



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**Covad Communications Group, Inc.**

IN RE INITIAL PUBLIC OFFERING SECURITIES LITIGATION	X : : : : : X	Master File No. 21 MC 92 (SAS)
IN RE COVAD COMMUNICATIONS GROUP, INC. INITIAL PUBLIC OFFERING SECURITIES LITIGATION	X : : : : : : : : : X	01 Civ. 5834 (SAS) (LMM)  CORRECTED CONSOLIDATED AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

Plaintiffs, by their 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 17 applicable to the named Plaintiffs which is alleged upon personal knowledge, bring this Consolidated Amended Complaint (the "Complaint") against the Defendants named herein, and allege 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 ("IPO") conducted on or about January 21, 1999 of 7,800,000 shares of Covad Communications Group, Inc. ("Covad" or the Issuer), the follow-on

public offering conducted on or about June 17, 1999 ("Secondary Offering") of 7,500,000 shares of Covad, the follow-on public offering conducted on or about November 3, 1999 ("Tertiary Offering") of 13,000,000 shares of Covad, and the trading of Covad common stock in the aftermarket from the date of the IPO through December 6, 2000, inclusive (the "Class Period"). Collectively, the IPO, the Secondary Offering and the Tertiary Offering will sometimes be referred to herein as the "Offerings."

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

3. In this regard, the Allocating Underwriter Defendants created artificial demand for Covad stock by conditioning share allocations in the IPO upon the requirement that customers purchase shares of Covad 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 Allocating 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 Allocating Underwriter Defendants, including, but not limited to, secondary and tertiary (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 addition, the Allocating Defendants' scheme enabled certain of them to further capitalize on the artificial inflation in Covad's stock by underwriting the Secondary Offering and Tertiary Offering receiving substantial fees in connection therewith -- in fact, the amount of disclosed compensation paid was directly tied to Covad's manipulated stock price.

6. In connection with the IPO, Covad filed with the SEC a registration statement ("IPO Registration Statement") and a prospectus ("IPO Prospectus"). The IPO Registration Statement and IPO Prospectus will, at varying times, be collectively referred to hereinafter as the "IPO Registration Statement/Prospectus." The IPO Registration Statement/Prospectus was declared effective by the SEC on or about January 21, 1999.

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

8. In connection with the Secondary Offering, Covad filed with the SEC a registration statement (the "Secondary Offering Registration Statement") and a prospectus (the "Secondary Offering Prospectus"). The Secondary Offering Registration Statement and the Secondary Offering Prospectus will be, at varying times, collectively referred to hereinafter as the Secondary Offering Registration Statement/Prospectus. The Secondary Offering Registration Statement/Prospectus was declared effective by the SEC on or about June 17, 1999.

9. The Secondary Offering Registration Statement/Prospectus was materially false and misleading in that it misrepresented or failed to disclose, among other things further described herein, that the price at which the Secondary Offering was sold to the public was artificially inflated and the product of a manipulated market. Also omitted from disclosure in the Secondary Offering Registration Statement/Prospectus was the material fact that the demand for the Secondary Offering was artificially inflated. Specifically, customers of the underwriters named as Defendants herein, in order to receive allocations of shares in this IPO and/or other "hot" initial public offerings, were required by these Defendants to purchase shares in the Secondary Offering.

10. In connection with the Tertiary Offering, Covad filed with the SEC a registration statement (the "Tertiary Offering Registration Statement") and a prospectus (the "Tertiary Offering Prospectus"). The Tertiary Offering Registration Statement and the Tertiary Prospectus will be, at varying times, collectively referred to hereinafter as the "Tertiary Offering Registration Statement/Prospectus." The Tertiary Offering Registration Statement/Prospectus was declared effective by the SEC on or about November 3, 1999.

11. The Tertiary Offering Registration Statement/Prospectus was materially false and misleading in that it misrepresented or failed to disclose, among other things further described herein, that the price at which the Tertiary Offering was sold to the public was artificially inflated and the product of a manipulated market. Also omitted from disclosure in the Tertiary Offering Registration Statement/Prospectus, was the material fact that the demand for the Tertiary Offering was artificially inflated. Specifically, customers of the underwriters named as

Defendants herein, in order to receive allocations of shares in this IPO and/or other "hot" initial public offerings, were required by these Defendants to purchase shares in the Tertiary Offering.

12. 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 Covad stock by issuing favorable recommendations.

13. The Individual Defendants (defined below) not only benefitted from the manipulative and deceptive schemes described herein as a result of their personal holdings of the Issuer's stock, but also knew of or recklessly disregarded the conduct complained of herein through their participation in the "Road Show" process by which underwriters generate interest in public offerings.

### **JURISDICTION**

14. 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.

15. Plaintiffs bring this action pursuant to Sections 11 and 15 of the Securities Act (15 U.S.C. §§ 77k and 77o) and Sections 10(b) and 20(a) of the Exchange Act as amended (15 U.S.C. §§ 78j(b) and 78t(a)), 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.

16. 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**

**PLAINTIFFS**

17. Plaintiffs Neils Peter Christenson, Michael Houser and Gordon L. Bailey (collectively "Plaintiffs") purchased or otherwise acquired shares of Covad common stock traceable to the Offerings, in the open market or otherwise during the Class Period, at prices that were artificially inflated by Defendants' conduct and were damaged thereby.

**DEFENDANTS**

**THE UNDERWRITER DEFENDANTS**

18. Plaintiffs hereby incorporate by reference the "Underwriter Defendants" section of the Master Allegations as if set forth herein at length.

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

**POSITION**

**NAME OF UNDERWRITER**

LEAD MANAGER

Bear Stearns

CO-MANAGERS

Goldman Sachs

CSFB (as successor-in-interest to DLJ)

DLJ

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

BT Alex. Brown

Deutsche Bank

SYNDICATE MEMBERS

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

BancBoston

J.P. Morgan

Salomon

20. Defendants Bear Stearns, Goldman Sachs, CSFB (DLJ), DB Alex. Brown (BT Alex. Brown), DB Alex. Brown (Deutsche Bank) and Robertson Stephens (BancBoston) will be, at varying times, collectively referred to hereinafter as the "Allocating Underwriter Defendants."

21. Defendants J.P. Morgan and Salomon, along with the Allocating Underwriter Defendants, will, at varying times, be collectively referred to hereinafter as the "IPO Underwriter Defendants."

22. The following investment banking firms acted in the following capacities with respect to the Secondary Offering and substantially participated in the wrongs alleged herein:

**POSITION**

**NAME OF UNDERWRITER**

LEAD MANAGER

Bear Stearns

CO-MANAGERS

Morgan Stanley

CSFB

CSFB (as successor-in-interest to DLJ)

DLJ

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

Deutsche Bank

Goldman Sachs

23. The Defendants identified in the preceding paragraph will be, at varying times, collectively referred to hereinafter as the "Secondary Offering Underwriter Defendants."

24. The following investment banking firms acted in the following capacities with respect to the Tertiary Offering and substantially participated in the wrongs alleged herein:

**POSITION**

**NAME OF UNDERWRITER**

LEAD MANAGERS

Bear Stearns

Morgan Stanley

CO-MANAGERS

Goldman Sachs

CSFB

CSFB (as successor-in-interest to DLJ)

DLJ

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

Deutsche Bank

J.P. Morgan

25. The Defendants identified in the preceding paragraph will be, at varying times, collectively referred to hereinafter as the "Tertiary Offering Underwriter Defendants." Collectively, the IPO Underwriter Defendants, the Secondary Offering Underwriter Defendants, and the Tertiary Offering Underwriters Defendants will be, at varying times, referred to hereinafter as the "Underwriter Defendants."

### **THE INDIVIDUAL DEFENDANTS**

26. Defendant Robert Knowling, Jr. ("Knowling") served, at the time of the IPO, as the Issuer's President, Chief Executive Officer and a member of the Board of Directors, and at the time of the Secondary and Tertiary Offerings, as Chairman of the Board, President, and Chief Executive Officer. Knowling signed the IPO Registration Statement, the Secondary Offering Registration Statement and the Tertiary Registration Statement.

27. Defendant Charles McMinn ("McMinn") served, at the time of the IPO, as the Issuer's Chairman of the Board and as a member of the Board of Directors at the time of the Secondary Offering. McMinn signed the IPO Registration Statement, and the Secondary Offering Registration Statement. He resigned on November 1, 1999, just days before the Tertiary Offering, but rejoined Covad in October of 2000.

28. Defendant Timothy Leahy ("Leahy") served, at the time of the IPO, as Chief Financial Officer, Treasurer and Vice President of Finance, and at the time of the Secondary Offering and Tertiary Offering, as Chief Financial Officer. Leahy signed the IPO Registration Statement, the Secondary Offering Registration Statement and the Tertiary Registration Statement.

29. Defendant Frank Marshall ("Marshall") served, at the time of the IPO, the Secondary Offering and the Tertiary Offering, as a member of the Board of Directors. Marshall signed the IPO Registration Statement, the Secondary Offering Registration Statement and the Tertiary Registration Statement.

30. Defendants Knowling, McMinn, Leahy and Marshall will be, at varying times, collectively referred to hereinafter as the "Individual Defendants."

#### **ADDITIONAL PERSON - THE ISSUER**

31. At the time of the IPO, Covad was a Delaware corporation with its principal executive offices located in Santa Clara, California. Covad described itself in the IPO Registration Statement/Prospectus as a leading provider of dedicated high-speed digital communications to Internet Service Providers and enterprise customers. On or about August 13, 2001, Covad filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. For this reason and this reason only, Covad has not been named as a Defendant in this Complaint.

#### **CLASS ACTION ALLEGATIONS**

32. Plaintiffs bring 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, members of the immediate family of the Individual Defendants, 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.

33. 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 Offerings, and the stock was actively traded during the Class Period; and

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

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

35. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiffs know 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.

36. 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, Secondary Offering and Tertiary Offering. 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.

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

## SUBSTANTIVE ALLEGATIONS

38. Plaintiffs hereby incorporate by reference the "Introductory" section of the Master Allegations as if set forth herein at length. Plaintiffs also adopt and incorporate 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

39. Covad's IPO of 7,800,000 shares was priced at \$18.00 on or about January 21, 1999. The sale and distribution of this firm commitment offering was effected by an underwriting syndicate consisting of, among others, the Allocating Underwriter Defendants. Additionally, Covad granted the underwriting syndicate an option to purchase a maximum of 1,700,000 additional shares at the initial offering price less underwriting discounts and commissions.

40. On the day of the IPO, the price of Covad common stock shot up dramatically, trading as high as \$46 per share, or more than 155% 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.

41. The unlawful practices continued during the Class Period as the price of Covad rose dramatically. For example, on April 12, 1999, approximately two months before the Secondary Offering, Covad reached a high of \$121.50 per share, a staggering 575% above the IPO price.

**UNLAWFUL CONDUCT IN CONNECTION WITH THE IPO**

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

43. 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 enter into Tie-in Agreements and/or pay Undisclosed Compensation.

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

44. 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.

45. 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)

46. In particular, the IPO Registration Statement/Prospectus stated:

The Underwriters have advised the Company that, pursuant to Regulation M promulgated under the Exchange Act, certain persons participating in the offering may engage in transactions, including stabilizing bids, syndicate covering transactions or the imposition of penalty bids, which may have the effect of stabilizing or maintaining the market price of the Common Stock at a level above that which might otherwise prevail in the open market. A stabilizing bid is a bid for or the purchase of the Common Stock on behalf of the Underwriters for the purpose of pegging, fixing or maintaining the price of the Common Stock. A syndicate covering transaction is the bid for or the purchase of the Common Stock on behalf of the Underwriters to reduce a short position created in connection with the offering. The Underwriters may also cover all or a portion of such short position by exercising the Over-Allotment Option. A penalty bid is an arrangement permitting the Underwriters to reclaim the selling concession otherwise accruing to an Underwriter or syndicate member in connection with the offering if the Common Stock originally sold by such Underwriter or syndicate member is purchased by the Underwriters in a syndicate covering transaction and has therefore not been effectively placed by such Underwriter or syndicate member. The Underwriters have advised the Company that such transactions may be effected on the Nasdaq National Market or otherwise and, if commenced, may be discontinued at any time.

47. 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 IPO 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 Covad common stock to rise, in transactions that cannot be characterized as stabilizing transactions, over-allotment transactions, syndicate covering transactions or penalty bids.

48. Because the Undisclosed Compensation was, in reality, underwriter compensation, it was required to be disclosed in the IPO 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).

49. 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).

50. 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.

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

52. Instead, the IPO Registration Statement/Prospectus misleadingly stated that the underwriting syndicate would receive as compensation an underwriting discount of \$1.12 per share, or a total of \$8,736,000 based on the spread between the per share proceeds to Covad (\$16.88) and the Offering price to the public (\$18.00 per share). This disclosure was materially false and misleading as it misrepresented underwriting compensation by failing to include Undisclosed Compensation.

53. In addition, the IPO Registration Statement/Prospectus stated:

The Underwriters have advised the Company that the Underwriters propose to offer the Common Stock to the public initially at the public offering price set forth on the cover page of this Prospectus [\$18.00] and to certain dealers at such price less a concession...

54. The IPO Registration Statement/Prospectus was materially false and misleading in that in order to receive share allocations from the Allocating Underwriter Defendants in the Covad 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.

55. 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.

56. 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).

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

58. 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.

59. 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.

60. The IPO 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**

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

62. The IPO 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 IPO Registration Statement/Prospectus.

63. For example, the IPO Registration Statement/Prospectus was materially false and misleading in that neither Salomon nor J.P. Morgan received any of the 130,000 shares listed next to each of their names.

**MARKET MANIPULATION THROUGH THE USE OF ANALYSTS**

64. As demonstrated in the "Use of Analysts" section of the Master Allegations in furtherance of their manipulative scheme, Defendants Bear Stearns, Goldman Sachs and DB Alex. Brown (BT Alex. Brown) improperly used their analysts to issue glowing research reports and positive recommendations so as to manipulate the aftermarket stock price as to offerings underwritten by them.

65. On January 22, 1999, the first day of trading with respect to the Covad IPO, Defendant Bear Stearns initiated analyst coverage with a "Buy" recommendation. On January 27, 1999, Defendants Goldman Sachs initiated coverage with a "Market Outperform" recommendation. On February 3, 1999, DB Alex. Brown (BT Alex. Brown) initiated coverage with a "Buy" recommendation.

#### **UNLAWFUL CONDUCT IN CONNECTION WITH THE SECONDARY OFFERING**

66. Consistent with their conduct in other secondary (or add-on) offerings as set forth in the Master Allegations, the Secondary Offering Underwriter Defendants engaged in unlawful practices described more fully herein in connection with the Secondary Offering.

67. For example, customers of DB Alex. Brown (Deutsche Bank), Bear Stearns, CSFB, CSFB (DLJ), Goldman Sachs and Morgan Stanley, in order to receive an allocation of stock in otherwise unrelated initial public offerings, were required or induced to purchase shares in the Covad Secondary Offering.

#### **THE SECONDARY OFFERING**

68. On or about June 17, 1999, an additional 7,500,000 shares of Covad were sold in the Secondary Offering at \$38.00 per share (a dramatic 111% premium above the \$18.00 per share IPO price) pursuant to the materially false and misleading Secondary Offering Registration Statement/Prospectus.

69. The Secondary Offering Registration Statement/Prospectus stated that "on June 17, 1999, the last reported sale price of [Covad] common stock on The Nasdaq National Market was \$39.56." This statement was materially false and misleading in that it failed to disclose that the stock's market price and the price at which the Secondary Offering was sold to the public

were artificially inflated and the product of a manipulated market. As set forth above, the Allocating Underwriter Defendants had required customers to agree to Tie-in Agreements and/or pay Undisclosed Compensation thereby artificially inflating the price of Covad's common stock in the aftermarket.

70. Also omitted from disclosure in the Secondary Offering Registration Statement/Prospectus was the material fact that demand for the Secondary Offering was artificially inflated. As set forth herein, customers of certain Underwriter Defendants were required to make purchases of shares in the Secondary Offering in order to receive allocations of shares in the Covad IPO and/or other "hot" initial public offerings underwritten by such Defendants.

71. As demonstrated in the "Use of Analysts" section of the Master Allegations, in furtherance of their manipulative scheme, CSFB (DLJ), Bear Stearns, DB Alex. Brown (Deutsche Bank) and Morgan Stanley improperly used their analysts, who suffered from conflicts of interest, to help support the market following the Secondary Offering.

72. For example, on June 18, 1999, Defendant CSFB (DLJ) initiated analyst coverage with a "Buy" and set the 12-month target price at \$54.00. On June 17, 1999, Covad common stock had closed at \$39.56 per share. On June 24, 1999, Defendant DB Alex. Brown (Deutsche Bank) initiated analyst coverage with a "Buy" recommendation and set a 12-month target price of \$70.00. On June 23, 1999, Covad common stock had closed at \$41.69 per share. On June 30, 1999, Defendant Morgan Stanley initiated analyst coverage with an "Outperform" recommendation and set the 12-month target price at \$60. The previous day, Covad common stock had closed at \$41.38. On July 16, 1999, CSFB initiated analyst coverage with a "Buy"

recommendation. These price targets were materially false and misleading as they were based upon a manipulated price (these price targets and trading prices reflect a 3-for-2 split which occurred on May 19, 1999).

### **UNLAWFUL CONDUCT IN CONNECTION WITH THE TERTIARY OFFERING**

73. Consistent with their conduct in other tertiary (add-on) offerings as set forth in the Master Allegations, the Tertiary Offering Underwriter Defendants engaged in manipulative and/or other unlawful practices described more fully herein in connection with the Tertiary Offering.

### **THE TERTIARY OFFERING**

74. On or about November 3, 1999, an additional 13,000,000 shares of Covad were sold in the Tertiary Offering at \$43.00 per share (a dramatic 138% premium above the \$18.00 per share IPO price) (this offering price per share reflects the May 19, 1999 3-for-2 stock split) pursuant to the materially false and misleading Tertiary Offering Registration Statement/Prospectus.

75. The Tertiary Offering Registration Statement/Prospectus stated that "on November 3, 1999, the last reported sale price of [Covad] common stock on The Nasdaq National Market was \$44.19." This statement was materially false and misleading in that it failed to disclose that the stock's market price and the price at which the Tertiary Offering was sold to the public were artificially inflated and the product of a manipulated market. As set forth above, the Allocating Underwriter Defendants had required customers to agree to Tie-in Agreements and/or pay Undisclosed Compensation, thereby artificially inflating the price of Covad's common stock in the aftermarket.

76. Also omitted from disclosure in the Tertiary Offering Registration Statement/Prospectus was the material fact that demand for the Tertiary Offering was artificially inflated. As set forth herein, customers of certain Underwriter Defendants were required to make purchases of shares in the Tertiary Offering in order to receive allocations of shares in the Covad IPO and/or other "hot" initial public offerings underwritten by such Defendants.

77. As demonstrated in the "Use of Analysts" section of Master Allegations in furtherance of their manipulative scheme, Bear Stearns, CSFB (DLJ) and J.P. Morgan improperly used their analysts, who suffered from conflicts of interest, to help support the market following the Tertiary Offering.

78. With respect to Covad's Tertiary Offering, on December 3, 1999, Defendant Bear Stearns reiterated its "Buy" recommendation. On that same date, CSFB (DLJ) reiterated its "Buy" recommendation as well. On December 7, 1999, Defendant J.P. Morgan initiated analyst coverage with a "Buy" recommendation and set the 18-month target price at \$100.00 per share. Covad common stock had closed at \$54.06 per share on December 6, 1999. This price target was materially false and misleading as it was based upon a manipulated price.

#### **THE END OF THE CLASS PERIOD**

79. 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**

80. Defendants' conduct alleged herein had the effect of inflating the aftermarket 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 INDIVIDUAL DEFENDANTS AND THE IPO UNDERWRITER  
DEFENDANTS FOR VIOLATION OF SECTION 11 RELATING TO  
THE IPO REGISTRATION STATEMENT)**

81. Plaintiffs repeat and reallege 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.

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

83. As set forth above, the IPO 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.

84. Each of the Individual Defendants, either personally or through an attorney-in-fact, signed the IPO Registration Statement or was a Director or person performing similar functions for the Issuer at the time of the IPO.

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

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

87. By virtue of the foregoing, Plaintiffs 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.

88. This Claim was brought within one year after discovery of the untrue statements and omissions in the IPO 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.

#### **SECOND CLAIM**

#### **(AGAINST THE INDIVIDUAL DEFENDANTS FOR VIOLATION OF SECTION 15 RELATING TO THE IPO REGISTRATION STATEMENT)**

89. Plaintiffs repeat and reallege the allegations set forth above in the First Claim as if set forth fully herein.

90. This Claim is brought against the Individual Defendants pursuant to Section 15 of the Securities Act, 15 U.S.C. § 77o, on behalf of Plaintiffs and other members of the Class who purchased or otherwise acquired the Issuer's common stock traceable to the IPO.

91. As the issuer of the IPO Registration Statement, the Issuer is strictly liable under Section 11 of the Securities Act for the materially false and misleading statements alleged herein.

92. Each of the Individual Defendants was a control person of the Issuer with respect to the IPO by virtue of that individual's position as a senior executive officer and/or director of the Issuer.

93. The Individual Defendants, by virtue of their managerial and/or board positions with the Company, controlled the Issuer as well as the contents of the IPO Registration Statement at the time of the IPO. Each of the Individual Defendants was provided with or had unlimited access to copies of the IPO Registration Statement and had the ability to either prevent its issuance or cause it to be corrected.

94. As a result, the Individual Defendants are liable under Section 15 of the Securities Act for the Issuer's primary violation of Section 11 of the Securities Act, which would have been charged but for the fact that the Issuer filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code.

95. By virtue of the foregoing, Plaintiffs and other members of the Class who purchased or otherwise acquired the Issuer's common stock traceable to the IPO are entitled to damages against the Individual Defendants.

### THIRD CLAIM

#### **(AGAINST THE INDIVIDUAL DEFENDANTS AND THE SECONDARY OFFERING UNDERWRITER DEFENDANTS FOR VIOLATION OF SECTION 11 RELATING TO THE SECONDARY OFFERING REGISTRATION STATEMENT)**

96. Plaintiffs repeat and reallege 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.

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

98. As set forth above, the Secondary Offering 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.

99. Each of the Individual Defendants, either personally or through an attorney-in-fact, signed the Secondary Offering Registration Statement or was a Director or person performing similar functions for the Issuer at the time of the Secondary Offering.

100. Each of the Secondary Offering Underwriter Defendants is liable as an underwriter in connection with the Secondary Offering.

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

102. By virtue of the foregoing, Plaintiffs and other members of the Class who purchased or otherwise acquired shares of the Issuer's common stock traceable to the Secondary Offering are entitled to damages pursuant to Section 11.

103. This Claim was brought within one year after discovery of the untrue statements and omissions in the Secondary Offering 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 bona fide offered to the public in connection with the Secondary Offering.

#### **FOURTH CLAIM**

#### **(AGAINST THE INDIVIDUAL DEFENDANTS FOR VIOLATION OF SECTION 15 RELATING TO THE SECONDARY OFFERING)**

104. Plaintiffs repeat and reallege the allegations set forth above in the Third Claim as if set forth fully herein.

105. This Claim is brought against the Individual Defendants pursuant to Section 15 of the Securities Act, 15 U.S.C. § 77o, on behalf of Plaintiffs and other members of the Class who purchased or otherwise acquired shares of the Issuer's common stock traceable to the Secondary Offering.

106. As the Issuer of the Secondary Offering Registration Statement, the Issuer is strictly liable under Section 11 of the Securities Act for the materially false and misleading statements alleged herein.

107. Each of the Individual Defendants was a control person of the Issuer with respect to the Secondary Offering by virtue of that individual's position as a senior executive officer and/or director of the Issuer.

108. The Individual Defendants, by virtue of their managerial and/or board positions with the Company, controlled the Issuer as well as the contents of the Secondary Offering Registration Statement at the time of the Secondary Offering. Each of the Individual Defendants was provided with or had unlimited access to copies of the Secondary Offering Registration Statement and had the ability to either prevent its issuance or cause it to be corrected.

109. As a result, the Individual Defendants are liable under Section 15 of the Securities Act for the Issuer's primary violation of Section 11 of the Securities Act, which would have been charged but for the fact that the Issuer filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code.

110. By virtue of the foregoing, Plaintiffs and other members of the Class who purchased or otherwise acquired shares of the Issuer's common stock traceable to the Secondary Offering are entitled to damages against the Individual Defendants.

#### **FIFTH CLAIM**

#### **(AGAINST CERTAIN OF THE INDIVIDUAL DEFENDANTS AND THE TERTIARY OFFERING UNDERWRITER DEFENDANTS FOR VIOLATION OF SECTION 11 RELATING TO THE TERTIARY OFFERING REGISTRATION STATEMENT)**

111. Plaintiffs repeat and reallege 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.

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

113. As set forth above, the Tertiary Offering 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.

114. Each of the Individual Defendants, excluding McMinn, either personally or through an attorney-in-fact, signed the Tertiary Offering Registration Statement or was a Director or person performing similar functions for the Issuer at the time of the Tertiary Offering.

115. Each of the Tertiary Offering Underwriter Defendants is liable as an underwriter in connection with the Tertiary Offering.

116. The Defendants named in this Claim are strictly liable to Plaintiffs and other members of the Class who purchased or otherwise acquired shares of the Issuer's common stock traceable to the Tertiary Offering.

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

118. This Claim was brought within one year after discovery of the untrue statements and omissions in the Tertiary Offering 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.

**SIXTH CLAIM**

**(AGAINST CERTAIN OF THE INDIVIDUAL DEFENDANTS  
FOR VIOLATION OF SECTION 15 RELATING TO  
THE TERTIARY OFFERING REGISTRATION STATEMENT)**

119. Plaintiffs repeat and reallege the allegations set forth above in the Fifth Claim as if set forth fully herein.

120. This Claim is brought against the Individual Defendants, excluding McMinn, pursuant to Section 15 of the Securities Act, 15 U.S.C. § 77o, on behalf of Plaintiffs and other members of the Class who purchased or otherwise acquired the Issuer's common stock traceable to the Tertiary Offering.

121. As the issuer of the Tertiary Offering Registration Statement, the Issuer is strictly liable under Section 11 of the Securities Act for the materially false and misleading statements alleged herein.

122. Each of the Individual Defendants, excluding McMinn, was a control person of the Issuer with respect to the Tertiary Offering by virtue of that individual's position as a senior executive officer and/or Director of the Issuer.

123. The Individual Defendants, excluding McMinn, by virtue of their managerial and/or board positions with the Company, controlled the Issuer as well as the contents of the Tertiary Offering Registration Statement at the time of the Tertiary Offering. Each of the Individual Defendants, excluding McMinn, was provided with or had unlimited access to copies of the Tertiary Offering Registration Statement and had the ability to either prevent its issuance or cause it to be corrected.

124. As a result, the Individual Defendants, excluding McMinn, are liable under Section 15 of the Securities Act for the Issuer's primary violation of Section 11 of the Securities Act, which would have been charged but for the fact that the Issuer filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code.

125. By virtue of the foregoing, Plaintiffs and other members of the Class who purchased or otherwise acquired the Issuer's common stock traceable to the Tertiary Offering are entitled to damages against the Individual Defendants, excluding McMinn.

**VIOLATIONS OF THE EXCHANGE ACT**

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

126. Plaintiffs 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 Issuers common stock.

**EXCHANGE ACT CLAIMS - THE UNDERWRITER DEFENDANTS**

**THE UNDERWRITER DEFENDANTS ACTED WITH SCIENTER**

127. 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 IPO Registration Statement/Prospectus as set forth herein was materially false and misleading; (c) knowingly or recklessly disregarded that the Secondary Offering Registration Statement/Prospectus as set forth herein was materially false and misleading; and/or (d) knew or recklessly disregarded that the Tertiary Offering Registration Statement/Prospectus as set forth herein was materially false and misleading; and/or

(e) knowingly or recklessly misused their analysts in connection with analyst reports.

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

129. 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 Allocating 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 governments investigation, "[w]e continue to believe our [initial public offering] allocation policies are consistent with those employed by others in the industry."

130. 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.

131. 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.

132. 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.

133. 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, Morgan Stanley, CSFB, DB Alex. Brown (Deutsche Bank), CSFB (DLJ) and Goldman Sachs were retained to underwrite the Secondary Offering. Whereas the IPO netted the underwriters \$8,736,000 in disclosed compensation, the Secondary Offering provided almost twice that amount resulting in disclosed underwriter compensation of \$14,250,000 for the underwriters. Bear Stearns also took advantage of the Secondary Offering to sell 147,814 of its own shares of Covad stock for proceeds in excess of \$5 million. Furthermore, Bear Stearns, Morgan Stanley, CSFB, DB Alex. Brown (Deutsche Bank), CSFB (DLJ), Goldman Sachs and J.P. Morgan were retained to underwrite the Tertiary Offering which resulted in disclosed underwriter compensation of \$16,770,000, nearly double that of the IPO. (See also "Additional Investment Banking Business" section of the Master Allegations).

(b) In addition, Bear Stearns, DB Alex. Brown (BT Alex. Brown) and CSFB (DLJ) acted as initial purchasers of Covad's 1999 notes for which they received substantial fees.

(c) In addition, Defendant and lead underwriter in all three Offerings, Bear Stearns, was retained to act as financial advisor to Covad in connection with the acquisition of BlueStar Communications Group. This cash deal, valued at over \$206,000,000 generated

substantial fees for Bear Stearns. Furthermore, Defendant Morgan Stanley received substantial fees for acting as financial advisor to Covad in connection with the acquisition of LaserLink.net on or about March 20, 2000, in a stock deal valued over \$91,000,000.

(d) 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 "Attracting New Investment Banking Clients" section of the Master Allegations).

(e) 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).

(f) 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 "Analyst Compensation" section of the Master Allegations).

(g) 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).

(h) Defendant CSFB was further motivated by the fact that, according to the Tertiary Offering Prospectus, Credit Suisse Group (the parent entity of CSFB, which indirectly held a 19.9% passive minority interest in Warburg, Pincus & Co., the general partner of Warburg, Pincus Ventures, L.P.), was one of Covad's principal shareholders. In addition, Managing Director Joseph Landy and General Partner Henry Kressel of Warburg, Pincus Ventures, L.P., both sat on the Board of Directors of Covad. According to the IPO Prospectus, Warburg, Pincus Ventures, L.P., owned 13,355,319 shares of Covad common stock which represented 42% of the shares beneficially owned prior to the Tertiary Offering and 33.7% after the Tertiary Offering. According to the Secondary Offering Prospectus, Warburg, Pincus Ventures, L.P., owned 20,050,335 shares of Covad common stock which represented 28.4% of the shares beneficially owned prior to the Secondary Offering, and 19,638,989 shares representing 27.8% after the Secondary Offering. CSFB saw the market value of its investments skyrocket as a result of the manipulation, misrepresentation and non-disclosure alleged herein.

(i) Finally, according to Form 4 filings with the SEC between June 18, 1999 and December 31, 1999, Warburg, Pincus Ventures, L.P. sold 2,122,913 shares of Covad common stock for proceeds for approximately \$92.8 million. In addition, Warburg, Pincus Ventures, L.P. and Warburg, Pincus & Co. filed SEC Form 144s in December, 1999, stating their sale or intent to sell an aggregate 586,567 shares of Covad common stock for proceeds of approximately \$23.3 million.

**SEVENTH 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)**

134. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein at length except for Claims brought pursuant to the Securities Act.

135. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, on behalf of Plaintiffs 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.

136. 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 Plaintiffs 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 Plaintiffs 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.

137. 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 Plaintiffs 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.

138. 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 Plaintiffs and other members of the Class.

139. 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.

140. 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 Plaintiffs 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.

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

142. As a result of the manipulative conduct set forth herein, Plaintiffs 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.

## EIGHTH CLAIM

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

143. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein at length except for Claims brought pursuant to the Securities Act.

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

145. The IPO 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 Plaintiffs and other members of the Class in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

146. During the Class Period, the IPO 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 Plaintiffs 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 Plaintiffs 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 IPO Underwriter Defendants took the actions set forth herein.

147. The IPO 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 Plaintiffs and other members of the Class.

148. The IPO Underwriter Defendants, either directly or through their designated representatives, prepared and reviewed certain portions of the IPO Registration Statement/Prospectus. In addition, the IPO 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.

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

150. As a result of making affirmative statements in the IPO Registration Statement/Prospectus, or otherwise, or participating in the making of such affirmative statements, the IPO 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.

151. The IPO 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.

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

153. As a result of the dissemination of materially false and misleading information described above, Plaintiffs 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.

#### **NINTH CLAIM**

#### **(FOR VIOLATIONS OF SECTION 10(b) AND RULE 10b-5 THEREUNDER AGAINST THE SECONDARY OFFERING UNDERWRITER DEFENDANTS BASED UPON DECEPTIVE PRACTICES IN CONNECTION WITH THE SECONDARY OFFERING)**

154. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein at length except for Claims brought pursuant to the Securities Act.

155. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, on behalf of Plaintiffs and other members of the Class who purchased or otherwise acquired the Issuer's common stock in and after the Secondary Offering against the Secondary Offering Underwriter Defendants. This Claim is based upon the deceptive practices of the Secondary Offering Underwriter Defendants.

156. The Secondary Offering Underwriter Defendants carried out a plan, scheme and course of conduct which was intended to and did: (a) deceive the investing public, including Plaintiffs 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 Plaintiffs 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 Secondary Offering Underwriter Defendants took the actions set forth herein.

157. The Secondary Offering 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 Plaintiffs and the Class they seek to represent in an effort to artificially inflate and maintain high market prices for Issuer's common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5. The Secondary Offering Underwriter Defendants are sued as primary participants in the unlawful conduct charged herein.

158. The Secondary Offering 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 Plaintiffs and other members of the Class.

159. The Secondary Offering Underwriter Defendants had actual knowledge of or recklessly disregarded the material fact that demand for the Secondary Offering was artificially inflated, due, in large part, to the requirement of these Defendants that customers could only

obtain allocations in "hot" initial public offerings such as Covad's IPO or otherwise unrelated offerings by purchasing shares in the Secondary Offering.

160. Each of the Secondary Offering 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 Secondary Offering Underwriter Defendants owed to Plaintiffs and other members of the Class the duty to conduct the Secondary Offering and the trading of the Issuer's common stock in a fair, efficient and unmanipulated manner.

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

162. As a result of the deceptive conduct set forth herein, Plaintiffs 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.

#### **TENTH CLAIM**

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

163. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein at length except for Claims brought pursuant to the Securities Act.

164. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, on behalf of Plaintiffs and other members of the Class who

purchased or otherwise acquired the Issuer's common stock in and after the Secondary Offering against the Secondary Offering Underwriter Defendants. This Claim is based upon materially false and misleading statements and omissions of material facts made in connection with the Secondary Offering.

165. The Secondary Offering 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 Plaintiffs other members of the Class in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

166. During the Class Period, the Secondary Offering Underwriter Defendants: (a) deceived the investing public, including Plaintiffs and other Class members, as alleged herein; (b) artificially inflated and maintained the market price of and demand for the Issuer's common stock; and (c) caused Plaintiffs and other members of the Class to purchase or otherwise acquire the Issuer's stock at artificially inflated prices. In furtherance of this unlawful course of conduct, the Secondary Offering Underwriter Defendants took the actions set forth herein.

167. The Secondary Offering 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 Plaintiffs and the other members of the Class.

168. The Secondary Offering Underwriter Defendants, either directly or through their designated representatives, prepared and reviewed the Secondary Offering Registration

Statement/Prospectus. In addition, the Secondary Offering Underwriter Defendants had access to drafts of the Secondary Offering Registration Statement/Prospectus prior to the filing with the SEC and the dissemination to the public.

169. 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; (c) concealing that the price of and demand for the Secondary Offering were both artificially inflated; and/or (d) concealing that certain of the Secondary Offering Underwriter Defendants and their analysts who reported on the Issuer's stock had material conflicts of interest with respect to the Offerings, trading and/or recommending of such common stock.

170. As a result of making affirmative statements in the Secondary Offering Registration Statement/Prospectus or otherwise or participating in the making of such affirmative statements, the Secondary Offering Underwriter Defendants had a duty to speak fully and truthfully regarding such representatives 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.

171. The Secondary Offering 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 Secondary Offering, and/or trading or recommending the Issuer's stock in the aftermarket of the Secondary Offering while in possession of such information.

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

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

**ELEVENTH CLAIM**

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

174. Plaintiffs repeat and reallege the allegations set forth above s though fully set forth herein at length except for Claims brought pursuant to the Securities Act.

175. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, on behalf of Plaintiffs and other members of the Class who purchased or otherwise acquired the Issuer's common stock during the Class Period against Tertiary Offering Underwriter Defendants. This Claim is based upon materially false and misleading statements and omissions of material facts made by the Tertiary Offering Underwriter Defendants in connection with the Tertiary Offering.

176. Each of the Tertiary Offering 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 Plaintiffs and other members of the Class in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

177. During the Class Period, the Tertiary Offering Underwriter Defendants:

(a) deceived the investing public, including Plaintiffs and other members of the Class as alleged herein; (b) artificially inflated and maintained the market price of and demand for the Issuer's common stock; and (c) caused Plaintiffs and other members of the Class to acquire the Issuer's stock at artificially inflated prices. In furtherance of this unlawful course of conduct, the Tertiary Underwriter Defendants took the actions set forth herein.

178. The Tertiary Offering 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 Plaintiffs and the other members of the Class.

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

180. 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; (c) concealing that the price of and demand for the Tertiary Offering were both artificially inflated; and/or (d) concealing that certain of the Tertiary Offering Underwriter Defendants and their analysts

who reported on the Issuer's stock had material conflicts of interest with respect to the Offerings, trading and/or recommending of such common stock.

181. As a result of making affirmative statements in the Tertiary Offering Registration Statement/Prospectus or otherwise, or participating in the making of such affirmative statements, the Tertiary Offering Underwriter Defendants had a duty to speak fully of such affirmative statements, the Tertiary Offering 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.

182. The Tertiary Offering 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 Tertiary Offering and/or trading or recommending the Issuer's stock while in possession of such information.

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

184. As a result of the dissemination of materially false and misleading information described above, Plaintiffs 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.

## TWELFTH CLAIM

### **(FOR VIOLATIONS OF SECTION 10(b) AND RULE 10b-5 THEREUNDER AGAINST THE TERTIARY OFFERING UNDERWRITER DEFENDANTS BASED UPON DECEPTIVE PRACTICES IN CONNECTION WITH THE TERTIARY OFFERING)**

185. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein at length except for Claims brought pursuant to the Securities Act.

186. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, on behalf of Plaintiffs and other members of the Class who purchased or otherwise acquired the Issuer's common stock in or after the Tertiary Offering against the Tertiary Offering Underwriter Defendants. This Claim is based upon the deceptive practices of the Tertiary Offering Underwriter Defendants.

187. The Tertiary Offering Underwriter Defendants carried out a plan, scheme and course of conduct which was intended to and did: (a) deceive the investing public, including Plaintiffs 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) cause Plaintiffs 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 Tertiary Offering Underwriter Defendants took the actions set forth herein.

188. The Tertiary Offering 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 Plaintiffs and other members of the Class in an effort to artificially inflate

and 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 Tertiary Offering Underwriter Defendants are sued as primary participants in the unlawful conduct charged herein.

189. The Tertiary Offering 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 Plaintiffs and the other members of the Class.

190. The Tertiary Offering Underwriter Defendants knowingly or recklessly disregarded the material fact that demand for the Tertiary Offering was artificially and materially overstated, due, in large part, to the requirement of these Defendants that customers could only obtain allocations in "hot" initial public offerings by purchasing shares in the Tertiary Offering.

191. Each of the Tertiary Offering 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 Tertiary Offering Underwriter Defendants owed to Plaintiffs and other members of the Class the duty to conduct the Tertiary Offering and the trading of the Issuer's common stock in a fair, efficient and non-manipulative manner.

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

193. As a result of the deceptive conduct set forth herein, Plaintiffs 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.

**EXCHANGE ACT CLAIMS - THE INDIVIDUAL DEFENDANTS**

**THE INDIVIDUAL DEFENDANTS ACTED WITH SCIENTER**

194. As alleged herein, the Individual 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 IPO Registration Statement/Prospectus as set forth herein was materially false and misleading; (c) knowingly or recklessly disregarded that the Secondary Offering Registration Statement/Prospectus as set forth herein was materially false and misleading; (d) knowingly or recklessly disregarded that the Tertiary Offering Registration Statement/Prospectus as set forth herein was materially false and misleading; and/or
- (e) knowingly or recklessly disregarded the misconduct of the Underwriter Defendants alleged herein.

195. The Individual Defendants had numerous interactions and contacts with the IPO Underwriter Defendants prior to the IPO from which they knew or recklessly disregarded that the manipulative and deceptive scheme described herein had taken place.

196. In this regard, the IPO Underwriter Defendants provided detailed presentations to the Issuer Defendants regarding the registration process leading up to the IPO and the expected price performance in aftermarket trading based upon previous companies taken public by these underwriters. In addition, the IPO Underwriter Defendants explained the process by which the Issuer Defendants could utilize the Issuer's publicly traded stock as currency in stock based

acquisitions, the analyst coverage they would provide for the Issuer upon the successful completion of the IPO and the effect that such positive coverage would have on the aftermarket price of the Issuer's stock. Such presentation also included a discussion of the potential for secondary or add-on offerings.

197. Once the Individual Defendants had determined to retain the IPO Underwriter Defendants with respect to the Issuer's initial public offering, the Individual Defendants worked closely with the IPO Underwriter Defendants in preparing the IPO Registration Statement/Prospectus, as well as generating interest in the IPO by speaking with various, but selected groups of investors.

198. During the course of these presentations, known as "Road Shows," the Individual Defendants learned of or recklessly disregarded the misconduct described herein. In this regard, the Chief Executive Officer, the Chief Financial Officer and/or other high-ranking Issuer employees worked side by side with representatives of the IPO Underwriter Defendants while visiting with several potential investors in a given city on a daily basis over a two to three week period to promote interest in the IPO. These presentations were all scheduled by and attended by representatives of the IPO Underwriter Defendants.

199. As a result of the close interaction between the Individual Defendants and the IPO Underwriter Defendants, the Individual Defendants learned of, became aware of or recklessly disregarded the misconduct described herein. (See "Issuer Defendants" section of the Master Allegations).

200. The Issuer Defendants had the motive and opportunity to engage in the wrongful conduct described herein for, among others, the following reasons:

(a) The Individual Defendants beneficially owned substantial amounts of the Issuer's common stock. For example, as of the IPO, Defendant Knowling owned 306,250 shares of Covad, Defendant McMinn owned 3,030,000 shares of Covad, Defendant Marshall owned 260,502 shares Covad, and Defendant Leahy owned 345,000 shares of Covad. These holdings, which were purchased or otherwise obtained at prices below the IPO price, substantially increased in value as a result of the misconduct alleged herein.

(b) The Issuer Defendants were motivated by the fact that the artificially inflated price of the Issuer's shares in the aftermarket would enable Individual Defendants to sell personal holdings in the Issuer's securities at artificially inflated prices in the aftermarket or otherwise. In the Tertiary Offering, Defendant Knowling sold 300,000 shares for approximate proceeds of \$13,000,000. Defendant Leahy sold 50,000 shares for proceeds of approximately \$2,000,000, and Defendant McMinn sold 500,000 shares for approximate proceeds of \$21,000,000. In addition, between February 9, 1999, and January 29, 2001, Defendant Knowling sold approximately 2,000,000 shares of the Issuer's stock for proceeds of approximately \$16,000,000, selling his shares for an inflated price as high as \$87.50 per share. In total, between February 3, 2000, and October 20, 2000, Defendant Laehy sold approximately 395,000 shares of common stock at as high as \$70.11 per share and received proceeds of approximately \$10,000,000. (See "Individual Defendants" Section of Master Allegations).

(c) The Issuer Defendants were further motivated by the fact that the Issuer's artificially inflated stock price could be utilized as currency in negotiating and/or consummating stock-based acquisitions after the IPO. In this regard, on or about March 20, 2000, Issuer

acquired LaserLink.net for 6,450,000 shares of its common stock. On or about September 25, 2000, Issuer acquired Bluestar Communications, Inc. for 8,000,000 shares of its common stock.

**THIRTEENTH CLAIM**

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

201. 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.

202. 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 Individual Defendants. This Claim is based upon materially false and misleading statements and omissions of material facts made by the Individual Defendants during the Class Period.

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

204. During the Class Period, the Individual 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 acquire the Issuer's common

stock at artificially inflated prices. In furtherance of this unlawful course of conduct, the Individual Defendants took the actions set forth herein.

205. The Individual 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 Plaintiff and other members of the Class.

206. The Individual Defendants prepared and reviewed documents alleged to contain the materially false and misleading statements and/or omissions complained of herein. In addition, the Individual Defendants had access to drafts of these documents prior to their filing with the SEC and dissemination to the public.

207. The material misrepresentations and/or omissions were made knowingly or recklessly and for the purpose and effect of concealing that the Underwriter Defendants had engaged in the manipulative and deceptive scheme alleged herein and that the Individual Defendants would benefit financially as a result of said scheme.

208. As a result of making such affirmative statements, or participating in the making of such affirmative statements, the Individual 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.

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

210. 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.

**FOURTEENTH CLAIM**

**(FOR VIOLATIONS OF SECTION 20(a)  
AGAINST THE INDIVIDUAL DEFENDANTS BASED UPON  
MATERIALLY FALSE AND MISLEADING STATEMENTS  
AND OMISSIONS OF MATERIAL FACTS)**

211. 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.

212. The Individual Defendants acted as controlling persons of the Issuer within the meaning of Section 20(a) of the Exchange Act as alleged herein and culpably participated in the wrongdoing. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Issuer's operations and/or intimate knowledge of the underwriting of the IPO, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Issuer, including the content and dissemination of various documents that contain the materially false and misleading statements and/or omissions complained of herein. The Individual Defendants were provided with or had unlimited access to copies of these documents prior to or shortly after they were filed with the SEC and/or disseminated to the public and had the ability to prevent their filing and/or dissemination or cause the documents to be corrected.

213. Each of these Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Issuer and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations herein, and exercise the same. Covad, the Issuer, would have been charged with violations under Section 10(b) of the Exchange Act but for the fact that it has filed for protection under the bankruptcy code.

214. By virtue of their positions as controlling persons of the Issuer, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of this wrongful conduct, Plaintiff and other members of the Class were damaged thereby.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, individually and on behalf of the Class, pray for judgment as follows:

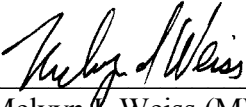
- A. Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and certifying Plaintiffs as representatives of the Class and counsel as class counsel;
- B. Awarding damages to Plaintiffs and the Class;
- C. Awarding Plaintiffs and the Class prejudgment 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**

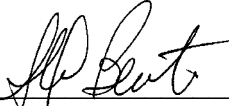
Plaintiffs demand a trial by jury.

DATED: June 17, 2002

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