

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
BRIDGEPORT

SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:04-cv-1331-JCH
)	
COMPETITIVE TECHNOLOGIES, INC.,)	April 12, 2007
CHAUNCEY D. STEELE,)	
JOHN R. GLUSHKO,)	
THOMAS C. KOCHERHANS,)	
RICHARD A. KWAK,)	
SHELDON A. STRAUSS,)	
STEPHEN J. WILSON and)	
FRANK R. McPIKE,)	
)	
Defendants.)	

FINAL PRETRIAL MEMORANDUM

Pursuant to the Court's Final Pretrial Order dated January 26, 2007, the parties submit this Final Pretrial Memorandum.¹ Jury selection for this trial is scheduled to begin on August 29, 2007. The trial is scheduled to begin on September 4, 2007.

¹ The parties submitting this Final Pretrial Memorandum are plaintiff Securities and Exchange Commission and defendants Competitive Technologies, Inc., John Glushko, Richard Kwak, Frank McPike, and Stephen Wilson. The *pro se* defendants, Thomas Kocherhans and Sheldon Strauss, were invited to participate in preparing the Memorandum but did not do so.

1. Trial Counsel and Pro Se Defendants

Plaintiff Securities and Exchange Commission (“the Commission”)²

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² The Commission’s local counsel – John Hughes, the Assistant United States Attorney and Chief of the Civil Division at the U.S. Attorney’s Office in New Haven – is not planning to attend the trial unless requested by the Court.

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2. Jurisdiction

The Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§77t(d), 77v(a)] and Sections 21 and 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§78u, 78aa].

The Commission seeks a permanent injunction and disgorgement of ill-gotten gains, with pre-judgment interest, pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Section 21(d)(1) of the Exchange Act [15 U.S.C. §78u(d)(1)], against all defendants except CTT and McPike. The Commission seeks the imposition of civil penalties, pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], against all defendants. The Commission seeks an officer and director bar, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. §78u(d)(2)], against defendant McPike.

3. Jury/Non-Jury

The issue of liability for violation of the federal securities laws is to be tried to a jury. If the jury finds that one or more of the defendants violated the federal securities laws, the issue of remedies (injunctive relief, disgorgement, civil penalty, and officer/director bar) is to be decided by the Court. *See SEC v. Lipson*, 278 F.3d 656, 662 (7th Cir. 2002) (trial judge should decide, “consistent with the jury’s finding of liability, not only what equitable relief to impose, but also the amount of the civil penalty”).

4. Length of Trial

The parties anticipate that the trial will last at least four weeks, including two weeks for the Commission’s presentation (which will include calling each of the individual defendants as part of its case) and two weeks for the defendants’ presentation.

5. Further Proceedings

The Court has scheduled a final pretrial conference on July 24, 2007 at which the parties will be prepared to discuss any pending motions and other pretrial matters. The Court has scheduled jury selection for August 29, 2007. The parties do not believe that any other pretrial proceedings are necessary before the start of trial.

6. Nature of the Case

The Commission’s Claims

This enforcement action involves a scheme to manipulate the price of CTT common stock during the period from July 1998 to June 2001. CTT is based in Connecticut, and its common stock is listed on the American Stock Exchange (“AMEX”). At the center of the

scheme was defendant Chauncey D. Steele, then a broker in a Massachusetts office of Prudential Securities, Inc. (“Prudential”). Working with Steele were brokers at three other firms – defendants John R. Glushko, then a broker in Nevada at Finance 500, defendant Richard A. Kwak, then a broker in California at Morgan Stanley Dean Witter, and defendant Stephen J. Wilson, then a broker in Florida at Shamrock Partners – as well as two former brokers – defendant Thomas C. Kocherhans, living in Utah, and defendant Sheldon A. Strauss, living in Ohio. Defendants CTT and Frank R. McPike, then the interim CEO of CTT, actively participated in the scheme through a stock repurchase plan which CTT adopted in October 1998 and for which McPike made the day-to-day decisions.

The manipulative scheme had two primary components. First, the defendants used their own accounts and, in the case of defendants Steele, Glushko, Kwak and Wilson, the accounts of their customers, to place buy orders at or near the close of the market in an attempt to inflate the reported closing price of CTT stock (a practice known as “marking the close”). “Marking the close” is a violation of Sections 9(a)(2) and 10(b) of the Exchange Act and Rule 10b-5 thereunder. Second, the defendants used the accounts they controlled or serviced to place pre-arranged buy and sell orders in substantially similar amounts in order to minimize the negative impact on CTT’s price from sales of the stock (a practice known as “matched trades”). “Matched trades” are a violation of Sections 9(a)(1)(B) and (C) and 10(b) of the Exchange Act and Rule 10b-5, and sales effected as part of a matched trade are a violation of Section 17(a) of the Securities Act. These practices were intended to, and did, artificially raise and maintain the price of CTT stock and create a false or misleading appearance with respect to the market for CTT stock.

The Commission has alleged that: (a) all the defendants violated Section 9(a) of the Exchange Act [15 U.S.C. §78i(a)], Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5]; (b) defendants Steele, Glushko, Kocherhans, Kwak, Strauss and Wilson violated Section 17(a) of the Securities Act [15 U.S.C. §77q(a)]; (c) defendants Glushko, Kocherhans, Kwak, McPike, Strauss and Wilson aided and abetted Steele's violations of Sections 9(a) and 10(b) of the Exchange Act and Rule 10b-5; and (d) defendant Steele aided and abetted Prudential's violations of Section 17(a) of the Exchange Act [15 U.S.C. §78q(a)] and Rule 17a-3 thereunder [17 C.F.R. §240.17a-3].

The Commission will pursue all of these claims at trial, with one major exception. On July 11, 2005, the Court entered a consent judgment against defendant Steele, permanently enjoining him from future violations of Section 17(a) of the Securities Act and Sections 9(a), 10(b) and 17(a) of the Exchange Act and Rules 10b-5 and 17a-3, ordering him to pay \$58,106 in disgorgement (reflecting his commissions from his customers' trading in CTT stock), and imposing a third-tier civil penalty of \$110,000. The Commission has thus obtained final relief as to all its claims against Steele himself. However, because the trial in this action will include the Commission's claim that defendants Glushko, Kocherhans, Kwak, McPike and Wilson aided and abetted Steele's violations of Sections 9(a) and 10(b) of the Exchange Act and Rule 10b-5, the Commission will present evidence to support a jury verdict that Steele committed a primary violation of those provisions. The Commission will not, however, present evidence that Steele violated Section 17(a) of the Securities Act and aided and abetted Prudential's violation of Section 17(a) of the Exchange Act and Rule 17a-3, since those violations have no bearing on the Commission's aiding and abetting claim against other defendants.

The Defendants' Defenses

A. Defendants CTT and McPike

The SEC alleges that McPike participated in a scheme to manipulate the price of CTT common stock from 1998 to 2001 (the “Relevant Period”) by (1) placing buy orders at or near the close of the market in an attempt to inflate the reported closing price of CTT stock (“marking the close”); and (2) engaging in prearranged trades of purchases of CTT stock that were substantially similar in size, price and time in an effort to artificially maintain the price of CTT stock (“matched trades”). CTT is a defendant in this case only because the SEC claims that the actions of McPike within the scope of his role as a corporate officer of CTT are imputed to it. However, contrary to the SEC’s allegations, McPike did not participate with one or more of the defendants in a fraudulent scheme to manipulate and inflate the price of CTT common stock in violation of the anti-fraud provisions of the federal securities laws.

1. McPike did not enter into pre-arranged “matched trades” in violation of Section 9(a) of the Exchange Act (Count I).

The SEC’s first allegation against McPike is that he violated Section 9(a) of the Exchange Act by entering into unlawful “matched orders” with one or more of the defendants, and purchased shares of CTT stock late in the day in order to “mark the close.” Those allegations are without merit. The testimony and evidence to be offered at trial shows McPike (authorized by CTT to buy back stock on behalf of CTT pursuant to SEC Rule 10b-18 as a part of CTT’s Common Stock Repurchase Program (“Repurchase Program”) did not conduct any matched trades in violation of Section 9(a)(1) of the Exchange Act, nor did McPike enter purchase orders

late in the day with the intent of artificially inflating or maintaining the price of CTT common stock by “marking the close” in contravention of Section 9(a)(2) of the Exchange Act.³

(a) There is no liability under Section 9(a)(1) of the Exchange Act.

The SEC claims that McPike violated Section 9(a)(1) of the Exchange Act by engaging in “matched orders” with one or more of the defendants in this case. To establish McPike’s liability (and impute that conduct to CTT) under Section 9(a)(1), the SEC must prove that McPike engaged in (1) matched orders of CTT stock; (2) with scienter; and (3) for the purpose of creating a false or misleading appearance of active trading in CTT common stock. *See SEC v. Malenfant*, 784 F. Supp. 141, 144 (S.D.N.Y. 1992). The Commission must also demonstrate that McPike had a specific intent to manipulate the market for CTT stock when he entered into those matched orders. *See SEC v. Competitive Techs., Inc.*, 2005 U.S. Dist. LEXIS 43349, *21 (D. Conn. 2005). To meet this heavy burden, the SEC cannot gloss the details: it must specify exactly “what manipulative acts were performed, which defendants performed them, when the manipulative acts were performed, and what effect the scheme had on the market for the securities at issue.” *See Baxter v. A.R. Baron & Co.*, 1995 U.S. Dist. LEXIS 14882, *22 (S.D.N.Y. 1995); *see also Sedona Corp. v. Ladenburg Thalmann & Co., Inc.*, 2005 U.S. Dist. LEXIS 16382, *36-*37 (S.D.N.Y. 2005); *SEC v. Competitive Tech., Inc.*, 2005 U.S. Dist. LEXIS 43349, *14 (D. Conn. 2005); *T.H.C., Inc. v. Fortune Petroleum Corp.*, 1999 U.S. Dist. LEXIS 4039, *10 (S.D.N.Y. 1999). The evidence to be presented by the SEC does not even come near satisfying this burden.

³ CTT also contends that any purchases by McPike alleged by the SEC to be outside of the parameters of Rule 10b-18 “safe harbor” Repurchase Program were not within the scope of his role as a principal officer of CTT, and thus cannot be imputed to CTT.

First, the testimony and evidence to be offered at trial shows that McPike did not enter into any unlawful matched trades with Steele or any of the other defendants in this matter. “Matched orders,” are those transactions in which a person pre-arranges with another person ahead of time to simultaneously buy or sell the same securities at substantially the same size and price. *See SEC v. Lybrand*, 200 F. Supp. 2d 384, 389 (S.D.N.Y. 2002) (citing *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 205 n. 25, (1976)); 15 U.S.C. § 78i(a)(1). In essence, for the SEC to prevail here, it must prove that McPike and one or more of the other defendants agreed to act in concert with one another to create artificial market activity and that they made such an agreement in order to profit from a rise in CTT’s common stock price. *See Mawod & Co. v. SEC*, 591 F.2d 588, 595 (10th Cir. 1979) (noting the existence of an established alliance in trading between the defendants). The SEC cannot offer sufficient evidence to support such a claim against McPike.

The testimony and evidence will show that:

the American Stock Exchange is a specialist-run exchange and, as such, market participants were precluded from entering into matched trades by means of orders to buy and sell stock at the prevailing market price;

the repurchase orders placed by McPike, brokered by Cantor Fitzgerald & Co. (“Cantor”), and subsequently carried out by the AMEX specialist, were not pre-arranged “riskless” transactions, and therefore were not “matched” trades;

McPike did not ever tell Steele or any of the other defendants when or if he intended to repurchase shares of CTT;

McPike never agreed to buy shares back at Steele’s request;

the repurchase orders were not intended to create a false or misleading appearance of active trading in CTT common stock or artificially raise or maintain the closing price of CTT stock;

all of the repurchases placed by McPike were market orders (not limit orders) and were incapable of being “matched” for a manipulative purpose on a specialist run exchange without the deliberate aid of the AMEX specialist (an allegation not raised by the Commission in this case);

because CTT’s purchases were in conjunction with CTT’s lawful Repurchase Program; and

in most instances, it was Cantor that determined the timing and size of each individual market purchase.

The testimony and evidence to be offered at trial will also show that McPike had no specific intent, knowledge or understanding of any scheme involving the use of matched trades by Steele or any of the other defendants. To the contrary, the testimony and evidence at trial will show that all of the repurchases executed by McPike during the Relevant Period were made in conjunction with CTT’s lawful Repurchase Program, which was conducted publicly and without deceit, and that CTT repeatedly disclosed the existence and status of the Repurchase Program to the investing public and the Commission in its quarterly and annual filings.⁴

(b) There is no liability under Section 9(a)(2) of the Exchange Act.

The SEC claims that McPike entered into late day purchases of CTT in an effort to be the last reported closing price of CTT stock and thereby “mark the close.” To establish McPike’s liability (and impute that conduct to CTT) under Section 9(a)(2), the SEC must show: “(1) a series of transactions in a security creating actual or apparent trading in that security or raising or depressing the price of that security; (2) carried out with scienter, and (3) for the purpose of

⁴ CTT also contends that any purchases by McPike alleged by the SEC to be outside of the parameters of Rule 10b-18 “safe harbor” Repurchase Program were not within the scope of his role as a principal officer of CTT, and thus cannot be imputed to CTT.

inducing the security's sale or purchase by others." See SEC v. Competitive Tech., Inc., et al., 2005 U.S. Dist. LEXIS at *18 (quoting SEC v. Malenfant, 784 F. Supp. at 144); see also 15 U.S.C. § 78i(a)(2) (2007). Proof of market manipulation is generally based on a course of conduct showing an intentional interference with the normal functions of the market for a security, rather than on a single activity. See SEC v. Schiffer, 1998 U.S. Dist. LEXIS 8579, *29 (S.D.N.Y. 1998) (noting that a single transaction does not establish a course of conduct).

The SEC cannot sustain its burden of proof under Section 9(a)(2). The testimony and evidence will show that:

the repurchase orders placed by McPike were part of CTT's lawful Repurchase Program;

McPike conducted CTT's lawful Repurchase Program publicly and without deceit and that both CTT and McPike took affirmative steps to ensure that all of the repurchase orders complied with the Rule 10b-18 safe harbor [17 C.F.R. § 240.10b-18], by ordering Cantor not to enter any purchase orders during the last half hour before the termination of reported trading;

McPike did not act with the intention of increasing (or maintaining) the stock price of CTT; and

Steele was a fanatical follower and promoter of CTT who habitually and incessantly contacted CTT dating back to the mid-1980s.

As expert analysis shows, there is no correlation between the calls from Steele to McPike (and the resulting message slips), and the entry of McPike's stock repurchase orders. The evidence will also show that McPike never told Steele if and when he would be executing repurchases of stock on behalf of CTT. In addition, the testimony and evidence will show that none of the trades executed by McPike were fictitious or illegitimate. Finally, it is undisputed

that neither CTT nor McPike profited in any way from implementation of the Repurchase Program.

2. Defendants McPike and CTT did not violate Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (Count II).

The SEC's allegations that Defendants McPike (and thus CTT) violated Section 10(b) of the Exchange Act and Exchange Rule 10b-5 are equally without merit. To establish liability for market manipulation under Section 10(b) and Rule 10b-5, the SEC must show that McPike (1) made misrepresentations or omissions of material facts, or engaged in a scheme to defraud; (2) with scienter; (3) in connection with the purchase or sale of a security. *See SEC v. PIMCO Advisors Fund Management, LLC, et al.*, 341 F. Supp. 2d 454, 463-64 (S.D.N.Y. 2004) (quoting *SEC v. Monarch Funding Corp.*, 192 F.3d 295, 308 (2nd Cir. 1999)).

To prove that McPike actively participated in a manipulative scheme with the other defendants, the SEC has the burden of proving each and every element under Section 10(b) specifically against McPike -- it may not simply evade the elements of its cause of action against McPike merely by alluding to a supposed joint scheme of "the defendants." *See Dinsmore v. Squadron, Ellenoff, Plesent, Sheinfeld & Sorkin*, 135 F.3d 837, 841-42 (2nd Cir. 1998) (holding that each of the elements for liability under Section 10(b) must be met as to each defendant).

To state a claim for manipulation under § 10(b), the SEC must also prove that McPike's conduct interfered with the proper functioning of the free market for CTT stock. *See Hundahl v. United Ben. Life Ins. Co.*, 465 F. Supp. 1349, 1361 (N.D. TX 1979) (noting "[p]ractices in the marketplace which have the effect of either creating the false impression that certain market

activity is occurring when in fact such activity is unrelated to actual supply and demand or tampering with the price itself are manipulative.”).

The SEC will not be able to make these showings at trial. As duly referenced above, the testimony and evidence offered at trial will show that at no time did McPike (on behalf of CTT) enter into, participate in, or have knowledge of the existence of an alleged scheme to manipulate and inflate the price of CTT stock in contravention of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. Rather, the testimony and evidence will show that:

the repurchase orders placed by McPike were part of CTT’s lawful Repurchase Program;

McPike conducted CTT’s lawful Repurchase Program publicly and without deceit and took affirmative steps to ensure that all of the repurchase orders complied with Rule 10b-18 by ordering Cantor not to execute purchases of CTT stock that did not comply with Rule 10b-18;

the repurchase orders were not intended to create a false or misleading appearance of active trading in CTT common stock or artificially raise or maintain the closing price of CTT stock;

McPike did not ever tell Steele or any of the other defendants when or if he intended to repurchase shares of CTT;

McPike never agreed to buy shares back at Steele’s request;

the repurchase orders were not intended to create a false or misleading appearance of active trading in CTT common stock or artificially raise or maintain the closing price of CTT stock;

Steele was a fanatical follower and promoter of CTT who habitually and incessantly contacted CTT dating back to the mid-1980s;

there is no correlation between the calls from Steele to McPike (and the resulting message slips), and the entry of McPike’s stock repurchase orders;

none of the trades executed by McPike were fictitious or illegitimate; and

that neither CTT nor McPike profited in any way from implementation of the Repurchase Program.

Trial of this matter will show that there was nothing deceptive or manipulative in McPike's execution of the CTT Repurchase Plan.⁵ McPike did not engage in pre-arranged trades with one or more of the other defendants in order to create a false appearance of activity in the market for CTT stock or to tamper with the price of CTT stock. McPike likewise did not purchase shares of CTT stock late in the day in an effort to be the last reported price of the day and thereby "mark the close."

3. McPike did not aid and abet Steele's violations of Sections 9(a) and 10(b) of the Exchange Act and Rule 10b-5 thereunder (Count V).

To establish aiding and abetting liability under Sections 9(a) and 10(b) of the Exchange Act and Rule 10b-5 thereunder, the SEC must prove: (1) the existence of a securities law violation by the primary wrongdoer; (2) knowledge of the violation by the aider and abettor; (3) proof that the aider and abettor substantially assisted in the primary violation. *See SEC v. Cedric Kushner Promotions, Inc., et al.*, 417 F. Supp.2d 326, 334 (S.D.N.Y. 2006) (quoting *Armstrong v. McAlpin*, 699 F.2d 79, 91 (2nd Cir. 1983)).

There is no fiduciary duty between McPike and the free market (and the Commission has not alleged one in this matter). Accordingly, a showing of recklessness on the part of McPike is insufficient -- the Commission must show an actual intent by McPike to aid in the purported fraudulent scheme of the other defendants. *See SEC v. Jones*, 2006 U.S. Dist. LEXIS 22800, *19

⁵ CTT also contends that any purchases by McPike alleged by the SEC to be outside of the parameters of Rule 10b-18 "safe harbor" Repurchase Program were not within the scope of his role as a principal officer of CTT, and thus cannot be imputed to CTT.

(S.D.N.Y. 2006) (noting the Second Circuit has held that where a defendant in a securities fraud case acts with reckless disregard, if the defendant does not owe the plaintiff a fiduciary duty, there must be a showing of the defendant's actual intent to defraud) (citations omitted); *see also* SEC v. Dibella, 2005 U.S. Dist. LEXIS 31762, *27 (D. Conn. 2005) (noting that to find a person liable for aiding and abetting a violation of Rule 10b-5, as distinct from committing the violation as a principal, requires something closer to an actual intent to aid in a fraud). Absent an agreement to act in concert with Steele, the SEC's mere allegation that McPike "should have known" that Steele was seeking his help in "matching" orders and "marking the close" is insufficient to establish aiding and abetting liability under Section 10(b). *See* ITT v. Cornfield, 619 F.2d 909, 924 (2nd Cir. 1980) (holding that in the absence of special circumstances, a plaintiff must prove that the defendant aided and abetted the primary violation with actual intent, not that defendant "should have known" of the primary violation.).

The SEC cannot meet its burden in this regard. The testimony and evidence to be offered at trial will show that McPike never had any type of agreement (verbal, written, or implied), or any kind of working arrangement to engage in pre-arranged repurchases of CTT common stock at the request of Steele -- whether to match trades or to mark the close. Indeed, the evidence at trial -- testimony and documents -- will demonstrate that Steele never had any knowledge of when McPike would buy stock pursuant to CTT's Repurchase Plan. McPike never told Steele (or any of the defendants) whether or not he planned to place a repurchase order for CTT stock with Cantor pursuant to the Repurchase Plan, and never told him when he had in fact placed such an order. Put another way, at no time did Steele ever know if or when McPike was buying CTT stock in the market. He may have had a desire for McPike to repurchase CTT stock, and he may

have had a hope, but he never knew one way of the other -- either express or implied -- by McPike's conduct. Without Steele's foreknowledge of McPike's repurchases, there are no viable claims of aiding and abetting here. Simply put, McPike gave Steele no aid and no assistance. He therefore cannot be held liable.

The testimony and evidence at trial will show that: (1) McPike had no knowledge of any purported scheme by Steele to manipulate or maintain the price of CTT common stock; (2) the purchases of CTT stock made by McPike during the Relevant Period were made in conjunction with CTT's lawful Repurchase Program; (3) those repurchases were never disclosed to Steele; (4) without that foreknowledge, McPike's actions cannot have substantially assisted Steele in any purported scheme to manipulate the price of CTT stock; (5) McPike never placed orders late in the day to "mark the close" or to assist Steele in "marking the close"; (6) the Repurchase Program was fully disclosed to the investing public by CTT and it was conducted in accordance with the safe harbor provided by Exchange Act Rule 10b-18; and (7) all of the repurchase orders placed by McPike were market orders (not limit orders) on a specialist-run exchange.

B. Defendant Glushko

Mr. Glushko did not manipulate the price of CTT's stock, nor did he ever intend to do so. Mr. Glushko has been a stock broker for more than 50 years. He focuses his efforts on small company stocks, closely following information on 10-20 publicly traded companies at any one time. He makes his investments, and advises his clients, in accordance with his expectation of the performance of these companies and their potential for growth.

In this case, regarding the trades in CTT stock involving his clients, he made those trades at his clients' direction. In some instances, trades were made late in the day as a result of limit

orders placed by his clients, under which Mr. Glushko was to trade CTT shares at a price certain and, if that price was not met, ultimately make a trade by the close of business.

One client, co-defendant Sheldon Strauss, bought CTT stock exclusively and only sold as the result of margin calls. In fact, without Mr. Glushko knowing, Mr. Strauss held CTT stock in numerous accounts and had on at least one prior occasion been entirely wiped out by his investments in CTT. In the dark regarding this information, Mr. Glushko repeatedly counseled Mr. Strauss that Mr. Strauss's purchases would have no material impact on the share price of CTT.

Mr. Glushko also made trades involving CTT stock for his own personal investments and on behalf of family members, with whom he discussed the viability of CTT stock as an investment vehicle. His employer's policies required that Mr. Glushko made these trades when there was no risk of conflict with a client's trade. As a result, and because Mr. Glushko tended to save his personal business until the end of the day, these trades were sometimes made during the market's final hour of trading for the day.

C. Defendant Kwak

The SEC's securities manipulation action against Kwak is based on nothing more than rank speculation and inferences for which there is no supporting evidence. The undisputed evidence at trial will show that Kwak's purchases of CTT stock were on behalf of legitimate, non-fictitious customers and were executed on the open market at prices that were consistent with the prices paid by other investors in the market, and that were determined by market forces. Kwak purchased CTT stock for himself and on behalf of his customers for the legitimate purpose of investing in CTT. Additionally, there is no evidence that Mr. Kwak's purchases raised or

maintained the price of CTT stock at an “artificial” level, meaning a level “above the investment value of the stock as determined by available information and market forces,” nor could Kwak have done so in this AMEX traded stock. Lastly, the evidence will show that none of the defendants disclosed the details of their trading activity to him, and Kwak did not disclose the details of his trading activity with them, so that Kwak did not, and could not, have entered “matched” orders of substantially the same size, at substantially the same time, and at substantially the same price as any other defendant for the purpose offsetting any purported effect on the price of the stock that a transaction by another defendant purportedly would have caused. Further, there is no evidence Kwak knew of Steele’s purported scheme to manipulate the stock, and not only did he not take any act to substantially further that alleged scheme, but, if there was such a scheme, he was, himself, a victim of it.

D. Defendant Wilson

Mr. Wilson is an investor who has been falsely accused of making a handful of purchases over a two and a half year period for a manipulative purpose and to artificially inflate the price of CTT stock. During that time period, Mr. Wilson was also a stockbroker who entered his clients’ orders to purchase CTT stock. His clients dictated the number of shares and the price they were willing to pay for CTT stock. Mr. Wilson placed his client’s orders with the trading desk at the brokerage firm. The clients, traders and specialist at the American Stock Exchange controlled the time and price for which the transactions were ultimately executed - not Mr. Wilson.

The Commission’s case against Mr. Wilson is based on speculation and conjecture. It has no evidence that any of Mr. Wilson or his family and clients’ purchases of CTT stock were for a manipulative purpose or intended to artificially inflate the market price of CTT stock. The

Commission has no order tickets and has erroneously used order execution times (not order entry times) to support its allegations that Mr. Wilson “matched trades” and “marked the close” for CTT stock. It has no evidence of the type of orders (market or limit) entered by Mr. Wilson which is critical to when and how they were executed on the American Stock Exchange. The Commission has no statistical evidence and never compared purchases in the Defendant and their clients’ accounts to the range of trading patterns observed in accounts which were not part of the alleged manipulation. No one could reasonably draw any inferences of any market manipulation from the investments made by Mr. Wilson, his family and clients in this case.

The securities laws do not prohibit market transactions which may raise or lower the price of securities and do not condemn extensive buying or selling of security the buying which raises the price of the security; if they did, all purchase transactions would be unlawful. The fact a person is trying to acquire stock for investment purposes and in so doing, effects the stock market price does not make his action unlawful. For this reason, the Commission has the burden of proving that Mr. Wilson entered orders to buy CTT stock for a manipulative rather than legitimate purpose; coordinated his orders to purchase CTT stock with the other Defendants; raised the price of the stock above its true value as determined by available market forces; and that the purchases created a false and misleading appearance with respect to the market for CTT stock. The Commission can not prove its allegations against Mr. Wilson because they are false.

A market manipulator typically pumps up the price of a company’s stock and takes a quick profit at the expense of others. Mr. Wilson was a long term investor who purchased and held CTT stock for legitimate purposes. He, like many other investors, suffered losses in CTT stock during

the relevant period. If the price of CTT stock was manipulated, Mr. Wilson, his family, and his clients were victims not perpetrators of any scheme.

Finally, Mr. Wilson is no longer working or registered as a securities broker and consequently any suggestion he needs to be enjoined for the alleged violations to prevent future harm is meritless. Furthermore, there were no ill gotten gains; Mr. Wilson and his wife have lost money purchasing and holding CTT stock during the relevant period. The net commissions Mr. Wilson earned on the transactions in his customer's accounts were di minimis. And so, the Commission would not be entitled to any equitable relief, or penalties even if the jury find in favor of the Commission on any of its claims against Mr. Wilson.

Joint Statement to be Read to the Jury

This case involves the federal securities laws. The plaintiff is the United States Securities and Exchange Commission, sometimes referred to as “the SEC” or “the Commission”. The SEC is the agency of the federal government that is responsible for enforcing the securities laws of the United States.

There are several defendants in this case. One of them is Competitive Technologies, Inc., usually referred to as “CTT”. CTT is a technology transfer and licensing company based in Fairfield, Connecticut. The common stock of CTT is traded on the American Stock Exchange, sometimes referred to as “the AMEX”. Defendant, Frank McPike, was the interim chief executive officer, or “CEO”, of CTT during the relevant time period for this case, which covers the period from July 1998 through June 2001. In his role as interim CEO, Mr. McPike was chosen by CTT's Board of Directors to implement a common stock repurchase program, which is a program that allowed CTT to repurchase up to 250,000 shares of its own common stock.

Defendants John R. Glushko, Richard Kwak, Chauncey Steele, and Stephen Wilson were all stockbrokers during the Relevant Period who bought and sold CTT common stock for their own personal accounts, on behalf of family members, and on behalf of their customers. The remaining defendants – Thomas Kocherhans and Sheldon Strauss – are former stockbrokers who bought and sold CTT stock for their own personal accounts and for family accounts.

The SEC alleges that the defendants violated the federal securities laws by engaging in a scheme to manipulate the market for CTT stock. According to the SEC, this scheme had two parts. First, the SEC alleges that defendants used their own accounts and, in the case of defendants Steele, Glushko, Kwak and Wilson, the accounts of their customers, to place buy orders at or near the close of the market in an attempt to inflate the reported closing price of CTT stock. This practice is sometimes referred to as “marking the close”. Second, the SEC alleges that the defendants used their own accounts and accounts they controlled to place pre-arranged buy and sell orders in substantially similar amounts and at substantially the same time in order to minimize the negative impact on CTT’s stock price from sales of the stock. This practice is sometimes referred to as “matched trades”. The SEC alleges that these practices were intended to, and did, artificially raise and maintain the price of CTT stock and create a false or misleading appearance with respect to the market for CTT stock.

Defendants Glushko, Kwak and Wilson deny the SEC’s allegations and contend that their orders to buy and sell CTT stock were for the legitimate purpose of investing in the company. Defendants deny the SEC’s allegation that they communicated the details of their transactions to

each other and coordinated their trading activity, or that they placed any orders, or engaged in any other activity, with the intent to manipulate the price of CTT stock. Defendants further deny that their purchases artificially raised or maintained the price of CTT stock, and deny that their transactions created a false or misleading appearance with respect to the market for CTT stock.

The Commission's position is that the initial statement to the jury should end there. The defendants request that the Court to include the following additional language:

_____ **A. Defendants CTT and McPike**

CTT is a defendant in this case because the SEC claims that the actions of McPike within the scope of his role as a corporate officer of CTT are imputed to CTT. McPike, however, denies that he participated with any of the defendants in a fraudulent scheme to manipulate and inflate the price of CTT common stock in violation of the anti-fraud provisions of the federal securities laws. Specifically, both McPike and CTT deny the SEC's allegations that McPike participated in a scheme to manipulate the price of CTT common stock during the relevant period because (1) McPike did not engage in prearranged trades of purchases of CTT stock that were substantially similar in size, price and time in an effort to artificially maintain the price of CTT stock ("matched trades") in contravention of Section 9(a)(1) of the Exchange Act; and (2) did not place buy orders at or near the close of the market in an attempt to artificially inflate the reported closing price of CTT stock ("marking the close") in contravention of Section 9(a)(2) of the Exchange Act. McPike and CTT both also deny the SEC's claim that McPike engaged in any deceptive or fraudulent conduct in contravention of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. Finally, CTT and McPike both deny that McPike aided and

abetted Steele's violations of Section 9(a) and 10(b) of the Exchange Act and Rule 10b-5 thereunder.

To the contrary, McPike contends that all of the purchases of CTT stock during the relevant period were made in accordance with CTT's lawful Common Stock Repurchase Program, which was conducted without deceit and fully disclosed to the investing public. Indeed, the SEC does not contest the fact that the public was on notice, and made fully aware of CTT's lawful Repurchase Program through press releases and the company's quarterly and annual filings with the SEC. McPike also denies that he aided and abetted Steele's violations of the federal securities laws by matching trades or marking the close.

B. Defendant Glushko

John Glushko denies that he intended to manipulate the price of CTT stock. He never believed that any of the trading activity in which he was involved could even have any real impact on the price.

Mr. Glushko has been a stock broker for more than 50 years. He focuses his efforts on small company stocks, closely following information on 10-20 publicly traded small companies at any one time. Mr. Glushko makes his investments, and advises his clients, in accordance with his expectation of the performance of these companies and their potential for growth. As to trading in CTT stock, contrary to the SEC's accusations, Mr. Glushko's years of experience and investment planning guided him and provided the basis of the advice he gave to his clients.

C. Defendant Kwak

The securities laws do not prohibit market transactions which may raise or lower the price of securities and they do not condemn extensive buying of a security or buying which raises the

price of a security. If a person is merely trying to acquire a large block of stock for investment his knowledge that in doing so he will affect the market price does not make his action unlawful. For this reason, the SEC has the burden to prove to you not only that Mr. Kwak's purchases affected the price of CTT stock, but that it is more likely than not that Mr. Kwak coordinated his orders to buy and sell CTT stock with other brokers, that he entered his orders to buy and sell CTT stock for a manipulative, rather than legitimate, purpose, that Mr. Kwak's purchases raised the price of the stock above its investment value as determined by available market forces and that his purchases created a false and misleading appearance with respect to the market for the stock.

Defendant Richard Kwak denies that he placed any orders, or engaged in any other activity, including communicating the details of his transactions to other brokers or coordinated his trading activity with them, with the intent to manipulate the price of CTT stock. Mr. Kwak further denies that his purchases artificially raised or maintained the price of the stock, and denies that his transactions created a false or misleading appearance with respect to the market for the stock. Indeed, the SEC admitted Mr. Kwak's orders to buy and sell CTT stock for himself and on behalf of his family and customers and will not introduce any evidence that any customer complained that the trade was not authorized or ratified. Nor did Mr Kwak's trading have any effect on the price and market for the stock, but reflected his sincere belief in the CTT stock as a viable company . If the SEC can show the manipulation of the stock by anyone, then Kwak was a victim.

D. Defendant Wilson

Mr. Wilson is an investor who has been falsely accused of making a handful of purchases over a two and a half year period for a manipulative purpose and to artificially inflate the price of CTT stock. During that time period, Mr. Wilson was also a stockbroker who entered his clients' orders to purchase CTT stock. His clients dictated the number of shares and the price they were willing to pay for CTT stock. Mr. Wilson placed his client's orders with the trading desk at the brokerage firm. The clients, traders and specialist at the American Stock Exchange controlled the time and price for which the transactions were ultimately executed - not Mr. Wilson.

The Commission's case against Mr. Wilson is based on speculation and conjecture. It has no evidence that any of Mr. Wilson or his family and clients' purchases of CTT stock were for a manipulative purpose or intended to artificially inflate the market price of CTT stock. The Commission has no order tickets and has erroneously used order execution times (not order entry times) to support its allegations that Mr. Wilson "matched trades" and "marked the close" for CTT stock. It has no evidence of the type of orders (market or limit) entered by Mr. Wilson which is critical to when and how they were executed on the American Stock Exchange. The Commission has no statistical evidence and never compared purchases in the Defendant and their clients' accounts to the range of trading patterns observed in accounts which were not part of the alleged manipulation. No one could reasonably draw any inferences of any market manipulation from the investments made by Mr. Wilson, his family and clients in this case.

The securities laws do not prohibit market transactions which may raise or lower the price of securities and do not condemn extensive buying or selling of security the buying which raises the price of the security; if they did, all purchase transactions would be unlawful. The fact a person is trying to acquire stock for investment purposes and in so doing, effects the stock market

price does not make his action unlawful. For this reason, the Commission has the burden of proving that Mr. Wilson entered orders to buy CTT stock for a manipulative rather than legitimate purpose; coordinated his orders to purchase CTT stock with the other Defendants; raised the price of the stock above its true value as determined by available market forces; and that the purchases created a false and misleading appearance with respect to the market for CTT stock. The Commission can not prove its allegations against Mr. Wilson because they are false. A market manipulator typically pumps up the price of a company's stock and takes a quick profit at the expense of others. Mr. Wilson was a long term investor who purchased and held CTT stock for legitimate purposes. He, like many other investors, suffered losses in CTT stock during the relevant period. If the price of CTT stock was manipulated, Mr. Wilson, his family, and his clients were victims not perpetrators of any scheme.

7. Trial by Magistrate Judge

The parties do not consent to a trial by a Magistrate Judge.

8. List of Witnesses

The Commission's Witnesses

The Commission intends to call the seven individual defendants – John Glushko, Thomas Kocherhans, Richard Kwak, Frank McPike, Chauncey Steele, Sheldon Strauss, and Stephen Wilson – as witnesses in its case in chief. The Commission will elicit testimony from the defendants about, among other things, their purchases and sales of CTT stock and their communications with each other about CTT stock.

The Commission intends to call five present or former members of its staff to lay the foundation for certain summaries that are being offered under FRE 1006. These five witnesses are (in alphabetical order):

1. *Paul Block, Esq.* Attorney Block is currently a Branch Chief in the Commission's Boston office. While a staff attorney in the Division of Enforcement, he participated in the investigation by the Commission staff that preceded the filing of this action. He will testify about: (a) certain documents and other evidence obtained by the Commission staff during its investigation; and (b) certain lists of transactions in CTT stock that were prepared by members of the Commission staff, including himself, and that are being offered as summaries under FRE 1006.

2. *Mark Gera.* Mr. Gera is a former Securities Compliance Examiner and Branch Chief in the Commission's Boston office. He now works for Bingham McCutchen LLP, a national law firm with an office in Boston. He participated in the investigation by the Commission staff that preceded the filing of this action. He will testify about: (a) certain documents and other evidence obtained by the Commission staff during its investigation; and (b) certain "blotters" reflecting lists of transactions in CTT stock that were prepared by members of the Commission staff, including himself, and that are being offered as summaries under FRE 1006.

3. *Gerald Lumer, Ph.D.* Dr. Lumer is an economist who works in the Commission's Office of Economic Analysis in Washington, DC. He will testify about a Trade and Quotation ("TAQ") Database for transactions in CTT stock that was compiled by the New York Stock Exchange, that he obtained from Wharton Research Data Services (an affiliate of the Wharton Business School in Philadelphia), and that is being offered as a market report under FRE

803(17). Dr. Lumer will also testify about: (a) an annotated version of the TAQ Database that was prepared by the Commission staff, including himself, to show purchases by the defendants and that is being offered as a summary under FRE 1006; and (b) certain calculations which he performed using information in the annotated version of the TAQ Database.

4. *Corliss Primavera*. Ms. Primavera is an investigator in the Commission's Boston office. She participated in the investigation by the Commission staff that preceded the filing of this action. She will testify about: (a) certain documents and other evidence obtained by the Commission staff during its investigation; (b) efforts by the Commission staff to identify which transactions shown on the TAQ Database involved purchases by one or more of the defendants; and (c) certain lists of telephone calls and transactions in CTT stock that were prepared by members of the Commission staff, including herself, and that are being offered as summaries under FRE 1006.

5. *Mark Velsko*. Mr. Velsko is an Information Technology Specialist (Litigation and Examination) in the Commission's Boston office. He will testify about an annotated version of the TAQ Database that was prepared by the Commission staff, including himself, to show purchases by the defendants and that is being offered as a summary under FRE 1006.

The Commission intends to call two third-party witnesses:

1. *Jonathan Frey*. Mr. Frey works at J. Streicher and Company ("Streicher"), a registered broker-dealer firm in New York. Streicher acts as the specialist for certain stocks that are traded on the AMEX, and Mr. Frey supervises the firm's specialist operations. During the relevant period, Streicher was the specialist for transactions in CTT stock, and Mr. Frey was the Streicher employee primarily responsible for the firm's handling of trading in CTT stock. Mr. Frey will testify about: (a) the activities of a specialist on the AMEX, (b) his communications

with representatives of CTT, including defendant McPike, (c) purchases of CTT stock submitted by CTT in connection with its stock repurchase plan, and (d) trading activity in CTT stock.

2. *Mark Schaedel*. Mr. Schaedel works at the New York Stock Exchange as Vice President for Proprietary Products. He will testify about the Trade and Quotation Database for transactions in CTT stock that was compiled by the NYSE, that is made available to the public through Wharton Research Data Services (an affiliate of the Wharton Business School in Philadelphia), and that is being offered as a market report under FRE 803(17).

Lastly, the Commission intends to call one expert witness:

Robert Lowry. Mr. Lowry is a former Senior Accountant in the Commission's Division of Market Regulation and a former Director of Securities Compliance at Prudential Insurance Company of America. Since 1996, he has been a self-employed consultant in the field of securities regulation, specializing in matters involving securities trading, market manipulation, and the practices of broker-dealers. He will testify about: (a) trading in securities on the AMEX, (b) the role of a specialist firm on the AMEX, (c) the defendants' purchases of CTT stock, and (d) certain features of the defendants' purchases of CTT stock that support an inference that the defendants were attempting to manipulate the market for CTT stock.

The Commission reserves the right to supplement this list as trial approaches.

The Defendants' Witnesses

A. Defendants CTT AND McPike

Defendants CTT and McPike intend to call the following expert witness:

Charles Lundelius, FTI Consulting, Inc., 1101 K Street, NW Suite B100, Washington, DC 20005. Mr. Lundelius will testify about (a) trading in securities on the AMEX, (b) the role of a specialist firm on the AMEX, and (c) the defendants' purchases of CTT stock.

CTT and McPike may call the following witnesses:

1. Frank R. McPike, Jr. Mr. McPike is the former Vice President and CFO of CTT. He will testify about all aspects of his implementation of the CTT repurchase plan.
2. Chauncey Steele. Mr. Steele is a defendant in this action and was a stockbroker at Prudential Securities in Hyannis, MA. He will testify about his purchases and sales of CTT stock and his communications with the other defendants in this action.
3. A corporate representative of Cantor Fitzgerald & Company. Cantor Fitzgerald was the brokerage firm responsible for placing orders for CTT in connection with the implementation of its stock repurchase plan. The corporate representative will testify about purchases made by Mr. McPike for CTT and the implementation of CTT's stock repurchase plan.
4. David E. Rosenstein, 86 Trinity Place, New York, NY 10006. Mr. Rosenstein is a regulatory attorney with the American Stock Exchange. He will testify about, among other things, regulatory investigations related to execution of orders by the American Stock Exchange Specialist.
5. George Bigar, 4906 Buena Vista #20, Dallas, TX 75204. Mr. Bigar is a former Director and Member of the Compensation and Stock Option Committee of CTT. He will testify about the adoption and implementation of CTT's stock repurchase plan.
6. Charles Philipin, 45 Clearwater Avenue, Massapequa, NY 11758. Mr. Philipin is the former Director and Chairman of the Compensation and Stock Option Committee of CTT. He will testify about the implementation of CTT's stock repurchase plan.

7. Michael Bolton, 1660 Whiteacre Drive, Bethlehem, PA 18015. Mr.

Bolton is a former Director and Member of the Compensation and Stock Option Committee of CTT. He will testify about the adoption and implementation of CTT's stock repurchase plan.

8. Robert Brown, 3628 Colgate Avenue, Dallas, TX 75225. Mr. Brown is a

former Director and Member of the Compensation and Stock Option Committee of CTT. He will testify about the adoption and implementation of CTT's stock repurchase plan.

9. Richard Carver, 13100 Twin Lakes Drive, Clifton, VA 20124. Mr. Carver

is a former Director of CTT. He will testify about the implementation of CTT's stock repurchase plan.

10. George Dunbar, 109 Via Santa Maria, Las Gatos, CA 95030. Mr. Dunbar

is a former Director and Member of the Compensation and Stock Option Committee of CTT. He will testify about the implementation of CTT's stock repurchase plan.

11. Samuel Fodale, 19838 Westchester Drive, Clinton Township, MI 48038.

Mr. Fodale is a former Director and Member of the Compensation and Stock Option Committee of CTT. He will testify about the adoption and implementation of CTT's stock repurchase plan.

12. John Sabin, 14709 Lancraft Court, Darnestown, MD 20874. Mr. Sabin is

a former Director and Member of the Compensation and Stock Option Committee of CTT. He will testify about the adoption and implementation of CTT's stock repurchase plan.

13. Jeanne M. Wendschuh, 35 Deerspring Road, Redding, CT 06896. Ms.

Wendschuh is the former controller of CTT. She will testify about the implementation of the repurchase plan.

CTT and McPike reserve the right to supplement this list as trial approaches.

B. Defendant Glushko

Defendant Glushko intends to testify on his own behalf, and he may call the following additional witnesses: clients Lyle Armstrong, James Bartel, Christopher Dunn, Donal Gallagher, Andrea Hollinshead, Alfred Kraus, Dr. Eugene McDannald, Joseph Passalaqua, David Pies, Edwin Senco, John Sholtiss, Donald Williams, and family members on whose behalf he bought and sold CTT stock, including his wife, Noreen Kearney, and his daughter Kristen Stilley and son-in-law Dennis Stilley. These witnesses will testify concerning their relationship with Mr. Glushko as their stockbroker, their investments in CTT, and, where applicable, their conversations with the SEC regarding this matter.

Mr. Glushko reserves his right to supplement this list as trial approaches.

C. Defendant Kwak

Defendant Kwak intends to testify on his own behalf and he may call the following additional witnesses: clients Thomas Dawson, Sean O'Neill, Georgia Ferrell, Keith Roles, Richard Corley, Linda Ammons, Bernadette Hogan, Loretta Walter, James Tobin, Richard Hicks, William Winger, Alan Atlas, William Winger, Otto and Dorris Bonomo, Brettinger, James Sather, Marvin Prosche, Elliott Dudnick, and Carol Scott and the family members on whose behalf he purchased or sold CTT stock. Mr. Kwak reserves the right to supplement this list as trial approaches.

These witnesses will testify concerning their relationship with Mr. Kwak as their stockbroker, their investment in CTT, and, where applicable, their conversations with the SEC regarding this matter.

D. Defendant Wilson

Mr. Wilson definitely intends to testify in his defense and effectively deny all of the Commission's allegations.

Mr. Wilson definitely intends to call the Experts Craig McCann, Ph.D., CFA and Charles Lundelius to testify about their findings and opinions set forth in their Expert Reports.

Mr. Wilson may call the American Stock Exchange ("AMEX") Specialist Jonathan Frey to testify generally about the AMEX procedures for a specialist's receipt of orders and execution of transactions, the trading activity in CTT common stock during the relevant period, and the CTT common stock transactions actually executed on the AMEX for Defendants, including, Mr. Wilson, his family and customers which collectively and individually had no impact on the prevailing market for CTT stock.

Mr. Wilson may call Shamrock traders John Doyle and Kevin Barr to testify about the orders placed by Mr. Wilson for his own accounts as well as his clients (limit v. market), the order entry and execution process at Shamrock, and the CTT common stock transactions executed at Shamrock for Mr. Wilson, his family and customer's accounts.

Mr. Wilson may call each of the Defendants to testify about their transactions in CTT common stock and communications with Mr. Wilson or lack of any communications with him.

Mr. Wilson may call his wife Kim Heath, his son Stephen P. Wilson and his customers, Frank DeLuca, Jonathan M. Slawsby, Charles Phillips, Donald Marino, Sr., William J. Andreoni, Norma Jean Bassett, Tom Conley, Roberta McAfee, Alexander Brot, Tom DePetrillo, and Robert Cohen as witnesses to the extent they may be necessary to rebut any of the Commission's claims that any of the trades in their accounts were not legitimate transactions for investment purposes and/or part of the SEC's alleged purposeful and manipulative scheme. Mr. Wilson's

customers are expected to testify that their CTT transactions were unsolicited, made by them for investment purposes using limit orders entered below the below market price and/or as market orders at the prevailing market price at the time they were entered and executed for legitimate investment purposes.

Mr. Wilson may call the SEC's witnesses Paul Block, Mark Gera, Corliss Primavera, Mark Velsko, Cecelia D. Moore, and Robert Lowry, to testify about the SEC's investigation and the Defendant's alleged participation in the alleged manipulative scheme.

9. Deposition Testimony

The Commission

The Commission does not intend to offer trial testimony from any solely by deposition transcript. However, the Commission intends to call each of the individual defendants at trial as part of its case in chief, and it intends to use transcripts from each defendant's prior testimony for purposes of cross-examination and impeachment. Depending on the nature of a defendant's testimony at trial, the Commission may offer portions of that defendant's prior testimony as evidence – for example, as a prior inconsistent statement under FRE 801(d)(1) or an admission by a party-opponent under FRE 801(d)(2). Also, if a defendant is unavailable at trial, the Commission may offer portions of that defendant's prior testimony as evidence – for example, as former testimony under FRE 804(b)(1) or as a statement against interest under FRE 804(b)(3).

The Defendants

A. Defendants CTT and McPike

At this point, defendants CTT and McPike do not intend to offer any deposition transcripts as trial testimony, apart from the use of deposition transcripts for impeachment or

cross-examination. Nevertheless, in the event that defendant Chauncey Steele's decision to invoke his Fifth Amendment right is upheld by the Court, defendants CTT and McPike will designate portions of Steele's investigative testimony for use at trial pursuant to Section 9 of the Court's Final Pre-trial Order.

In the event that any of the non-party witnesses identified in Section 8 "List of Witnesses" who gave testimony at a deposition in this case are unavailable to testify at trial, CTT and McPike may offer the testimony taken during the deposition into evidence at trial.

In the event that any of the Defendants do not appear at trial or assert their privilege against self incrimination at trial, CTT and McPike may offer testimony taken and recorded during the SEC's investigation and/or taken during any deposition in this case into evidence at trial.

B. Defendant Glushko

In the event that any of the non-party witnesses identified in Section 8 "List of Witnesses" who gave testimony at a deposition in this case are unavailable to testify at trial, Mr. Glushko may offer the testimony taken during the deposition into evidence at trial.

In the event that any of Mr. Glushko's customers identified in Section 8 "List of Witnesses" above, are also unavailable to testify at trial, Mr. Glushko may take their deposition and offer the direct testimony taken during their deposition into evidence at trial.

In the event that any of the Defendants do not appear at trial or assert their privilege against self incrimination at trial, Mr. Glushko may offer testimony taken and recorded during the SEC's investigation and/or taken during any deposition in this case into evidence at trial.

C. Defendant Kwak

In the event that any of the non-party witnesses identified in Section 8 “List of Witnesses” who gave testimony at a deposition in this case are unavailable to testify at trial, Mr. Kwak may offer the testimony taken during the deposition into evidence at trial.

In the event that any of Mr. Kwak’s customers identified in Section 8 “List of Witnesses” above, are also unavailable to testify at trial, Mr. Kwak may take their deposition and offer the direct testimony taken during their deposition into evidence at trial.

In the event that any of the Defendants do not appear at trial or assert their privilege against self incrimination at trial, Mr. Kwak may offer testimony taken and recorded during the SEC’s investigation and/or taken during any deposition in this case into evidence at trial.

D. Defendant Wilson

Mr. Wilson definitely intends to offer the deposition testimony of Frank DeLuca taken on February 21, 2007, pages 1 through 17, and 44 through 47 if he is unavailable to testify at trial.

In the event that any of the non-party witnesses identified in Section 8 “List of Witnesses” who gave testimony at a deposition in this case are unavailable to testify at trial, Mr. Wilson may offer the testimony taken during the deposition into evidence at trial.

In the event that any of Mr. Wilson’s customers identified in Section 8 “List of Witnesses” above, are also unavailable to testify at trial, Mr. Wilson intends to take their deposition and offer the direct testimony taken during their deposition into evidence at trial.

In the event that any of the Defendants do not appear at trial or assert their privilege against self incrimination at trial, Mr. Wilson may offer testimony taken and recorded during the SEC’s investigation and/or taken during any deposition in this case into evidence at trial.

10. Interrogatories and Requests to Admit

The Commission

The Commission intends to offer certain answers to interrogatories from five of the defendants:

Glushko – Nos. 1, 3-4.
Kocherhans – Nos. 1, 4.
Kwak – Nos. 1, 9.
McPike – No. 3.
Wilson – Nos. 1, 4, 9, 11 and Supplem. No. 1.

The Defendants

Defendants CTT and McPike intends to offer certain of the Commission's responses to their discovery requests:

First Requests for Admissions Nos. 7, 9-10, 15-16, 25-27, 32-33, 38, 51, 54-63.
Second Requests for Admission No. 1.
Answers to First Interrogatories No. 15 and Supplem. No. 14.

Defendant Glushko intends to offer certain of the Commission's responses to his discovery requests:

Requests for Admissions Nos. 1-2, 4-5, 8-10, 18-19, 25-27, 29-31.
Answers to Interrogatories Nos. 1, 4, 8, 14, 22, 27, 32, 34, 40, 49.

Defendant Kwak intends to offer certain of the Commission's responses to his discovery requests:

Requests for Admissions Nos. 1-3, 6-9, 12-13, 16-20, 24-29, 33, 35-37, 39, 49-53, 56, 58-59.
Answers to Interrogatories Nos. 1, 4, 10, 30.

Defendant Wilson intends to offer certain of the Commission's responses to his discovery requests:

Requests for Admissions Nos. 1-2, 4, 6-7, 9-11, 13-17, 20, 22-27, 42-52.
Answers to Interrogatories Nos. 18, 30-33, 44-45, 47-48, 51-58.

All parties reserve the right to offer additional responses for purpose of cross-examination and/or impeachment.

11. Exhibits

Attached hereto are lists of proposed exhibits from the Commission and defendants CTT and McPike, Glushko, Kwak and Wilson.

12. Anticipated Evidentiary Problems

The Commission

A. Secondary Sources on Stock Repurchase Plans

Defendants CTT and McPike, Glushko, Kwak and Wilson have all included on their lists of proposed exhibits a collection of articles and other secondary sources about stock repurchase plans and the limited “safe harbor” provided by Rule 10b-18 under the Exchange Act. The Commission questions the basis for admitting these items as trial exhibits, for two reasons.

First, the Commission does not contend that CTT’s decision to embark on a stock repurchase plan was, in and of itself, a manipulative act or evidence of manipulative intent. Rather, the Commission’s claims against CTT and McPike concern the way the plan was actually implemented, in that, for example, there is strong circumstantial evidence that McPike was aware of Steele’s efforts to influence the price of CTT stock and that he sometimes placed orders for the repurchase plan in accordance with specific requests from Steele. As a result, there is no need for defendants to present evidence about the legality or economic utility of stock repurchase plans in the abstract, because the Commission does not intend to challenge CTT’s adoption of the repurchase plan on that basis.

Second, to the extent that the defendants wish to present these materials to the Court in connection with legal arguments about the Commission's claims and the scope of the limited "safe harbor" in Rule 10b-18, they are certainly free to do so, but it would unduly complicate the trial and confuse the jury to treat these items as ordinary exhibits.

The Commission intends to discuss this issue with defense counsel. To the extent the issue is not resolved, the Commission will submit a memorandum on this subject at least three calendar days prior to the pretrial conference in accordance with Paragraph 11 of the Final Pretrial Order.

B. Other Commission Regulatory and Enforcement Actions

Defendants CTT and McPike, Glushko, Kwak and Wilson have all included on their lists of proposed exhibits a collection of materials concerning various regulatory and enforcement actions by the Commission. Examples include testimony to Congress by then-Chairman Harvey Pitt in 2001 and the Commission's public releases concerning its enforcement actions against the American Stock Exchange just last month. As with the group of proposed exhibits discussed above, the Commission questions the basis for admitting these items as trial exhibits, since they have no apparent connection to the issues in the case, would almost certainly confuse the jury, and seem more appropriate as citations for legal argument.

The Commission intends to discuss this issue with defense counsel. To the extent the issue is not resolved, the Commission will submit a memorandum on the subject at least three calendar days prior to the pretrial conference in accordance with Paragraph 11 of the Final Pretrial Order.

The Defendants

A. Commission's Introduction Of Expert Testimony of Robert W. Lowry

The SEC cannot meet the standard for admissibility of expert opinion evidence under Federal Rule of Evidence 702 as to Robert W. Lowry. Specifically, Lowry lacks the requisite expertise concerning stocks traded by a specialist on the American Stock Exchange (“AMEX”) sufficient to give reliable expert testimony. Defendants CTT and McPike have filed their Motion *in Limine* and supporting memorandum of law to preclude the testimony of Robert W. Lowry pursuant to Fed. R. Evid. 702.

Defendants Glushko, Kwak, and Wilson adopt the above-referenced issues as anticipated evidentiary problems and have filed a separate joint motion to join Defendants CTT and McPike's motion and memorandum of law addressing this issue.

B. Commission's Introduction Of Certain Testimony At Trial

The fact discovery period in this matter concluded on September 16, 2005. Approximately 17 months after the close of discovery and in preparation of the Pre-Trial Memorandum in this case, the SEC for the first time indicated that it intended to call Paul Block, Mark Gera, Dr. Gerald Lumer, Corliss Primavera, and Mark Velsko (collectively “SEC Staff Witnesses”) and Mark Schaedel to testify about matters beyond each individual's specific activities in compiling the SEC's proposed Federal Rule of Evidence 1006 summaries. Defendants CTT and McPike have filed their Motion *in Limine* and supporting memorandum of law to (1) limit the trial testimony of the SEC Staff Witnesses; and (2) exclude the trial testimony of Mark Schaedel.

Defendants Glushko, Kwak, and Wilson adopt the above-referenced issues as anticipated evidentiary problems and have filed a separate joint motion to join Defendants CTT and McPike's motion and memorandum of law addressing this issue.

C. Steele's Invocation Of His Fifth Amendment Privilege Against Self-Incrimination

The Commission has indicated it intends to call Chauncey Steele to testify at trial. Counsel for Mr. Steele has indicated that, if called to testify, Steele will invoke his Fifth Amendment privilege against self-incrimination and will not testify. The Commission has further indicated that if Steele invokes his Fifth Amendment privilege at trial, it will request this Court to impute the ensuing adverse inference to the other defendants. Although this evidentiary issue is not yet ripe for adjudication, Defendants CTT, McPike, Glushko, Kwak, and Wilson submit that the circumstances of this case do not warrant an adverse inference against them.

Steele testified fully and under oath during the Commission's investigation. Moreover, on July 5, 2005, without admitting or denying the allegations contained in the Complaint, Steele consented to the entry of Final Judgment in this matter and, in doing so, waived his right to a jury trial and to appeal from the entry of the Final Judgment. *See Consent to Final Judgment of Permanent Injunction, Disgorgement, and Other Relief By Defendant Chauncey D. Steele* ("Final Judgment). The terms of the Final Judgment state that (subject to his right to exercise his rights under the Fifth Amendment), Steele must appear and testify at the hearing of this matter if called to do so by the Commission. *Id.* In light of these circumstances, the Commission cannot, in good faith, allow Steele to now invoke his Fifth Amendment privilege. To the contrary, any acquiescence by the Commission on this issue should be deemed an act of bad faith unless the Final Judgment is nullified and Steele resumes his status as a named party in interest in this matter.

The Commission has indicated it is going to address this issue and anticipates filing a motion *in limine* to prevent Steele from invoking his Fifth Amendment privilege. CTT and

McPike have conveyed their desire to join the Commission in this motion. In the event the Commission does not pursue this issue and file such motion, CTT and McPike will. Moreover, CTT and McPike will also file a motion *in limine* to prevent Steele's appearance at trial to invoke his Fifth Amendment privilege and will seek to designate, and admit as evidence, certain portions of Steele's investigative transcripts. Accordingly, unless this issue is resolved, CTT and McPike will file the above-referenced motions *in limine* and supporting memorandum of law addressing this issue at least three (3) calendar days prior to the pre-trial conference, in accordance with Paragraph 11 of the Court's Final Pre-Trial Order.

Defendants Glushko, Kwak, and Wilson adopt the above-referenced issue as an anticipated evidentiary problem and, if not resolved, will file their memorandum of law addressing this evidentiary issue at least three (3) calendar days prior to the pre-trial conference, currently scheduled for July 24, 2007.

D. The Commission's Reliance On Inadmissible Hearsay

In support of its allegations that McPike (and by imputation CTT) participated in a fraudulent scheme to manipulate and inflate the price of CTT common stock, the Commission principally relies upon a series of message slips purportedly left by Steele at CTT from October 1998 through March 2001 and contends that the message slips, when coupled with evidence of proximate purchases by CTT, are proof of market manipulation. The Court, however, should exclude these message slips from evidence because they are inadmissible hearsay. Moreover, the probative value of introducing such documents is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading of the jury. Accordingly, in accordance with Paragraph 11 of the Court's Final Pre-Trial Order, CTT and McPike will file their

memorandum of law addressing this evidentiary issue at least three (3) calendar days prior to the pre-trial conference, currently scheduled for July 24, 2007.

Defendants Glushko, Kwak, and Wilson adopt the above-referenced issue as an anticipated evidentiary problem and, if not resolved, will file their memorandum of law addressing this evidentiary issue at least three (3) calendar days prior to the pre-trial conference, currently scheduled for July 24, 2007.

E. Commission's Introduction of 1006 Summaries

In support of its allegations that McPike (and by imputation CTT), actively engaged in a fraudulent scheme to manipulate and inflate the price of CTT common stock, the Commission has produced a number of charts purportedly summarizing the phone records of defendants and trading data of the defendants as it relates to the purchase and sale of CTT common stock during the relevant period. These charts have been repeatedly updated and revised by the Commission and we have only recently received the final version of the charts that have been designated as the "final" exhibits.

We are currently in the process of analyzing the information contained in these charts to ensure they fairly and accurately summarize the evidence upon which they are based and do not improperly mislead the jury. To the extent issues arise regarding the information contained in these charts, CTT and McPike will work with the Commission to correct those inaccuracies. However, in the event those issues cannot be resolved, CTT and McPike will object to the admission of the summary charts as evidence at trial and will submit a memorandum addressing those issues at least three calendar days prior to the pretrial conference in accordance with Paragraph 11 of the Final Pre-Trial Order.

Defendants Glushko, Kwak, and Wilson adopt the above-referenced issue as an anticipated evidentiary problem and, if not resolved, will file their memorandum of law addressing this evidentiary issue at least three (3) calendar days prior to the pre-trial conference, currently scheduled for July 24, 2007.

F. Commission's Introduction of Telephone Records

In support of its allegations that McPike (and by imputation CTT), actively engaged in a fraudulent scheme to manipulate and inflate the price of CTT common stock, the Commission relies upon CTT phone bills (No. 108 on SEC List of Trial Exhibits), Frank McPike phone bills (No. 110 on SEC List of Trial Exhibits). The Court, however, should exclude these documents from evidence because the probative value of introducing such documents is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. To the extent this issue is not resolved, CTT and McPike will submit a memorandum addressing this issue at least three calendar days prior to the pretrial conference in accordance with Paragraph 11 of the Final Pre-Trial Order.

G. Imputation of Statements of Co-Defendants

To the extent the Commission attempts to impute a statement or statements of a co-defendant against the other co-defendants, Defendants CTT, McPike, Glushko, Kwak and Wilson submit that such evidence should be excluded as inadmissible hearsay. Moreover, the probative value of imputing a co-defendants statement to the other co-defendants is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. Accordingly, unless this issue is resolved with the Commission, Defendants CTT, McPike, Glushko, Kwak, and Wilson anticipate filing a memorandum addressing this issue at least three

calendar days prior to the pretrial conference in accordance with Paragraph 11 of the Final Pre-Trial Order.

H. Commission's Introduction of Kocherhans' Prior SEC Ruling

To the extent the Commission intends to introduce the prior SEC review of disciplinary proceedings by the National Association of Securities Dealers, Inc. against defendant Thomas C. Kocherhans, Defendants CTT, McPike, Glushko, Kwak and Wilson contend that such evidence is inadmissible character evidence. Defendants CTT, McPike, Glushko, Kwak and Wilson further contend that such evidence that probative value of introducing such documents is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. To the extent this issue is not resolved, Defendants CTT, McPike, Glushko, Kwak and Wilson will submit a memorandum addressing this issue at least three calendar days prior to the pretrial conference in accordance with Paragraph 11 of the Final Pre-Trial Order.

I. Other Issues raised by Defendant Glushko

In addition to those motions raised above, Mr. Glushko anticipates numerous evidentiary problems with respect to the use of the other Defendants' testimony and business records of activity in CTT stock against him. Without the requisite testimony, Mr. Glushko anticipates objecting to the documents on Plaintiff's List of Trial Exhibits numbered 1-7, 10-18, 22, 38-74, 95-111, 113, 115-153, and prior investigative testimony of Defendants on the following grounds: Authentication; Best Evidence Rule; Chain of Custody; Relevancy; Foundation; Hearsay; Immaterial; Probative Value Substantially Outweighed By Prejudice. In addition, the 1006 Summaries Include Readings From Documents Not Admissible In Evidence; Summaries Include Lay Opinions; and Summaries Include Inadmissible Speculation. Moreover, the Lowry Expert Report Includes Statements Not Proper Subject of Expert Testimony And By Persons Not

Properly Qualified As Expert; Expert Report Includes Legal Conclusions and the Expert Report Assumptions Can Not Be A Proper Basis For Expert Opinions.

J. Other Issues Raised by Defendant Kwak

In addition to those motions raised above, Mr. Kwak anticipates numerous evidentiary issues with respect to the use of the other Defendants' testimony and business records of activity in CTT stock against him. Mr. Kwak anticipates objecting to the documents on Plaintiff's List of Trial Exhibits numbered 1 through 10, 14-37, 40-103, 108-113, 114, 115, 117, 118, 119 through 153 and prior investigative testimony of Defendants on the following grounds: Authentication; Best Evidence Rule; Chain of Custody; Relevancy; Foundation; Hearsay; Immaterial; Probative Value Substantially Outweighed By Prejudice. In addition, the 1006 Summaries Include Readings From Documents Not Admissible In Evidence; Summaries Include Lay Opinions; and Summaries Include Inadmissible Speculation. Moreover, the Lowry Expert Report, as referred to by the above referenced CTT motion in limine, should be excluded as it contains Statements Not Proper Subject of Expert Testimony And By Persons Not Properly Qualified As Expert; Expert Report Includes Legal Conclusions and the Expert Report Assumptions Can Not Be A Proper Basis For Expert Opinions.

K. Other Issues Raised by Defendant Wilson

Mr. Wilson anticipates numerous evidentiary problems with respect to the use of the other Defendants' testimony and business records of activity in CTT stock against him. Without the requisite testimony, Mr. Wilson anticipates objecting to the documents on Plaintiff's List of Trial Exhibits numbered 1 through 42, 52 through 94, 104 through 117, 119 through 153 and prior investigative testimony of Defendants on the following grounds: Authentication; Best Evidence Rule; Chain of Custody; Relevancy; Foundation; Hearsay; Immaterial; Probative Value

Substantially Outweighed By Prejudice. In addition, the 1006 Summaries Include Readings From Documents Not Admissible In Evidence; Summaries Include Lay Opinions; and Summaries Include Inadmissible Speculation. Moreover, the Lowry Expert Report Includes Statements Not Proper Subject of Expert Testimony And By Persons Not Properly Qualified As Expert; Expert Report Includes Legal Conclusions and the Expert Report Assumptions Can Not Be A Proper Basis For Expert Opinions.

13. Motions in Limine/Daubert Motions

The following motions are being filed separately:

1. Defendants Competitive Technologies, Inc. and Frank McPike's Motion in Limine (and supporting Memorandum of Law) to Exclude the Expert Testimony of Robert W. Lowry.
2. Defendants Kwak, Glushko and Wilson's Motion to Join in to Motion Filed by Co-Defendants Competitive Technologies and Frank McPike Motion to Exclude Testimony of Robert Lowry.
3. Defendants Competitive Technologies, Inc. and Frank McPike's Motion in Limine (and supporting Memorandum of Law) to Limit or Exclude Certain Testimony at Trial.
4. Defendants Kwak, Glushko and Wilson's Motion to Join in to Motion Filed by Co-Defendants Competitive Technologies and Frank McPike Motion to Limit or Exclude Certain Testimony at Trial.

14. Glossary

The parties submit this preliminary glossary of terms and state that they will submit a final glossary at least three calendar days prior to the pretrial conference:

1. **Rule 10b-18** – Provides issuers with a safe harbor from liability for manipulation under Sections 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b-5 under the Exchange Act, when they repurchase their common

stock in the market in accordance with the rule's manner, timing, price, and volume conditions.

2. **Intermarket Trading System** – A computer network that connects several major U.S. stock exchanges for the purpose of choosing the best market for a given transaction.
3. **Short-sale rule** – SEC rule requiring short sales to be made only on an uptick or zero-plus tick. The purpose of the rule is to prevent traders from being able to force prices downward by borrowing stock and then selling it. The Regulation SHO updated the short-sale rule in January 2005.
4. **Firm quote rule** – SEC Rule 11Ac1-1 requires exchanges and broker-dealers to publish firm quotes.
5. **Interposition/Trading Ahead** – An illegal action of a specialist or broker-dealer unnecessarily inserting him/herself into a natural transaction between a buyer and seller in order to pocket an improper profit.
6. **Marking the close** – An attempt through trading to set an artificially high or low reported closing price for a security.
7. **Inside bid** – The highest price at which someone is willing to buy a security.
8. **Inside ask** – The lowest price at which someone is willing to sell a security.
9. **Bid-ask spread** – The difference between the current bid and the current ask (in over-the-counter trading) or offered (in exchange trading) of a given security; also called bid/ask spread.
10. **Quote database** – A database that shows the changes in inside bid and ask prices throughout a trading day.
11. **Market liquidity** – Market with a high degree of liquidity, often resulting from a large number of buyers and sellers.
12. **Efficient market theory** – The theory that all market participants receive and act on all of the relevant information as soon as it becomes available. Proponents of the efficient market theory believe that there is perfect information in the stock market. This means that whatever information is available about a stock to one investor is available to all investors (except, of course, insider information, but insider trading is illegal). Since

everyone has the same information about a stock, the price of a stock should reflect the knowledge and expectations of all investors.

13. **Random walk** – Market prices follow a random path up and down, without any influence by past price movements, making it impossible to predict with any accuracy which direction the market will move at any point.
14. **Dollar volume** – Dollar value of share volume transacted.
15. **Weekly turnover rate** – Total weekly trading volume as a percentage of total shares outstanding.
16. **Uptick** – A stock market transaction (or sometimes, a quote) at a price higher than the preceding one for the same security.
17. **Downtick** – A stock market transaction (or sometimes, a quote) at a price lower than the preceding one for the same security.
18. **Zero-plus tick** – A price which is the same as the previous transaction price, but is greater than the most recent different transaction price.
19. **Zero-minus tick** – A price which is the same as the previous transaction price, but is less than the most recent different transaction price.
20. **Buyer-initiated trade** – A trade that is initiated by a buyer. The buyer demands liquidity for the trade while the seller supplies liquidity for the trade.
21. **Seller-initiated trade** – A trade that is initiated by a seller. The seller demands liquidity for the trade while the buyer supplies liquidity for the trade.
22. **Corporate repurchase** – Also called buyback. A corporation's repurchase of stock or bonds it has issued.
23. **Matched Trade** – A pre-arranged securities transaction where two parties agree ahead of time to simultaneously execute a buy and a sell of a security for the same size and price.
24. **Over-the-Counter (OTC) Market** – A widespread aggregation of dealers who make markets in many different securities. Unlike an exchange on which trading takes place at one physical location, OTC trading occurs through telephone and computer negotiations between buyers and sellers.

25. **Exchange Market** – An exchange market is a central meeting place established to facilitate the trading of securities and commodities. Exchange markets are generally characterized as auction places where bids and offers are directed by brokers or a specialist.
26. **Specialist** – Broker-dealer authorized by an exchange to be a party through which all trading on the floor of an exchange in a particular security is transacted. A specialist provides for a fair and orderly market for the selected list of securities is authorized to trade. The Specialist must generally be ready to take the other side of a transaction if other buyers and sellers are not available. The specialist also maintains a book of limit orders and acts as a brokers broker in executing these limit orders against incoming market orders.
27. **Block Trade** – A large quantity of stock held or traded. As a general guide, 10,000 shares or more of a stock are described as a block.
28. **Market Order** – A customer order for immediate execution at the best price available when the order reaches the market place. This is the most common type of order, and it has the advantage of always being filled since no price is specified.
29. **Limit Order** – An order to execute a transaction only at a specified price (the limit) or better. Used by investors who have decided on the price at which they are willing to trade.
30. **Execution Reporting** – The order room matches or reconciles the execution reports (the notification that an order has been executed by the OTC or exchange market) coming in from the trading area with the orders, to make certain that all of the customer’s original criteria have been met.
31. **Pending Orders** – Orders awaiting execution must be organized in a manner to ensure proper execution.
32. **Margin** – The equity in an account. The requirements for the margin vary between initial and maintenance margin and also according to the type of collateral used in computing the equity.
33. **Margin Transaction** -- -- A transaction in which the broker-dealer advances credit to the customer for a portion of the purchase price.
34. **Margin Call** -- A request for additional margin.
35. **Maintenance Call** -- Call for additional money or securities when a brokerage customer margin account equity falls below a certain level.

Unless the account is brought up to the levels complying with equity maintenance rules, some of the customer securities may be sold to remedy the deficiency. A maintenance call is a type of margin call.

15. Additional Filings

Contested Issues of Fact and Law

All issues raised by the parties in the pleadings are contested. The parties are unable to stipulate to any issues of fact or law at this time, although they are continuing to discuss the possibility of entering into certain stipulations of fact that would simplify the presentation of evidence at trial.

Proposed Voir Dire Questions

Attached hereto are proposed voir dire questions submitted by the Commission and by defendants CTT and McPike, Glushko, Kwak and Wilson.

Proposed Jury Instructions

Attached hereto are proposed jury instructions submitted by the Commission and by defendants CTT and McPike and defendant Wilson. Defendants Glushko and Kwak reserve the right to submit proposed jury instructions at a later time, after having reviewing the instructions filed by the parties and the outcome of the motions in limine. Their instructions at this time likely would be duplicative of those filed by their co-defendants.

Proposed Jury Interrogatories

Attached hereto are proposed jury interrogatories submitted by the Commission and by defendants CTT and McPike, Glushko, Kwak and Wilson.

Respectfully submitted,

/s/

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Dated: April 12, 2007

CERTIFICATE OF SERVICE

I, Frank C. Huntington, certify that on April 12, 2007, the foregoing Final Pretrial Memorandum (with Exhibits A-O) was filed electronically with the Court. Notice will be sent by e-mail to all parties through the Court's electronic filing system (and by mail to parties not registered with the system), and the filing may be accessed through the Court's system. In addition, the undersigned has caused a paper copy to be served by first-class mail to defendants' counsel of record and to the defendants who have appeared *pro se*:

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