



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

drkoop.com, Inc.

IN RE INITIAL PUBLIC OFFERING SECURITIES LITIGATION	X : : : : X	Master File No. 21 MC 92 (SAS)
IN RE DR.KOOP.COM, INC. INITIAL PUBLIC OFFERING SECURITIES LITIGATION	X : : : : : : : X	01 Civ. 6242 (SAS)(VM) CORRECTED CONSOLIDATED AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

Plaintiff, by his undersigned attorneys, individually and on behalf of the Class described below, upon information and belief, based upon, *inter alia*, the investigation of counsel, which includes a review of public announcements made by Defendants, interviews with individuals with knowledge of the acts and practices described herein, Securities and Exchange Commission ("SEC") filings made by Defendants, press releases, and media reports, except as to Paragraph 11 applicable to the named Plaintiff which is alleged upon personal knowledge, bring this Consolidated Amended Complaint (the "Complaint") against the Defendants named herein, and alleges as follows:

NATURE OF THE ACTION

1. This is a securities class action alleging violations of the federal securities laws in connection with the initial public offering conducted on or about June 8, 1999 (the "IPO" or the "Offering") of 9,375,000 shares of drkoop.com, Inc. ("drkoop" or the "Issuer") and the trading of

drkoop common stock in the aftermarket from the date of the IPO through December 6, 2000, inclusive (the "Class Period").

2. In connection with the IPO, certain of the underwriters named as Defendants (and defined below as the Allocating Underwriter Defendants) participated in a scheme to improperly enrich themselves through the manipulation of the aftermarket trading in drkoop common stock following the IPO.

3. In this regard, the Allocating Underwriter Defendants created artificial demand for drkoop stock by conditioning share allocations in the IPO upon the requirement of customers to purchase shares of drkoop in the aftermarket and, in some instances, to make those purchases at pre-arranged, escalating prices ("Tie-in Agreements").

4. As part of the scheme, these underwriter Defendants required their customers to repay a material portion of profits obtained from selling IPO share allocations in the aftermarket through one or more of the following types of transactions: (a) paying inflated brokerage commissions; (b) entering into transactions in otherwise unrelated securities for the primary purpose of generating commissions; and/or (c) purchasing equity offerings underwritten by the by these Allocating Underwriter Defendants including, but not limited to, secondary (or add-on) offerings that would not be purchased but for the unlawful scheme alleged herein. (Transactions "(a)" through "(c)" above will be, at varying times, collectively referred to hereinafter as "Undisclosed Compensation").

5. In connection with the IPO, drkoop filed with the SEC a registration statement ("Registration Statement") and a prospectus ("Prospectus"). The Registration Statement and Prospectus will be, at varying times, collectively referred to hereinafter as the

"RegistrationStatement/Prospectus." The Registration Statement/Prospectus was declared effective by the SEC on or about June 8, 1999.

6. The Registration Statement/Prospectus was materially false and misleading in that it failed to disclose, among other things further described herein, that the Allocating Defendants had required Tie-in Agreements in allocating shares in the IPO and would receive Undisclosed Compensation in connection with the IPO.

7. As part and parcel of the scheme alleged herein, certain of the underwriters named as Defendants herein also improperly utilized their analysts, who, unbeknownst to investors, were compromised by conflicts of interest, to artificially inflate or maintain the price of drkoop stock by issuing favorable recommendations in analyst reports.

JURISDICTION

8. This Court has jurisdiction over the subject matter of this action pursuant to Section 22 of the Securities Act of 1933 (the "Securities Act") (15 U.S.C. § 77v) and Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

9. Plaintiff brings this action pursuant to Sections 11 of the Securities Act (15 U.S.C. § 77k) and Section 10(b) of the Exchange Act as amended (15 U.S.C. § 78j(b)), and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5). Venue is proper in this District as many of the material acts and injuries alleged herein occurred within the Southern District of New York.

10. In connection with the acts alleged in the Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not

limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

PARTIES

PLAINTIFF

11. Plaintiff Jack Schwartz ("Plaintiff") purchased or otherwise acquired shares of drkoop common stock traceable to the IPO, in the open market or otherwise during the Class Period, at prices that were artificially inflated by Defendants' misconduct and was damaged thereby.

DEFENDANTS

THE UNDERWRITER DEFENDANTS

12. Plaintiff hereby incorporates by reference the "Underwriter Defendants" section of the Master Allegations as if set forth herein at length.

13. The following investment banking firms acted in the following capacities with respect to the Offering and substantially participated in the unlawful conduct alleged herein:

POSITION

UNDERWRITER

LEAD MANAGER

Bear Stearns

CO-MANAGER

J.P. Morgan (as successor-in-interest to H&Q)

H&Q

SYNDICATE MEMBERS

Banc of America

Robertson Stephens (as successor-in-interest to BancBoston)

BancBoston

DB Alex. Brown (as successor-in-interest to
BT Alex. Brown)

BT Alex. Brown

Goldman Sachs

Merrill Lynch

14. Defendants Bear Stearns, J.P. Morgan (H&Q), Banc of America, Robertson Stephens (BancBoston), Goldman Sachs and Merrill Lynch will be, at varying times, collectively referred to hereinafter as the "Allocating Underwriter Defendants."

15. Defendant DB Alex. Brown (BT Alex. Brown) along with the Allocating Underwriter Defendants, will be, at varying times, collectively referred to hereinafter as the "Underwriter Defendants."

ADDITIONAL PERSON - THE ISSUER

16. At the time of the Offering, Defendant drkoop was a Delaware corporation with its principal executive offices located in Texas. Drkoop is described in the Registration Statement/Prospectus as an Internet-based consumer healthcare network. On December 16, 2001, drkoop announced that it planned to cease operations and file for bankruptcy protection under Chapter 7 of the United States Bankruptcy Code. drkoop has not been named as a Defendant in this complaint.

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class consisting of all persons and entities who purchased or otherwise acquired the common stock of the Issuer during the Class Period and

were damaged thereby (the "Class"). Excluded from the Class are Defendants herein, Defendants' legal counsel, any entity in which any of the Defendants has a controlling interest, and the legal representatives, heirs, successors or assigns of any of the Defendants.

18. Members of the Class are so numerous that joinder of all members is impracticable.

(a) Millions of shares of common stock were sold in the IPO and the stock was actively traded during the Class Period; and

(b) While the exact number of Class members is unknown to the Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds, if not thousands, of Class members who purchased or otherwise acquired the Issuer's common stock during the Class Period.

19. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and the other members of the Class have sustained damages because of Defendants' unlawful activities alleged herein. Plaintiff has retained counsel competent and experienced in class and securities litigation and intends to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiff. Plaintiff has no interest that is contrary to or in conflict with those of the Class which Plaintiff seek to represent.

20. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Furthermore, since the damages suffered by individual members of the Class may be relatively small, the

expense and burden of individual litigation make it economically impracticable for the members of the Class to seek redress individually for the wrongs they have suffered.

21. The names and addresses of the record purchasers of the Issuer's common stock are available from the Issuer, its agents, and the underwriters who sold and distributed the Issuer's common stock in the IPO. Notice can be provided to Class members via a combination of published notice and first class mail using techniques and forms of notice similar to those customarily used in class actions arising under the federal securities laws.

22. 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' misconduct as alleged herein;
- (b) Whether the Registration Statement/Prospectus omitted and/or misrepresented material facts;
- (c) Whether Defendants participated in the course of conduct complained of herein;
- (d) Whether, solely with respect to claims brought under the Exchange Act, the Defendants named thereunder acted with scienter; and
- (e) Whether the members of the Class have sustained damages as a result of Defendants' conduct, and the proper measure of such damages.

SUBSTANTIVE ALLEGATIONS

23. Plaintiff hereby incorporates by reference the "Introductory" section of the Master Allegations, as if set forth herein at length. Plaintiff also adopts and incorporates herein by reference the allegations set forth in the Master Allegations that specifically relate to each of the Underwriter Defendants, as if set forth herein at length.

THE IPO

24. Drkoop's IPO of 9,375,000 shares was priced at \$9.00 on or about June 8, 1999. The sale and distribution of this firm commitment offering was effected by an underwriting syndicate consisting of, among others, the Underwriter Defendants. Additionally, drkoop granted the underwriting syndicate an option to purchase additional shares at the initial offering price less underwriting discounts and commissions.

25. On the day of the IPO, the price of drkoop stock shot up dramatically, trading as high as \$18.50 per share, or more than 105% above the IPO price on substantial volume. This "impressive" debut however, was not the result of normal market forces; rather, it was the result of Defendants' unlawful practices more fully described herein.

26. On July 6, 1999, just one month after the IPO, drkoop common stock traded as high as \$45.75 per share, or more than 408% above the IPO price.

UNLAWFUL CONDUCT IN CONNECTION WITH THE IPO

27. Consistent with their conduct in other initial public offerings, as set forth in the Master Allegations, the Underwriter Defendants engaged in manipulative and/or other unlawful practices described more fully herein in connection with the drKoop IPO.

28. Customers of each of the Allocating Underwriter Defendants, as a condition to obtaining an allocation of stock in the IPO, were required or induced to agree to enter into Tie-in Agreements and/or pay Undisclosed Compensation.

**THE REGISTRATION STATEMENT/PROSPECTUS
WAS MATERIALLY FALSE AND MISLEADING**

29. In conducting the IPO, the Allocating Underwriter Defendants violated Regulation M promulgated pursuant to the Exchange Act. Rule 101(a) of Regulation M reads as follows:

Unlawful Activity. In connection with a distribution of securities, it shall be unlawful for a distribution participant or an affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period.

17 C.F.R § 242.101.

30. As explained by the SEC's Staff Legal Bulletin No. 10, dated August 25, 2000, tie-in agreements violate Regulation M:

Tie-in agreements are a particularly egregious form of solicited transactions prohibited by Regulation M. As far back as 1961, the Commission addressed reports that certain dealers participating in distributions of new issues had been making allotments to their customers only if such customers agreed to make some comparable purchase in the open market after the issue was initially sold. The Commission said that such agreements may violate the anti-manipulative provisions of the Exchange Act, particularly Rule 10b-6 (which was replaced by Rules 101 and 102 of Regulation M) under the Exchange Act, and may violate other provisions of the federal laws.

Solicitations and tie-in agreements for aftermarket purchases are manipulative because they undermine the integrity of the market as an independent pricing mechanism for the offered security. Solicitations for aftermarket purchases give purchasers in the offering the impression that there is a scarcity of the offered securities. This can stimulate demand and support the pricing of

the offering. Moreover, traders in the aftermarket will not know that the aftermarket demand, which may appear to validate the offering price, has been stimulated by the distribution participants. Underwriters have an incentive to artificially influence aftermarket activity because they have underwritten the risk of the offering, and a poor aftermarket performance could result in reputational and subsequent financial loss. (Emphasis added).

31. In particular, the Registration Statement/Prospectus stated:

In order to facilitate this offering, certain persons participating in this offering may engage in transactions that stabilize, maintain or otherwise affect the price of the common stock during and after this offering. Specifically, the underwriters may over-allot or otherwise create a short position in the common stock for their own account by selling more shares of common stock than we have sold to them. The underwriters may elect to cover any such short position by purchasing shares of common stock in the open market or by exercising the over-allotment option granted to the underwriters. In addition, the underwriters may stabilize or maintain the price of the common stock by bidding for or purchasing shares of common stock in the open market and may impose penalty bids, under which selling concessions allowed to syndicate members or other broker-dealers participating in this offering are reclaimed if shares of common stock previously distributed in this offering are repurchased in connection with stabilization transactions or otherwise. The effect of these transactions may be to stabilize or maintain the market price at a level above that which might otherwise prevail in the open market. The imposition of a penalty bid may also affect the price of the common stock to the extent that it discourages resales thereof. No representation is made as to the magnitude or effect of any such stabilization or other transactions. Such transactions may be effected on the Nasdaq National Market or otherwise and, if commenced, may be discontinued at any time.

32. The statements contained in the previous paragraph were materially false and misleading because the Allocating Underwriter Defendants required customers to commit to Tie-in Agreements and created the false appearance of demand for the stock at prices in excess of the IPO price and in violation of Regulation M. At no time did the Registration

Statement/Prospectus disclose that the Allocating Underwriter Defendants would require their customers seeking to purchase IPO shares to engage in transactions causing the market price of drkoop common stock to rise, in transactions that cannot be characterized as stabilizing transactions, over allotment transactions, syndicate covering transactions or penalty bids.

33. Because the Undisclosed Compensation was, in reality, underwriter compensation, it was required to be disclosed in the Registration Statement/Prospectus. As Regulation S-K, Item 508 (e) provides:

Underwriter's Compensation. Provide a table that sets out the nature of the compensation and the amount of discounts and commissions to be paid to the underwriter for each security and in total. The table must show the separate amounts to be paid by the company and the selling shareholders. **In addition, include in the table all other items considered by the National Association of Securities Dealers to be underwriting compensation for purposes of that Association's Rules of Fair Practice.** (Emphasis added).

34. The NASD specifically addresses what constitutes underwriting compensation in NASD Conduct Rule 2710(c)(2)(B) (formerly Article III, Section 44 of the Association's Rules of Fair Practice):

For purposes of determining the amount of underwriting compensation, all items of value received or to be received from any source by the underwriter and related persons which are deemed to be in connection with or related to the distribution of the public offering as determined pursuant to subparagraphs (3) and (4) below shall be included. (Emphasis added).

35. NASD Conduct Rule 2710(c)(2)(c) specifically requires:

If the underwriting compensation includes items of compensation in addition to the commission or discount disclosed on the cover page of the prospectus or similar document, a footnote to the offering proceeds table on the cover of the prospectus or similar

document shall include a cross-reference to the section on underwriting or distribution arrangements.

36. Contrary to applicable law, the Registration Statement/Prospectus did not set forth, by footnote or otherwise, the Undisclosed Compensation.

37. Instead, the Registration Statement/Prospectus misleadingly stated that the underwriting syndicate would receive as compensation an underwriting discount of \$0.63 per share, or a total of \$5,906,250, based on the spread between the per share proceeds to drkoop (\$8.37) and the Offering price to the public (\$9.00 per share). This disclosure was materially false and misleading as it misrepresented underwriting compensation by failing to include Undisclosed Compensation.

38. In addition, the Registration Statement/Prospectus stated:

The underwriters propose to offer the shares of common stock directly to the public at the "public offering price" set forth on the cover page of this prospectus [\$9.00] and at such price less a concession...

39. The Registration Statement/Prospectus was materially false and misleading in that in order to receive share allocations from the Allocating Underwriter Defendants in the drkoop IPO, customers were required to pay an amount in excess of the IPO price in the form of Undisclosed Compensation and/or Tie-in Agreements.

40. NASD Conduct Rule 2330(f) further prohibits an underwriter from sharing directly or indirectly in the profits in any account of a customer:

[N]o member or person associated with a member shall share directly or indirectly in the profits or losses in any account of a customer carried by the member or any other member.

41. The Allocating Underwriter Defendants' scheme was dependent upon customers obtaining substantial profits by selling share allocations from the IPO and paying a material portion of such profits to the Allocating Underwriter Defendants. In this regard, the Allocating Underwriter Defendants shared in their customers' profits in violation of NASD Conduct Rule 2330(f).

42. The failure to disclose the Allocating Underwriter Defendants' unlawful profit-sharing arrangement as described herein, rendered the Registration Statement/Prospectus materially false and misleading.

43. NASD Conduct Rule 2440 governs Fair Prices and Commissions and, in relevant part, provides that a member:

shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and market therefor.

44. Guideline IM-2440 of the NASD states, in relevant part:

It shall be deemed a violation of . . . Rule 2440 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission which is not reasonable A mark-up of 5% or even less may be considered unfair or unreasonable under the 5% policy.

45. The Registration Statement/Prospectus was materially false and misleading due to its failure to disclose the material fact that the Allocating Underwriter Defendants were charging customers commissions that were unfair, unreasonable, and excessive as consideration for receiving allocations of shares in the IPO.

THE REGISTRATION STATEMENT/PROSPECTUS FAILED TO DISCLOSE THAT THE DISTRIBUTION OF THE IPO SHARES WAS CONCENTRATED AMONG FEWER THAN ALL OF THE UNDERWRITERS

46. The Registration Statement/Prospectus failed to accurately disclose which of the underwriters identified therein actually participated in the distribution of the IPO. In fact, the Registration Statement/Prospectus represented that each of the underwriters participated in the distribution to the extent of the shares identified next to its name.

47. The Registration Statement/Prospectus was materially false and misleading in that it did not inform the investing public that the shares in the IPO would be distributed only by a few of the underwriters identified in the Registration Statement/Prospectus.

48. For example, the Registration Statement/Prospectus was materially false and misleading in that DB Alex. Brown (BT Alex. Brown) did not receive any of the 180,000 shares listed next to its name.

MARKET MANIPULATION THROUGH THE USE OF ANALYSTS

49. As demonstrated in the "Use of Analysts" section of the Master Allegations, in furtherance of their manipulative scheme, Allocating Underwriter Defendants Bear Stearns and J.P. Morgan (H&Q) improperly used their analysts, who suffered from conflicts of interest, to issue glowing research reports and positive recommendations at or about the expiration of the "quiet period" so as to manipulate the Issuer's aftermarket stock price.

50. On July 6, 1999, just after the expiration of the "quiet period" with respect to the drkoop IPO, Bear Stearns initiated coverage with a "buy" recommendation. On July 7, 1999, J.P. Morgan (H&Q) initiated coverage with a "buy" recommendation.

THE END OF THE CLASS PERIOD

51. On December 6, 2000, The Wall Street Journal published an article concerning an investigation of various improper initial public offering practices.

**DEFENDANTS' UNLAWFUL CONDUCT
ARTIFICIALLY INFLATED THE PRICE OF THE ISSUER'S STOCK**

52. Defendants' conduct alleged herein had the effect of inflating the price of the Issuer's common stock above the price that would have otherwise prevailed in a fair and open market throughout the Class Period.

VIOLATIONS OF THE SECURITIES ACT

FIRST CLAIM

**(AGAINST THE UNDERWRITER
DEFENDANTS FOR VIOLATION OF SECTION 11 RELATING TO
THE REGISTRATION STATEMENT)**

53. Plaintiff repeats and realleges the allegations set forth above as if set forth fully herein, except to the extent that any such allegation may be deemed to sound in fraud.

54. This Claim is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. § 77k, on behalf of Plaintiff and other members of the Class who purchased or otherwise acquired the Issuer's common stock traceable to the IPO against the Underwriter Defendants and were damaged thereby.

55. As set forth above, the Registration Statement, when it became effective, contained untrue statements of material fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading.

56. Each of the Underwriter Defendants is liable as an underwriter in connection with the IPO.

57. The Defendants named in this Claim are liable to Plaintiff and other members of the Class who purchased or otherwise acquired shares of the Issuer's common stock traceable to the IPO.

58. By virtue of the foregoing, Plaintiff and other members of the Class who purchased or otherwise acquired the Issuer's common stock traceable to the IPO are entitled to damages pursuant to Section 11.

59. This Claim was brought within one year after discovery of the untrue statements and omissions in the Registration Statement, or after such discovery should have been made by the exercise of reasonable diligence, and within three years after the Issuer's common stock was first bona fide offered to the public.

EXCHANGE ACT CLAIMS

APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD-ON-THE-MARKET DOCTRINE

60. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

(a) Defendants named under Claims brought pursuant to the Exchange Act made public misrepresentations or failed to disclose material facts during the Class Period regarding the Issuer as alleged herein;

(b) The omissions and misrepresentations were material;

(c) Following the IPO and continuing throughout the Class Period, the Issuer's stock was traded on a developed national stock exchange, namely the NASDAQ National Market, which is an open and efficient market;

(d) The Issuer filed periodic reports with the SEC;

(e) The Issuer was followed by numerous securities analysts;

(f) The market rapidly assimilated information about the Issuer which was publicly available and communicated by the foregoing means and that information was promptly reflected in the price of the Issuer's common stock; and

(g) The misrepresentations and omissions and the manipulative conduct alleged herein would tend to induce a reasonable investor to misjudge the value of the Issuer's common stock.

EXCHANGE ACT CLAIMS - THE UNDERWRITER DEFENDANTS

THE UNDERWRITER DEFENDANTS ACTED WITH SCIENTER

61. As alleged herein, the Underwriter Defendants acted with scienter in that they: (a) knowingly or recklessly engaged in acts and practices and a course of conduct which had the effect of artificially inflating the price of the Issuer's common stock in the aftermarket; (b) knowingly or recklessly disregarded that the Registration Statement/Prospectus as set forth herein was materially false and misleading; and/or (c) knowingly or recklessly misused their analysts in connection with analyst reports.

62. In addition, each of the Underwriter Defendants violated the federal securities laws as they sold the Issuer's shares in and/or after the IPO and/or recommended the Issuer's stock while in possession of material, non-public information, which they failed to disclose.

63. As evidenced by the public statements of CSFB published by The Wall Street Journal on or about June 29, 2001, the practices employed by the Underwriter Defendants in connection with public offerings complained of herein were widespread throughout the financial underwriting community. In this regard, CSFB, which recently settled regulatory claims of misconduct concerning its initial public offering allocation practices, stated during the pendency of the government's investigation, "[w]e continue to believe our [initial public offering] allocation policies are consistent with those employed by others in the industry."

64. The Underwriter Defendants knew from their direct participation in the manipulation of the IPO, or recklessly disregarded as a result of their experience with other manipulated offerings as set forth in the "Matrix" section of the Master Allegations, that the manipulations alleged herein were taking place with respect to the IPO and were not disclosed.

65. As required by NASD Conduct Rule 3010(c), each of the Underwriter Defendants had in place compliance procedures so as to better inform itself whether it was acting in the unlawful manner alleged herein.

66. Senior management of each of the Underwriter Defendants had regular access to and received timely written reports tracking the account activity of each of its customers. By comparing the ratio of brokerage firm commission income per account with the amount of dollars invested by such account that received allocations of shares in the IPO, senior management knew, or was reckless in not knowing, that such commissions were disproportionately high relative to that customer's total investment and imposed on management a duty of inquiry as is customary in the industry. Such inquiry would have revealed the illegal practices described herein. Any failure to conduct such inquiry was, at the very least, reckless

and further demonstrates that the Underwriter Defendants knew or recklessly disregarded the misconduct alleged herein.

67. Certain of the Underwriter Defendants also had the motive and opportunity to engage in the wrongful conduct described herein for the following reasons, among others:

(a) Such conduct increased the likelihood that the Issuer would retain certain of the Allocating Underwriter Defendants to undertake future investment banking services such as public offerings of equity or debt securities, financial consulting, and possible future acquisitions, thus permitting the Allocating Underwriter Defendants to receive additional fees in connection with those services. Specifically in this regard, Bear Stearns was retained as drkoop's financial advisor in an attempted acquisition of drkoop by Millennium Health Communication in July 2000. While this transaction was never executed, Bear Stearns stood to collect significant fees in connection with their services and likely did collect fees with regard to work done in preparation for this deal. (See also "Additional Investment Banking Business" section of the Master Allegations).

(b) Such conduct increased the likelihood of attracting the business of new issuers for the underwriting of initial and secondary public offerings, as well as debt and convertible offerings, and related investment banking fees, while simultaneously sustaining and/or enhancing their reputations as investment banks. (See "New Investment Banking Clients" section of the Master Allegations).

(c) The Undisclosed Compensation of the Allocating Underwriter Defendants was directly proportional to the amount of the aftermarket price increase achieved by the manipulative scheme as their customers were required to pay a percentage of their profits. The

larger the profits, the greater the payment. (See "Maximizing Undisclosed Compensation" Section of the Master Allegations).

(d) Certain of the Underwriter Defendants' analysts were motivated to and did issue favorable recommendations for companies they covered because their compensation was, at least in part, tied to the amount of investment banking fees received by their respective firms in connection with financial services provided to such companies. (See "Analysts Compensation" section of the Master Allegations).

(e) Certain of the Underwriter Defendants' analysts were further motivated to and did issue favorable recommendations because they personally owned pre-IPO stock in companies they were recommending. (See "Personal Investments of Analysts" section of the Master Allegations).

SECOND CLAIM

(FOR VIOLATIONS OF SECTION 10(b) AND RULE 10b-5 THEREUNDER AGAINST THE ALLOCATING UNDERWRITER DEFENDANTS BASED UPON DECEPTIVE AND MANIPULATIVE PRACTICES IN CONNECTION WITH THE IPO)

68. Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein at length except for Claims brought pursuant to the Securities Act.

69. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, on behalf of Plaintiff and other members of the Class against the Allocating Underwriter Defendants. This Claim is based upon the deceptive and manipulative practices of the Allocating Underwriter Defendants.

70. During the Class Period, the Allocating Underwriter Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (a) deceive the investing public, including Plaintiff and other members of the Class by means of material misstatements and omissions, as alleged herein; (b) artificially inflate and maintain the market price and trading volume of the Issuer's common stock; and (c) induce Plaintiff and other members of the Class to purchase or otherwise acquire the Issuer's common stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, the Allocating Underwriter Defendants took the actions set forth herein.

71. The Allocating Underwriter Defendants employed devices, schemes, and artifices to defraud and/or engaged in acts, practices and a course of business which operated as a fraud and deceit upon the Plaintiff and other members of the Class in an effort to inflate and artificially maintain high market prices for the Issuer's common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5. The Allocating Underwriter Defendants are sued as primary participants in the unlawful conduct charged herein.

72. The Allocating Underwriter Defendants, individually and in concert, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal their unlawful practices and course of business which operated as a fraud and deceit upon Plaintiff and other members of the Class.

73. The Allocating Underwriter Defendants had actual knowledge of or recklessly disregarded the existence of the Tie-in Agreements, the requirement that customers pay Undisclosed Compensation and the manipulations alleged herein.

74. Each of the Allocating Underwriter Defendants held itself out as an NASD member and was required to observe high standards of commercial honor and just and equitable principles of trade (NASD Conduct Rule 2110). The Allocating Underwriter Defendants owed to Plaintiff and other members of the Class the duty to conduct the IPO and the trading of the Issuer's common stock in a fair, efficient and unmanipulated manner.

75. By virtue of the foregoing, the Allocating Underwriter Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5.

76. As a result of the manipulative conduct set forth herein, Plaintiff and other members of the Class purchased or otherwise acquired the Issuer's common stock during the Class Period at artificially inflated prices and were damaged thereby.

FOURTH CLAIM

(FOR VIOLATIONS OF SECTION 10(b) AND RULE 10b-5 THEREUNDER AGAINST THE UNDERWRITER DEFENDANTS BASED UPON MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMISSIONS OF MATERIAL FACTS)

77. Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein at length except for Claims brought pursuant to the Securities Act.

78. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, on behalf of Plaintiff and other members of the Class against the Underwriter Defendants. This Claim is based upon materially false and misleading statements and omissions of material facts made by the Underwriter Defendants during the Class Period.

79. The Underwriter 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 Plaintiff and other members of the Class in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

80. During the Class Period, the Underwriter Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (a) deceive the investing public, including Plaintiff and other members of the Class, as alleged herein; (b) artificially inflate and maintain the market price of and demand for the Issuer's common stock; and (c) induce Plaintiff and other members of the Class to purchase or otherwise acquire the Issuer's common stock at artificially inflated prices. In furtherance of this unlawful course of conduct, the Underwriter Defendants took the actions set forth herein.

81. The Underwriter Defendants, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal material information 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 Plaintiff and other members of the Class.

82. The Underwriter Defendants, either directly or through their designated representatives, prepared and reviewed the Registration Statement/Prospectus. In addition, the Underwriter Defendants had access to drafts of the Registration Statement/Prospectus prior to the filing of said document with the SEC and the dissemination to the public.

83. The material misrepresentations and/or omissions were made knowingly or recklessly and for the purpose and effect of, *inter alia*: (a) securing and concealing the Tie-in Agreements; (b) securing and concealing the Undisclosed Compensation; and/or (c) concealing

that certain of the Underwriter Defendants and their analysts who reported on the Issuer's stock had material conflicts of interest.

84. As a result of making affirmative statements in the Registration Statement/ Prospectus, or otherwise, or participating in the making of such affirmative statements, the Underwriter Defendants had a duty to speak fully and truthfully regarding such representations and to promptly disseminate any other information necessary to make the statements made, in the light of the circumstances in which they were made, not misleading.

85. The Underwriter Defendants also had a duty to disclose the material, non-public information complained of herein or to abstain from selling the Issuer's common stock in the IPO, and/or trading or recommending the Issuer's stock while in possession of such information.

86. By reason of the foregoing, the Underwriter Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

87. As a result of the dissemination of materially false and misleading information described above, Plaintiff and other members of the Class purchased or otherwise acquired the Issuer's common stock during the Class Period without knowledge of the fraud alleged herein at artificially inflated prices and were damaged thereby.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for judgment as follows:

A. Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and certifying Plaintiff as a representative of the Class and counsel as class counsel;


- B. Awarding damages to Plaintiff and the Class;
- C. Awarding Plaintiff and the Class prejudgment and post-judgment interest, as well as reasonable attorneys' and experts' witness fees and other costs; and
- D. Awarding such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: May 8, 2002

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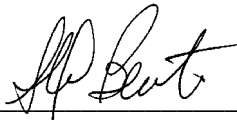
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