N E W Y O R K S T O C K E X C H A N G E, I N C.

<u>EXCHANGE HEARING PANEL DECISION 03-75</u> **April 23, 2003**
JACK BENJAMIN GRUBMAN
FORMER REGISTERED REPRESENTATIVE

* * *

Aided and abetted violations of SEA Sections 15(c)(1) and 15(c)(2), SEC Rule 15c1-2 and violated Exchange Rule 476 (a)(6), and caused violations of Exchange Rules 472 and 401 by issuing certain research reports that contained misstatements and omissions of material facts, contained recommendations contrary to his actual views, overlooked or minimized the risk of investing in recommended companies, and predicted substantial revenue and earnings growth without a reasonable basis; violated Exchange Rules 476(a)(6) and caused violations of Exchange Rule 401 by issuing certain research reports that did not provide a sound basis for evaluating business prospects, contained exaggerated or unwarranted claims, and/or contained opinions for which there was no reasonable basis and published a recommendation that contained an omission of material fact and was misleading; and caused violations of Exchange Rule 472 by issuing certain research reports that did not provide a sound basis for evaluating business prospects, contained exaggerated or unwarranted claims and/or opinions for which there was no reasonable basis, and by publishing a recommendation that contained an omission of material fact and was misleading – Consent to censure, permanent bar and a payment of $15,000,000.

Appearances:

For the Division of Enforcement
David P. Doherty, Esq.
Robert A. Marchman, Esq.
Linda S. Riefberg, Esq.
Jeanne R. Elmadany, Esq.
Suzanne R. Elovic, Esq.
Samantha Hankins, Esq.
James E. Shipley, Jr., Esq.

For the Respondent
Lee Richards, Esq.
Arthur Greenspan, Esq.

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An Exchange Hearing Panel met to consider a Stipulation and Consent[1] entered into between the Exchange's Division of Enforcement and Jack Benjamin Grubman ("Grubman"), a former

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[1] This document is a "Stipulation and Consent" as the term is used in Exchange Rule 476(g), which authorizes an Exchange Hearing Panel to accept findings of fact to which the parties consented without the presentation of evidence or testimony.

registered representative. Without admitting or denying the allegations herein, Grubman consents to findings by the Hearing Panel that he:

I. Aided and abetted violations of Section 15(c)(1) of the Exchange Act, Rule 15c1-2 thereunder, and Section 15(c)(2) of the Exchange Act, violated Exchange Rule 476(a)(6), and caused the Firm to violate Exchange Rules 472 and 401, by issuing research reports on Focal Communications and Metromedia Fiber as identified below that contained misstatements and omissions of material facts about those companies, contained recommendations contrary to the actual views described below, overlooked or minimized the risk of investing in those companies, and predicted substantial growth in those companies' revenues and earnings without a reasonable basis.

II. Violated Exchange Rule 476(a)(6) by engaging in conduct inconsistent with just and equitable principles of trade by:

A. Issuing research reports on Focal Communications, RCN Communications, Level 3 Communications, XO Communications, Adelphia Business Solutions, and Williams Communications Group as identified below that did not provide a sound basis for evaluating facts regarding those companies' business prospects, contained exaggerated or unwarranted claims about those companies, and/or contained opinions for which there was no reasonable basis; and

B. Publishing a recommendation on AT&T as identified below that contained an omission of material fact and was misleading.

III. Caused the Firm to violate Exchange Rule 401 by failing to adhere to principles of good business practice in the conduct of its business affairs by:

A. Issuing research reports on Focal Communications, RCN Communications, Level 3 Communications, XO Communications, Adelphia Business Solutions, and Williams Communications Group as identified below that did not provide a sound basis for evaluating facts regarding those companies' business prospects, contained exaggerated or unwarranted claims about those companies, and/or contained opinions for which there was no reasonable basis; and

B. Publishing a recommendation on AT&T as identified below that contained an omission of material fact and was misleading.

IV. Caused the Firm to violate Exchange Rule 472 relating to communications with the public by:

A. Issuing research reports on Focal Communications, RCN Communications, Level 3 Communications, XO Communications, Adelphia Business Solutions, and Williams Communications Group as identified below that did not provide a sound basis for evaluating facts regarding those companies' business prospects, contained exaggerated or unwarranted claims about those companies, and/or contained opinions for which there was no reasonable basis; and

B. Publishing a recommendation on AT&T as identified below that contained an omission of material fact and was misleading.

For the sole purpose of settling this disciplinary proceeding, prior to hearing, without adjudication of any issues of law or fact, and without admitting or denying allegations, facts, conclusions or findings referred to herein, Grubman consents to findings by the Hearing Panel, the substance of which is as follows:

Background and Jurisdiction

1. Grubman was born on October 8, 1953. He entered the securities industry in January 1985 as a registered employee of Painewebber Incorporated, where he worked until March 1994.

2. From March 1994 to September 1998, Grubman worked as a registered employee of Salomon Brothers Inc. He then worked as a research analyst for Salomon Smith Barney Inc. from September 1998 until August 15, 2002.

3. In 1999, 2000, and 2001 (the "relevant period"), as described below, Grubman issued research reports on two telecommunications ("telecom") companies that were fraudulent and issued research reports on several telecom companies that violated Exchange Rule 472.

4. Grubman was the linchpin for Salomon Smith Barney, Inc. ("SSB") investment banking efforts in the telecom sector. He was the preeminent telecom analyst in the industry, and telecom was of critical importance to SSB. His approval and favorable view were important for SSB to obtain investment banking business from telecom companies in his sector. In total, SSB earned more than $790 million in investment banking revenue during the relevant period from telecom companies Grubman covered. Given Grubman's key role in SSB's investment banking success in the telecom sector, SSB compensated him handsomely. During the relevant period, Grubman was one of the most highly paid research analysts at SSB and on Wall Street. Between 1999 and August 2002, when he left the firm, Grubman's total compensation exceeded $67.5 million, including his multi-million dollar severance package.

5. During the relevant period, Grubman published fraudulent research reports on Focal Communications and Metromedia Fiber Networks, as set forth below. These reports were contrary to the true views Grubman and another analyst on his team privately expressed, presented an optimistic picture that overlooked and minimized the risk of investing in these companies, predicted substantial growth in the companies' revenues and earnings without a reasonable basis, did not disclose material facts about these companies, and contained material misstatements about the companies.

6. Moreover, Grubman also published certain research reports that violated Exchange Rule 472. In April 2001, Grubman expressed a need to downgrade six telecom

companies (Level 3 Communications, Williams Communications Group, XO Communications, Focal, Adelphia Business Solutions, and RCN Communications). Investment bankers pressured Grubman not to downgrade these companies and Grubman did not. He continued to advise investors to buy these stocks, and did not disclose the influence of investment bankers on his ratings. In addition, a research report on Williams Communications and certain research reports on Focal contained exaggerated or unwarranted statements or claims about these companies, opinions for which there was no reasonable basis, and a treatment of risks and potential benefits that was not adequately balanced.

7. In November 1999, Grubman upgraded AT&T from a Neutral (3) -- his longtime rating on the stock -- to a Buy (1). SSB and Grubman did not disclose in the report that Grubman had a conflict of interest relating to his evaluation of AT&T. Prior to the upgrade, Sanford I. Weill, the co-CEO and Chairman of Citigroup (and a member of the AT&T board of directors), had asked Grubman to take a "fresh look" at AT&T, and Grubman had asked Weill for assistance in gaining admission for his children to the selective 92nd Street Y preschool in New York City at the same time Grubman was conducting his "fresh look" at the company. Subsequently, Grubman stated privately that he had upgraded AT&T to help his children get into the 92nd Street Y preschool. After Grubman upgraded AT&T and his children were admitted to the preschool, Weill arranged a pledge of $1 million payable in equal amounts over five years from Citigroup to the 92nd Street Y.

8. Grubman's upgrade of AT&T also helped SSB gain investment banking business from AT&T. In late fall 1999, AT&T determined to make an initial public offering ("IPO") of a tracking stock for its wireless unit – the largest equity offering in the United States. In February 2000, AT&T named SSB as one of the lead underwriters and joint book-runners for the IPO, in large part because of Grubman's "strong buy" rating of, and "strong support" for, AT&T. SSB earned $63 million in investment banking fees from this engagement.

Jack Grubman Supported SSB's Investment Banking Business in the Telecom Sector

9. During the relevant period, Grubman was one of the most prominent analysts on Wall Street. He was a Managing Director of SSB, and the preeminent research analyst at SSB. He managed a team of analysts who issued research reports ("Reports") and call notes ("Notes) on telecom companies. Grubman was principally responsible for each Report and Note SSB issued on these companies.

Grubman Helped Obtain Investment Banking Clients for SSB

10. Grubman helped to obtain and maintain business for SSB's investment bankers from telecom companies in his sector. Grubman also vetted proposed transactions involving telecom companies and vetoed those he could not view favorably. Once he determined he could support a proposed transaction, he and other telecom analysts

who reported to him often participated in pitching the potential client to award SSB investment banking business and in roadshows that marketed offerings to investors.

Grubman's Ratings Assisted SSB's Investment Banking Business

11. During the relevant time period, SSB advised its customers that it utilized the following five-point investment rating system: (1) - Buy; (2) - Outperform; (3) - Neutral; (4) - Underperform; and (5) - Sell.

12. In addition, SSB during the relevant period included in each research report a risk rating of L (low risk), M (moderate risk), H (high risk), S (Speculative), or V (Venture). Each of the research reports and call notes discussed below, other than those on AT&T, rated the company S (Speculative).

13. During the relevant period, SSB was the lead underwriter on 6 IPOs for telecom companies. For each company, Grubman initiated coverage with a 1 (Buy) recommendation. In virtually every instance, Grubman also issued favorable research reports on telecom companies for which SSB acted as lead or co-manager of a secondary offering of equity stock offering. In fact, Grubman and his group, with only one exception, did not rate a stock a 4 during the relevant period and never rated a stock a 5. Rather, he and the research personnel who reported to him would drop coverage altogether rather than rate a stock at less than a Neutral.

Grubman Helped Generate Substantial Revenue for SSB's Investment Banking Department and Was Highly Compensated

14. Grubman's efforts contributed to the telecom sector generating substantial investment banking revenue for SSB. During the relevant period, as reflected in documents prepared in connection with Grubman's evaluation and compensation, SSB earned more than $790 million in total gross investment banking fees from telecom companies covered by Grubman: approximately $359 million in 1999, $331 million in 2000, and $101 million in 2001.

15. Grubman was well paid for his efforts. During the relevant period, he was one of the most highly compensated research analysts at SSB. His total compensation (including deferred compensation) from 1999-2001 exceeded $48 million: over $22 million in 1999, over $20.2 million in 2000, and over $6.5 million in 2001. In light of the importance investment banking played in SSB's annual evaluations, Grubman and two of his assistants in their 2001 performance evaluation highlighted the investment banking deals for which they had been responsible.

16. As was true of other research analysts, Grubman was evaluated by investment bankers, institutional sales, and retail sales. Grubman received high scores and evaluations from investment bankers in 2000 and 2001 that reflected his importance to investment banking. Investment bankers rated analysts on a scale from 1 (lowest) to 5 (highest). For 2000, Grubman received a 5 rating overall from investment bankers, who ranked him first among all analysts. His ratings and rankings in

specific investment banking categories, such as pre-marketing, marketing, and follow-up were also at the top levels. For 2001, Grubman's average score (the only score presented that year) from investment bankers was 4.382, ranking him 23rd among the 98 analysts reviewed.

17. SSB's institutional sales force rated Grubman 16th out of 113 analysts in 2000 and 46th out of 115 analysts in 2001.

18. Retail brokers ranked analysts on a scale from -1 (lowest) to 2 (highest). For 1999, the retail sales force gave Grubman an average score of 1.59, ranking him 4th out of 159 analysts evaluated. In contrast, for 2000 and 2001, Grubman's evaluations from retail were dramatically lower and well below his scores from investment bankers and the institutional sales force in both years. In 2000, retail ranked Grubman last among all analysts with a score of –0.64. The same was true for 2001 -- the retail force ranked Grubman last among all analysts reviewed, and his score fell to -0.906.

19. Moreover, Grubman received scathing written evaluations from the retail sales force in 2000 and 2001. Hundreds of retail sales people sent negative written evaluations of Grubman in both years. Many claimed Grubman had a conflict of interest between his role as an analyst and his role assisting investment banking:

    a. "poster child for conspicuous conflicts of interest;"

    b. "I hope Smith Barney enjoyed the investment banking fees he generated, because they come at the expense of retail clients;"

    c. "Let him be a banker, not a research analyst;"

    d. "His opinions are completely tainted by 'investment banking' relationships (padding his business);"

    e. "Investment banker or research analyst? He should be fired;" and

    f. "Grubman has made a fortune for himself personally and for the investment banking division. However, his investment recommendations have impoverished the portfolio of my clients and I have had to spend endless hours with my clients discussing the losses Grubman has caused them."

20. Many retail sales people criticized his support of companies that were SSB investment banking clients:

    a. "Grubman's analysis and recommendations to buy (1 Ranking) WCOM [Worldcom], GX [Global Crossing], Q [Qwest] is/was careless;"

    b. "His ridiculously bullish calls on WCOM and GX cost our clients a lot of money;"

c. “How can an analyst be so wrong and still keep his job? RTHM [Rhythm NetConnections], WCOM, etc., etc.;”

d. “Downgrading a stock at $1/sh is useless to us;” and

e. “How many bombs do we tolerate before we totally lose credibility with clients?”

21. The evaluations and comments from retail did not appear to affect Grubman. In a January 2001 e-mail, he stated: “I never much worry about review. For example, this year I was rated last by retail (actually had a negative score) thanks to T [AT&T] and carnage in new names. As the global head of research was haranguing me about this I asked him if he thought Sandy [Weill] liked $300 million in trading commission and $400 million (only my direct credit not counting things like NTT [Nippon Telecom] or KPN [KPN Qwest] our total telecom was over $600 million) in banking revenues. So, grin and bear it. . . .”

22. When Grubman left SSB in August 2002, he signed a separation agreement that included compensation worth approximately $19.5 million plus approximately $13 million in deferred compensation previously accrued in 1999, 2000, and 2001.

Investment Bankers Successfully Pressured Grubman to Maintain Positive Ratings on Stocks

23. Investment bankers pressured Grubman to maintain positive ratings on companies in part to avoid angering the covered companies and causing them to take their investment banking business elsewhere.

24. On April 18, 2001, one of the companies Grubman covered, Winstar Communications, Inc. (a Competitive Local Exchange Carrier or CLEC), declared bankruptcy. In the aftermath of the Winstar bankruptcy, an SSB investment banker suggested that SSB’s telecom investment bankers and research analysts have a conference call followed by a meeting to consider the prospects of other CLECs and similar telecom companies. Grubman agreed, but made clear that the Winstar bankruptcy had convinced him of the need to downgrade other CLECs and telecom companies, all of which he rated a Buy (1) at the time: “Also to be blunt we in research have to downgrade stocks lest our retail force (which Sandy cares about a lot which I know to [sic] well) end up having buy rated stocks that go under. So part of this call will be our view that LVLT [Level 3], WCG [Williams Communication Group], XOXO [XO Communications], FCOM [Focal], ABIZ [Adelphia Business Solutions], RCN [RCN Communications] must not remain buys.”

25. Thereafter, the then-head of investment banking for SSB and the head of telecom investment banking called Grubman separately. The head of investment banking told him not to downgrade the stocks because doing so would anger these companies and hurt SSB’s investment banking business. The head of telecom investment banking told him that they should discuss his proposed downgrades because some of the

names were more sensitive than others. SSB and Grubman did not downgrade these stocks until months thereafter, continued to advise investors to buy these stocks and, in the weeks and months following, merely lowered the target prices for each of these companies.

26. Grubman acknowledged that investment banking influenced his publicly expressed views about the companies he covered. He stated in a May 2001 e-mail to an analyst who reported to him: ". . . If anything the record shows we support our banking clients too well and for too long."

27. The analyst agreed and stated that Grubman had helped SSB's investment banking business by using his influence to sell securities for questionable companies: ". . . I told [an investment banker] that you get the good and the bad with you [Grubman] and to look at all the bad deals we sold for them in the past. He agreed."

28. On May 31, 2001, Merrill Lynch downgraded XO, one of the stocks Grubman had wanted to downgrade in April. Merrill's actions caused Grubman to consider again whether he should have downgraded XO: "Another one. *I hope we were not wrong in not downgrading*. Try to talk to folks to see what they think of these downgrades. *Maybe we should have done like I wanted to. Now it's too late.*" (Emphasis added.)

29. A research analyst who reported to Grubman responded to this e-mail by reiterating a negative view of XO and Level 3: ". . . XOXO is a lost cause, its [sic] never too late to do the call, we could downgrade XO, LVLT, etc."

30. Later the same day, the same analyst e-mailed Grubman, warning him that an institutional investor thought downgrading XO would: "definitely get the Lame-O award on CNBC & wouldn't help anyone out, it would just call attention to our negligence on not downgrading sooner."

31. A few weeks later, Grubman was invited to a dinner with the head of U.S. Equity Research and two senior investment bankers. Grubman anticipated discussing banking's displeasure with his commentary on telecom stocks. Grubman e-mailed one of his research colleagues: ". . . I have dinner with [a senior investment banker and the head of U.S. Equity Research] I bet to discuss banking's displeasure with our commentary on some names. *Screw [the investment bankers]. We should have put a Sell on everything a year ago.*" (Emphasis added.)

32. The next day, Grubman e-mailed the head of U.S. Equity Research, stating that the pressure from investment banking had caused him not to downgrade stocks he covered: "See you at dinner. If [a senior investment banker] starts up I will lace into him. . . . most of our banking clients are going to zero and you know I wanted to downgrade them months ago but got huge pushback from banking."

33. SSB and Grubman maintained Buy ratings on Level 3, WCG, XO, RCN, Adelphia, and Focal for months after April 2001. SSB and Grubman did not downgrade Level 3 until June 18, 2001; RCN until August 2, 2001; Focal and Adelphia until August 13,

2001; and WCG and XO until November 1, 2001. In each instance, SSB downgraded these stocks to a 3 (Neutral). None of the Notes published between April 18 and the date of each downgrade disclosed the pressure investment bankers had exerted on Grubman and Grubman's yielding to such pressure. These Notes were therefore inconsistent with the views Grubman had expressed, as reflected in the emails above, concerning these stocks.

Grubman Published Fraudulent Research That Promoted Focal Communications and Metromedia Fiber, Two of SSB's Investment Banking Clients

34. Grubman published certain fraudulent research reports on Focal Communications and Metromedia Fiber, two investment banking clients of SSB. As described below, certain research reports on these companies were contrary to Grubman's private views and those of his team. Moreover, certain research reports on these two companies presented an optimistic picture that overlooked or minimized the risk of investing in these companies and predicted substantial growth in the companies' revenues and earnings without a reasonable basis.

Grubman Published Fraudulent Research Reports on Focal

35. Focal was a CLEC – a broadband telecommunications provider of limited reach. As of December 31, 1999 it operated in 16 locations nationwide and as of December 31, 2000 it operated in 20 locations nationwide. Focal was never profitable. Focal's net loss was approximately $500,000 in 1996, $3 million in 1997, $8 million in 1998, $22 million in 1999, and $105 million in 2000.

36. Focal was an investment banking client for SSB. SSB underwrote Focal's initial public offering in July 1999. It also assisted the company in other investment banking transactions. In total, SSB earned approximately $11.8 million in investment banking fees from Focal.

37. Shortly after SSB underwrote Focal's initial public offering, Grubman initiated coverage with a Buy (1) rating and maintained that rating until August 12, 2001. Grubman was responsible for SSB's Reports and Notes on the company.

38. Grubman published two Notes on Focal that were fraudulent – one issued on February 21, 2001 and one issued on April 30, 2001. The February 21 Note "reiterated" a Buy recommendation. It left the target price unchanged from $30 (approximately twice the stock price of $15.50). The Note reported overall results that were "in line" with expectations, and a revenue mix that "continues to improve." It also reported that Focal "continues to gain a stronger foothold in the large business market and continues to grow sales of existing customers with existing and new products and also into multiple markets." The February 21 Note reported EBITDA (earnings before interest, taxes, depreciation, and amortization) that improved over the previous quarter and was in line with estimates; it advised investors that Focal expected to be EBITDA breakeven sometime in 2001.

39. Finally, the Note thought the company could continue to perform well and grow and, if it did, the target price and estimates would be increased: "The quarter's results were in line with our expectations. The revenue and line mix is improving but the fact remains that FCOM still has exposure to recip comp and exposure to ISPs, which are areas of concern for investors. While FCOM is collecting recip comp and is good at reviewing its customer credit profiles with ISPs, which are areas of concern for investors, we believe it is prudent to see a few more quarters of good execution and growth before we change numbers. We continue to remain prudent and thus, we don't think we should raise our price target to above $30 when the stock is only trading at $15. But, as we stated in our 3Q note, if [Focal] management continues to execute and also delivers on its data strategy, we believe this will be reflected in its stock price, and thus, we will be in a better position to raise numbers."

40. The same day as the February 21 Note, however, Grubman stated that he believed Focal should be rated an Underperform (4) rather than a Buy(1), that "every single smart buysider" believed its stock price was going to zero, and that the company was a "pig." Focal apparently complained about the February 21 Note. When Grubman heard of the complaint, he e-mailed two investment bankers: "I hear company complained about our note. I did too. I screamed at [the analyst] for saying "reiterate buy." If I so much as hear one more fucking peep out of them we will put the proper rating (ie 4 not even 3) on this stock which every single smart buysider feels is going to zero. We lose credibility on MCLD and XO because we support pigs like Focal."

41. Also on February 21, an institutional investor e-mailed a research analyst who worked for Grubman, "Mcld [McLeod USA, Inc.] and Focal are pigs aren't they?" and asked whether Focal was "a short." The analyst responded to the e-mail: "Focal definitely . . . ."

42. Grubman continued to express his true view of Focal in a subsequent communication. As described in paragraphs 34 to 59, he stated on April 18, 2001 that the company needed to be downgraded in the aftermath of the Winstar bankruptcy.

43. Contrary to these negative views of Grubman and his colleague, the April 30 Note on Focal again advised investors to buy Focal. By April 30, the stock price had fallen to $6.48. Although the April 30 Note lowered the target price to $15, calling the previous target price of $30 "stale," the new target price was still more than twice the stock price. The April 30 Note stated that the company had reported quarterly results in line with estimates, repeated that Focal's "revenue mix is improving towards telecom," and noted the "line mix" continued to improve.

44. Neither the February 21 Note nor the April 30 Note disclosed the actual views of Grubman and a colleague about Focal. Indeed, both Notes contradicted such views. Neither Note described the company as a "pig" or a "short," disclosed that "smart buysiders" were predicting that Focal's stock price was going to zero, or indicated that the proper rating for Focal was an Underperform (4). The February 21 Note and the April 30 Note did not provide any other reason the stock should be downgraded. To the contrary, both Notes advised investors to buy the stock, predicted that the

company's stock price could at least double over the next 12 to 18 months, and indicated that the company's numbers were "in line" and in some respects improving. Accordingly, the Notes issued on February 21, 2001 and April 30, 2001 were fraudulent.

Grubman Issued Fraudulent Research Reports on Metromedia Fiber

45. Metromedia Fiber built and operated fiber optic systems nationally and in Europe. It intended to provide telecom services to CLECs and large telecom companies, cable companies, internet service providers, and Fortune 500 companies in large metropolitan areas. As of the end of 2000, Metromedia Fiber was increasingly unprofitable, spent substantial amounts of cash to construct its fiber optic systems and required even more capital to complete its planned network.

46. Metromedia Fiber was an investment banking client for SSB. SSB underwrote Metromedia Fiber's IPO in 1997 and a secondary offering in November 1999. In addition, SSB engaged in other investment banking transactions for the company. In total, SSB earned approximately $49 million in investment banking fees in Metromedia Fiber deals. After Metromedia Fiber's IPO, Grubman initiated coverage of the company with a Buy (1) rating and maintained that rating until July 25, 2001.

47. In 2001, the company entered into an agreement with Citicorp USA, Inc. (an SSB affiliate) to provide it with a credit facility that it needed to fund its operations. The deadline for closing on the facility was extended twice and, in the end, the facility was completed for less than half its full amount. The Notes issued on Metromedia Fiber between April 2001 and July 2001 did not adequately disclose the red flags concerning the credit facility or Grubman's view that the company might not get the funding. Moreover, in June 2001, a research analyst working for Grubman told him that while the company had funds through the end of 2001, thereafter the company's fundamentals would deteriorate. This contradicted the ratings and price targets Grubman published on the stock in a Note dated June 28, 2001. For these reasons, the Notes dated April 30, 2001, June 6, 2001, and June 28, 2001 were fraudulent and misleading.

48. Metromedia Fiber announced on January 8, 2001 that it had "obtained a commitment for a fully underwritten credit facility for $350 million from Citicorp USA, Inc., which it expects will fully fund its current business plan of building 3.6 million fiber miles . . . by the end of 2004."

49. As of March 2001, Metromedia Fiber faced a risk of not obtaining financing for its operations, had sufficient funds for its operations through the end of 2001, and may not have had sources for additional capital to finance its operations after the end of 2001. In particular, the company stated at the time that it may not be able to close on the pending $350 million credit facility from Citicorp USA.

50. In an April 18, 2001 e-mail to a senior investment banker, Grubman indicated he was aware that Metromedia Fiber might not close the credit facility and would downgrade

the company should it not obtain the additional funding: "If MFNX [Metromedia Fiber] does not get credit facility they too get downgraded [from a buy]."

51. Nevertheless, on April 30, 2001, Grubman issued a Note that reiterated a Buy (1) rating for Metromedia Fiber, stating: "We want to make it very clear that [Metromedia Fiber] remains one of our favorite names." Regarding funding for the company, the Note stated: "As noted in our previous note, MFN has obtained a commitment for a fully underwritten credit facility for $350 million from Citicorp USA, Inc., which it expects will fully fund its current business plan...."

52. The April 30 Note failed to disclose that the company believed it might not consummate the credit facility and that Grubman had expressed doubt that that the company might get funding.

53. Metromedia Fiber subsequently announced that the deadline for closing on the credit facility had been extended from May 15 to June 30, 2001.

54. In a June 6, 2001 Note, Grubman continued to state that the stock was "exceptionally inexpensive" and opined that the company had "good visibility in its core fiber business." Grubman began and ended the Note with: "We strongly reiterate our Buy . . . and we would be aggressive at current prices." Regarding the funding for the company, Grubman wrote: "We continue to believe the $350 million bank loan, which will bring MFNX to fully-funded status, will close by the end of June….The lack of available capital for MFNX-lookalikes only strengthens MFNX's position. Most recently private companies, such as OnFiber and other metro builders, have failed in getting private financing and other companies in the metro space have an extremely difficult time….MFNX has a business plan that is fully funded and many 'would-be' competitors are never getting to the market."

55. The Note did not disclose that (a) the deadline for consummating the bank loan had been extended from May 15 to the end of June; or (b) after announcing the funding commitment, the company had determined that it may not be able to successfully consummate the senior credit facilities. The Note also did not reflect Grubman's opinion that Metromedia Fiber might not secure the financing. As described above, the Note emphasized and recognized the importance of Metromedia Fiber's fully-funded position.

56. In the June 28, 2001 Note, two days before the expiration of the funding commitment, Grubman disclosed that Metromedia Fiber had not consummated the bank loan and that the deadline had been extended from May 15 to June 30. Grubman minimized the funding problem by advising investors that the company had other options for financing, but added that they "can only guess on the nature or terms of the alternative financing [Metromedia Fiber] would agree to." Nevertheless, the Note analyzed the company's financing needs assuming the company could secure the $350 million in additional funds under the loan or by other means and therefore would be fully funded through 2003. The Note continued to project a positive EBITDA for 2003 and reiterated a Buy (1) rating.

57. The Notes published from April to July 2001 on Metromedia Fiber minimized the risks facing the company, assumed the company was going to be fully funded, and estimated that the company would enjoy explosive growth in revenues and earnings. The $25 price target issued on April 30, 2001 assumed that the company would have estimated revenue in 2010 of $10.6 billion and EBITDA of $4.4 billion. The June 6, 2001 target price of $15 assumed the company would have $8.7 billion in revenue nine years out and EBITDA of $3.2 billion. The June 28, 2001 target price of $10 maintained the estimate of future revenue and EBITDA.

58. These reports, and the ratings and price targets included in them, reflected Grubman's publicly expressed opinion that the company's future was secure. This view was contrary to the actual views of an SSB analyst, which were expressed privately to Grubman and not disclosed. On June 21, 2001, a research analyst who reported to Grubman discounted the prospects of the company, telling Grubman in an e-mail that while the company had funding through the end of 2001, its fundamentals would deteriorate thereafter: "I have received over 50 calls today on MFNX (its down $0.20 again to $1.51). . . . Most people have written off this stock saying that it will go bankrupt, even if they could get an equity infusion here it would be massively dilutive. At least they have some cash through the end of the year but I doubt the fundamentals recover which is actually the important thing. I think downgrading right now is not advisable since everyone would say 'gee thanks.' I think we need an exuse [sic] from the company, we should have done it the day they lowered guidance but of course we were restricted."

59. Grubman did not downgrade Metromedia Fiber until July 25, 2001 and even then only downgraded the stock to a Neutral (3) rating. By then, the company's stock price had sunk to 98 cents, more than a 33 percent drop from its price on June 21, 2001, when the analyst who reported to Grubman disparaged the company's future.

Grubman Issued Research Reports on Level 3, Focal, RCN, Adelphia, WCG, and XO That Violated Exchange Rule 472

60. Under Exchange Rule 472, research analysts must have a reasonable basis for their recommendations, research reports must present a fair, balanced picture of the risks and benefits of investing in the covered companies, and research reports must avoid exaggerated or unwarranted claims regarding the covered companies. As described below, certain research reports issued on Level 3, Focal, RCN, Adelphia, WCG, and XO violated Exchange Rule 472.

Grubman Issued Research on Focal That Violated Exchange Rule 472

61. As stated above, on February 21, 2001 and April 30, 2001, Grubman published fraudulent research reports on Focal. In addition to those reports, Grubman published four research reports on Focal, dated April 10, 2000, April 18, 2000, April 26, 2000, and July 31, 2000 that violated Exchange Rule 472.

62. In April 2000, Focal selected SSB to be the joint book runner for a secondary offering of its stock. Focal also announced a major expansion of its business plan. At the time, the company had significant capital expenditures and required additional capital to complete its new business plan. It faced the risks that it could not raise such capital and could not complete its new plan, and that, because of its capital expenditures, it would potentially have substantial negative operating cash flow and substantial net operating losses for the foreseeable future, including through 2000 and 2001. Nevertheless, the Notes Grubman published on April 10, 2000, April 18, 2000, April 26, 2000, and July 31, 2000 either did not disclose these risks or did not fully address them. In addition, these Notes published a target price that did not have a reasonable basis. Accordingly, these Notes violated Exchange Rule 472.

63. On April 10, 2000, Grubman issued a Note that reiterated a Buy (1) recommendation on Focal and increased the target price for Focal from $60 to $110. The Note discussed Focal's planned expansion, describing it as "sexy" and "providing the sizzle in this story." Based on Focal's expanded business plan, Grubman predicted that the company's revenue within 10 years would increase to $6 billion and EBITDA would increase to $2.4 billion. The Note described Focal management as "stellar." The Note did not disclose the additional capital expenditures that would be necessary to fund Focal's expanded business plan or the risk the company may not be able to obtain such capital. It did not disclose the likelihood that the expanded business plan would increase the company's substantial negative operating cash flow and substantial net operating losses.

64. On April 18, 2000, Grubman issued a Note reiterating the $110 price target and Buy rating. The April 18 Note stated that "[Focal] is expanding its business plan to 24 markets and aggressively pursuing data opportunities . . . The name of the game in value creation is to drive geographic footprint & service capabilities. Focal is dramatically increasing the latter w/its data initiative while increasing its geographic footprint by 15-20% . . . We reiterate our Buy rating & $110 target & would be aggressive buyers." The April 18, 2000 Note did not disclose the additional capital expenditures that would be necessary to fund Focal's expanded business plan or the risk the company may not be able to obtain such capital. It did not disclose the likelihood that the expanded business plan would increase the substantial negative operating cash flow and substantial net operating losses the company faced in the foreseeable future.

65. On April 26, 2000, Grubman issued a Note that reiterated a Buy recommendation, the $110 target price, and Grubman's predictions of substantial growth in the company's revenues and EBITDA. By this time, Focal's share price had dropped to $34.00. The Note repeated Grubman's earlier comments that Focal's new data initiative "is the real sizzle in this story . . . we believe that [Focal's] recent geographic & data expansion will enable [Focal] to become one of the critical path points in what is the next evolution in the Internet." The Note stated: "From a liquidity standpoint, no matter what happens with the capital markets, between the money [Focal] has on hand and its bank facilities commitments, we believe that [Focal] will be fully funded

through mid- to late-2001. During the first quarter, [Focal] completed a $275 million offering of 11 7/8% senior notes due 2010 through a private placement."

66. The Note concluded with another recommendation for investors to buy the stock: "We continue to be very bullish on [Focal] and believe the stock is undervalued at current levels." The Note did not disclose the additional capital expenditures that would be necessary to fund Focal's expanded business plan or the risk the company may not be able to obtain such capital. It did not disclose the likelihood that the expanded business plan would increase the substantial negative operating cash flow and substantial net operating losses the company faced in the foreseeable future.

67. The Note Grubman published on July 31, 2000 left the rating and target price unchanged. The Note extolled the virtues of Focal's management, stating that the reported strong earnings for second quarter 2000 "highlights the execution abilities of FCOM management . . . ." It repeated earlier advice to investors that "the stock is undervalued at current levels." The July 31 Note stated: "From a liquidity standpoint, [Focal] received a commitment for $300 million of senior secured credit facilities during the quarter. Capital expenditures totaled $77 million this quarter and we still expect [Focal] to spend $300 million and $305 million in 2001. We estimate that with the cash on hand of $342 million and the available credit, [Focal] will be fully funded through 2001."

68. Missing from the July 31 Note, however, were sufficient risk disclosures adequate to warn investors of the funding needs facing Focal. The Note did not disclose the additional capital expenditures that would be necessary to fund Focal's expanded business plan or the risk that the company may not be able to obtain such capital. It did not disclose the likelihood that the expanded business plan would increase the substantial negative operating cash flow and substantial net operating losses the company faced in the foreseeable future.

69. By October 17, 2000, Focal's stock price had plummeted to $18. That day, Grubman issued a Report on Focal and other CLECs entitled "CLECs: Clean Up of Ratings, Price Targets & DCFs." In this Report, Grubman maintained a Buy (1) rating on Focal, but lowered Focal's target price from $110 to $30, noting that the previous target price was "a clearly stale number." Despite advising investors for months prior to October that Focal's new business strategy was "sexy" and "the sizzle to the story" and would raise Focal's stock price by $50, Grubman decreased Focal's price target in part by substantially reducing the revenue expected from the new business strategy.

Grubman Failed to Disclose Investment Banking Pressure on Him

70. As described above, in April 2001 Grubman expressed the need to downgrade Level 3, Focal, RCN, Adelphia, WCG, and XO in the aftermath of the Winstar bankruptcy. Investment bankers pressured Grubman not to change the Buy ratings on these stocks and he did not downgrade them until months later.

71. None of the Notes for these companies issued between April 18, 2001 and the date the stocks were downgraded disclosed the pressure the investment bankers had exerted on Grubman or the fact that he had acceded to it. As described above, the following Notes violated Exchange Rule 472: the Note for Level 3 on April 18, 2001; the Note for Adelphia on May 14, 2001; the Notes for WCG on May 1, 2001, August 1, 2001, and September 21, 2001; the Notes for XO on April 26, 2001, and July 25, 2001; and the Note for RCN on May 3, 2001.[2]

Grubman Issued a Note on WCG That Was Contrary to the Actual, Private Views of Grubman and Another Analyst

72. In addition, the May 1, 2001 Note on WCG lacked a reasonable basis because it did not disclose the contrary private views of Grubman and a member of his team. On May 1, 2001, Grubman issued a Note that failed adequately to disclose the views of Grubman and another analyst of the funding risks facing WCG. Before the issuance of that Note, Grubman and the analyst commented privately that the company "need[s] money." These funding concerns were so acute that the analyst warned an institutional investor to "be careful with WCG." Similarly, Grubman explained to a SSB retail broker who complained about Grubman's target price for WCG that WCG was a "tough one. They still need money. I think business is ok . . . ."

73. The May 1 Note, however, reiterated a Buy recommendation on the stock. It noted that "visibility on funding better vs. 6 mos. ago." It reassured investors that WCG had adequate funds "into 2003." The Note stated that the company had reduced capital expenditures and "has made steps to improve its funding situation since the beginning of the year and have [sic] raised additional liquidity of more than $2 billion." While predicting that the company may need $1 billion to fund its operations in 2003, the Note stated, "frankly, if the second tranche of the bank facility gets fully syndicated out, and WCG does perform as it expects . . . then our funding gap will be cut dramatically."

74. The May 1 Note failed to accurately describe the negative view of Grubman and the analyst who reported to him of the company's funding concerns. Rather than informing investors that WCG's business was merely "ok" or a "tough one," the May 2001 Note advised investors to "be more aggressive on [WCG]." The Note did not warn investors to "be careful" with WCG and did not fully reflect the analysts' views on the company's funding needs.

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[2] For the additional reasons set forth in paragraphs 60 to 74, the Note on Focal for April 30, 2001 was fraudulent.

Undisclosed Conflicts of Interest
Pervaded Grubman's Upgrade of AT&T in November 1999

AT&T Complained About Grubman's Views of the Company

75. From 1995 through November 1999, Grubman maintained a Neutral (3) rating on AT&T. Though at times he offered qualified approval of AT&T's strategy, he also repeatedly disparaged the company in his research and his public comments.

76. Beginning in July 1998 and continuing through the relevant period, Sanford Weill, then co-CEO and Chairman of Citigroup, was a member of the AT&T Board of Directors. Prior to November 1999, AT&T management complained to Weill and other SSB representatives about the tone of Grubman's comments. In particular, the AT&T CEO told Weill that Grubman's unprofessional tone and comments about AT&T made it difficult for AT&T to do business with SSB.

77. At an October 1998 industry trade show, Grubman failed to mention AT&T as one of the important telecommunications companies of the future. AT&T complained to Weill, and Weill relayed the complaint to senior SSB investment bankers. As a result, Grubman wrote a letter of apology dated October 9, 1998 to Weill and the heads of SSB's investment banking and equities departments. Before it was finalized, the letter was reviewed and approved by Weill and several members of senior management.

78. Grubman's apology stated, in part: "It has come to my attention that a speech I made offended AT&T. I want to make it perfectly clear that the last thing I want to do is embarrass the firm or myself or for that matter have AT&T put in an awkward position in dealing with Salomon Smith Barney. To the extent I have done so, I apologize to you and to the firm. I will also find the appropriate time and place to apologize directly to AT&T….Despite our current investment stance on AT&T, I view AT&T as one of the most significant companies in this industry, a company that I hope we can build a long and valued relationship with and one where I truly am open-minded about changes in investment views."

79. In his cover memo to the head of investment banking, and the SSB investment banker covering AT&T, Grubman indicated that his letter was suitable to send to AT&T. On October 12, Weill and the investment banker covering AT&T traveled to AT&T's Basking Ridge, NJ headquarters and met with AT&T's CEO.

Weill Asked Grubman to "Take a Fresh Look" at AT&T

80. A few months later, in late 1998 or early 1999, Weill asked Grubman to "take a fresh look" at AT&T in the hope that Grubman might change his opinion of the company. Weill had a positive view of AT&T and its CEO whom Weill had known personally for years. AT&T's CEO was a member of Citigroup's Board of Directors during the relevant period and, prior to the merger of Citicorp and Travelers Corporation (SSB's

corporate parent), had been a member of the Travelers' Board of Directors since 1993.

81. Thereafter, on April 5, 1999, Grubman sent AT&T a seven-page questionnaire seeking further information about its business. On June 11, 1999 Grubman sent Weill a memorandum noting that AT&T had not responded to his questionnaire. Weill apparently then spoke to AT&T's CEO about the questionnaire. AT&T asked Grubman to re-send the questionnaire, and Grubman wrote Weill: "Maybe this time we can actually make some progress in closing the deal with [AT&T's CEO]." On July 19, 1999, AT&T sent an eleven-page response to Grubman.

82. On August 5, 1999 Grubman and Weill traveled to AT&T's headquarters for a meeting with AT&T's CEO that Weill had arranged. On August 19, 1999, Grubman wrote to AT&T's CEO: "I am writing to follow up on our meeting with Sandy. . . . I thought it was important to write to you directly to lay-out what I think we agreed to in order to get this process going. . . . I need to get to a level of specificity well beyond what's on the street today and I will need your help getting to the right people. . . . Wall Street is lacking analysis that comes remotely close to answering the detailed economic, technical, and operational questions that investors are demanding answers to regarding the roll-out of the bundled service platform using the cable plant . . . . When my analysis is complete and if the results are in line with what you and I are both anticipating, once I'm on board there will be no better supporter than I. . . . As I indicated to you at our meeting, I would welcome the role of being a "kitchen cabinet" member to you."

83. Grubman sent a copy of his August 19, 1999 letter to Weill, SSB's head of investment banking, and the SSB investment banker covering AT&T.

Grubman Requested Weill's Assistance to Get His Children Accepted to the 92nd St. Y Preschool and AT&T Considered Issuing a Tracking Stock for Its Wireless Unit

84. In September 1999, Grubman began his efforts to get his children admitted to the prestigious and competitive preschool at the 92nd Street Y in New York City.

85. On October 20, 1999, the AT&T Board of Directors began discussing whether to issue a tracking stock for its wireless unit. That day, Weill attended an all-day meeting of the AT&T Board, at which AT&T's management presented a number of strategic alternatives, including issuing a tracking stock for AT&T's wireless business.

86. On October 29, 1999, Weill and Grubman had a 14 minute telephone conversation during which they discussed the status of Grubman's "fresh look" at AT&T. In that conversation or one shortly thereafter, they also discussed Grubman's desire to send his children to the 92nd Street Y preschool in New York City.

87. By November 2, AT&T had taken its first steps towards issuing a tracker stock for its wireless unit. That day, an investment banking firm advising AT&T on financial strategies met with AT&T's outside counsel to discuss a proxy statement for AT&T shareholder approval of the wireless tracker.

88. On November 5, 1999, Grubman sent a memo to Weill entitled "AT&T and 92nd Street Y." In it, Grubman updated Weill on his progress in "taking a fresh look" at AT&T and outlined the future steps he would take to reexamine the company. He referred to his earlier meeting with AT&T's CEO and to his scheduled meetings in Denver with the head of AT&T's cable operations and in Basking Ridge with AT&T's network operations personnel. Grubman also sought Weill's assistance in getting his children admitted to the 92nd Street Y preschool. Noting the difficulty in getting into the school, Grubman stated that "there are no bounds for what you do for your children. . . . it comes down to 'who you know.'" In the last paragraph of his memo, Grubman concluded: "Anyway, anything you could do Sandy would be greatly appreciated. As I mentioned, I will keep you posted on the progress with AT&T which I think is going well."

Grubman Kept Weill Apprised of His Reevaluation of AT&T in November 1999; AT&T Management Recommended That AT&T Issue a Tracking Stock

89. During November 1999, Grubman intensified his "fresh look" at AT&T. He met and spoke by telephone with AT&T's CEO and traveled to AT&T's Denver and New Jersey offices to meet with company officials and view AT&T's operations. Grubman reported on his efforts to Weill during an unprecedented number of telephone calls on November 3, 11, 17, 22, 24 and 30.

90. On the morning of November 17, Weill attended an AT&T board meeting at which senior AT&T management recommended that the board approve the issuance of a tracking stock for the wireless business. Grubman called Weill from Milan, Italy late that night and the two discussed the status of Grubman's "fresh look" at AT&T. During a call on November 22 or November 24, Grubman informed Weill that he soon would be issuing a report upgrading AT&T.

Grubman Upgraded AT&T and Subsequently Stated He Did So to Get His Children Into the 92nd St. Y Preschool

91. Grubman announced on November 29, 1999 that he was upgrading AT&T from a Neutral (3) to a Buy (1) rating. The same day, Grubman sent an e-mail to the SSB publications department, with a copy to Research Management, stating: "The AT&T Report must be edited and mailed out to the printers today so that it can be distributed in time to meet Sandy Weill's deadline (before the AT&T meeting)."

92. The next day, Grubman issued a 36-page Report setting forth his new rating and rationale. In his November 30 Report, Grubman wrote that his upgrade rested largely on two points: (1) the "real economics" of AT&T's cable strategy and (2) AT&T's

ability to upgrade its cable technology to deliver a range of different services to consumers' homes. Grubman commented positively in his report about the widely-reported wireless tracking stock but denied upgrading because of the possible IPO.

93. After issuing the report, Grubman told an analyst who reported to him and an institutional investor, in separate conversations, that he upgraded AT&T to help get his children into the 92nd St. Y preschool.

94. Roughly a year after the upgrade, on January 13, 2001, in an e-mail to a friend, Grubman stated: "You know everyone thinks I upgraded T [AT&T] to get lead for AWE [AT&T Wireless tracker]. Nope. I used Sandy to get my kids into 92nd St Y pre-school (which is harder than Harvard) and Sandy needed [the AT&T's CEO's] vote on our board to nuke [John] Reed in showdown. Once coast was clear for both of us (ie Sandy clear victor and my kids confirmed) I went back to my normal negative self on T. [AT&T's CEO] never knew that we both (Sandy and I) played him like a fiddle."

95. The following day, Grubman e-mailed the same friend: "I always viewed T [AT&T] as a business deal between me and Sandy."

After the AT&T Upgrade, Weill Helped Facilitate the Admission of Grubman's Children to the 92nd St. Y Preschool

96. After Grubman issued his November 1999 report on AT&T, Weill helped gain admission for Grubman's children to the 92nd St. Y preschool. On or about December 17, 1999, Weill called a member of the 92nd St. Y board and told her he would be "very appreciative" if she would help Grubman, a "valued employee" at Citigroup. Weill did not explicitly offer a donation to the Y during this phone call. By indicating that he would be "very appreciative," he understood that he was implicitly offering such assistance.

97. In March 2000, Grubman's children were admitted to the Y preschool. Subsequently, the board member called Weill, suggested a donation be made to the Y, and may have suggested the amount. Weill agreed. Weill was one of three corporate officers who approved charitable donations from Citigroup or the Citigroup Foundation. During a subsequent conversation with the president of the Citigroup Foundation, Weill indicated that the Foundation should make a $1 million donation to the Y and instructed the Foundation president to work with the Y to develop a suitable program with the donation. The program that was subsequently developed consisted of a series of 10 events per year that had cultural, artistic, and educational aims. Weill, the president of the Foundation, and another Citigroup corporate officer approved the donation on July 24, 2000[3] and the first installment of the donation ($200,000) was sent to the Y in September 2000. The president of the Foundation understood the

[3] Because of certain tax considerations, and in light of benefits Citigroup employees received from the program supported by the donation, Citigroup, not Citigroup Foundation, made the donation to the Y. The $1 million donation was payable in equal amounts over five years.

donation was a "thank you" for the admission of the Grubman children to the preschool at the 92nd St. Y.

**After Grubman's Upgrade of AT&T,
AT&T Selected SSB as a Lead Underwriter
in the AT&T Wireless IPO**

98. Grubman's upgrade of AT&T assisted SSB in being selected as a lead underwriter and joint book-runner for the IPO of a tracking stock for AT&T's wireless subsidiary.

99. The AT&T Board approved the IPO during its December 5, 1999 Board meeting. AT&T announced its plans at a meeting with analysts the following day.

100. In January 2000, SSB competed to be named a lead underwriter and book-runner for the offering. In its pitch book, it highlighted the experience, prominence, and support for AT&T of Grubman and the SSB wireless analyst. Among other things, SSB's pitch book contained numerous statements about Grubman's views regarding the positive impact the wireless tracking stock would have on AT&T's shares, as well as promises about the role he would play in marketing the deal to investors.

101. In evaluating the various proposals from SSB and other investment banks, AT&T assigned significant weight (55%) to its views of each investment bank's wireline and wireless telecommunications analysts. Because Grubman was a highly rated and highly respected analyst, had a "strong buy" on AT&T stock, and was a "strong supporter" of the company, AT&T gave him the highest possible score in the internal matrix it used to rank the competing investment banks. In February 2000, based in large part on this positive evaluation of Grubman, AT&T named SSB as one of three joint book-runners for the AT&T Wireless IPO. The IPO occurred on April 27, 2000. It was the largest equity offering ever in the United States, and SSB earned $63 million in fees as lead underwriter for the offering.

Grubman Downgraded AT&T

102. On May 17, 2000, three weeks after the IPO, two months after his children were admitted to the 92nd St. Y preschool, and after AT&T announced disappointing earnings, Grubman issued a research report in which he compared AT&T with WorldCom. While Grubman did not change his Buy ratings on the two companies, he lowered his target price for AT&T from $75 to $65 per share and made a number of negative comments about AT&T.

103. Institutional investors viewed Grubman's report as a "virtual downgrade" because of his unfavorable comparisons of AT&T to WorldCom. An internal AT&T document also reported that Grubman was privately making comments to investors that were considerably more critical than those in his written reports.

104. Grubman subsequently downgraded AT&T on October 6, 2000 (to a 2 (Outperform)) and October 25, 2000 (to a 3 (Neutral)), citing what he described as negative news from the company.

Violations of Federal Securities Laws and Exchange Rules

105. Section 15(c)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), Rule 15c1-2 thereunder, and 15(c)(2) of the Exchange Act prohibits transactions in and inducement to the purchase or sale of securities by means of any manipulative, deceptive, or fraudulent device or contrivance.

106. Exchange Rule 476(a)(6) prohibits employees of member organizations from engaging in practices that constitute conduct inconsistent with just and equitable principles of trade.

107. Exchange Rule 472 governs communications with the public, including requirements relating to research communications and research reports.

DECISION

The Hearing Panel, in accepting the Stipulation and Consent, found Mr. Grubman guilty as set forth above by unanimous vote.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, imposed the penalty consented to by Mr. Grubman of a censure, a permanent bar from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization and a total payment of $15,000,000 as specified in the Final Judgment ordered in a related action filed by the Securities and Exchange Commission, the payment provisions of which are incorporated by reference herein. Of this amount, $7,500,000 constitutes a penalty and $7,500,000 constitutes restitution.

For the Hearing Panel

Edward W. Morris, Jr.
Chief Hearing Officer