non-profit **NASD, The For Profit** was responsible for enforcement (subject to **NASD** review), when the new rules became effective.

50. In publishing false and misleading advertising and promoting and touting shares of WorldCom as a good investment and in disseminating the fraudulent WorldCom financial statements, **The For Profit** concealed the fact that WorldCom was not in compliance with the new audit committee rules.

51. Under the new audit committee rules, WorldCom was required to certify its compliance with the new audit committee charter requirement by June 14, 2000; and, to certify its compliance with the new audit committee structure and composition requirements by June 14, 2001.

52. **The For Profit** continued to tout WorldCom shares and disseminate its fraudulent financial statements without disclosing, even though it was well aware or should have known, that WorldCom failed to fully satisfy the new audit committee certification and implementation requirements.

53. The new audit committee rules required that to continue its Nasdaq listing, WorldCom certify it had an audit committee comprised of three financially literate, independent directors. In addition, WorldCom was required to certify to **The For Profit** by June 14, 2001, that (Nasdaq Rule 4350):

". . . it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting, or any other

comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities."

54. In order to qualify as "independent directors", each member of the audit committee is required to satisfy the following (Nasdaq Rule 4200):

" 'Independent director' means a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the company's board of directors, would interfere with the exercise of independent judgement in carrying out the responsibilities of a director. The following persons shall not be considered independent.

(A) a director who is employed by the corporation or any of its affiliated for the current year or any of the past three years;

(B) a director who accepts any compensation from the corporation or any of its affiliates in excess of \$60,000 during the previous fiscal year, other than compensation for board service, benefits under a tax-qualified retirement plan, or non-discretionary compensation;

(C) a director who is a member of the immediate family of an individual who is, or has been in any of the past three years, employed by the corporation or any of its affiliates as an executive officer. Immediate family includes a person's spouse, parents children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and anyone who resides in such person's home;

(D) a director who is a partner in, or a controlling shareholder or an executive officer of, any for-profit business organization to which the corporation made, or from which the corporation received, payments (other than those arising solely from investments in the corporation's securities) that exceed 5% of the corporation's or business organization's consolidated gross revenues for that year, or \$200,000, whichever is more, in any of the past three years;

(E) a director who is employed as an executive of another entity where any of the company's executives serve on that entity's compensation committee."

55. **The For Profit** was aware that WorldCom did not satisfy the new audit committee rules because **The For Profit** knew WorldCom's committee members were not independent and they had expressly stated that they lacked the required financial expertise. For example,

WorldCom's Form S-4 filed with the SEC on April 26, 2001, with a copy to **The For Profit** and **NASD**, makes the following disclaimer, effectively negating WorldCom's compliance with the Nasdaq audit committee requirements:

"The members of the audit committee are not professionally engaged in the practice of auditing or accounting and are not experts in the fields of auditing or accounting, including in respect of auditor independence. Members of the audit committee rely without independent verification on the information provided to them and on the representations made by management and the independent auditors. Accordingly, the audit committee's oversight does not provide an independent basis to determine that management has maintained appropriate accounting and financial reporting principles or appropriate internal control and procedures designed to assure compliance with accounting standards and applicable laws and regulations. Furthermore, the audit committee's considerations and discussions referred to above do not assure that the audit of WorldCom's financial statements has been carried out in accordance with generally accepted auditing standards, that the financial statements are presented in accordance with generally accepted accounting principles or that WorldCom's auditors are in fact "independent." "

56. Knowing that WorldCom failed to meet the audit committee rules, **The For Profit** continued to advertise, promote and tout WorldCom as a great company, and to disseminate its fraudulent financial statements, implicitly warranting and falsely representing that WorldCom satisfied all listing requirements. In purchasing all of his WorldCom shares, Plaintiff relied on **The For Profit's** advertisements and the WorldCom financial statements it disseminated, unaware of WorldCom's failure to meet the Nasdaq audit committee listing requirement.

57. At all times material to this action, Max E. Bobbitt was chairman of the WorldCom audit committee. During May of 2000, WorldCom filed a Form Def. 14A with the SEC and **The For Profit** which reflects that Mr. Bobbitt owned 407,611 shares of WorldCom, including 80,268 shares over which he held stock options and audit committee member Francisco Galesi controlled 4,810,741 shares including 80,268 over which he held stock options. In the WorldCom Form 14A filed with **The For Profit** in April 2002, Bobbitt held 433,749 WorldCom shares including 103,145 over which he held stock options and Galesi controlled 1,800,393

shares including 103,145 over which he held stock options. The stock options were given to these directors by WorldCom as a form of additional compensation.

58. **The For Profit** knew or, but for its gross negligence and recklessness should have known, the members of the WorldCom audit committee held stock and stock options in WorldCom and had various interests in entities doing business with WorldCom and received other benefits from WorldCom, which precluded those directors from qualifying as "independent directors" under the Nasdaq rules.

59. If the **NASD** or **The For Profit** had disclosed in their advertisements touting the shares of WorldCom which Plaintiff relied upon; or, with the promotional dissemination to Plaintiff of WorldCom's fraudulent financial statements upon which Plaintiff also relied, that WorldCom was in violation of the Nasdaq independent audit committee requirement, Plaintiff would not have purchased the shares and suffered a virtual total loss of the investment.

The Advertising Campaign

60. During 2000 and 2001, **The For Profit** expended \$74 million dollars on marketing. In 2002 **The For Profit** expended an additional \$27 million dollars ". . .on the company's marketing campaign featuring NASDAQ-listed companies."⁵ As set forth in its April 30, 2001 registration statement filed with the SEC:

"**Nasdaq's branding strategy** is designed to convey to the public that the world's innovative, **successful growth companies** are listed on Nasdaq."

Pursuant to the Plan of Allocation and Delegation of Function Agreement, the **NASD**, at all times material to this action, controlled **The For Profit's** "allocation of resources" including its marketing and advertising expenditures. Paragraphs 23m and 25, *supra*.

61. In purchasing shares of WorldCom, Plaintiff relied on **The For Profit's** advertising, which repetitively advertised WorldCom as a "**successful growth company**". *Id.* For example,

appearing in major prime time programming such as West Wing and MSNBC News with Brian Williams, **The For Profit** ran TV spots for its 100 Index Trust, better known as the QQQ. These TV ads began running the week of September 24, 2001. The ads feature a group of companies included in the trust, specifically including and showing WorldCom. The key message is that the world's most successful, sought after companies, can be found on the Nasdaq stock market.

62. Seeking to calm the markets in the wake of the Enron fraud, on April 11, 2002, **The For Profit** took out a two full page spread advertisement in the Wall Street Journal discussing its belief in the need for Nasdaq listed companies to provide accurate financial reporting in accordance with Generally Accepted Accounting Principals ("GAAP"), "supported by a Knowledgeable Audit Committee". On one page is a picture of the Nasdaq ticker with the slogan "**The Responsibilities We All Share**". On the opposite page under the headline "**Keeping Our Markets True - It Is All About Character**" is a list of the chief executives of the "good" Nasdaq listed companies under the sub-heading "**Our Beliefs Stand In Good Company**". Listed thereunder as an endorser of these Nasdaq goals is "Bernard J. Ebbers, President and Chief Executive Officer WorldCom, Inc." The message implicitly conveyed by the ad is that WorldCom and its CEO are endorsed by **The For Profit** as, *inter alia*, having good character, accounting done in accordance with GAAP, and a viable audit committee in accordance with Nasdaq listing requirements. Plaintiff relied on this endorsement the following day in purchasing yet additional shares of WorldCom as its price continued on a downward spiral.

63. Within 20 days after the April 11, 2002 ad featuring Ebbers/WorldCom, Ebbers resigned as the massive fraud became public. In order to increase the credibility and impact of the April 11, 2002 ad, the following 18 prominent members of the board of directors of **The For**

⁵ Page 3 of **The For Profit's** March 10, 2003 press release.

Profit, several of whom were also directors of the **NASD**, allowed their names to appear in the advertisement giving Plaintiff the impression that they too were vouching for the fact that WorldCom's financial statements were in accordance with GAAP and that it satisfied Nasdaq listing requirements:

Hardwick Simmons
Chairman and Chief Executive Officer
The Nasdaq Stock Market, Inc.

Dr. Josef Ackermann
Chairman, Corporate and
Investment Banking
Deutsche Bank AG

H. Furlong Baldwin
Chairman
Mercantile Bankshares Corporation

Frank E. Baxter
Chairman Emeritus
Jefferies Group, Inc.

Michael Casey
Executive Vice President
Chief Financial Officer and Chief
Administrative Officer
Starbucks Corporation

William S. Cohen
Chairman and CEO
The Cohen Group

Michael W. Clark
Managing Director and Head of
Global Equity Trading
Credit Suisse First Boston

F. Warren Hellman
Chairman
Hellman & Friedman LLC

Richard G. Ketchum
President and Deputy Chairman
The Nasdaq Stock Market, Inc.

Dr. John D. Markese
President
American Association of Individual Investors

Stan O'Neal
President and Chief Operating Officer
Merrill Lynch & Co., Inc.

Vikram S. Pandit
Co-President and Chief Operating Officer
Morgan Stanley

Kenneth D. Pasternak
Retiree, Chairman and Chief Executive Officer
Knight Trading Group, Inc.

David S. Pottruck
President and Co-Chief Executive Officer
The Charles Schwab Corporation

Arthur Rock
Principal
Arthur Rock & Co.

Richard C. Romano
President
Romano Brothers & Co.

Arvind Sodhani
Vice President and Treasurer
Intel Corporation

Sir Martin S. Sorrell
Group Chief Executive and Director
SPP Group PLC

64. **The For Profit's** marketing and advertising campaign was intended to boost volume on the Nasdaq and to promote the shares of the larger listed companies, in particular, Worldcom, by placing the imprimatur of a registered securities association under the Securities Exchange Act of 1934 (which **The For Profit** is not), upon those shares. In purchasing shares of Worldcom, Plaintiff relied upon **The For Profit's** "official" promotions and advertisements as an

endorsement and a warranty that Worldcom met all Nasdaq listing requirements and had made fair disclosure of its true financial condition.

The Defendants' Joint Marketing Partnership With WorldCom

65. During the period July 9, 2000 through May 2002, **The For Profit** (controlled by the **NASD**, *supra*) and its major listed companies, including Worldcom, operated pursuant to a cooperative joint venture or **partnership** to promote the sale of Nasdaq stocks in general and the major companies shares in particular.

66. During the period July 9, 2000 through May 2002, **The For Profit** (controlled by the **NASD**, *supra*), conspired with WorldCom to promote Worldcom stock by lending it the imprimatur of a registered securities association i.e. to capitalize on the "Nasdaq brand". **The For Profit** (controlled by the **NASD**, *supra*), encouraged WorldCom to link its corporate website (containing its fraudulent financial statements) to the Nasdaq site. **The For Profit** expressly recognized this promotional activity as a "**partnership**" with the listed companies for the purpose of helping them "generate visibility", "build investor awareness" and take advantage of the strength of the Nasdaq brand " *a brand associated with growth, innovation and all the possibility of the American dream*—to help them build additional visibility." **The For Profit's** 2001 Annual Report expressly acknowledges this "**partnership**" stating:

Key to the Nasdaq culture is the cultivation of a strong and highly effective **partnership with our listed companies**. Not only do we give them access to capital, visibility and an exceptional portfolio of services, we also share their commitment to moving the world forward. . . . Regardless of companies' economic sectors, Nasdaq can **open the door to the capital needed** to implement their strategies and fulfill their visions. Beyond that, we lend the strength of our brand—*a brand associated with growth, innovation and all the possibility of the American dream*—to help them build additional visibility. And as an integral part of our partnership with our listed companies, we offer a wide range of educational and informational products and services. . .

* * *

GATEWAY TO THE PUBLIC

Our consumer Web-site, **nasdaq.com**, was built to help listed companies generate visibility with both existing and potential investors. Averaging 7.5 million page views each weekday, the site offers comprehensive data for securities listed on all major global exchanges, as well as for U.S. equity options and mutual funds. **We strongly**

[Page Break] THE POWER OF PARTNERSHIP

encourage listed companies to establish direct links between nasdaq.com and their corporate Web-sites. Doing so can help them build further investor awareness and add value to their own investor relations efforts."

67. **The For Profit's** numerous ads touting and endorsing WorldCom as a good investment and linking its Nasdaq web-site to the WorldCom corporate site and the fraudulent WorldCom financial statements contained thereon, without disclosure of its relationship with WorldCom, was, *inter alia*, false and misleading advertising and was relied upon by Plaintiff in purchasing his shares of WorldCom.⁶

68. Plaintiff relied on Worldcom financial information linked to and provided on **The For Profit's** web-site believing that by providing and disseminating this information, **The For Profit** represented it was reviewed by it and found to be reasonably accurate. In addition, Plaintiff was not aware that **The For Profit** had a direct financial stake and sought to generate profits and revenue through the sale of WorldCom shares.

69. Trading on the strength of the "Nasdaq brand" which carries the imprimatur of a registered National registered securities association, **The For Profit** (controlled by the NASD, *supra*), was grossly negligent in marketing, advertising and promoting the fraudulent WorldCom

⁶ The NASD expressly prohibits its member stockbrokers and securities firms from engaging in the very type of stock promotion that **The For Profit** engaged in. Thus, NASD Rule 2200, which governs communications with the public and advertising, specifically prohibits: "**Exaggerated or unwarranted claims or unwarranted superlatives**". NASD members are also prohibited from making any reference to the NASD which "**could imply endorsement or approval by the association.**"

financial information and statements by linking them to the Nasdaq web-site without a fair disclaimer. **The For Profit** specifically acknowledges on its web-site its liability for gross negligence in the provision of such financial information:

"Unless due to willful tortious misconduct or gross negligence, Nasdaq (and affiliates) and the Information Providers have no liability in tort, contract, or otherwise (and as permitted by law, product liability), to user and/or any third party."

70. **The For Profit** willfully failed to reveal the fact that it did not independently review the fraudulent WorldCom financial information and statements linked to and posted on its Nasdaq web-site; and, to the contrary, **The For Profit** represented that it believed the information to be accurate and reliable:

"All information contained herein is obtained by NASDAQ from sources believed by NASDAQ to be accurate and reliable."

71. **The For Profit** should have placed on the Nasdaq web-site a disclaimer similar to that provided by "non-official" information providers such as Yahoo, which states at its financial web-site:

Data and information is provided for informational purposes only, and is not intended for trading purposes. . . . **Yahoo! has not reviewed, and in no way endorses the validity of such data. [Emphasis added]**

Contrary to the Yahoo site, which clearly states that it serves merely as a conveyor of third party information, **The For Profit** and **NASD** had a financial stake in promoting shares of WorldCom and intentionally conveyed the false impression to Plaintiff that the financial information provided on the official Nasdaq site was reviewed by them in their official capacities.

72. The New York Stock exchange web-site also provides an example of the type of disclosure required of **The For Profit** if it had not made a conscious decision to invite investors, including Plaintiff, to rely on the WorldCom financial information linked to the Nasdaq web-site:

**“New York Stock Exchange, Inc.
World Wide Web-site Terms and Conditions of Use**

* * *

Disclaimers and Limitation of Liability

* * *

Use of Links

Please note that links from this site are provided for your convenience. Should you leave this site via a link contained herein, the content that you view therein is not provided by NYSE. NYSE is not responsible for, nor has it developed or reviewed, the content at those sites.”

COUNT I

Action for Violation of Florida Statute § 517.301(1)(b) Against The For Profit

73. Plaintiff restates and incorporates herein the allegations set forth in paragraphs 1 through 72.

74. Plaintiff sues **The For Profit** for violation of Florida Statute § 517.301(1)(b), which states:

“517.301 Fraudulent transactions; falsification or concealment of facts.-(1) It is unlawful and a violation of the provisions of this chapter for a person:

* * *

(b) To publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, communication, or broadcast which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received directly or indirectly from an issuer, underwriter, or dealer, or from an agent or employee of an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount of the consideration.”

75. During 2000 and 2001, **The For Profit** expended \$74 million dollars on marketing and advertising. In 2002, **The For Profit** expended an additional \$27 million dollars on marketing and advertising. The marketing and advertising campaign featured NASDAQ-listed

companies, including WorldCom. **The For Profit** published numerous print and television advertisements in Florida endorsing WorldCom as a great company and a good investment. **The For Profit** also provided publicity to WorldCom on its web-site and assisted in the dissemination of WorldCom's fraudulent financial statements.

76. Though not purporting to offer WorldCom stock for sale, **The For Profit** undertook said advertising and promotion for a consideration received or to be received directly or indirectly from WorldCom, market makers and/or stock dealers without disclosing the receipt, whether past or prospective, of such consideration and the amount of the consideration.

77. The consideration WorldCom received for advertising WorldCom included, but is not limited to, continuation of listing fees from WorldCom, fees generated by increased trading volume on the Nasdaq stock market, and fees generated from gaining new listings. As stated in **The For Profit's** calendar year 2001 annual report (SEC Form 10-K, at page 2):

“Nasdaq’s growth and operating results are directly affected by the trading volume of Nasdaq-listed securities and the number of companies listed on The Nasdaq Stock Market.”

78. The purpose of **The For Profit's** advertising campaign to build the “Nasdaq Brand” is to generate revenue through maintaining its listings, obtaining new listings and to jointly market shares with the listed companies (SEC Form 10-K for 2001, at page 22):

Nasdaq’s strategies for maintaining its current listings in both The Nasdaq National Market and The Nasdaq SmallCap Market and gaining new listings include building global brand identity, developing joint marketing opportunities with listed companies. . .

79. **The For Profit** has undertaken an enormous advertising campaign to build the “Nasdaq brand” as if it were selling a tangible consumer product like toothpaste or shoes. However, the “Nasdaq brand” is a brand of stocks. **The For Profit** sought to engender trust and confidence of the investing public, including Plaintiff, that when they invest in a Nasdaq listed stock, the fact that it is regulated by the Nasdaq market and meets the Nasdaq listing

requirements, provides assurance of the quality of their investment. The failure of **The For Profit** to disclose that it was compensated by WorldCom, market makers and/or stock dealers, directly or indirectly for the advertisements and promotions violated Florida Statute Section 517.301(1)(b).

80. **The For Profit's** advertisements and endorsements of WorldCom carried extraordinary weight and power with Plaintiff because of Defendant's unique position as if it were a National securities association whose function and motto were known to Plaintiff to be: "**Investor protection. Market integrity.**" Plaintiff relied upon the endorsements and recommendation of WorldCom shares by **The For Profit** in purchasing same.

81. Increased trading volume on the Nasdaq Stock Market results in an increase in the revenue of **The For Profit**.

82. **The For Profit** directly profited and benefited from Plaintiff's purchase of WorldCom shares.

83. Pursuant to Florida Statute Section 517.211, Plaintiff is entitled to rescind the purchases of WorldCom shares and recover the full amount invested therein and, to the extent Plaintiffs shares have been disposed of, the total damages Plaintiff incurred, together with interest and attorneys fees.

Wherefore, Plaintiff prays for judgment against Defendant, THE NASDAQ STOCK MARKET, INC., for the amount invested in WorldCom shares and such damages and other relief, including rescission, as are allowed by law with interest, costs and reasonable attorneys fees.

COUNT II

Action for Violation of Florida Statute § 517.12 Against The For Profit

84. Plaintiff restates and incorporates herein the allegations set forth in paragraphs 1 through 72.

85. Plaintiff sues **The For Profit** for violation of Florida Statute § 517.12, for acting as a broker and selling, or offering for sale, WorldCom shares in the state of Florida without registering as required by law.

86. Florida Statute § 517.12 prohibits sale of securities by unregistered dealers:

(1) No dealer . . . shall sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with the department. . .”

87. **The For Profit** is a “dealer” as defined in Florida Statute § 517.021(6)(a)1, to wit:

“Any person . . . who engages, either for all or part of her or his time, directly or indirectly, as broker . . . in the business of offering . . . selling, or otherwise dealing . . in securities issued by another person.”

The For Profit has failed to register as a dealer as required by Florida law.

88. **The For Profit’s** advertisements, promotion and endorsements of WorldCom carried extraordinary weight and power with Plaintiff because of Defendant’s unique position as if it were a National securities association whose function and motto were known to Plaintiff to be: **"Investor protection. Market integrity."** Plaintiff relied upon the endorsements and recommendation of WorldCom shares by **The For Profit** in purchasing same.

89. **The For Profit** directly benefited and profited by Plaintiff’s purchases of WorldCom shares because, *inter alia*, its income is increased by increased trading volume on the Nasdaq stock market.

90. Pursuant to Florida Statute Section 517.211, Plaintiff is entitled to rescind the purchases of WorldCom shares and to recover the full amount invested therein and, to the extent Plaintiffs shares have been disposed of, the total damages Plaintiff incurred, together with interest and attorneys fees.

Wherefore, Plaintiff prays for judgment against Defendant, THE NASDAQ STOCK MARKET, INC., for the amount invested in WorldCom shares and such damages and other relief, including rescission, as are allowed by law with interest, costs and reasonable attorneys fees.

COUNT III

Common-Law Fraud against Both Defendants

91. Plaintiff restates and incorporates herein the allegations set forth in paragraphs 1 through 72.

92. Plaintiff sues **The For Profit** and the **NASD** for common-law fraud.

93. At the time of Plaintiff's purchases of the common stock of WorldCom, Inc. (see par. 10, *supra*), that company had: (i) for over two years issued phony financial statements grossly overstating its income and assets; (ii) represented itself as profitable and having positive cash flow when, in fact, it had losses and negative cash flow; (iii) failed to meet the independent audit committee requirement for listing on the Nasdaq stock market; and (iv) was engaged in the largest known corporate fraud in United States history.

94. At all times material to this action, **The For Profit** was not registered as a securities association under the Securities Exchange Act of 1934, which is required in order to operate any stock market, including the Nasdaq. The **NASD** is so registered. To avoid violation of the Act, the July 9, 2000 Plan of Allocation and Delegation Agreement between the Defendants states that actions taken by **The For Profit** in connection with the operation of the Nasdaq stock market are subject to "review, ratification or rejection by the NASD" (par. 25, *supra*). At all times material to this action, operation of the Nasdaq stock market, including the advertising and marketing campaign, was jointly controlled and run by the Defendants.

95. During 2000 and 2001, **The For Profit** and **NASD**, jointly and in concert with each other, expended \$74 million dollars on marketing and advertising. In 2002, **The For Profit** expended an additional \$27 million dollars on marketing and advertising. The purpose of this marketing and advertising campaign was to induce investors, including Plaintiff, to purchase shares of stock traded on the Nasdaq stock market, including WorldCom, in order to benefit the **NASD** and **The For Profit** (as well as the officers and directors of the Defendants who held stock and stock options in **The For Profit**) by:

- (i) generating increased trading volume and the attendant revenue;
- (ii) generating and retaining listing income from Nasdaq listed companies, including WorldCom; and,
- (iii) increasing the value of **The For Profit's** stock.

96. As part of the advertising and marketing campaign described in paragraph 95 above, **The For Profit** published numerous print and television advertisements in Florida which knowingly, with intent to deceive, endorsed WorldCom and conveyed the false representation and impression that WorldCom was a great company with accounting in accordance with GAAP; a good investment; and, that WorldCom met the listing requirements of the Nasdaq stock market. **The For Profit** also provided publicity to WorldCom on its web-site and assisted in the dissemination of WorldCom's fraudulent financial statements. The aforesaid advertising and marketing campaign conducted during the year prior to Plaintiff's purchases of WorldCom shares included, but was not limited to:

- (i) As set forth in its April 30, 2001 registration statement filed with the

SEC:

"**Nasdaq's branding strategy** is designed to convey to the public that the world's innovative, **successful growth companies** are listed on Nasdaq."

- (ii) Appearing in major prime time programming such as West Wing and MSNBC News with Brian Williams, **The For Profit** ran TV spots for its

100 Index Trust, better known as the QQQ. These TV ads began running the week of September 24, 2001. The ads feature a group of companies included in the trust, including WorldCom. The key message is that the world's most sought after companies can be found on the world's most sought after security.

(iii) Seeking to calm the markets in the wake of the Enron fraud, on April 11, 2002, **The For Profit** took out a two full page spread advertisement in the Wall Street Journal discussing its belief in the need for Nasdaq listed companies to provide accurate financial reporting in accordance with Generally Accepted Accounting Principals, "supported by a Knowledgeable Audit Committee". On one page is a picture of the Nasdaq ticker with the slogan "**The Responsibilities We All Share**". On the opposite page under the headline "**Keeping Our Markets True - It Is All About Character**" is a list of the chief executives of the "good" Nasdaq listed companies under the sub-heading "**Our Beliefs Stand In Good Company**". Listed thereunder as an endorser of these Nasdaq goals is "Bernard J. Ebbers, President and Chief Executive Officer WorldCom, Inc." The message conveyed by the ad is that WorldCom and its CEO are endorsed by **The For Profit** as, *inter alia*, having good character, accounting done in accordance with GAAP, and a viable audit committee in accordance with Nasdaq listing requirements.

(iv) Linking the Nasdaq website to WorldCom's fraudulent financial statements with the specific intent to create the impression that they were reviewed and/or endorsed by **The For Profit**.

(v) Generally conveying the false impression that WorldCom was in compliance with Nasdaq listing requirements.

In addition to the foregoing, during the months prior to his purchases of WorldCom shares, Plaintiff saw, heard and relied upon other public media advertisements/communications by the Defendants conveying the same false representations and impression to the effect that WorldCom was a great company with accounting in accordance with GAAP; a good investment; and, that it met the listing requirements of the Nasdaq stock market. Plaintiff requires discovery to recall and provide further specification as to the dates and places and method of publication of said additional advertisements/communications during the time periods leading to Plaintiff's purchases of WorldCom shares.

97. **The For Profit** and **NASD's** advertising and marketing campaign was designed and intended by Defendants to induce investors, including Plaintiff, to purchase shares of WorldCom

and, as part of that campaign, Defendants knowingly and intentionally made false laudatory representations regarding WorldCom while concealing their direct profit motive and interest in generating purchases of WorldCom shares. The intention of **The For Profit** and **NASD** in making these false representations and concealing their direct profit motive and interest in selling the stock of that company, was to convince and induce investors, including Plaintiff, to purchase shares of WorldCom.

98. In their advertising and marketing campaign, **The For Profit** and **NASD**, acting jointly and in concert with each other, purposely concealed and withheld disclosure of their profit motive and financial stake in generating sales of WorldCom shares, and of their joint venture with WorldCom to market said shares, with the intention of misleading potential investors, including Plaintiff, into believing the endorsements were being made by of a disinterested self regulatory organization whose goal was investor protection and market integrity. In order to effectuate their plan to mislead potential investors, including Plaintiff, the Defendants willfully published numerous advertisements and distributed WorldCom's financial statements in violation of Florida Statute § 517.301(1)(b), which requires disclosure in advertisements and marketing material that Defendants were in a joint venture with WorldCom to promote the sale of its shares and were compensated and/or reimbursed, *inter alia*, from the trading volume the marketing and advertising generated, listing and other fees. The intention of **The For Profit** and **NASD** in so misleading potential investors, including Plaintiff, was to convince and induce investors, including Plaintiff, to purchase shares of WorldCom.

99. In purchasing all of his shares of WorldCom (listed at par. 10, *supra*), Plaintiff relied upon the aforesaid false and misleading representations in the Defendants' advertising and marketing campaign; and, as a result, was induced to and did purchase said shares of stock and has suffered substantial damages as a result thereof.

Wherefore, Plaintiff prays for the award of compensatory and punitive damages and such other damages as are allowed by law against **The For Profit** and the **NASD**.

COUNT IV

Negligent Misrepresentation Against Both Defendants

100. Plaintiff restates and incorporates herein the allegations set forth in paragraphs 1 through 72.

101. Plaintiff sues **The For Profit** and the **NASD** for negligent misrepresentation.

102. At the time of Plaintiff's purchases of the common stock of WorldCom, Inc. (see par. 10, *supra*), that company had: (i) for over two years issued phony financial statements grossly overstating its income and assets; (ii) represented itself as profitable and having positive cash flow when, in fact, it had losses and negative cash flow; (iii) failed to meet the independent audit committee requirement for listing on the Nasdaq stock market; and (iv) was engaged in the largest known corporate fraud in United States history.

103. At all times material to this action, **The For Profit** was not registered as a securities association under the Securities Exchange Act of 1934, which is required in order to operate any stock market, including the Nasdaq. The **NASD** is so registered. To avoid violation of the Act, the July 9, 2000 Plan of Allocation and Delegation Agreement between the Defendants states that actions taken by **The For Profit** in connection with the operation of the Nasdaq stock market are subject to "review, ratification or rejection by the **NASD**" (par. 25, *supra*). At all times material to this action, operation of the Nasdaq stock market, including the advertising and marketing campaign, was jointly controlled and run by the Defendants.

104. During 2000 and 2001, **The For Profit** and **NASD**, jointly and in concert with each other, expended \$74 million dollars on marketing and advertising. In 2002, **The For Profit** expended an additional \$27 million dollars on marketing and advertising. The purpose of this

marketing and advertising campaign was to induce investors, including Plaintiff, to purchase shares of stock traded on the Nasdaq stock market, including WorldCom, in order to benefit the **NASD** and **The For Profit** (as well as the officers and directors of the Defendants who held stock and stock options in **The For Profit**) by:

- (i) generating increased trading volume and the attendant revenue;
- (ii) generating and retaining listing income from Nasdaq listed companies, including WorldCom; and,
- (iii) increasing the value of **The For Profit's** stock.

105. **The For Profit** and **NASD**, jointly and in concert with each other, published numerous print and television advertisements in Florida which endorsed WorldCom and conveyed the false representation and impression to the effect that WorldCom was a great company with accounting in accordance with GAAP; a good investment; and, that it met the listing requirements of the Nasdaq stock market. **The For Profit** also provided publicity to WorldCom on its web-site and assisted in the dissemination of WorldCom's fraudulent financial statements in a manner which made it appear that Defendants had reviewed and endorsed them. In actuality, Defendants were without knowledge as to the truth or falsity of the representations and impression conveyed by their advertising and marketing campaign to the effect that WorldCom was a great company with accounting in accordance with GAAP; a good investment; and, that it met the listing requirements of the Nasdaq stock market. Under the circumstances, Defendants should have known the falsity of the representations and impression conveyed by their advertising and marketing campaign to the effect that WorldCom was a great company with accounting in accordance with GAAP; a good investment; and, that it met the listing requirements of the Nasdaq stock market. The aforesaid advertising and marketing campaign included, but was not limited to:

(i) As set forth in its April 30, 2001 registration statement filed with the

SEC:

"**Nasdaq's branding strategy** is designed to convey to the public that the world's innovative, **successful growth companies** are listed on Nasdaq."

(ii) Appearing in major prime time programming such as West Wing and MSNBC News with Brian Williams, **The For Profit** ran TV spots for its 100 Index Trust, better known as the QQQ. These TV ads began running the week of September 24, 2001. The ads feature a group of companies included in the trust, including WorldCom. The key message is that the world's most sought after companies can be found on the world's most sought after security.

(iii) Seeking to calm the markets in the wake of the Enron fraud, on April 11, 2002, **The For Profit** took out a two full page spread advertisement in the Wall Street Journal discussing its belief in the need for Nasdaq listed companies to provide accurate financial reporting in accordance with Generally Accepted Accounting Principals, "supported by a Knowledgeable Audit Committee". On one page is a picture of the Nasdaq ticker with the slogan "**The Responsibilities We All Share**". On the opposite page under the headline "**Keeping Our Markets True - It Is All About Character**" is a list of the chief executives of the "good" Nasdaq listed companies under the sub-heading "**Our Beliefs Stand In Good Company**". Listed thereunder as an endorser of these Nasdaq goals is "Bernard J. Ebbers, President and Chief Executive Officer WorldCom, Inc." The message conveyed by the ad is that WorldCom and its CEO are endorsed by **The For Profit** as, *inter alia*, having good character, accounting done in accordance with GAAP, and a viable audit committee in accordance with Nasdaq listing requirements.

(iv) Linking the Nasdaq website to WorldCom's fraudulent financial statements to create the impression that they were reviewed and/or endorsed by **The For Profit** and therefore prepared in accordance with GAAP.

(v) Generally conveying the false impression that WorldCom was in compliance with Nasdaq listing requirements.

In addition to the foregoing, during the months prior to his purchases of WorldCom shares, Plaintiff saw, heard and relied upon other public media advertisements/communications by the Defendants conveying the same false representations and impression to the effect that WorldCom was a great company with accounting in accordance with GAAP; a good investment; and, that it met the listing requirements of the Nasdaq stock market. Plaintiff requires

discovery to recall and provide further specification as to the dates and places and method of publication of said advertisements/communications during the time periods leading to Plaintiff's purchases of WorldCom shares.

106. **The For Profit** and **NASD's** advertising and marketing campaign was designed and intended by Defendants to induce investors, including Plaintiff, to purchase shares of WorldCom.

107. In their advertising and marketing campaign, **The For Profit** and **NASD**, acting jointly and in concert with each other, negligently failed to disclose their profit motive and financial stake in generating sales of WorldCom shares, and their joint venture with WorldCom to market said shares. In failing to disclose this material information, Defendants intended to mislead investors, including Plaintiff, into believing the endorsements were being made by of a disinterested self regulatory organization whose goal was investor protection and market integrity. Defendants negligently placed numerous advertisements in violation of Florida Statute § 517.301(1)(b), which requires disclosure in advertisements and marketing material that Defendants were in a joint venture with WorldCom to promote the sale of its shares and were compensated and/or reimbursed, *inter alia*, from the trading volume the marketing and advertising generated, listing and other fees. The intention of **The For Profit** and **NASD** in withholding these material facts was to convince and induce investors, including Plaintiff, to purchase shares of WorldCom.

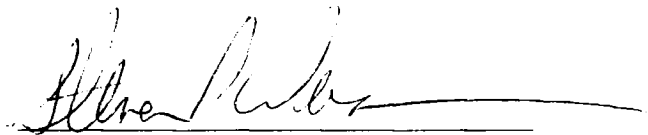
108. Plaintiff was unaware of the financial interest of the Defendants in generating purchases of WorldCom shares and had believed Defendants were serving in a unique position representing and constituting a National securities association whose function and motto were known to Plaintiff to be: "**Investor protection. Market integrity.**"

109. In purchasing all of his shares of WorldCom (listed at par. 10, *supra*), Plaintiff justifiably and reasonably relied upon the aforesaid false and misleading representations in the Defendants' advertising and marketing campaign; and, as a result, was induced to and did purchase said shares of stock and has suffered substantial damages as a result thereof.

Wherefore, Plaintiff prays for the award of compensatory damages and such other damages and relief as may be allowed by law against **The For Profit** and the **NASD**.

Plaintiff demands trial by jury as to all issues in this Complaint so triable

Dated this 9th day of June, 2002.



Steven I. Weissman, Esq.
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CIVIL COVER SHEET 03-61107

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
 Steven I. Weissman

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Broward
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
 Steven I. Weissman, P.A.
 10762 Denver Drive, Cooper City, FL 33026
 Tel. 954-704-9050

DEFENDANTS
 CIV-MARRA
 The National Association of Securities Dealers, Inc.; and The Nasdaq Stock Market Inc.

MAGISTRATE JUDGE
 SELTZER
 Broward Co. Corp.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

ATTORNEYS (IF KNOWN)

(d) CIRCLE COUNTY WHERE ACTION AROSE: DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Incorporated or Principal Place of Business in This State	<input type="checkbox"/>	<input type="checkbox"/>
Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify) _____

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT	A TORTS	FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 A PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customs Challenge 12 USC 3400 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 990 Other Statutory Actions A OR B
A REAL PROPERTY	A CIVIL RIGHTS	PRISONER PETITIONS	A LABOR	B SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Mgmt. Relations <input type="checkbox"/> 730 Labor Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (40519) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (4051g) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Diversity of Citizenship 28 U.S.C. § 1332

This action involves false advertising, negligence and fraud. Florida Statutes 517.301 and 517.12

LENGTH OF TRIAL
 via 8 days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$600,000, plus

CHECK YES only if demanded in complaint:
JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE June 9, 2003 **SIGNATURE OF ATTORNEY OF RECORD** Steven I. Weissman

FOR OFFICE USE ONLY

RECEIPT # 588222 AMOUNT 150.00 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____