Exhibit 5

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PEOPLE OF THE STATE OF NEW YORK, by ELIOT SPITZER, the Attorney General of the State of New York,

Plaintiff,

-against-

RICHARD A. GRASSO, KENNETH G. LANGONE and THE NEW YORK STOCK EXCHANGE, INC.

Defendants

Index No. _____

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to appear in this action by serving an answer to the complaint on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after completion of service where service is made in any other manner than by personal delivery within the state. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

New York County is designated as the place of trial on the basis of the Attorney

General's offices at 120 Broadway, New York, New York.

Dated: New York, New York
May 24, 2004

ELIOT SPITZER
Attorney General of the State of New York
120 Broadway
New York, New York 10271
(212) 416-8050

By: _____
AVI SCHICK
Deputy Counsel to the Attorney General

TO: RICHARD A. GRASSO
231 Piping Rock Road
Locust Valley, N.Y. 11560

KENNETH G. LANGONE
Sands Point Road
Sands Point, N.Y. 11050

THE NEW YORK STOCK EXCHANGE, INC.
11 Wall Street
New York, N.Y. 10005

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PEOPLE OF THE STATE OF NEW YORK, by ELIOT SPITZER, the Attorney General of the State of New York, Plaintiff, -against- RICHARD A. GRASSO, KENNETH G. LANGONE and THE NEW YORK STOCK EXCHANGE, INC., Defendants	INDEX NO. **COMPLAINT**

The People of the State of New York, by and through their attorney, Eliot Spitzer, Attorney General of the State of New York, as and for their complaint, allege upon information and belief as follows:

PRELIMINARY STATEMENT

1. This action is brought to enforce the public's interest in effectuating the principle, articulated in New York's Not-for Profit Corporation Law, that officers of not-for-profit corporations be paid only that compensation that is "reasonable" and "commensurate with the services performed." The New York Stock Exchange's awards of compensation and benefits to defendant Richard A. Grasso violates this principle because they were: (i) objectively unreasonable; (ii) the product of a process that permitted Grasso improperly to influence both the amounts awarded to him and the members of the New York Stock Exchange Compensation Committee and Board of Directors who were required to approve those awards; and (iii) approved by the NYSE Board of Directors based upon materially incomplete, inaccurate and misleading information.

THE PARTIES

2. Plaintiff Eliot Spitzer, Attorney General of the State of New York, is responsible for enforcing the Not-for-Profit-Corporation Law (the "N-PCL"), which governs New York not-for-profit corporations and the conduct of their officers and directors. The Attorney General maintains offices at, among other locations, 120 Broadway, New York, New York 10271. Venue is therefore proper in New York County.

3. Defendant New York Stock Exchange, Inc. (the "NYSE") is a New York not-for-profit corporation.

4. Defendant Richard A. Grasso ("Grasso") served as the Chairman and Chief Executive Officer ("CEO") of the NYSE from 1995 until September 17, 2003, and thus was an officer and director of the NYSE.

5. Grasso exercised enormous power over the operation and governance of the NYSE. Although the NYSE Board of Directors (the "Board") had a Nominating Committee, Grasso effectively selected individuals to serve on the Board, and had sole authority to assign Directors to Board committees, including the Compensation Committee. Grasso also had significant influence over the compensation of NYSE employees, including his own.

6. Defendant Kenneth G. Langone ("Langone") joined the NYSE Board of Directors in June 1998. Grasso appointed him Chairman of the Compensation Committee in June 1999, a position he held until June 2003.

RELEVANT STATUTORY AND JURISDICTIONAL PROVISIONS

7. The N-PCL imposes restrictions on the compensation that a New York not-for-profit corporation may pay its officers and directors. Under N-PCL §202(a)(12), compensation is

unlawful if it is not "reasonable" or "commensurate with services performed." N-PCL §515(b) also provides that "[a] corporation may pay compensation in a reasonable amount to members, directors, or officers for services rendered." (Emphasis added.)

8. N-PCL §720 authorizes the Attorney General to commence an action against a director or officer of a not-for-profit corporation "[t]o compel the defendant to account for his official conduct" with respect to: (a) "[t]he neglect of, or failure to perform, or other violation of his duties in the management and disposition of corporate assets committed to his charge"; and (b) "[t]he acquisition by himself, transfer to others, loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of his duties." N-PCL §720 also authorizes the Attorney General to commence an action "to set aside an unlawful conveyance, assignment or transfer of corporate assets where the transferee knew of its unlawfulness."

9. N-PCL §720(b) further authorizes the Attorney General to seek recovery under N-PCL §719 against officers and directors who approve the payment of unreasonable compensation to an officer or director in violation of N-PCL §515(b).

10. N-PCL §112 authorizes the Attorney General to maintain an action to restrain a not-for-profit corporation from conducting unauthorized activities.

OTHER RELEVANT ENTITIES AND PERSONS

11. Frank Z. Ashen ("Ashen") was employed by the NYSE from December 1977 until his retirement effective October 1, 2003. From February 1997 until he retired, he served as the director of human resources at the NYSE. Among his primary duties was providing information to, and working with, the members of the NYSE Human Resources Policy & Compensation

Committee (the "Compensation Committee" or "Committee") and Board of Directors on matters relating to executive compensation.

12. Hewitt Associates, LLC. ("Hewitt"), a subsidiary of Hewitt Associates, Inc., is a human resources consulting firm with offices worldwide. In 1993, the NYSE retained Hewitt to provide consulting services with respect to compensation of senior NYSE executives. A representative of Hewitt, Jeffrey S. Hyman ("Hyman"), participated in providing such services.

13. Vedder Price, Kaufman & Kammholz ("Vedder Price") is a law firm with a specialization in executive compensation. In late September 2002, the Compensation Committee retained Vedder Price to provide services with respect to a proposal to extend Grasso's employment agreement with the NYSE.

14. Mercer Human Resources Consulting, Inc., ("Mercer") and its predecessors have rendered services to the NYSE since approximately 1985, when William D. Mischell ("Mischell"), currently a principal and worldwide partner of Mercer, began working on matters relating to the NYSE.

FACTS

Summary of the Facts

15. During Grasso's tenure as NYSE Chairman and CEO, his compensation was governed by three agreements. The first agreement (the "1995 Agreement") was for a five year-period. That agreement was renegotiated in May 1999 (the "1999 Agreement"). A third agreement was entered into on August 27, 2003 (the "August 2003 Agreement"). The August 2003 Agreement extended the term of Grasso's employment until June 30, 2007. Under that agreement, Grasso received an immediate payment of $139.5 million, and a promise of an

additional $48 million to be paid over the next four years for a total of over $187 million. This sum was comprised of deferred compensation and pension benefits accumulated under the NYSE Supplemental Executive Retirement Plan ("SERP"). These payments all related to past work; Grasso would also be compensated for additional work.

16. These payments and the process that led to their accumulation reflected a fundamental breakdown of corporate governance and were the product of numerous breaches of fiduciary duties owed to the NYSE. Indeed, in 2003, a special governance committee of the NYSE recommended: (a) restrictions on Grasso's authority to appoint to the Compensation Committee individuals whose businesses he regulated – CEOs of Wall Street securities firms and NYSE members; and (b) annual public disclosure of his compensation. By then, however, the damage had been done.

17. The staggering sums awarded to Grasso were both objectively unreasonable and inconsistent with N-PCL § 202(a)(12), which authorizes the payment of only "reasonable compensation" that is "commensurate with services performed." Moreover, they were attributable to an improper and flawed methodology for determining the compensation of Grasso and other NYSE executives over which Grasso exercised considerable and, at some stages, unfettered discretion.

18. Moreover, the information provided to Directors who approved Grasso's compensation awards for 1999 through 2001, and that led to the August 2003 Agreement, was inaccurate, incomplete and misleading.

19. Both Mercer and Ashen have confirmed that the Compensation Committee and Board were misled. Mercer has entered into a settlement that requires it to return to the NYSE

all fees earned by its Retirement Group for work performed for the NYSE from January 1, 2003 through August 31, 2003. Ashen has entered into a settlement that requires him to return $1.3 million to the NYSE.

20. With respect to the compensation awarded to Grasso for 1999 through 2001, the misstatements and omissions included the following:

(i) the Board was not told and was affirmatively misled about bonus awards to Grasso in 1999, 2000 and 2001 totaling more than $18 million;

(ii) information was withheld from the Board regarding the effect that its compensation awards would have in increasing Grasso's SERP benefits;

(iii) available information about the amount of Grasso's accumulated SERP benefits was withheld from the Board; and

(iv) the Board was not told that over $36 million in payments and transfers from Grasso's SERP benefits in 1995 and 1999 resulted in illegal, interest-free loans to Grasso, for which he owes the NYSE accumulated and compounded interest.

21. With respect to the process leading to the approval of the 2003 Agreement:

(i) misrepresentations were made to the members of the Compensation Committee and Board with respect to $27 million of the $139.5 million paid to Grasso pursuant to the 2003 Agreement:

- $18.5 million that was represented as vested and payable to Grasso immediately was in fact not vested and not payable at that time; and

- the members of the Compensation Committee and the Board were told that Grasso had accrued all of the SERP benefits that were to be paid to him as part of the $139.5 million. In fact, $8.5 million of those benefits would not have been accrued had the NYSE employed its typical accounting practices.

(ii) the Board was incorrectly advised that the $139.5 million payment pursuant to the 2003 Agreement would save the NYSE $4 million dollars.

22. William Mischell of Mercer and Ashen have each signed a sworn statement. A copy of Ashen's settlement agreement and sworn statement, in which he admits that information provided to the Compensation Committee and Board was "incomplete, inaccurate and misleading" is annexed to this Complaint as Exhibit 1. A copy of the Mercer settlement agreement and sworn statement is annexed to this Complaint as Exhibit 2.

23. As a result, the Board's approvals of Grasso's compensation awards for 1999 through 2001 were inconsistent with the N-PCL and are thus null and void. Because they were also contrary to the N-PCL's restriction limiting compensation to "reasonable" amounts they must be set aside as unlawful and ultra vires.

24. Likewise, because the information provided to the Board regarding the August 2003 Agreement was incomplete, inaccurate and misleading, the Board's approval of that Agreement is null and void under the N-PCL.

THE NYSE GOVERNANCE STRUCTURE AND GRASSO'S REGULATORY AUTHORITY OVER THE NYSE'S DIRECTORS CREATED ACTUAL AND APPARENT CONFLICTS OF INTEREST

25. Grasso had the authority unilaterally to select those who served on the Compensation Committee. He also regulated most of them. This conflict allowed Grasso to influence directors who might have wanted to pay him less, and to reward directors who would pay him more. For example, one former Compensation Committee member was confronted by Grasso after he had privately expressed concern to Ashen about a component of Grasso's proposed compensation for 2000. The director testified that "he was a little taken [a]back that

there was an ear to the committees . . . and that my hesitancy was reported immediately." The Committee member, who ultimately approved Grasso's proposed compensation for that year, recalled thinking "thank God I escaped that one. This man was also our regulator, and I'm a member of the New York Stock Exchange . . . And when he's kind of indirectly your supervisor or your regulator, you have to be careful."

26. Grasso's ability to assist Compensation Committee members is demonstrated by the "quiet assurance" that he provided to Merrill Lynch in 1998 when it encountered difficulty in gaining the approval of the NYSE Market Performance Committee for a sale of its specialist division. After that committee met and withheld its approval, Merrill Lynch complained to Grasso. An e-mail from a Merrill Lynch employee forwarded to Merrill Lynch Chief Executive Officer David Komansky, who served on the Compensation Committee from June 1997 through June 2003, states that Grasso had "quietly assured me that this deal will move ahead." Komansky was urged to call Grasso to remind him "how important it is to Merrill Lynch . . . that this deal move ahead seamlessly," and, on November 23, 1998, he did. The sale was approved in December 1998.

27. The industry perceived potential advantages to those who served on the Board. For example, James E. Cayne, the Chief Executive Officer of Bear Stearns, testified that the senior executive of Bear Stearns' specialist division had for many years urged him to join the NYSE Board because the executive believed that division would get better treatment from the NYSE if Cayne were a member of its Board. Cayne joined the NYSE Board in 2002.

28. In 2002, the NASD began an investigation of Langone and Invemed, the investment bank he controls, concerning the allocation of shares in initial public offerings.

Langone conveyed this information to Grasso, who called NASD Chairman and Chief Executive Officer Robert Glauber on Langone's behalf. In April 2003, the NASD filed suit against Invemed, but not against Langone.

29. Similarly, Grasso took no regulatory action when confronted with evidence of fraud relating to the equity research analysis being offered by many of the largest NYSE member firms. On November 6, 2001, Grasso attended a private meeting convened by Harvey Pitt, then Chairman of the Securities and Exchange Commission ("SEC"), at the Regent Hotel in New York City. Among those at the meeting were Michael Carpenter of Citigroup, David Komansky of Merrill Lynch, John Mack of Credit Suisse First Boston, Henry Paulson of Goldman Sachs and Philip Purcell of Morgan Stanley. A representative of the Securities Industry Association was also present, as was a representative of the NASD. A copy of Harvey Pitt's memorandum convening the meeting is annexed to this Complaint as Exhibit 3.

30. Pitt and Grasso continued to meet with the group of Wall Street executives into early 2002. Two meeting participants -- Henry Paulson and David Komansky -- were members of the Compensation Committee, and a third participant -- Michael Carpenter -- was a member of the NYSE Board that approved Grasso's compensation. The other two industry participants at the meeting -- John Mack and Philip Purcell -- shortly thereafter were invited by Grasso to join the NYSE Board of Directors.

31. While those meetings were occurring, the NYSE Compensation Committee met in February 2002 and awarded Grasso $30.6 million in compensation for 2001. The NYSE and SEC did not take any action to investigate, remedy or punish the abusive and improper practices

of research analysts until later in 2002, after Merrill Lynch entered into a settlement requiring it to end those abusive and improper practices.

GRASSO'S COMPENSATION WAS UNREASONABLE AND THE PROCESS BY WHICH IT WAS DECIDED WAS STRUCTURALLY FLAWED

32. The $187.5 million payment contemplated by the 2003 Agreement was comprised almost entirely of compensation and benefits that Grasso had accumulated during the four years between 1999 and 2002, when Langone chaired the Compensation Committee. Those compensation and benefits awards were improper under the N-PCL.

33. First, they simply were not "reasonable": Grasso's compensation for those years of $80.7 million was more than four times the total compensation of $17.8 million that he received for the preceding four years, when the Compensation Committee was not headed by Langone. (This does not include the benefits Grasso accumulated because of such compensation awards.) The charts below illustrate the differences in compensation awarded to Grasso in these periods:

Pre-Langone Compensation Committee Awards to Grasso

YEAR	SALARY	BONUS AWARDS	TOTAL
1995	$1.26 million	$900,000	$2.16 million
1996	$1.4 million	$1.6 million	$3 million
1997	$1.4 million	$3.8 million	$5.2 million
1998	$1.4 million	$4.6 million	$6 million
TOTAL	**$5.46 million**	**$12.36 million**	**$17.82 million**

Langone Compensation Committee Awards to Grasso

YEAR	SALARY	BONUS AWARDS	TOTAL
1999	$1.4 million	$9.9 million	$11.3 million
2000	$1.4 million	$25.4 million	$26.8 million
2001	$1.4 million	$29.15 million	$30.6 million
2002	$1.4 million	$10.6 million	$12 million
TOTAL	**$5.6 million**	**$75.1 million**	**$80.7 million**

34. Second, the amount the NYSE expensed in connection with Grasso's compensation and benefits for 2000 through 2002 was equal to 99 percent of the NYSE's net income during those years. (In fact, Grasso's accumulated benefits during those years exceeded the amounts expensed by the NYSE.) As set forth in the chart below, those expenses also constitute over 50 percent of the increases in NYSE members' fees during those years:

YEAR	Grasso's Annual Compensation	Compensation and Benefits Expensed	NYSE Net Income	Increase in NYSE Members' Fees
2000	$26.8 million	$38.0 million	$72.9 million	$52.7 million
2001	$30.6 million	$54.6 million	$31.8 million	$101.2 million
2002	$12.0 million	$37.6 million	$28.1 million	$91.3 million
TOTAL	**$69.4 million**	**$130.3 million**	**$132.8 million**	**$245.2 million**

35. Because the N-PCL (which prohibits the distribution of profits) does not permit the NYSE to pay, or Grasso to accept, compensation and benefits in a sum equal to 99 percent of the NYSE's net income, the Board's determinations to award these amounts was ultra vires.

36. To understand how Grasso came to accumulate these sums, it is necessary to review the components of compensation at the NYSE and the faulty methodology by which Grasso's compensation was determined.

I. The NYSE Compensation and Benefits Programs

37. As set forth above, after Grasso became NYSE Chairman and CEO effective June 1, 1995, he was awarded compensation and benefits pursuant to three different employment agreements. Each of the employment agreements provided Grasso with a fixed annual salary of $1.4 million, and permitted Grasso to participate in certain NYSE compensation and benefits programs. Among the NYSE's compensation and benefits programs were the following: (i) Incentive Compensation Plan ("ICP"); (ii) Long Term Incentive Plan ("LTIP"); (iii) Capital Accumulation Plan ("CAP"); (iv) Supplemental Executive Retirement Plan ("SERP"); and (v) Supplemental Executive Savings Plan ("SESP"). These plans, and the extent to which Grasso participated in them, are described below.

A. Incentive Compensation Plan

38. The ICP was the NYSE's largest bonus program. Grasso received a $13.6 million ICP award for 2000 and a $16.1 million ICP award for 2001. For most NYSE executives other than Grasso, ICP awards were determined based on the NYSE's performance against targets that had been set a year earlier. Those standards do not appear to have been applied to Grasso. By contrast, Grasso's ICP appears to have been discretionary and not guided or limited by either the

NYSE's performance against targets or the data Hewitt provided about the projected compensation paid to a select group of chief executives at for-profit companies that comprised the NYSE's so-called "Comparator Group" (described below in Paragraphs 55-60).

B. Capital Accumulation Plan (CAP)

39. The 1999 Agreement entitled Grasso to another bonus award similar to awards granted to other NYSE executives under the NYSE's CAP. Although Grasso did not contractually participate in the NYSE's CAP, his employment agreement provided for CAP-like benefits or awards. References in this Complaint to Grasso's CAP benefits or awards are to those CAP-like benefits or awards.

40. Grasso's CAP benefit entitled him to a deferred award equal to fifty percent of his ICP award. For example, when Grasso received a $16.1 million ICP award for 2001, he received a CAP award equal to an additional fifty percent of that amount, or $8.05 million.

41. NYSE executives who participated in its CAP, the amounts of which were deferred, were entitled to be credited with 8 percent annual interest on their deferred CAP awards. Grasso was not entitled to 8 percent interest on his CAP awards. Nevertheless, the more than $20 million in CAP awards that Grasso received between 2000 and 2003 were credited with such interest.

42. Another difference between Grasso's CAP benefits and the benefits provided to participants in the NYSE's CAP is that those participants would partially vest in their CAP awards each year once they reached age 55. By contrast, Grasso's CAP benefits were forfeitable and did not vest until May 31, 2005 – a fact that would later be misrepresented to the Compensation Committee when Grasso was seeking the $139.5 million payment.

C. Long Term Incentive Plan

43. In 1996, the NYSE introduced LTIP, which was intended to reward NYSE executives to the extent the NYSE achieved or exceeded three-year performance targets. A new three-year cycle began every year, so that LTIP awards were earned for NYSE performance during the preceding three years. Grasso received LTIP awards for the three-year cycles ending in 1998, 1999 and 2000.

44. Because the NYSE consistently failed to meet the LTIP targets while Grasso was Chairman, the LTIP awards earned by Grasso were much smaller than they would have been if the NYSE's performance had met the targets. For example, in 1998 Grasso's target LTIP award was $2 million, but he received only $396,000. For 1999, Grasso's LTIP target was $2.5 million, but he received $948,000. For 2000, his LTIP target was $2.5 million, but he received $1.1 million.

45. In April 2001, the LTIP was discontinued because the Compensation Committee was concerned about "the impracticality of identifying meaningful NYSE-wide performance metrics and the absence of CEO discretionary power in the determination of award formulation." The elimination of LTIP was coupled with a decision to increase ICP awards.

D. Supplemental Executive Retirement Plan

46. The NYSE's executive pension plan, known as "SERP," was designed to provide a supplemental pension based upon compensation that exceeded pension limits imposed by federal law. The NYSE's SERP permitted retiring participants to elect to receive their pension in the form of annual payments, or a lump-sum payment equal to the present-value of their future annual payments. As with CAP, Grasso did not contractually participate in the NYSE's SERP,

but his employment agreements provided for certain SERP-like benefits. References in this Complaint to Grasso's SERP benefits or awards are to those SERP-like benefits or awards.

47. The amount of Grasso's SERP benefit was determined by a formula that took into account his age, years of service and the average of his three consecutive highest annual compensation awards earned within the last ten years of employment. The combination of Grasso's many years of employment with the NYSE and the size of his compensation awards for 1999, 2000 and 2001 resulted in SERP accumulations of over $100 million as of 2002.

48. While many large for-profit corporations have SERPs, much of the bonus compensation paid by those corporations comes in the form of stock options or restricted stock, which are typically excluded for the purpose of determining SERP benefits. The NYSE implemented ICP and LTIP bonuses to compensate for the fact that, as a not-for-profit corporation, it could not issue stock. However, unlike for-profit corporations, NYSE included those bonuses as compensation for the purpose of determining NYSE SERP benefits. Thus, SERP benefits were generally higher for NYSE executives than for similar executives at for-profit corporations.

49. An analysis of Grasso's SERP benefits provided to the Compensation Committee in October 2002 by Vedder Price concluded that Grasso's SERP benefits exceeded the median SERP benefits for executives in his peer group by more than $100 million. Because many NYSE Directors did not understand the extent to which the compensation awarded to Grasso inflated his SERP benefits, they did not take those benefits into account when considering the total value of compensation awarded to him.

E. Supplemental Executive Savings Plan

50. The NYSE also maintained a SESP, which enabled its executives to defer taxation on compensation that exceeded the federal limit on contributions to a 401(k) plan. The NYSE matched the contributions to SESP made by executives, up to six percent of base salary.

51. Funds transferred to SESP would be invested for the executive's benefit in one of several investment vehicles offered to the executive. When the executive left the NYSE, the funds would be available to the executive either in the form of a lump-sum payment or in annual installments.

II. The Methodology By Which Grasso's Compensation Was Purportedly Set

52. The Compensation Committee was responsible for determining the compensation of Grasso and other high-ranking NYSE executives, subject to the approval of the NYSE Board of Directors. Each year, in February, the Compensation Committee met to make compensation determinations for the prior calendar year. To assist in this process, the Compensation Committee was provided with materials prepared by the NYSE's Human Resources staff and Hewitt.

53. The starting point for discussions about how much Grasso should be paid was a "benchmark" that was the product of two factors: (i) the median compensation paid to the chief executives of a select group of companies (the "Comparator Group"); and (ii) an assessment of the NYSE's performance. Grasso controlled the process that led to that assessment, and thus was able to manipulate it to ensure that it would result in an inflated benchmark that would become the starting point for discussions about his compensation.

54. Notably, despite the inflated "benchmark" produced by this process, Grasso's

compensation significantly exceeded that benchmark in the years that Langone was Chairman of the Compensation Committee.

A. "Comparator Group"

55. In 1996, the Compensation Committee adopted a policy, purportedly in furtherance of attracting and retaining "world class talent," of assessing the compensation it paid to senior executives in light of the compensation paid by a select group of companies in what was described as a "Comparator Group." The basis for including companies in the Comparator Group was not comparability in size, revenue or complexity, but rather a subjective sense that these companies and the NYSE might "compete" for executive talent.

56. Each year, Hewitt provided the NYSE with data concerning the compensation of the chief executives and other senior executives at the Comparator Group companies. The Compensation Committee would then be provided with a selected portion of this data – typically only the median compensation of CEOs in the group (*i.e.*, the amount that was at the midway point in a "high to low" listing of the compensation paid by each company in the group). In partial recognition of the substantial differences between the NYSE and the Comparator Group companies, the NYSE human resources staff revised the median downward by ten percent. This was insufficient; these companies should not have been included in the NYSE Comparator Group.

57. The reduced median would then be multiplied by the NYSE's performance percentage (explained in more detail below in Paragraphs 61-66) to produce the "benchmark" figure upon which consideration of Grasso's compensation supposedly rested. For example, if the reduced median compensation amount identified by Hewitt was $10 million, and the NYSE's

performance percentage was 150 percent, the benchmark figure for Grasso's compensation would be $15 million.

58. Significantly, the Comparator Group compensation data that Hewitt provided to the NYSE included the value of the stock options and other long-term incentives granted to executives at those companies.

59. Langone viewed this benchmark figure as merely a point of reference – a starting point – in fixing Grasso's compensation. However, because the Comparator Group was comprised of enormously large and complex financial services conglomerates, and because the compensation data collected from those companies included the value of stock options and other long-term incentive compensation, this starting point was substantially higher than it should have been.

60. In sum, the NYSE's use of the Comparator Group data was severely flawed in the following respects, among others:

- The companies in the Comparator Group were not bound by the N-PCL's restrictions on compensation.
- Because the Compensation Committee was provided with data only about the median CEO compensation from the Comparator Group, the Compensation Committee had no way of knowing whether or not the compensation awarded to Grasso exceeded that of every CEO in the Comparator Group.
- The Comparator Group data already captured the value of the stock and stock options awarded. Thus, there was no need to exceed the benchmark to compensate for the NYSE's inability to issue stock or award stock options.
- Awards of stock options and restricted stock received by CEOs of public companies contained an element of risk not present in any of the forms of compensation received by Grasso: stock could decline in value.

B. The NYSE "Performance Targets" and the Chairman's Award

61. The second factor in determining the benchmark was the NYSE "performance targets." It too was flawed primarily because Grasso had almost unilateral control over it.

62. Two components together comprised the performance percentage. The first component was "objective" numerical performance targets that were set at the beginning of each year and measured the NYSE's actual performance against those targets at year end. This component had a baseline of 65 points. If the NYSE met its targets, 65 points would be added to the NYSE's performance percentage. If it exceeded those targets, more than 65 points would be added. The NYSE considered these "targets" necessary because, as a not-for-profit corporation, neither share price nor profit maximization could be used to measure performance.

63. The second component, known as the "Chairman's Award," had a baseline of 35 points and was determined solely by Grasso. If Grasso believed that the NYSE underperformed in a given year, the Chairman's Award could be less than 35 points; if he believed that the NYSE overperformed, more than 35 points would be added.

64. The Chairman's Award and the award for the NYSE's performance against its targets were combined to arrive at the performance percentage. Grasso had considerable influence in determining both components of the performance percentage, and had substantial incentive to set them at a level where they could easily be exceeded.

65. Moreover, because these two components were simply added without any weighting, the Chairman's Award could account for more than 35 percent of the actual performance percentage in the relevant years. In fact, during 2000 and 2001, the Chairman's Award comprised more than forty percent of the performance percentage.

66. During Grasso's tenure as chief executive, the NYSE's performance percentage was never less than 115 percent, and rose as high as 155 percent for 2000 and 2001-- meaning that the reduced median chief executive compensation identified by Hewittt was multiplied by 155 percent to get to the benchmark, or starting point, for Grasso's compensation. During those years, Grasso was paid $26.8 million and $30.6 million, respectively.

C. The Benchmark Was Ignored

67. Notwithstanding the effort and complexity of this methodology, it was wholly disregarded in calculating Grasso's compensation during Langone's tenure as Chairman of the Compensation Committee. This represented a departure from the NYSE's prior practice: during Grasso's first four years as chief executive, his compensation never exceeded the benchmark calculated on the basis of the Hewitt data. While Langone was the Committee Chairman, he provided Ashen with a recommendation for the amount to be awarded to Grasso. Ashen then met individually with the other Compensation Committee members in January to review the NYSE's performance during the prior calendar year and to discuss Langone's recommendation regarding Grasso's compensation The following chart demonstrates the extent to which Grasso's compensation for 1999 through 2001, exceeded the benchmark:

YEAR	NYSE Benchmark	Compensation Awarded	Excess Over Benchmark
1999	$6.9 million	$11.3 million	$4.4 million (64%)
2000	$11.1 million	$26.8 million	$15.7 million (141%)
2001	$18.6 million	$30.6 million	$12 million (65%)
TOTAL	**$36.6 million**	**$68.7 million**	**$32.1 million (88%)**

68. Moreover, the $32.1 million excess over the benchmark that was awarded to Grasso during those years led to an increase of Grasso's SERP benefits that was substantially

greater than that excess itself.

THE NYSE BOARD WAS MISLED BY THE WITHHOLDING OF INFORMATION ABOUT GRASSO'S CAP BONUSES AND SERP BENEFITS

69. Not only was Grasso's compensation fixed in a manner that vastly exceeded even the "benchmark" calculated by a flawed methodology, but information about two important components of Grasso's compensation and benefits was withheld from the Board. First, no disclosure was made to Board members by Grasso or Langone of the amount of Grasso's CAP awards, which totaled $18.15 million for 1999 through 2002.

70. Second, no disclosure was made about the fact that a $6.6 million lump-sum payment of Grasso's SERP benefits under the 1995 Agreement and a transfer of $29.9 million in SERP benefits to his SESP account under the 1999 Agreement unlawfully enriched Grasso by providing him with an interest-free loan at a corresponding cost to the NYSE.

I. The CAP Awards

71. Under the 1999 Agreement, Grasso became eligible to receive CAP awards in amounts equal to 50 percent of his other bonus awards; at the time, other NYSE executives were limited to no more than 25 percent. The documents used by Langone and Ashen to advise members of Compensation Committee and the Board demonstrate that those members were not properly advised of the CAP awards.

72. Ashen prepared a one-page, five-column worksheet that purported to list various components of Grasso's compensation, which he used during meetings with the Compensation Committee members. Among the components listed in the worksheet, with dollar figures included, were: (i) base salary; (ii) LTIP; and (iii) ICP. A fourth column contained the heading "total variable compensation," and reflected the sum of the LTIP and ICP bonus awards. The

fifth column was headed "total compensation," and reflected the sum of the base salary and the total variable compensation. The worksheet did not contain a column that disclosed Grasso's CAP awards, which were equal to 50 percent of Grasso's variable compensation. Both the "total variable compensation" and "total compensation" columns should have reflected Grasso's CAP awards, but did not.

73. The worksheets did contain a note that referenced the CAP award. The language used in the note, however, was misleading. For example, the worksheet distributed in January and February 2000 stated that "Mr. Grasso will receive 50% of his variable compensation in the Capital Accumulation Plan," suggesting that the CAP amount was not an additional fifty percent of variable compensation, but included within the total variable compensation indicated on the worksheet. A copy of the worksheet distributed to Compensation Committee members for use in determining Grasso's 1999 compensation is attached hereto as Exhibit 4.

74. The worksheets that Ashen prepared for his own use -- but did not share with Directors -- reflected all of Grasso's compensation: Ashen's worksheet contained a CAP column. A copy of the worksheets used by Ashen in connection with Grasso's compensation but not shown to Committee members is annexed to this Complaint as Exhibit 5. A copy of the worksheet that was shown to Committee Members which omitted the CAP column is annexed to the Complaint as Exhibit 6.

75. Langone was responsible for advising the full Board of the details of Grasso's proposed compensation. The notes used by Langone to describe Grasso's compensation for 2001 refer to the elements of Grasso's compensation as: (i) salary of $1.4 million; (ii) an ICP award of $16.1 million; and (iii) a special payment of $5 million. They did not state that Grasso was awarded an additional $8.05 million in CAP. Langone's speaking points also referred to the

compensation awarded to Grasso for 2000. That amount was also misreported, because Langone failed to mention the $6.8 million CAP award Grasso received that year. A copy of Langone's speaking points is annexed to this Complaint as Exhibit 7.

76. The minutes of both the Compensation Committee and Board meetings never contained or discussed the total compensation that was awarded to Grasso. However, after Grasso's compensation award was "approved," Ashen prepared a memorandum for the NYSE's Chief Financial Officer advising him of the compensation that Grasso would receive. Attached to the memorandum was a worksheet similar but not identical to the worksheet used with Compensation Committee members. Unlike the worksheet provided to the members of the Committee, the worksheet provided to the CFO contained a column labeled "CAP," and the amount of Grasso's CAP award was included in the "total variable compensation" and "total compensation" columns. A copy of the worksheet provided to the NYSE's CFO is attached to this Complaint as Exhibit 8.

77. In sum, Board members were not aware that Grasso received CAP awards equal to over $18 million for 1999 through 2001. Because N-PCL §715(f) required that Grasso's compensation be approved by a majority of the entire Board of Directors, more than $18 million of Grasso's compensation lacked the required Board approval and is subject to recission.

II. The SERP Payments

78. Grasso received a payment of his accumulated SERP benefits under the 1995 contract. The $6.6 million payment was unusual, because SERP benefits are typically payable only upon the executive's retirement. The payment did not impact the SERP benefits to which Grasso would become entitled at retirement, except that it would be credited against any lump-sum payment that Grasso would ultimately receive at that time.

79. The payment came at a significant cost to the NYSE and conferred a significant – and illegal – benefit upon Grasso. It imposed a cost on the NYSE, because SERP benefits can accumulate as an unfunded book entry, which allows the NYSE to earn interest on the SERP funds until such time as an executive retires and becomes eligible to receive those funds. By accelerating the payment of those funds, the NYSE was deprived of the interest it could earn on those funds. The NYSE Directors were unaware of the cost of pre-paying Grasso his accumulated SERP benefit.

80. The payment of Grasso's accumulated SERP amounted to an interest-free loan from the NYSE. While Grasso would have to deduct the $6.6 million he received from the payment he would receive at retirement, he kept all interest earned on those funds during the intervening years. Accordingly, Grasso owes the NYSE interest on the $6.6 million SERP benefit payment that he obtained in 1995.

81. Pursuant to the 1999 Agreement, Grasso was also permitted to transfer $29.9 million in SERP benefits to his SESP account where he could earn interest, even though he remained employed at the NYSE. Like the $6.6 million payment that Grasso received in 1995, the $29.9 million SERP-to-SESP transfer both imposed undisclosed costs on the NYSE and amounted to an illegal, interest-free loan to Grasso.

III. The Directors Were Misled About The Amount Of Grasso's SERP Benefits

82. After the Board approved the 1999 Agreement, a Hewitt consultant present at the meeting prepared a note to the file observing that the Committee "neglected to even consider the value to Grasso of these compensation and benefit enhancements" which, over the term of the new agreement, would aggregate "roughly $60 million from the pension and capital accumulations alone." A copy of the Hewitt note is annexed to this Complaint as Exhibit 9.

83. While Directors may have been aware generally that there was a connection between the compensation awarded to Grasso and the value of his SERP, the amount of Grasso's SERP benefits was never identified to the members of the Compensation Committee at any time between May 1999 and September 2002. As predicted, the enormous increases in Grasso's compensation for 1999 through 2001 also had the effect of allowing Grasso to accumulate SERP benefits with a lump-sum value in excess of $100 million.

84. The Directors were never provided with available and relevant information regarding (i) the amount of Grasso's accumulated SERP benefits or (ii) the effect their compensation awards had in allowing Grasso to accumulate those benefits. If the amount of Grasso's accumulated SERP benefits had been disclosed to the Directors, they could have taken actions to reduce it, either by reducing Grasso's compensation or by taking other steps to ensure that his compensation award did not increase his SERP.

A. Information About Grasso's SERP Was Withheld From The Directors

85. In February 2001, the NYSE's benefits consultant, Mercer, prepared an analysis detailing the multiplier effect that an ICP award could have on Grasso's SERP. Specifically, Mercer's analysis showed that an incremental $1 million ICP award could result in a $6.8 million increase in Grasso's lump-sum SERP benefits. The analysis also contained a spreadsheet detailing the amount of Grasso's accumulated SERP. The NYSE did not transmit the Mercer analysis, the information it contained, or the spreadsheet to the members of the Compensation Committee or Board of Directors.

86. In April 2001, Hewitt Associates, prepared a report that discussed, among other things, the effect that the expansion of the ICP benefit program would have on the SERP benefits accumulated by the NYSE's senior executives. Appended to the Hewitt report was a

spreadsheet that listed the accumulated SERP benefits for seventeen of the NYSE's most senior executives. Grasso's accumulated SERP was not listed on that spreadsheet.

87. At that time, Grasso's lump-sum SERP benefit was nearly equal to the aggregate lump-sum SERP benefits to which all other SERP participants were entitled. Specifically, those executives had in the aggregate accumulated SERP benefits with a then lump-sum value of $93.6 million, while Grasso's accumulated benefit was at least $94.3 million.

B. The Directors Did Not Consider Or Authorize Grasso's SERP Benefits

88. Because the members of the Compensation Committee that made recommendations about Grasso's compensation awards, and the Board that approved those recommendations, were not aware of either the amount of Grasso's SERP benefits or the extent to which their compensation awards to him had increased those benefits, they were deprived of the opportunities available to them to limit Grasso's accumulation of SERP benefits.

89. Because the amount of SERP benefits accumulated by Grasso was unknown and unintended by the NYSE Board of Directors, those benefit awards are invalid under N-PCL §715(f). Accordingly, the undisclosed SERP accumulations obtained by Grasso are void and subject to rescission.

GRASSO'S 2002-2003 CONTRACT PROPOSAL

90. Just as the process that led to Grasso's accumulation of excessive compensation and benefits was based on incomplete, inaccurate and misleading information, so too was the year-long process that culminated in the August 2003 Agreement under which those compensation and benefits would be paid to him.

91. In the end, the August 2003 Agreement was approved only when added at the last minute to the agenda of a Board meeting (i) at which opponents of the Agreement were absent;

(ii) to which the independent lawyer advising the NYSE was not invited, and (iii) at which the documents provided to Directors purportedly to analyze the cost and implications of the August 2003 Agreement were false and misleading.

I. The Initial Proposal In July 2002

92. In July 2002, Grasso asked Langone for revision of his employment contract. The NYSE was experiencing a decline in revenue during 2002, and at that time was expecting to record a $24 million expense in connection with Grasso's SERP benefit. One way to avoid recording the expense in the future was to extend Grasso's contract, thereby allowing the NYSE to amortize Grasso's SERP benefits over a longer employment term. In essence, the contract extension would have permitted the NYSE to report better earnings than it otherwise would have reported.

93. In or about August 2002, Grasso advised Ashen that the Compensation Committee was going to consider the proposal to extend Grasso's employment agreement. In addition to the extended term, the proposal sought the transfer of $51.5 million in SERP benefits to SESP, and to accelerate the February 2006 vesting of a $5 million special payment that had been awarded to Grasso for 2000.

94. Ashen asked Mischell to prepare a spreadsheet that calculated the amount of Grasso's accrued SERP. To perform that calculation, Mischell made the assumption that Grasso's compensation for 2002 -- which had not yet been determined – would be equal to the compensation that he was awarded for 2001 (which was the largest compensation award Grasso ever received). Employing this assumption, the accrued SERP was calculated at approximately $51.5 million (net of the $6.5 million paid in 1995 and the $29.9 million transferred in 1999).

95. Both the NYSE and Mischell were aware that the typical practice at the NYSE

was to "true-up" the accrual calculation after an employee's actual compensation for the calendar year had been determined in the following February. In other words, typical practice was to recalculate the accrual by replacing the assumption about future compensation with the most recent year's actual compensation award.

96. As noted in Paragraph 81 above, a SERP-to-SESP transfer would have a negative financial impact on the NYSE while conferring significant financial rewards on Grasso. The members of the Compensation Committee in 2002 were unaware of the consequences of the $51.5 million SERP-to-SESP transfer requested by Grasso.

II. The September 23, 2002 Compensation Committee Meeting

97. On September 23, 2002, the Compensation Committee conducted a telephonic meeting to discuss Grasso's proposal. Committee members were provided a two-page term sheet describing the proposal, which had been reviewed by Grasso and Langone.

98. The term sheet provided for the SERP-to-SESP transfer, accelerated vesting of the 2000 $5 million special payment and an 18-month extension of Grasso's employment term.

99. The term sheet described the proposal's principal advantages (from the perspective of the NYSE) as the reduction of both (a) Grasso's projected lump sum SERP benefit from approximately $110.8 million to $80.1 million; and (b) the amount attributable to Grasso's SERP that the NYSE would have to expense for 2003, from $24.5 million to $7.1 million.

100. The term sheet did not disclose, and the Committee members were not aware, that those reductions were arrived at by employing a faulty assumption to calculate Grasso's final average pay. To arrive at the $110.8 million SERP lump sum and $24.5 million SERP expense figures, the assumption was that Grasso's compensation for 2002 (which had not yet been determined) would be at least equal to his 2001 compensation.

101. The Compensation Committee members were sufficiently concerned about the size of Grasso's SERP that they requested the advice of an independent consultant who had no prior dealings with the NYSE. In handwritten notes of the meeting, Mischell described the meeting as a "disaster! The new members were shocked by the size of Dick's SERP. They want an independent consultant to say it is ok . . . . someone who has never worked with NYSE before."

102. The Compensation Committee retained Vedder Price to serve as the independent consultant and to provide advice in connection with Grasso's proposal. Vedder Price made a presentation to the Compensation Committee when it met on October 3, 2002. The Committee did not reach a decision on the proposal at that meeting, except for an agreement to reject the requested accelerated vesting of the $5 million special payment.

III. Grasso Changes His Proposal

103. Despite the Compensation Committee's hesitant approach to his initial proposal, Grasso told Ashen in January 2003 that he had revised his request -- upward. Grasso may have been motivated by a concern that a future Board would not agree to pay him the nearly $200 million in compensation and benefits that he had accumulated.

104. Another factor may have been at work. The NYSE's special governance committee had begun to consider several proposals that would alter the NYSE's governance structure. Among the proposals being considered -- and later adopted -- was a prohibition barring executives of NYSE member or listed companies that were regulated by Grasso from serving on the Compensation Committee. Future payments to Grasso -- including lump-sum payments of accumulated benefits -- might need the approval of an independent committee. Moreover, the special governance committee was also considering a proposal requiring the

NYSE to disclose the compensation paid to its five most senior executives. Until that proposal was adopted, executive compensation at the NYSE had not been disclosed. These governance reforms might have hampered Grasso's ability to "cash-out" his accumulated compensation and benefits.

105. A revised term sheet for the proposal described it as providing Grasso with an immediate cash payment equal to his accrued SERP benefits ($51.5 million), a portion of his compensation that had been deferred ($79 million at that time; ultimately $88 million), and future payments of additional SERP and deferred compensation over the next four years. The term sheet did not quantify the amount of the future payments, which turned out to be $48 million. (The revised proposal is hereinafter referred to as the "Grasso Proposal.")

106. Ashen did not inform Vedder Price of the terms or existence of the Grasso Proposal, even though Vedder Price was the Compensation Committee's independent consultant and was scheduled to attend a February 6, 2003 Compensation Committee meeting where the Grasso Proposal would be discussed. Vedder Price first became aware of the Grasso Proposal on February 3, after Compensation Committee member Juergen Schrempp, CEO of Damlier Chrysler, faxed a document describing it that he had received from Ashen.

107. At the February 6, 2003 Compensation Committee meeting, Committee members were falsely told that Grasso would be entitled to the $79 million if he "quit today." A term sheet distributed at the meeting conveyed the same conclusion. This was inaccurate. In fact, substantial sums were not vested and would have been forfeited if Grasso left the NYSE before the expiration of his employment agreement.

108. The Compensation Committee considered the Grasso Proposal at the February 6, 2003 meeting, but did not approve it. Instead, the Committee established the following process

for consideration of the Grasso Proposal: (i) a financial analysis of the proposal would be prepared; (ii) Ashen would then meet individually with each Committee member to discuss the analysis; and (iii) the Committee would meet in March to formulate a recommendation about the Proposal for the April Board of Directors meeting.

109. After the meeting, Vedder Price wrote to advise the NYSE and the Compensation Committee that:

> The goal is to complete the . . . analysis over the next month, with the expectation of discussing the information and alternative(s) with the Committee members . . . in March.

Ashen told Mischell that he was infuriated by the Vedder Price letter, and later expressed a concern that Vedder Price was "hedging" in its advice about the Grasso Proposal.

110. After the February 6, 2003 Compensation Committee meeting, Ashen called Mischell to inform him that the Compensation Committee had made no decision on the revised Grasso Proposal and was seeking a detailed financial analysis. Mischell was asked to prepare the analysis, with the understanding that the Committee wanted to be advised of all of the costs imposed by the Grasso Proposal.

111. Preparing the financial analysis was a project that was unlike other work Mischell had performed for the NYSE. While Vedder Price had contemplated a discussion of various alternatives to the Grasso Proposal, Mischell was not told to develop alternative scenarios or explore alternatives. Mischell specifically inquired about including an analysis of the amount to which Grasso would be entitled if he were to leave the NYSE -- in other words, an analysis of Grasso's benefits that had "vested." Ashen directed Mischell not to include such an analysis.

IV. The March 2003 Mercer Analysis Of The Grasso Proposal (the "Report")

112. Between February 11 and March 10, 2003, Mischell sent Ashen six drafts of the

Report for his review. The Report analyzed various components of the Grasso Proposal, including the immediate payment to Grasso of his SERP benefits and his deferred compensation. The Report contained material inaccuracies and omitted material facts about (i) the extent to which the funds to be paid to Grasso were vested or accrued, (ii) the potential total payments to which Grasso might be entitled and (iii) true cost of the Grasso Proposal to the NYSE.

113. Ashen sent the final version of the Report to the members of the Compensation Committee, together with a two-page document purporting to summarize the Grasso Proposal. These materials were used in one-on-one briefings that Ashen and Mischell conducted with several Committee members. Grasso was also given a copy of the Report, which he reviewed. A telephonic Compensation Committee meeting to discuss the Report and the Grasso Proposal was scheduled for March 28.

114. The Report concluded that there was a small financial "benefit" to the NYSE if it agreed to the Grasso Proposal. The financial "benefit" to the NYSE was driven largely by the acceleration of the tax deduction that the NYSE would receive if it paid the sums sought by the Grasso Proposal. If the NYSE had been a publicly-held, for-profit corporation, it would not have been entitled to those tax benefits.

115. A two-page summary of the Report that was distributed to Committee members (and, in August 2003, to the entire Board) contained virtually all of the same flaws as the Report.

A. $51.6 Million SERP Lump Sum Payment

116. The Report stated that among the funds to be paid immediately to Grasso pursuant to the Grasso Proposal were $51.6 million in accrued SERP benefits. As noted above, however, that accrual was based on an assumption made in August 2002 about the compensation (for 2002) that Grasso was to be awarded in February 2003. In fact, as known when the report was prepared,

Grasso was awarded substantially less for 2002 than for prior years.

117. Consistent with the typical practice of the NYSE and Mercer, Mischell suggested to the NYSE in February 2003 that the accrual be adjusted -- downward -- to reflect the actual 2002 compensation award to Grasso. If typical practice had been followed, the purported $51.6 million accrual would have been reduced by approximately $8.5 million to $43 million because of Grasso's lower compensation award for that year. Mischell was told not to make an adjustment.

118. The Report did not disclose: (i) the assumption upon which the "accrued" $51.6 million was based; (ii) that the assumption was unfounded, given that it used projected compensation for 2002 that was significantly higher than Grasso's actual 2002 compensation; and (iii) that the calculation of the "accrual" did not conform with typical past practice.

B. Additional Cost from Accelerating Payment of the SERP Lump Sum

119. Years earlier, in connection with the 1995 $6.5 million lump-sum SERP payment to Grasso, Mischell had recommended that the NYSE impose an "interest charge" on the funds being advanced to Grasso. In Mischell's opinion, that was the "way to make the [payment] 'no cost' to the Exchange." Now in 2003, Mischell advised Ashen that the Grasso Proposal did not impose an interest charge on the $51.6 million SERP payment that was to be made to Grasso. The Report did not disclose or discuss the possibility or effect of imposing such a charge, nor did it quantify the opportunity cost to the NYSE in not imposing an interest charge. Thus, the Report understated the cost of the Grasso Proposal to the NYSE.

C. Grasso's SERP and the Mortality Table

120. The value of Grasso's SERP benefits was at its peak as he approached age 60. Actuarial principles dictated, however, that, beyond the age of 60, his SERP benefit would decline in value. The Report does not contain this information and the members of the Compensation

Committee and the Board were never advised that the NYSE's SERP liability to Grasso was likely to decrease if he remained at the NYSE.

D. Interest on Deferred Compensation

121. On March 12, 2003, a copy of the Report was sent to Vedder Price, which raised several questions about it. Mischell wrote at least four letters in response, all of which Ashen reviewed before they were sent to Vedder Price.

122. Among the questions posed by Vedder Price was why the Report did not include a calculation of the interest the NYSE would earn if it did not immediately pay the deferred compensation component requested by the Grasso Proposal but instead used the money for its corporate purposes until Grasso retired. Mischell's response conceded that it would be appropriate to include the interest income lost as a cost to the NYSE. This cost would reduce any financial advantage to the NYSE of the Grasso Proposal by more than $1.5 million.

123. Notwithstanding this concession, the Report was never corrected or amended to reflect the interest that would be earned by the NYSE if it opted to "do nothing." Thus, the Report understated the cost of the Grasso proposal to the NYSE.

E. CAP Awards to Be Paid Immediately

124. The Report described as vested $13.5 million in CAP awards that were in fact forfeitable. Ashen and Mischell knew that Grasso's CAP awards were unvested and forfeitable. Nevertheless, Ashen directed Mischell to label Grasso's CAP awards as "vested." Langone was also aware that the Report mischaracterized the CAP awards as vested, but did not direct Mischell or Ashen to correct the Report or advise other directors of this misrepresentation. These funds were ultimately paid to Grasso under the August 2003 Agreement.

F. CAP Awards Payable in the Future

125. The Grasso Proposal also required the NYSE to pay an additional $12 million in previously granted but forfeitable CAP awards to Grasso over the subsequent four years. These sums were also mischaracterized as vesting.

126. The Report also assumed that these future CAP benefits would be credited with 8 percent interest annually. As set forth in Paragraph 41 above, Grasso was not contractually entitled to earn interest on his CAP awards. Nevertheless, Ashen advised Mischell to have the Report assume that the NYSE would pay interest on those CAP awards.

G. Special Retirement Payment

127. Another component of the deferred compensation sought by Grasso was a $5 million "special award" granted to him for 2001. The Directors approving this award at that time meant it to be unvested and payable only at the expiration of Grasso's then existing contract.

128. Nevertheless, Ashen advised Mischell that the $5 million special award was vested. As a result, the Report incorrectly characterized the $5 million as "Vested Special Benefits" to which Grasso was already entitled.

H. Additional "Hidden" Payment

129. The Report did not disclose that the Grasso Proposal potentially entitled Grasso to a payment of $12 million in addition to the $139.5 million payable immediately and the $48 million to be paid over the subsequent four years.

130. The concealment of this hidden payment was discussed in a letter from Mischell to Ashen dated July 29, 2003. After mentioning the potential liability of the NYSE to make this $12 million payment, Mischell advised Ashen as follows:

> When we write the [new] Agreement, we need to be careful. The Agreement should ***not*** say that he [Grasso] gets $51.574 in September 2003, four payments of $7,138, and nothing else . . .
>
> In other words, what we've told the Committee so far and what we will tell them on August 7, was that he is giving up two things: He is locking in Average Pay (at the 1999-2001 level) and we are rolling back the mortality table. We never said that he is giving up the possibility of getting another payment at the end of the contract if interest rates drop . . .
>
> I just want to be sure that you and I are on the same page. (Emphasis and italics in original)

131. The Compensation Committee and the Board did not know that the Report contained the foregoing incorrect statements and material omissions. Grasso and Langone both reviewed the Report prior to its distribution to the members of the Compensation Committee. Neither corrected it.

V. Consideration Of The Grasso Proposal Is Deferred

132. On March 25, 2003, Vedder Price forwarded to Ashen a streamlined version of its prior analysis for distribution to the members of the Compensation Committee. The analysis did not recommend that they approve the Grasso Proposal, and noted that (i) "[i]t is rare to pay-out executive incentive deferred compensation and SERP benefits prior to retirement/termination of employment"; (ii) "there are cost and benefits in doing so, some of which have been identified in the analysis prepared by management and Mercer"; and (iii) "the documents and schedule of payments that would implement the proposal should be reviewed by the Committee and its advisors before the cash distributions are made." (Emphasis added)

133. On March 26, 2003, the Vedder Price analysis, together with the Report and a previously circulated two-page summary, were e-mailed to the Compensation Committee members for use during the Committee's telephonic meeting on March 28.

134. Also on March 26, Vedder Price had a phone conversation with Ashen during which it reviewed the approach it intended to take at the March 28 meeting. Vedder Price noted that there must be "full disclosure of what is contemplated" by the Grasso Proposal, and not merely a discussion of the revisions to the proposal. In that regard, Vedder Price stated that the Committee should be provided with "a side-by-side comparison of what [Grasso] gets on a quit vs. payments" scenario, including an analysis of the "cash savings from accumulated tax deduction vs. income from pension payout." Vedder Price also wanted to ensure that the NYSE was not being deprived of the retention and incentive elements of its prior awards to Grasso, by "confirm[ing] each year that payments still leave $ on the table." Finally, it recommended reconfirming with Grasso the reasons for requesting the payout.

135. Shortly after his March 26 conversation with Vedder Price, Grasso advised Ashen that the March 28 meeting was cancelled and that the Grasso Proposal would not be considered at the upcoming April 3, 2003 Compensation Committee. No action was taken with respect to the Grasso Proposal in April or May 2003. The NYSE did not have any further contact with Vedder Price after the March 26 call.

VI. New Members Join the Compensation Committee and the Committee Recommends the Grasso Proposal

136. In early June 2003, three Compensation Committee members rotated off the Committee and two new members joined, including a new Chairman, Carl McCall ("McCall"). In early June 2003, Ashen and Mischell met with McCall to review the Report. In an effort to ensure his understanding was the same as Grasso's, McCall requested a meeting with Grasso to discuss the Grasso Proposal.

137. In preparation for that meeting, Ashen gave Grasso the Report and the two-page summary of the proposed changes to the employment agreement. Ashen met with Grasso for fifteen to twenty minutes and reviewed the Report with him. McCall was not provided with the analysis prepared by Vedder Price. On or about June 24, 2003, Grasso met with McCall to discuss the Grasso Proposal. The Report's errors and omissions were never disclosed to McCall.

138. The Report was revised slightly in June 2003 to account for changes in (i) the market value of the funds in Grasso's deferred compensation and benefits plans and (ii) the length of Grasso's proposed new employment agreement. In anticipation of the Compensation Committee's reviewing the Grasso Proposal at its upcoming July 14 meeting, the Report was renamed the July Report, and the two-page summary was shortened to a one-page summary.

139. On July 8, 2003, Mischell provided Ashen with the final version of the Report and the one-page summary, copies of which were subsequently furnished to the members of the Compensation Committee. None of the defects in the Report or two-page summary set forth above were cured in the July Report or one-page summary.

140. Ashen and Mischell attended the July 14, 2003 meeting of the Compensation Committee. According to the minutes of the meeting, the Committee decided to recommend that the full Board approve the Grasso Proposal at its next scheduled meeting on August 7, 2003.

141. According to Ashen, Grasso told him that he personally met before the Board meeting with three "floor" Directors to discuss the proposal and Report. The floor Directors are members of the NYSE, such as specialists, whose businesses are intertwined with, dependent on, and regulated by the NYSE. At the time Grasso met with the floor directors to discuss his compensation, the NYSE was conducting an investigation into the trading activities of the specialist firms.

VII. The August 7th Board Meeting

142. Prior to the August 7th Board meeting, several non-Compensation Committee members of the Board who learned of the proposed $139.5 million payment told Grasso that they thought it would be inadvisable both for the NYSE to make the payment and for Grasso to accept it. By August 4, 2003, Grasso heeded this advice and informed at least five Board members that the Grasso Proposal would not be taken up at the August 7 Board meeting. As a result, the Grasso Proposal was not included on the Agenda for either the August 7, 2003 Compensation Committee meeting or the Board meeting that was to follow.

143. On August 4, 2003, Grasso advised Martin Lipton, Esq. of the law firm of Wachtell Lipton Rosen & Katz ("Wachtell") that the Grasso Proposal would not be considered at the August 7 meeting. Lipton sent an e-mail to Eric Robinson of his firm advising that the Grasso Proposal was pulled from consideration because "there was concern on the b/d and dick decided to shelve it."

144. On August 7, 2003, the Compensation Committee met. Mischell did not attend because he had been advised by Ashen that the Grasso Proposal would not be discussed or considered. Vedder Price was not invited to the August 7 meeting.

145. At the August 7 meeting, certain Committee members advocated going forward with the Grasso Proposal even though it was not on the Agenda. Ashen was told to ask Grasso to join the meeting. After Ashen did so, he waited outside the meeting while Grasso talked to the Committee. After approximately fifteen minutes, Grasso emerged from the meeting and Ashen reentered. McCall immediately advised Ashen that the Committee had voted to recommend to the Board that the Grasso Proposal be approved.

146. After the meeting, Ashen called Mischell to advise him that the Board was going to

consider the Grasso Proposal within the hour. Mischell informed Ashen that he could not get to the NYSE from his New Jersey office in time for the meeting; Ashen did not ask him to participate in the meeting by telephone.

147. Five directors who were not present at the Board meeting decided not to participate without any knowledge that the Grasso Proposal would be considered. Two of the five were among those who previously had expressed opposition to the Grasso Proposal. Another Director who had expressed opposition was only able to participate by telephone.

148. The non-Compensation Committee Directors had not received any briefing material describing or analyzing the Grasso Proposal or its implications. After the Compensation Committee meeting, McCall asked Ashen to prepare speaking points for him to use at the Board meeting. Ashen also provided McCall with a two-page "source of funds" document that he had previously prepared (and that had previously been reviewed by Grasso) and a single page from the Report to be used as handouts at the Board meeting. Ashen subsequently prepared the speaking points and distributed the handouts.

149. The single page from the Report consisted of a six line list of the components comprising the proposed $139.5 million immediate payout. The "source of funds" document purported to describe each component. The single page and the "source of funds" document contained the same or similar misleading statements and material omissions as the July Report. The speaking points contained information about the $48 million in future payments, but the handouts given to each Director did not.

150. Ashen asked McCall for permission to attend the Board meeting and to be available to answer questions because he was, in his view, best able to explain or answer questions about the Grasso Proposal and the Report. That request was denied. According to

Ashen, no one attending the Board meeting had sufficient knowledge about the Grasso Proposal or the Report to lead a discussion or answer detailed questions about them.

151. According to Ashen, the Grasso Proposal should not have been considered by the Board on August 7, because (i) there were no consultants present; and (ii) the full Board had not been adequately prepared or briefed on the Grasso Proposal or the Report. According to Vedder Price, Directors who were unfamiliar with the Grasso Proposal and the Report would have needed to spend considerable time with a complete set of documents and an individual who was familiar with the proposal and Report to understand them and to appreciate their implications.

152. There was significant confusion among the Board members in attendance on August 7. Some believed that the Grasso Proposal was limited to the immediate payment of $139.5 million while others understood that it also entitled Grasso to $48 million in future payments. None of those present were aware that it potentially entitled Grasso to the additional $12 million in "hidden payments."

153. Many Directors were also under the mistaken impression that the Grasso Proposal only paid to Grasso sums to which he was entitled if he quit that day. As set forth above, this was not accurate for approximately $27 million.

154. Board members also voted in the mistaken belief that Vedder Price or another law firm had approved or recommended the Grasso Proposal and in misplaced reliance upon the misrepresentation in the Report that the NYSE would obtain the amount of the cost savings identified in the Report.

155. The Board of Directors voted to approve the Grasso Proposal at the August 7 meeting, initially by a margin of several votes. It subsequently voted to make its approval of the Grasso Proposal unanimous.

156. At the August 7 meeting, the Directors were not asked to consider whether the funds sought by the Grasso Proposal should be paid to Grasso. Instead, they were led to believe that the funds sought were owed to Grasso, and were told to confine their consideration to the question of when those funds should be paid to Grasso. Accordingly, the Board's action on August 7, 2003 was not intended to ratify, and did not ratify, any prior compensation or benefits awarded to Grasso.

VIII. The Events Leading to Grasso's Resignation

157. On or about August 12, 2003, the NYSE retained a law firm that had drafted Grasso's prior employment agreements to draft the agreement implementing the Grasso Proposal. Shortly thereafter, the law firm asked Ashen whether the NYSE had obtained a reasonableness opinion in connection with its consideration of the Grasso Proposal. Ashen's response led the law firm to believe that such an opinion had been obtained, when in fact it had not.

158. On August 27, 2003, the 2003 Agreement was executed. That same day, the NYSE issued a press release that disclosed the amounts payable immediately to Grasso, but not the $48 million in future payments.

159. On September 2, 2003, SEC Chairman William Donaldson wrote to McCall to request certain information concerning Grasso's compensation and his new employment agreement. As had the Report, the NYSE's response to the SEC mischaracterized the CAP awards to Grasso as vested even though they were forfeitable.

160. Wachtell played a significant role in drafting the response to the SEC. To assist in framing the response, Ashen sent Wachtell copies of relevant documents, including the Report and the handouts that had been distributed at the August 7 Board meeting. Wachtell did not suggest revising the letter to disclose that the CAP awards were not vested.

161. Early drafts of the letter to the SEC discussed and disclosed the $48 million in future payments contemplated by the Grasso Proposal. Several Directors expressed surprise that Grasso was entitled to an additional $48 million. During a telephonic Board meeting on September 8, 2003 to discuss the response to the SEC, Grasso agreed to forego the $48 million in future payments.

162. On September 30, 2003, Lipton sent an e-mail to a friend in which he conceded that "[a]s a friend, I did advise Dick [Grasso] with respect to his taking his accumulated benefits and the related public disclosure." At the same time that Lipton was "advising" Grasso, he was also serving as counsel to the NYSE's special governance committee that was considering changes to the structure of the Compensation Committee and to the manner in which the NYSE disclosed executive compensation.

163. On September 17, 2003, Grasso directed Ashen to contact the law firm that had drafted the employment agreement to obtain language that he could use to offer his resignation, while at the same time protecting any future payments to which he might be entitled. Ashen did as Grasso requested, and obtained the requested language.

CAUSES OF ACTION[1]

FIRST CAUSE OF ACTION
[Against Defendant Grasso for Imposition of a Constructive Trust and Restitution]

164. As an officer and director of the NYSE, Grasso was subject to the provisions of N-PCL §§202(a)(12) and 515(b).

165. Under N-PCL §202(a)(12):

[1] Pursuant to CPLR 3014, the allegations in the paragraphs preceding the causes of action are deemed repeated and adopted in each of the causes of action.

> Each corporation, subject to any limitations provided in this chapter or any other statute of this state or its certificate of incorporation, shall have power in furtherance of its corporate purposes:
>
> * * *
>
> To elect or appoint officers, employees and other agents of the corporation, define their duties, fix their reasonable compensation and the reasonable compensation of directors, and to indemnify corporate personnel. Such compensation shall be commensurate with services performed.

(Emphasis added)

166. Under N-PCL §515(b):

> A corporation may pay compensation in a reasonable amount to members, directors, or officers for services rendered, and may make distributions of cash or property to members upon dissolution or final liquidation as permitted by this chapter.

167. The annual compensation and SERP benefits received by Grasso from the NYSE were neither "reasonable" nor "commensurate with the services performed."

168. To the extent Grasso received annual compensation and SERP benefits from the NYSE that were not reasonable and not commensurate with the services he performed, the payment to him of such annual compensation and SERP benefits was unlawful and ultra vires under N-PCL §§202(a)(12) and 515(b).

169. To the extent Grasso received unlawful, ultra vires payments because they were not reasonable compensation and not commensurate with the services he performed within the meaning of N-PCL §§202(a)(12) and 515(b), such payments to Grasso by a not-for-profit corporation were against public policy.

170. To the extent Grasso received unlawful, ultra vires payments because they were not reasonable compensation and not commensurate with the services he performed within the meaning of N-PCL §§202(a)(12) and 515(b), he has been unjustly enriched and cannot in equity

and good conscience retain such payments.

171. As an officer and director of the NYSE, Grasso owed the NYSE a fiduciary duty under N-PCL §717 and was in a relationship of confidence and trust with the NYSE.

172. The Court should impose a constructive trust for the benefit of the NYSE on all compensation received by Grasso from the NYSE to the extent such compensation was not reasonable and not commensurate with the services rendered within the meaning of N-PCL §§202(a)(12) and 515(b) in an amount to be determined at trial and Grasso should required to make restitution to the NYSE of all funds as to which the Court imposes a constructive trust.

SECOND CAUSE OF ACTION
[Against Defendant Grasso Under N-PCL §§720(a)(2) and 720(b)]

173. Under N-PCL §720(b), the Attorney General may commence an action against an officer or director of a not-for-profit corporation to seek the relief provided under, inter alia, N-PCL §720(a)(2).

174. Under N-PCL §720(a)(2), an action may be maintained against an officer or director of a not-for-profit corporation "[t]o set aside an unlawful conveyance, assignment or transfer of corporate assets, where the transferee knew of its unlawfulness."

175. The annual compensation and SERP benefits received by Grasso from the NYSE were not reasonable and not commensurate with the services Grasso performed, in violation of N-PCL §§202(a)(12) and 515(b), and thus were unlawful transfers of corporate assets.

176. Grasso knew or is legally chargeable with knowing that the compensation he received was unlawful under N-PCL §§202(a)(12) and 515(b).

177. The Attorney General is entitled to judgment setting aside all unlawful payments by the NYSE to Grasso and directing that Grasso return such payments to the NYSE in an amount

to be determined at trial.

THIRD CAUSE OF ACTION
[Against Defendant Grasso for Breach of Fiduciary Duty under N-PCL §§717, 720(b) & 720(a)]

178. As an officer and director of the NYSE, Grasso owed the NYSE a fiduciary duty of loyalty and care.

179. The codification of fiduciary duty owed by an officer or director of a not-for-profit corporation, N-PCL §717(a), provides, in part:

> Directors and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions . . . .

180. Because the unreasonable compensation Grasso received was not merely imprudent, as would be the case for a stock corporation subject to the Business Corporation Law, but was unlawful, Grasso could not accept any such payment and thereby acquiesce in an unlawful act consistent with his fiduciary duty to the NYSE. As a fiduciary of a not-for-profit corporation, Grasso could not accept compensation without considering whether it was lawful and not ultra vires under N-PCL §§202(a)(12).

181. Accordingly, Grasso breached his fiduciary duty to the NYSE by accepting unlawful, ultra vires payments from the NYSE.

182. Under N-PCL §720(b), the Attorney General may commence an action against an officer or director of a not-for-profit corporation to seek the relief provided under, inter alia, N-PCL§720(a)(1).

183. Under N-PCL §720(a)(1), an action may be maintained against an officer or director of a not-for-profit corporation:

> To compel the defendant to account for his official conduct in the following cases:

(A) The neglect of, or failure to perform, or other violation of his duties in the management and disposition of corporate assets committed to his charge.

(B) The acquisition by himself, transfer to others, loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of his duties.

184. Grasso's receipt of unlawful, ultra vires payments in breach of his fiduciary duty was "[t]he neglect of, or failure to perform, or other violation of his duties in the management and disposition of corporate assets committed to his charge" within the meaning of N-PCL §720(a)(1)(A).

185. Grasso's receipt of unlawful, ultra vires payments in breach of his fiduciary duty was "[t]he acquisition by himself . . . or waste of corporate assets due to any neglect of, or failure to perform, or other violation of his duties" within the meaning of N-PCL §720(a)(1)(B).

186. The Attorney General is entitled to judgment directing Grasso to account for his official conduct in violation of N-PCL §720(a)(1) and to make restitution to the NYSE of all payments to the extent he fails to account for the lawfulness of such payments in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
[Against Defendant Grasso for Payment Had and Received]

187. The annual compensation received by Grasso from the NYSE, including SERP and other benefits, was not reasonable and not commensurate with the services Grasso performed under N-PCL §§ 202(a)(12) and 515(b).

188. To permit Grasso to retain compensation and benefits that were in excess of a reasonable amount would be contrary to the laws and public policy of this State, which seek to limit private inurement by officers and directors of not-for-profit corporations.

189. Restitution of the unlawful compensation to the NYSE is appropriate because N-PCL §§202(a)(12) and 515(b) are designed: (1) to protect not-for-profit corporations, such as the NYSE, from dissipation of their assets; (2) to assure that the assets of not-for-profit corporations are used for the benefit of their members or the public; and (3) to prohibit officers and directors from benefitting from private inurement and enriching themselves to the detriment of their corporations.

190. Accordingly, Grasso should be ordered to return the unlawful compensation received by him, in an amount to be determined at trial, because he has been unjustly enriched and his retention of the fruits of the unlawful compensation is against equity, good conscience and public policy.

FIFTH CAUSE OF ACTION
[Against Defendant Grasso for Under N-PCL §715(f)]

191. Under N-PCL §715(f):

> The fixing of salaries of officers, if not done in or pursuant to the by-laws, shall require the affirmative vote of a majority of the entire board unless a higher proportion is set by the certificate of incorporation or by-laws.

192. N-PCL §715(f) applies to all the valuable monetary consideration Grasso was paid by the NYSE as consideration for his serving as its Chairman and CEO.

193. The NYSE board of directors did not approve the CAP awards that Grasso received.

194. The NYSE board of directors did not approve any future payments under sections 3.3(c) and 3.3(e)(2) of the August 2003 Agreement.

195. The NYSE Board of Directors did not approve the SERP benefits paid to Grasso.

196. Under N-PCL §715(f), the CAP awards to Grasso lacked the required board of

directors approval and are thus voidable.

197. Under N-PCL §715(f), any obligation to make future payments under sections 3.3(c) and 3.3(e)(2) of the August 2003 Agreement lacked the required board of directors approval is thus void.

198. Under N-PCL § 715(f), the SERP benefits paid to Grasso lacked the required Board of Directors approval and are thus void.

199. The Attorney General is entitled to judgment directing restitution by Grasso to the NYSE of all payments he received that lacked the required board of directors approval under N-PCL §715(f) and a declaration that any obligation by the NYSE to make future payments lacking the required N-PCL §715(f) board approval is void. Those payments include but are not limited to all CAP awards to Grasso, and all SERP

SIXTH CAUSE OF ACTION
[Against Defendant Grasso Under N-PCL §716]

200. Under N-PCL §716:

> No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by a [not-for-profit] corporation to its directors or officers, or to any other corporation, firm, association or other entity in which one or more of its directors or officers are directors or officers or hold a substantial financial interest, except a loan by one type B corporation to another type B corporation. A loan made in violation of this section shall be a violation of the duty to the corporation of the directors or officers authorizing it or participating in it, but the obligation of the borrower with respect to the loan shall not be affected thereby.

(Emphasis added.)

201. As described above in Paragraphs 78-81, Grasso, while an officer and director of the NYSE, received $6,571,397 from the NYSE on or about May 11, 1995, and received

$29,928,062 on or about May 3, 1999.

202. Each of these payments represented advance payments to Grasso of lump sum SERP benefits to which he was not entitled under his then existing employment agreements. Grasso agreed to repay these amount by agreeing that they would be deducted from the ultimate lump sum pension benefits payable when he retired.

203. The 1995 and 1999 payments were loans within the meaning of N-PCL §716.

204. Grasso failed to pay any interest to the NYSE with respect to the unlawful loans he obtained in 1995 and 1999.

205. The Attorney General is entitled to judgment directing payment by Grasso to the NYSE of reasonable interest on each of the loans in violation of N-PCL §716 for the respective periods each was outstanding in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
[Against Defendant Langone for Breach of Fiduciary Duty under N-PCL §§717, 720(b) & 720(a)]

206. As an officer and director of the NYSE, and as the Chairman of its Compensation Committee, Langone owed the NYSE a fiduciary duty of loyalty and care.

207. The codification of the fiduciary duty owed by an officer or director of a not-for-profit corporation, N-PCL §717(a), provides, in part:

> Directors and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions . . .

208. Langone breached his fiduciary duty to the NYSE by misleading the NYSE Board of Directors -- which had delegated to him the task of explaining the proposed compensation -- about the amount of the annual compensation the Compensation Committee was recommending

be approved by the Board, through, among other things, his failure to disclose that Grasso would be receiving as deferred compensation an additional 50 percent of his bonus or ICP award.

209. Under N-PCL §720(b), the Attorney General may commence an action against an officer or director of a not-for-profit corporation to seek the relief provided under, inter alia, N-PCL§720(a)(1).

210. Under N-PCL §720(a)(1), an action may be maintained against an officer or director of a not-for-profit corporation:

> To compel the defendant to account for his official conduct in the following cases:
>
> (A) The neglect of, or failure to perform, or other violation of his duties in the management and disposition of corporate assets committed to his charge.
>
> (B) The acquisition by himself, transfer to others, loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of his duties.

211. Langone's misrepresentation to the NYSE Board of Director about the amount of compensation being paid to Grasso in breach of his fiduciary duty was "[t]he neglect of, or failure to perform, or other violation of his duties in the management and disposition of corporate assets committed to his charge" within the meaning of N-PCL §720(a)(1)(A).

212. Langone's misrepresentation to the NYSE Board of Director about the amount of compensation being paid to Grasso in breach of his fiduciary duty was "[t]he . . . transfer to others, loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of his duties" within the meaning of N-PCL §720(a)(1)(B).

213. The Attorney General is entitled to judgment directing Langone to account for his official conduct in violation of N-PCL §720(a)(1) and to make restitution to the NYSE of all unlawful, improper, excessive or erroneous payments of compensation and benefits paid by the

NYSE to Grasso that were caused by his breach of duty, in an amount to be determined at trial.

EIGHTH CAUSE OF ACTION
[Against Defendant NYSE Under N-PCL §§202(a)(12) and 515(b)]

214. Under N-PCL §202(a)(12):

> Each corporation, subject to any limitations provided in this chapter or any other statute of this state or its certificate of incorporation, shall have power in furtherance of its corporate purposes:
>
> * * *
>
> To elect or appoint officers, employees and other agents of the corporation, define their duties, fix their reasonable compensation and the reasonable compensation of directors, and to indemnify corporate personnel. Such compensation shall be commensurate with services performed.

(Emphasis added)

215. Under N-PCL §515(b):

> A corporation may pay compensation in a reasonable amount to members, directors, or officers for services rendered, and may make distributions of cash or property to members upon dissolution or final liquidation as permitted by this chapter.

216. Defendant NYSE paid Grasso compensation and SERP benefits that were not reasonable and not commensurate with the services Grasso performed and, as a result, such payments were unlawful and ultra vires pursuant to N-PCL §§202(a)(12) and 515(b).

217. The Attorney General is entitled to a judgment declaring that the NYSE made unlawful, ultra vires payments to Grasso in an amount to be determined at trial, and an injunction pursuant to N-PCL §112 requiring the NYSE to adopt and implement safeguards to ensure that all compensation paid in the future are in compliance with the N-PCL.

Relief Requested

WHEREFORE, plaintiff Eliot Spitzer, on behalf of the People of the State of New York, respectfully requests judgment for the following relief:

(a) imposing a constructive trust for the benefit of the NYSE on all compensation and benefits received by defendant Grasso from the NYSE to the extent such compensation was unlawful by reason of being not reasonable and not commensurate with the services performed within the meaning of N-PCL §§202(a)(12) and 515(b) in an amount to be determined at trial;

(b) pursuant to N-PCL §720(a)(2), setting aside all payments of compensation and benefits by the NYSE to defendant Grasso that were unlawful by reason of being not reasonable and not commensurate with the services performed within the meaning of N-PCL §§202(a)(12) and 515(b) and directing that Grasso return such payments to the NYSE in an amount to be determined at trial;

(c) directing defendant Grasso to account for his official conduct in violation of N-PCL §720(a)(1) and to make restitution to the NYSE of all payments to the extent he fails to account for the lawfulness of such payments in an amount to be determined at trial;

(d) directing restitution by defendant Grasso to the NYSE of all payments of compensation and benefits that he received that lacked the required board of directors approval under N-PCL §715(f) and a declaration that any obligation by the NYSE to make future payments lacking the required N-PCL §715(f) board approval is void;

(e) directing payment by defendant Grasso to the NYSE of reasonable interest on all loans in violation of N-PCL §716 for the respective periods each was outstanding in an amount to be determined at trial;

(f) directing defendant Langone to account for his official conduct in violation of N-PCL §720(a)(1) and to make restitution to the NYSE of all unlawful, improper, excessive or erroneous payments of compensation and benefits made by the NYSE to Grasso that were caused

by his breach of duty, in an amount to be determined at trial;

(g) declaring that the NYSE paid Grasso annual compensation and SERP benefits that were not reasonable and not commensurate with the services Grasso performed and, as a result, such payments were unlawful and ultra vires pursuant to N-PCL §§202(a)(12) and 515(b), in an amount to be determined at trial, and enjoining the NYSE to adopt and implement safeguards to ensure that all compensation paid in the future, are in compliance with the N-PCL;

(h) awarding costs and disbursements to the Attorney General, including attorneys' fees, court costs and expenses; and

(i) granting such other and further relief as this Court deems just and proper.

Dated: New York, New York
May 24, 2004

Respectfully Submitted,

ELIOT SPITZER
Attorney General of the State of New York
120 Broadway
New York, New York 10271
(212) 416-8050

By: _____
AVI SCHICK
Deputy Counsel to the Attorney General

Of Counsel:
David Axinn
Robert Pigott
Bruce Topman

EXHIBIT 1

THE ATTORNEY GENERAL OF THE
STATE OF NEW YORK

In the Matter of the Investigation by ELIOT SPITZER, Attorney General of the State of New York, into matters relating to THE NEW YORK STOCK EXCHANGE, INC.	**ASSURANCE OF DISCONTINUANCE PURSUANT TO EXECUTIVE LAW SECTION 63(15)**

WHEREAS, ELIOT SPITZER, Attorney General of the State of New York (the "Attorney General"), pursuant to his authority under the New York Not-for-Profit Corporation Law, the New York Executive Law and all other applicable laws, is conducting an investigation into matters relating to the New York Stock Exchange, Inc. (the "NYSE"), a New York not-for-profit corporation; and

WHEREAS, Frank Z. Ashen ("Ashen") served as the director of Human Resources for the NYSE from February 1997 through and including September 30, 2003; and

WHEREAS, Ashen was the NYSE executive responsible for providing information to, and working with, NYSE Human Resources Policy & Compensation Committee (the "Committee") and the NYSE Board of Directors on matters relating to the compensation of NYSE employees and executives; and

WHEREAS, Ashen prepared worksheets for the use and review by the members of the Committee in connection with their determination of the annual compensation to be paid to former NYSE Chairman and Chief Executive Officer Richard A. Grasso ("Grasso"); and

WHEREAS, Ashen prepared talking points for Committee Chairman Kenneth G. Langone ("Langone") to use in advising the members of the NYSE Board of Directors of the annual compensation the Committee was recommending that Grasso be paid; and

WHEREAS, Ashen was the NYSE executive responsible for providing information to, and working with, the Committee and Board of Directors in connection with their review during 2002 and 2003 of a proposal to renegotiate Grasso's employment agreement pursuant to which the NYSE would pay certain sums requested by Grasso (the "Grasso Proposal"); and

WHEREAS, in connection with its review, the Committee requested the preparation of a financial analysis of the Grasso Proposal, which was ultimately prepared by Mercer Human Resources Consulting ("Mercer"); and

WHEREAS, Ashen has asserted that while employed at the NYSE he did not prepare or distribute documents to the Board, the Committee or their members with the intent to mislead them; and

WHEREAS, based upon facts uncovered in this investigation, the Attorney General has concluded, and Ashen does not dispute for purposes of this investigation or any governmental proceeding brought pursuant thereto, that the (i) worksheets prepared in connection with Grasso's compensation for 1999, 2000 and 2001; (ii) talking points discussing Grasso's 2000 and 2001 compensation; and (iii) financial analysis prepared by Mercer were inaccurate, incomplete and misleading; and

WHEREAS, Ashen and the Attorney General enter into this Assurance of Discontinuance pursuant to Executive Law Section 63(15) (the "Assurance Agreement") to avoid the expense of, and time involved in, the possibility of litigation that could be commenced by the Attorney

General against Ashen;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, this ___ day of May 2004, by and among the Attorney General and Ashen, as follows:

1. The Effective Date of this Assurance Agreement shall be the date on which it becomes fully-executed by Ashen and the Attorney General.

2. Ashen and the Attorney General have agreed that within two weeks of the Effective Date Ashen shall make a payment of $1.3 million to the NYSE as restitution for amounts previously paid to him pursuant to his employment.

3. Ashen attests that the Ashen Statement of Facts set forth in Exhibit A hereto (the "Ashen Statement") is a true and correct statement of the factual matters set forth therein.

4. Ashen will not dispute or contest in any way the truth or accuracy of the Ashen Statement in any subsequent action, proceeding, hearing or testimony brought by the Attorney General.

5. The Attorney General is not bound or limited by the Ashen Statement.

6. Upon payment of the sum set forth above, the Attorney General agrees not to initiate any further proceedings against Ashen with respect to the matters described in the Ashen Statement or this Assurance Agreement. This does not preclude the Attorney General from taking additional testimony or discovery from Ashen.

7. Ashen agrees to cooperate with the Attorney General in this investigation and in any proceeding brought by the Attorney General pursuant thereto. Such cooperation shall include, but is not limited to, (i) making himself available to meet with representatives of the Attorney General; (ii) providing information to representatives of the Attorney General as to matters in which he was involved while employed at the NYSE; and (iii) if requested, testifying as a witness or providing sworn affidavits in an action brought by the Attorney General.

8. This Assurance Agreement constitutes the entire agreement between the parties hereto. This Assurance Agreement shall be binding on the parties hereto, and cannot be changed or modified except by a writing duly executed by the parties.

9. In the event of a breach of this Assurance Agreement by Ashen, he shall pay to the Attorney General the cost of enforcing this Assurance Agreement, including, without limitation, legal fees, expenses and court costs, except that if Ashen breaches this Assurance Agreement with respect to his representations and obligations in paragraphs "3", "4" and "7" above, the Attorney General shall have the right to void this Assurance Agreement;

10. Ashen acknowledges that at all times in the negotiation and execution of this Assurance Agreement he has been represented by counsel of his own choosing.

Dated: New York, New York
May 23, 2004

FRANK Z. ASHEN

ELIOT SPITZER
Attorney General of the
State of New York
By: _____
Avi Schick
Deputy Counsel to the Attorney General

EXHIBIT A

FRANK ASHEN'S STATEMENT OF FACTS

1. I was employed by the New York Stock Exchange, Inc. ("NYSE") from December 1977 until my retirement effective October 1, 2003. From February 1997 until I retired, I served as the director of Human Resources at the NYSE. Among my primary duties during that time was providing information to, and working with, the members of the NYSE Human Resources Policy & Compensation Committee (the "Compensation Committee" or "Committee") and Board of Directors on matters relating to executive compensation.

2. The NYSE Board set the annual compensation of its former Chairman and Chief Executive Officer Richard A. Grasso ("Grasso"), and other senior executives for any given year on the first Thursday in February of the following year. In connection with my duties to the Compensation Committee I met individually with Committee members each January and February to review the NYSE's performance during the prior calendar year and to discuss the compensation proposed for Grasso and others.

3. Kenneth G. Langone ("Langone") became the Chairman of the Compensation Committee in or around June 1999. My standard practice was to speak with Langone prior to meeting with the other Compensation Committee members. When Langone was Committee Chairman, he would suggest an amount to pay Grasso with the understanding that I would discuss that proposal during my individual meetings. I would call Langone to advise him of the Committee members' responses to the amount that Langone had proposed Grasso get paid.

4. Among the documents that I prepared and used with Committee members during my individual meetings with them in 2000, 2001 and 2002 was a one-page worksheet that contained a chart with five columns, listing various components of Grasso's compensation. The components

listed, with dollar figures included, were (i) base salary; (ii) a bonus plan, known as the Long Term Incentive Plan ("LTIP"); and (iii) another bonus plan, known as the Incentive Compensation Plan ("ICP"). A fourth column contained the heading "total variable compensation," and reflected the sum of the LTIP and ICP bonus awards. The fifth column was headed "total compensation," and reflected the sum of the base salary and the total variable compensation.

5. Grasso also received another bonus award that in certain respects was similar to awards granted to other NYSE executives pursuant to the NYSE's Capital Accumulation Plan "(CAP"). (Grasso didn't participate in the NYSE's CAP but his employment agreement provided for CAP-like benefits; when I refer to CAP in this statement, I am referring to those CAP-like benefits.) According to an exhibit to Grasso's 1999 employment contract, Grasso received a CAP award that was equal to fifty percent of his ICP and LTIP awards. Pursuant to that contract, the payment of Grasso's CAP awards was deferred until the expiration of Grasso's employment agreement, and the amounts awarded were forfeitable if he left the NYSE under certain circumstances. Most of the CAP sums awarded to Grasso were also credited with 8% interest annually for a period of time, even though it is my understanding that his contract did not provide such interest (the NYSE executives who participated in the NYSE CAP were entitled to such interest).

6. Because CAP represented an award to Grasso of an additional fifty percent of his ICP and LTIP awards, the worksheets used to assist the Committee members determining Grasso's compensation for 1999, 2000 and 2001 should have had a column with the heading "CAP" that reflected the amount of Grasso's proposed CAP award, and the "total variable compensation" and "total compensation" columns of the worksheets should have included the CAP amounts proposed

for Grasso. In fact, the worksheet distributed for use in connection with Grasso's compensation for 2002 included a "CAP" column and the CAP amounts were reflected in the "total variable compensation" and "total compensation" columns.

7. The worksheets did include a footnote that referenced the CAP award. The worksheet distributed in January and February 2000 stated that "Mr. Grasso will receive 50% of his variable compensation in the Capital Accumulation Plan." That language was ambiguous. It should have stated that Grasso would have received an additional or incremental 50 percent of his variable compensation in a CAP award.

8. In connection with the Compensation Committee's recommendation to the Board of Directors of an amount to pay Grasso, I would prepare speaking points for Langone to use to describe the recommendation for Grasso's compensation to the Board. I recall that Langone instructed me to keep the information in the speaking points prepared for the February 2002 Board meeting general.

9. As a result, those speaking points did not refer to the CAP amounts awarded to Grasso. For example, Grasso was paid $30.6 million for 2001, as follows: (i) a base salary of $1.4 million; (ii) $16.1 million in ICP; (iii) an $8.05 million CAP award; and (iv) a $5 million special payment (which I understood would be deferred and not paid to Grasso until the expiration of his then-existing employment contract)(the "2001 Special Payment"). The speaking points for Grasso's 2001 compensation (awarded in February 2002) stated that Grasso would receive his base salary, $16.1 million in variable compensation and the $5 million special payment. There was no mention of the $8.05 million CAP-like award. The speaking points also summarized Grasso's compensation for 2000. Again, there was no mention of his CAP award, which totaled $6.8 million for that year.

10. The speaking points also stated that Grasso's 2001 compensation reflected an increase of $2.5 million over the compensation Grasso had received for 2000. In fact, when Grasso's CAP award is taken into account, Grasso's compensation for 2001 exceeded his prior years' compensation by almost $4 million.

11. I do not know whether the non-Compensation Committee members of the NYSE Board of Directors understood that Grasso received a CAP award equal to 50 percent of his ICP award or how they would have come to such an understanding unless it was discussed at the executive session of the February Board meeting at which Grasso's annual compensation was determined (at which I was not present). It is possible that non-Committee Directors who were on the Board during the Spring of 1999 would have been told at that time that Grasso would be entitled to CAP awards in the future.

12. After the Board would set Grasso's annual compensation, I would prepare a memorandum for the Chief Financial Officer of the NYSE to advise him of the compensation that Grasso would receive. I would attach to the memorandum a worksheet similar but not identical to the worksheet described in paragraph 4 above. Unlike the worksheet provided to the members of the Committee, the worksheet provided to the C.F.O. contained a sixth column labeled "CAP." The amount of Grasso's CAP benefit was also included in the figures provided in the "total variable compensation" and "total compensation" columns.

13. Grasso's compensation also affected his pension plan, which provided him with benefits similar to those provided to other executives pursuant to the NYSE's pension plan, known as Supplemental Executive Retirement Plan, or SERP. (As with CAP, Grasso didn't participate in the NYSE's SERP but was contractually entitled to SERP-like benefits; when I refer to SERP in this

statement, I am referring to those SERP-like benefits.) While I believe that the Compensation Committee members were generally aware that Grasso received SERP benefits, I do not recall any instance between June 1999 and September 2002 in which they discussed the amount of Grasso's accumulated SERP benefits. While there may have been a general discussion that increased compensation would translate into increased SERP, I do not recall any instance in which the Committee discussed the specific effect that a compensation award or a variable compensation award had or would in the future have on the amount of Grasso's SERP.

14. In April 2001, the Compensation Committee and Board of Directors approved a change in the NYSE's bonus plans, by eliminating LTIP and expanding ICP. In connection with the Board's consideration of that change, the NYSE's compensation consultant, Hewitt Associates, prepared a report that discussed, among other things, the effect that the change would have on the SERP benefits accumulated by the NYSE's senior executives. I appended to the Hewitt report a spreadsheet that listed the accumulated SERP benefits for approximately twenty of the NYSE's most senior executives. The amount of Grasso's accumulated SERP was not listed on that spreadsheet, nor was the amount of the accumulated SERP of then NYSE President William Johnston. The amount of both Grasso's and Johnston's SERP were relevant to the proposal before the Board.

15. In February 2001, in connection with the NYSE's consideration of the proposed change to its bonus plans, Mercer Human Resources Consulting ("Mercer") sent me a letter detailing the impact or multiplier effect that an ICP award can have on Grasso's SERP benefits. Mercer's letter implies that an incremental $1 million ICP award could result in a $6.8 million increase in Grasso's lump-sum SERP benefits. I did not transmit the Mercer letter or the information that it contained to members of the Committee or Board of Directors.

16. In July or August 2002, Grasso advised me that the NYSE was considering revising and extending his employment agreement. Shortly thereafter, I confirmed that fact with Langone. Grasso also told me that in connection with the revised and extended agreement, he had requested that the NYSE (i) transfer his accrued SERP benefits to a SESP account, which would permit Grasso to invest it in investment vehicles that paid interest; and (ii) to vest, and transfer into SESP, the $5 million special payment that was awarded to him for 2000 but which was not scheduled to vest until February 2006.

17. I prepared a term sheet describing the proposed extension, including the $51.6 million transfer from SERP to SESP. I provided Grasso with a copy of the term sheet and explained to him how the $51.6 million was calculated, as well as the other SERP related figures on the term sheet, including the assumptions about final average pay. At some point prior to September 23, 2002, I believe that I also showed him the actual SERP calculation sheets that I received from William Mischell ("Mischell") of Mercer.

18. On September 23, 2002, the Compensation Committee had a telephonic meeting to discuss the proposed contract extension. The Compensation Committee members had the term sheet, a copy of which is attached to the minutes of the September 23rd meeting. At that time, the Committee requested that a consultant that had never done work for the NYSE be retained to evaluate the proposal. Langone retained the law firm of Vedder Price Kaufman & Kammholz ("Vedder Price") to advise the Committee.

19. The Compensation Committee met again on October 3, 2002. Vedder Price delivered a presentation on the proposal at the meeting. The Committee deferred decision on the proposal, but I understood that the Committee members opposed the requested acceleration of the $5 million

special payment. Vedder Price subsequently wrote to each member of the Compensation Committee, advising them of the analysis that should be undertaken prior to a formal vote on the proposal. Langone told me that he was angry that Vedder Price wrote directly to the other Committee members; I understood that he wanted all communication to flow through him.

20. In January 2003, Grasso advised me that his proposal had changed and that he was now seeking a cash payment of his accrued SERP benefits and approximately $80 million in deferred compensation, including certain CAP funds and the 2001 Special Payment (the "Grasso Proposal"). I confirmed these changes with Langone.

21. When Grasso advised me of changes to the proposal, I was in the process of conducting my individual meetings with the members of the Compensation Committee to discuss the compensation of Grasso and other senior executives. I had already met with all but two of the Committee members with whom I had scheduled meetings. Since the changes represented a significant departure from the terms of the original proposal -- which did not seek any immediate cash payments, as opposed to the more than $130 million in cash payments Grasso was currently seeking -- I asked Langone whether I should circle back to brief the Committee members with whom I had already met. Langone told me not to do that, but that the revised proposal would be considered at a February 6 Committee meeting.

22. On February 6, 2003, the Compensation Committee met to discuss the Grasso Proposal, among other things. I now understand that Vedder Price learned of the Grasso Proposal (from a member of the Compensation Committee) only a few days prior to the meeting. Vedder Price again made a presentation to the Committee.

23. To the extent the minutes of the October 3, 2002 or February 6, 2003 Committee

meetings state or imply that Vedder Price had recommended approval of any portion of the Grasso Proposal or its predecessor, that would be inaccurate. In fact, I recall that certain Committee members appeared to be frustrated with Vedder Price because they could not be pinned down and would not give an "up-or-down" recommendation. It is my understanding that the Committee members believed that the only SERP benefits that would be paid pursuant to the Grasso Proposal were those that at the time they were paid would have accrued in the typical manner in which the NYSE calculated such accruals.

24. At the February 6, meeting, the Committee requested a financial analysis of the Grasso Proposal and its impact on the NYSE. Shortly after the meeting, Vedder Price wrote to Langone that "the goal is to complete the information gathering and analysis over the next month, with the expectation of discussing the information and alternative(s) with the Committee members . . . in March."

25. I advised Vedder Price that Mercer would prepare the analysis. Subsequently, I worked with Mercer to prepare a report (the "Report") that contained an analysis of the Grasso Proposal.

26. Among the funds to be paid to Grasso pursuant to the Grasso Proposal was approximately $13 million in CAP awards that, pursuant to his then-existing contract, were forfeitable under certain circumstances. Nevertheless, the Report described those funds as "vested." Similarly, the 2001 Special Payment of $5 million was also characterized as "vested" even though I understood that it would be deferred and would not be paid to Grasso until the expiration of his then-existing employment contract.

27. On or around March 10, 2003, Mercer finalized the Report analyzing the Grasso

Proposal. William Mischell, the Mercer consultant who had prepared the Report, and I met individually with Compensation Committee members during the last two weeks of March 2003 to discuss the Report. Prior to those meetings, I advised Langone that the CAP funds to be paid pursuant to the Grasso Proposal were forfeitable under certain circumstances. Mischell and I subsequently met with members who joined the Compensation Committee after March 2003, and briefed them on the Grasso Proposal and the Report.

28. I believe that during that same time period in March 2003, Mischell and I met with Grasso to brief him on the Report. At that meeting, Grasso was given a copy of the Report, which he reviewed. Grasso was given another copy of the Report to review in preparation for a June 24, 2003 meeting with the new Committee Chairman Carl McCall ("McCall") to discuss the Grasso Proposal.

29. On March 25, 2003, Vedder Price sent me an analysis of the Grasso Proposal. I received the Vedder Price analysis after Mischell and I had completed our individual meetings with the Committee members to review the Grasso Proposal and Report.

30. On March 26, 2003, I arranged for the Vedder Price analysis, together with the Report and two-page summary which had previously been circulated, to be e-mailed to all Committee members for their use during a March 28 telephonic special Committee meeting that had been scheduled to consider the Grasso Proposal.

31. I believe that on the same day, I received a call from Vedder Price, during which they reviewed the approach they intended to take at the March 28 meeting.

32. The next day, Grasso told me that the Committee meeting was cancelled, and consideration of the Grasso Proposal at the April 3, 2003 Committee meeting was also withdrawn. I now believe that I did not have any further contact with Vedder Price after the March 26 call

described above, nor am I aware of any other NYSE employee who had contact with Vedder Price during that time.

33. With one exception, I did not meet with non-Committee members of the Board of Directors to review the Grasso Proposal or Report with them. While several non-Committee Directors were generally aware of the existence of a proposal to extend Grasso's contract, they had not received briefings on the Grasso Proposal or the Report from me. However, Grasso advised me that he had personally met with the "floor" Directors to discuss the Grasso Proposal and Report with them. The floor Directors are NYSE Board members who are also members of the NYSE, such as specialists, whose businesses are intertwined with, dependent on and regulated by the NYSE. There were five floor Directors during 2003, four of whom were officers or executives at specialist firms.

34. On July 14, 2003, the Compensation Committee met to discuss the Grasso Proposal. The Committee decided to approve the proposal at its next regularly scheduled meeting, on August 7. Mischell had been invited to attend the July 14 meeting, and I also invited him to attend the August 7 meeting. Vedder Price was not invited to attend the July 14 meeting.

35. I generally reported back to Grasso after Compensation Committee meetings at which the Grasso Proposal or its predecessor was discussed – beginning with the September 23, 2002 meeting through the July 14, 2003 meeting. I advised Grasso of the status of the Committee's discussions and conveyed my general impression about the way the Committee was leaning.

36. At some point – I believe in or around July 2003 -- Langone advised me that he was going to call Martin Lipton to inquire whether it would be okay to not tell the full Board the amounts to be paid to Grasso pursuant to the Grasso Proposal.

37. A few days prior to August 7, I was advised by Grasso that the Grasso Proposal would not be considered at the August 7 meeting. I confirmed this with McCall. Accordingly, I advised

Mischell that he did not need to attend the meeting.

38. At the August 7, 2003 Compensation Committee meeting, certain Committee members advocated going forward with the Grasso Proposal even though it was not on the agenda. I was asked to notify Grasso of this, and to ask him to join the meeting. I did so, and waited outside the meeting while Grasso talked to the Committee members. I had been outside for approximately fifteen minutes when Grasso emerged from the meeting and I reentered. I was immediately advised by McCall that the Committee was recommending to the Board that the Grasso Proposal be approved.

39. The Board meeting was scheduled to begin approximately thirty minutes after the conclusion of the Compensation Committee meeting. McCall asked me to prepare speaking points for him to use at the board meeting. A two-page document that I had previously prepared (and that was reviewed by Grasso) concerning the Grasso Proposal, and a single page from the Report were selected to be used as handouts at the Board meeting. I subsequently prepared the speaking points and distributed the handouts.

40. I repeatedly requested permission from McCall to attend the Board meeting and to be available to assist him in his presentation, but was denied. My request was predicated on a belief that the Grasso Proposal and Report were fairly complicated and that I was best equipped to explain, or answer questions about, them. I am not certain that there was anybody present during the August 7 Board meeting who possessed as detailed knowledge of the Grasso Proposal or Report as I did, or who was able to answer detailed or nuanced questions about the Grasso Proposal or the Report. I therefore asked Grasso just prior to the meeting why we were proceeding in this manner. Grasso replied that it was the will of the Committee.

41. I believed that the Grasso Proposal should not have been considered at the August

7 Board meeting, because there were no consultants present and the non-Committee Directors were not adequately prepared or briefed. In sum, based on a quarter-century of work at the NYSE, I felt that this was not the way the NYSE conducts its business.

42. If the Board members who voted on August 7 believed that the Grasso Proposal only paid to Grasso sums that he was entitled to receive that day if he decided to immediately quit, they were mistaken. Board members would also be mistaken if they believed that Vedder Price or any other law firm had recommended that the Grasso Proposal should be approved.

43. The law firm of Proskauer Rose was retained by the NYSE to draft the employment agreement implementing the Grasso proposal. Proskauer Rose had also drafted Grasso's prior employment agreements for the NYSE.

44. Both before and after August 7, 2003, Martin Lipton and colleagues at Wachtell Lipton Rosen & Katz ("Wachtell Lipton") advised the NYSE on issues relating to the disclosure of Grasso's compensation, including sums payable pursuant to the Grasso Proposal. Lipton had already been advising the NYSE in connection with the recommendations regarding disclosure that were being formulated by the NYSE's Special Governance Committee.

45. Wachtell Lipton reviewed the press release issued by the NYSE on August 27, 2003 that disclosed the amounts immediately payable pursuant to the Grasso Proposal but did not disclose the future payments due under the proposal. Consistent with his typical practice, I believe that Grasso reviewed and approved the press release before it was issued.

46. I prepared the initial draft of the NYSE's September 9, 2003 response to the September 2, 2003 letter from Securities and Exchange Commission Chairman William Donaldson. Wachtell Lipton played a significant role in crafting and drafting what became the final version of that letter.

47. On September 17, 2003, Grasso directed me to contact Proskauer Rose to request language that he could use to protect any future payments to which he might be entitled if he resigned. I did as Grasso directed, and obtained the requested statement, which I provided to Grasso. Grasso then contacted his personal attorney to review the statement I had given him. After incorporating a few changes suggested by his attorney, Grasso read the statement to me and asked whether this protects him. I responded, "that is a legal question," or words to that effect.

48. I was among a group of senior NYSE executives who walked with Grasso as he left the NYSE for the last time. I was extremely saddened to see him leave.

49. For 2000, 2001 and 2002, the majority of my compensation came in the form of bonuses over which Grasso had ultimate discretion. The aggregate amount of the bonuses awarded to me by Grasso during those years was approximately $1,981,250.

50. While I was employed at the NYSE I did not prepare or distribute documents to the Board, the Committee or their members with the intent to mislead them. In hindsight, I now recognize that the (i) worksheets prepared in connection with Grasso's compensation for 1999; 2000 and 2001; (ii) talking points discussing Grasso's 2000 and 2001 compensation; and (iii) financial analysis prepared by Mercer were inaccurate, incomplete and misleading.

Dated: New York
May __, 2004

STATE OF NEW YORK }
} ss:
COUNTY OF NEW YORK }

Frank Z. Ashen

Sworn to before me this
May 22, 2004

BARBARA B. SWANN
NOTARY PUBLIC
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires Mar. 13, 2009

EXHIBIT 2

THE ATTORNEY GENERAL OF THE
STATE OF NEW YORK

In the Matter of the Investigation by ELIOT SPITZER, Attorney General of the State of New York, into matters relating to THE NEW YORK STOCK EXCHANGE, INC.	**ASSURANCE OF DISCONTINUANCE PURSUANT TO EXECUTIVE LAW SECTION 63(15)**

WHEREAS, ELIOT SPITZER, Attorney General of the State of New York (the "Attorney General"), pursuant to his authority under the New York Not-for-Profit Corporation Law, the New York Executive Law and all other applicable laws, is conducting an investigation into matters relating to the New York Stock Exchange, Inc. (the "NYSE"), a New York not-for-profit corporation; and

WHEREAS, Mercer Human Resource Consulting, Inc.("Mercer"), a Delaware corporation, has rendered actuarial and other employment benefits and consulting services to the NYSE; and

WHEREAS, among those services was the preparation of a financial analysis (the "Report") requested by members of the Compensation Committee of the NYSE Board of Directors in connection with their review of a proposal to pay certain sums requested by its then Chairman and Chief Executive Officer, Richard A. Grasso ("Grasso"); and

WHEREAS, based upon facts uncovered in this investigation, the Attorney General has concluded, and Mercer does not dispute for purposes of this investigation or any governmental

proceeding brought pursuant thereto, that the Report prepared by Mercer contained inaccuracies and omitted relevant information; and

WHEREAS, Mercer and the Attorney General enter into this Assurance of Discontinuance pursuant to Executive Law Section 63(15) (the "Assurance Agreement") to avoid the expense of, and time involved in, the possibility of litigation that could be commenced by the Attorney General against Mercer; and

WHEREAS, Mercer and the Attorney General have agreed that Mercer shall make a payment of $440,275 to the NYSE within one week of the Effective Date, which is an amount equal to that paid by the NYSE to Mercer for services rendered by its Retirement Practice for the period January 1, 2003 through and including August 31, 2003.

NOW, THEREFORE,

IT IS HEREBY STIPULATED AND AGREED, this ~~26th~~ 29th of April, 2004, by and among the Attorney General and Mercer, as follows:

1. The Effective Date of this Assurance Agreement shall be the date on which it becomes fully-executed by Mercer and the Attorney General.

2. Mercer attests that the Mercer's Statement of Facts set forth in Exhibit A hereto (the "Mercer Statement") is a true and correct statement of the factual matters set forth therein and has been reviewed by William D. Mischell, a Mercer employee with direct knowledge of the factual matters set forth therein.

3. Mercer will not dispute or contest in any way the truth or accuracy of the Mercer Statement in any subsequent action, proceeding, hearing or testimony.

4. The Attorney General is not bound or limited by the Mercer Statement.

5. Upon payment of the sum set forth above, the Attorney General agrees not to initiate any further proceedings against Mercer or its employees with respect to the matters described in the Statement. This does not preclude the Attorney General from taking additional testimony or discovery from Mercer or its employees.

6. Mercer, and the officer or employee executing this Assurance Agreement on its behalf, represent and warrant that she is authorized to enter into this Assurance Agreement on behalf of Mercer.

7. This Assurance Agreement constitutes the entire agreement between the parties hereto. This Assurance Agreement shall be binding on the parties hereto and their respective employees, agents, successors and assigns, and it cannot be changed or modified except by a writing duly executed by the parties.

8. In the event of a breach of this Assurance Agreement by Mercer, it shall pay to the Attorney General the cost of enforcing this Assurance Agreement, including, without limitation, legal fees, expenses and court costs.

9. Mercer acknowledges that at all times in the negotiation and execution of this Assurance Agreement it has been represented by counsel of its own choosing.

Dated: New York, New York
May ~~April~~ 19, 2004

ELIOT SPITZER
Attorney General of the
State of New York

By: _____
Avi Schick
Deputy Counsel to the Attorney General

New York, New York
Dated: ~~Princeton, New Jersey~~
April 29, 2004

MERCER HUMAN RESOURCE
CONSULTING, INC.

By: _____
Karen Greenbaum
President and Chief Operating Officer

EXHIBIT A

MERCER'S STATEMENT OF FACTS

1. William D. Mischell ("Mischell") has been employed by Mercer Human Resources Consulting , Inc. ("Mercer") and its predecessors since 1980, and is a principal and worldwide partner of Mercer. Mischell has worked on matters relating to the New York Stock Exchange, Inc. (the "NYSE") since approximately 1985.

2. Mischell's work for the Exchange included providing services related to the Exchange's pension and employee savings plans, such as the Supplemental Executive Retirement Plan ("SERP") and the Supplemental Executive Savings Plan ("SESP").

3. Mischell provided services during 2002 and 2003 relating to the renegotiation of the employment contract of Richard A. Grasso ("Grasso"), then Chairman and Chief Executive Officer of the NYSE. Mischell prepared a Report (the "Report") containing a financial analysis of the costs and benefits to the NYSE of a proposed new employment contract for Grasso. The Report was entitled "The New York Stock Exchange Financial Analysis of Proposed Changes to Employment Agreement." Frank Z. Ashen ("Ashen"), the NYSE's Human Resources director, was Mischell's sole contact at the NYSE on nearly all matters relating to the Report.

4. The Report analyzed various components of the proposal, including the immediate payment to Grasso of his pension (SERP) benefits and his deferred compensation.

5. In or about August 2002, Ashen informed Mischell that the Human Resources Policy and Compensation Committee ("Compensation Committee") of the NYSE Board of Directors was going to be presented with a proposal to extend Grasso's contract and to permit him to transfer the amount of the NYSE's accrued SERP liability with respect to Grasso into a SESP account. That

proposal did not require any cash payments to Grasso.

6. Mercer prepared a spreadsheet calculating the amount of the 2002 expense relating to Grasso's SERP and indicating the NYSE's projected accrued liability with respect to that SERP as of December 31, 2002. To calculate these sums, Mercer used a NYSE provided assumption that Grasso's compensation for 2002 and beyond (which had not yet been determined) would be equal to the compensation that he was awarded for 2001. Mischell advised Ashen of this assumption and provided him with a copy of the spreadsheet. Employing this assumption, the accrued SERP liability was calculated at approximately $51 million. The NYSE's typical practice was to "true-up" the numbers after Grasso's 2002 compensation was actually determined. In other words, historical practice was to recalculate the accrual using the most recent year's compensation.

7. At Ashen's request, Mischell participated in a September 23, 2002 Compensation Committee meeting at which Ashen presented the proposal described in paragraph 5 above. Mischell, in his handwritten notes, described the meeting as "a disaster! The new members were shocked by the size of Dick's SERP. They want an independent consultant to say it is ok . . . someone who has never worked with NYSE before." In a follow-up telephone conversation with Mischell, Ashen described the Committee's request for an independent consultant as "CYA."

8. Mischell was informed by Ashen that the Compensation Committee retained the law firm of Vedder, Price, Kaufman & Kammholz ("Vedder Price") to provide advice in connection with the proposal. Mischell attended a Compensation Committee meeting on October 3, 2002 to discuss the proposal. A decision on the proposal was not reached at that meeting.

9. Prior to February 6, 2003, Ashen informed Mischell that the proposal had been revised. Pursuant to the revised proposal, the NYSE would have been obligated to pay immediately

to Grasso, inter alia, the amount of its accrued SERP liability with respect to Grasso ($51 million) and his deferred compensation (ultimately approximately $90 million), and a separate $48 million over the next four years (the "Grasso Proposal"). Mischell was advised by Ashen that the Grasso Proposal was considered but not approved at a February 6, 2003 meeting of the Compensation Committee.

10. After that meeting, Ashen called Mischell to inform him that the Compensation Committee was seeking a financial analysis of all of the costs of the Grasso Proposal. Vedder Price, which had attended that meeting, assumed that it would prepare the analysis and wrote to advise the NYSE that:

> The goal is to complete the information gathering and analysis over the next month, with the expectation of discussing the information and alternative(s) with the Committee members . . . in March.

11. Ashen told Mischell that he was infuriated by the Vedder Price letter. Mischell understood that Ashen wanted the Compensation Committee to approve the Grasso Proposal. Ashen later told Mischell that he was concerned that Vedder Price was "hedging" about whether it would recommend the Grasso Proposal.

12. Ashen directed Mischell to prepare the financial analysis of the Grasso Proposal. Although Mischell routinely interacted with many members of the NYSE staff, Ashen instructed Mischell that he was to be his principal point of contact on matters relating to the Grasso Proposal.

13. Preparing the financial analysis was a project that was unlike the work Mischell had previously performed for the NYSE. Ashen provided Mischell with the scenarios that he wanted him to utilize in preparing the analysis. Ashen did not ask Mischell to develop alternative scenarios or to explore whether there were alternative proposals that the NYSE should consider. Mischell

prepared three draft versions of the Report, each of which discussed different options with respect to the acceleration of a portion of Grasso's deferred bonus compensation. Ashen told Mischell that Compensation Committee Chairman Ken Langone chose the acceleration option that he wanted reflected in the Report. Mischell also prepared spreadsheets reflecting various assumed interest rates on the NYSE's working capital account. The NYSE advised Mischell that the Report should assume an interest rate of 3%.

14. Between February 11 and March 10, 2003, Mischell sent Ashen multiple drafts of the Report for his review. It was Mischell's understanding that, in or about this period, Ashen was going to brief Grasso on the Report.

15. By March 10, 2003, Mischell had finalized the Report. Mischell received a copy of an email indicating that the Report was sent to all the members of the Compensation Committee. The Report concluded that there was a small financial net savings to the NYSE if it accepted the Grasso Proposal. That savings was driven largely by the acceleration of the tax deduction that the NYSE would receive if it paid the sums shown in the Report as payable under the Grasso Proposal. Mischell understood that the NYSE would not have been entitled to those tax benefits if it had been a publicly-held for-profit corporation.

16. On March 12, 2003, a copy of the Report was sent to Vedder Price, which raised several questions about the Report. Mischell wrote multiple letters in response, all of which were first sent to Ashen for review before being sent to Vedder Price.

17. Among the questions posed by Vedder Price was one asking why the Report did not include a calculation of the interest the NYSE would earn if it did not immediately pay the deferred compensation component of the Grasso Proposal but instead elected to "do nothing." Mischell's

response (copied to Ashen) confirmed that including such interest earnings would reduce by slightly more than $1.5 million the $4.1 million savings stated in the Report.

18. The Report was never revised or amended to reflect the interest that would be earned by the NYSE if it opted to "do nothing." After responding to Vedder Price's inquiry, Mischell is not aware of any effort or attempt to bring this issue to the attention of members of the Compensation Committee or NYSE Board.

19. The Report stated that among the funds to be immediately paid to Grasso pursuant to the Grasso Proposal was $51.574 million in accrued SERP liability. As noted above, however, that accrual was based on an assumption made in August 2002 about the compensation (for 2002) that was to be awarded to Grasso in February 2003. In fact, the actual compensation awarded to Grasso in February 2003 was substantially lower than the compensation that Grasso had received in prior years and therefore substantially lower than the amount assumed in the calculation of the accrued SERP expense.

20. Consistent with the NYSE's typical practice, Mischell asked the NYSE in February 2003 whether its accrual of SERP benefits with respect to Grasso should be adjusted – downward – to reflect the actual compensation award to Grasso. If typical practice had been followed, the accrual would have been reduced by approximately $8.5 million, to $43 million. Mischell was informed that no adjustment would be made because the money was either going to be paid to Grasso or transferred to his SESP account.

21. The Report was prepared in a manner that was consistent with that instruction but that departed from the NYSE's typical practice of "truing-up" the accrual expense. Mischell is not aware of any effort or attempt to inform or advise the members of the Compensation Committee or the

Board of the assumptions underlying the calculation of the accrued SERP liability.

22. In fact, this was not the first time that Mischell had dealt with the question of how to accrue expenses incurred in connection with Grasso's benefits. In 1999, the NYSE permitted Grasso to transfer funds from his SERP to his SESP accounts. Mischell advised the NYSE that it would have a 1999 expense of approximately $12 million in connection with that transfer. In a conversation with Ashen and others that occurred on April 6, 1999, Mischell was informed that "Grasso does not want a $12 m[illion] expense associated with his SERP." According to his notes of that conversation, he spent forty-five minutes discussing this matter with the NYSE. The primary argument in favor was "1. Grasso wants it (the rest are details)." Ultimately, the NYSE recorded (for 1999) the lower amount that Grasso had requested and not the higher amount originally calculated by Mischell.

23. Among the funds to be paid to Grasso pursuant to the Grasso Proposal were the amounts of his compensation that had been deferred. The Report describes those sums as "approximately $80 [million] (including the vested portion of [Grasso's] CAP account." CAP refers to the one of the NYSE's bonus plans, known as the Capital Accumulation Plan. Grasso was entitled to benefits that were, in certain respects, like CAP benefits, but he did not participate in the NYSE's CAP plan. Approximately $13 million of the deferred compensation payable to Grasso pursuant to the Grasso Proposal was in (what the Report described as) his CAP account.

24. Mischell was aware that Grasso's CAP-like benefits were not vested, and Mischell told Ashen that Grasso's CAP-like benefits were not vested. Ashen directed Mischell to have the Report describe as "vested" the portion of Grasso's CAP-like benefits that were funded by the NYSE in a Vanguard account. Ashen indicated that he would explain to the members of the Compensation

Committee that these benefits were in fact forfeitable. Mischell referred to the use of the word "vested" as the "Ashen convention." As a result, the Report characterized as "vested" at least $13 million of CAP-like benefits that were not vested. (The Report also characterized as becoming "vested" an additional $12 million in CAP-like benefits that were similarly forfeitable and were to be paid to Grasso as part of the $48 million in future payments to which he would be entitled pursuant to the Grasso Proposal.)

25. Another component of the deferred compensation payable to Grasso pursuant to the Grasso Proposal was a $5 million "special award" that was made in connection with Grasso's 2001 compensation.

26. In a February 10, 2003 meeting to discuss drafting the Report, Ashen advised Mischell that the $5 million special award was vested. As a result, the Report characterized the $5 million as "vested." Mischell is not aware of any effort or attempt to bring this to the attention of the members of the Compensation Committee or the NYSE Board.

27. Pursuant to the Grasso Proposal, Grasso was to receive an immediate payment of approximately $139.5 million and future payments of approximately $48 million. However, the Grasso Proposal potentially entitled Grasso to additional payments. Grasso's entitlement to those payments was dependent on the prevailing interest rate at the time of his retirement. If the interest rate at Grasso's retirement was the same as the interest rate in effect at the time the Report was prepared and distributed, Grasso would have been entitled to a substantial additional payment above and beyond the $139.5 million and the $48 million. The Report does not state that the NYSE might be obligated to make this payment if the Grasso Proposal were approved.

28. In the weeks prior to the August 7, 2003 Board meeting at which the Grasso Proposal

was discussed, Mischell discussed with Ashen that the NYSE might have to make this additional payment. Mischell provided specific examples demonstrating that those payments could rise to as much as approximately $12 million. Mischell is not aware of any effort or attempt to bring this information to the attention of the members of the Compensation Committee or the NYSE Board.

29. The Report contained the assumption that Grasso's CAP-like benefits that were not funded at Vanguard would grow each year through the crediting of interest at a rate of 8% annually. While certain NYSE employees were contractually entitled to earn 8% annually on their unvested CAP awards, Grasso was not. Nevertheless, Ashen advised Mischell to assume for purposes of the Report that this portion of Grasso's CAP-like benefits would be credited with 8% interest annually. Mischell is not aware of any effort or attempt to advise the members of the Compensation Committee or the NYSE Board of the basis for this assumption.

30. In connection with an earlier lump-sum SERP payment to Grasso that occurred in 1995, Mischell suggested that the NYSE impose an "interest charge" on the funds being advanced to Grasso. In his opinion, this was the "way to make the [payment] 'no cost' to the Exchange." At that time, Mischell was told that Grasso objected and the NYSE did not impose an interest charge.

31. In February 2003, Mischell advised Ashen that pursuant to the Grasso Proposal, Grasso would not be charged interest in connection with the accelerated payment of $51 million. Ashen subsequently directed Mischell to prepare the Report with the assumption that Grasso would not be charged such interest. The Report does not discuss the possibility or effect of imposing such a charge and Mischell is not aware of any effort or attempt to advise the members of the Compensation Committee or NYSE Board of this possibility.

32. Actuarial principles dictated that (all other things being equal) as Grasso got older than

60 his SERP benefits would decline in value each year. Pursuant to the Grasso Proposal, Grasso would have been older than 60 when he retired. The Report does not contain this information, and Mischell is not aware of any effort or attempt to bring the information to the attention of the members of the Compensation Committee or NYSE Board.

33. Although the Report was revised in June 2003 to account for changes in (i) the market value of the funds in Grasso's deferred compensation and benefits plans and (ii) the length of Grasso's proposed new employment agreement, there were no revisions made with regard to any of the matters discussed above.

34. The Compensation Committee was scheduled to consider the Grasso Proposal at its July 14, 2003 meeting. On July 8, 2003, Mischell provided Ashen with the final version of the Report, which contained no revisions with regard to any of the matters discussed above. Prior to the Compensation Committee meeting, Mischell and Ashen met privately with the two new members of the Committee to review his analysis with them.

35. Mischell attended the July 14, 2003 meeting of the Compensation Committee, as did Ashen. The final version of the Report had been distributed to the all members of the Compensation Committee prior to the meeting.

36. On August 7, 2003, the Compensation Committee met again to discuss the Grasso Proposal. Mischell was not present at the meeting, because on August 4 he had been advised by Ashen that the Grasso proposal would not be on the agenda for the August 7 Board meeting. After the Compensation Committee met and discussed the Grasso Proposal, Mischell received a call from Ashen advising him that the NYSE Board was going to consider the Grasso Proposal within the hour. Mischell informed Ashen that he could not get to the NYSE from his Princeton, New Jersey office in time for the meeting, and Ashen did not ask him to participate in the meeting by telephone. Later

that day, Mischell learned from Ashen that the Board had approved the Grasso Proposal.

37. On August 27, 2003, Grasso and the NYSE executed a new employment agreement pursuant to the Grasso Proposal. On or about September 3, 2003, the NYSE paid Grasso the $139.5 million pursuant to the Grasso Proposal.

Dated: New York
April ~~28~~ 29, 2004

STATE OF ~~NEW JERSEY~~ New York)
) ss.:
COUNTY OF ~~MERCER~~ New York)

William D. Mischell, being duly sworn, deposes and says that he has read the foregoing "Mercer's Statement of Facts" and it is true and correct.

William D. Mischell

Sworn to before me
this April 29th, 2004

Notary Public

ANNAMARIA CARLISI
Notary Public, State of New York
No. 01-CA5057480
Qualified in Bronx County
Commission Expires March 25, 2006

EXHIBIT 3

MEMORANDUM

Confidential

October 29, 2001

VIA FACSIMILE

To: Michael Carpenter
Dick Grasso
David Komansky
Mark Lacritz
John Mack
Hank Paulson
Phil Purcell
Mary Shapiro

From: Harvey Pitt

RE: Meeting

Thank you all for arranging your schedules to make time for a meeting on Tuesday, November 6. The issues that have been raised with respect to certain conduct of securities analysts are issues for the industry to resolve, at least in the first instance.

In individual discussions, with most of you, I have indicated my belief that the industry needs to take the lead in addressing the concerns that have surfaced. While the Commission will presumably have a role to play when and if the SROs propose ethical standards, my goal is to bring you together, not to dictate any solutions. I believe it is best if the industry announces its own solution to its own issue, and if the implementation of any changes is done by SRO rule proposal. I am of the strong view that there is no need for either legislation or SEC regulation.

We had anticipated holding this meeting in early September, until the tragic events of September 11 intervened. The cooperation and partnership evidenced in the aftermath of September 11, when the public and private sectors worked together to restore our U. S. markets, showed the world that our private and public sectors can, working together and collegially, effectively and expeditiously resolve significant concerns. That is the spirit in which I hope you will meet on November 6.

The plan is for the meeting to start at 9:30 a.m. on the 6th, and end at about 12:30 p.m. We understand that some may not be able to attend the full session, and that we also may need additional time. The meeting will be held at the Regent Hotel, located at 55 Wall Street. The general phone number of the hotel is 212-845-8600. The Isaiah Rogers

Room has been reserved, and we will leave word with your offices on any additional specifics.

We will send each of you an outline of items that may help shape your discussion next week. In the interim, if you have any thoughts on how to proceed, please let everyone know. This is your meeting, and it should conform to your expectations.

Thanks, and warm personal regards,

Sincerely,

Harvey L. Pitt

EXHIBIT 4

Chief Executive Officer

Median Actual $9,700,000
Median actual = 150%, 100% = $6,466,667

100 =	$6,466,667	@ 90%	$5,820,000
110 =	7,113,333		6,402,000
120 =	7,760,000		6,984,000
130 =	8,406,667		7,566,000
140 =	9,053,333		8,148,000
150 =	9,700,000		8,730,000

Richard A. Grasso

	Base Salary	ICP	LTIP	Total Compensation	Total Variable Compensation
1998	$1,400,000	$4,204,000	$ 396,000	$6,000,000	$4,600,000
1999	$1,400,000	$5,652,000	$ 948,000	$8,000,000.	$6,600,000

In 1999 Mr. Grasso will receive 50% of his variable compensation in the Capital Accumulation Plan

EXHIBIT 5

Chief Executive Officer

The 100% level is the median target of comparator data aged to 1/02

Performance	Median Target		Median Target
100	$13,349,864	at 90%	$12,014,878
110	$14,684,850		$13,216,365
120	$16,019,837		$14,417,853
125	$16,687,330		$15,018,597
130	$17,354,823		$15,619,341
140	$18,689,810		$16,820,829
150	$20,024,796		$18,022,316

	2000		
100	$7,948,105	at 90%	$7,153,295
110	$8,742,916		$7,868,624
120	$9,537,726		$8,583,954
130	$10,332,537		$9,299,283
140	$11,127,347		$10,014,613
150	$11,922,158		$10,729,942
155	$12,319,563		$11,087,607
160	$12,716,969		$11,445,272

Total 2000
Base 1.4
variable 13.6
(cap 6.8)
spec 5.0
26.8
↓
20 (+cap)

Total 2001
Base 1.4
ICP 10.6
(cap 5.3 + 1.5)
spec 10.5
27.8 + 1.5
29.3
↓
22.5 (+cap)

cap: 5.3 (variable)
1.5 (from spec)
6.8

Richard A. Grasso

	Base Salary	ICP	LTIP	Variable Comp	Total Cash Comp	CAP	Total Compensation
1999	$1,400,000	$5,652,000	$948,000	$6,600,000	$8,000,000	$3,300,000	$11,300,000
2000	$1,400,000	$12,519,000	$1,081,000	$13,600,000	$15,000,000	$6,800,000	$21,800,000
2001	$1,400,000			10,600000	12,000,000	5,300,000	17,300

49% dollar 50% dollar

Mr. Grasso will also receive a capital accumulation award equal to 50% of the Variable Compensation.

In February, 2001 Mr. Grasso was granted a special award of $5,000,000 that fully vests on February 1, 2006

cash
700
5,300
6.0

Special: 10.5
7.5 special
3.0 deferral ICP
10.5
85%
L cap/SERP (3.0

EXHIBIT 6

Chief Executive Officer

The 100% level is the median target of comparator data aged to 1/02

Performance	Median Target		Median Target
100	$13,349,864	at 90%	$12,014,878
110	$14,684,850		$13,216,365
120	$16,019,837		$14,417,853
125	$16,687,330		$15,018,597
130	$17,354,823		$15,619,341
140	$18,689,810		$16,820,829
150	$20,024,796		$18,022,316

Richard A. Grasso

	Base Salary	ICP	LTIP	Variable Comp	Total Cash Comp
2000	$1,400,000	$12,519,000	$1,081,000	$13,600,000	$15,000,000
2001	$1,400,000	$10,600,000	N/A	$10,600,000	$12,000,000

Mr. Grasso will also receive a capital accumulation award equal to 50% of the Variable Compensation.

In February, 2001 Mr. Grasso was granted a special award of $5,000,000 that fully vests on February 1, 2006

In February, 2002 Mr. Grasso is proposed for a special award of $10,700,000 payable into his SESP account and deferred until retirement, $3,000,000 of which will be CAP and SERP eligible

EXHIBIT 7

Ken Langone Speaking Points

- The Human Resources Policy and Compensation Committee met this morning to consider Dick's compensation for 2001

- Comments about Dick's personal performance...

- Last year, in addition to his salary of $1.4 million (that is established by his contract) Dick received variable compensation of $13.6 million and a Special Payment of $5 million that will vest fully in February 2006.

- This year, the Committee recommends that Dick receive, in addition to his salary:

  --$16.1 million in variable compensation (up $2.5 million from last year)

  --A Special Payment of $5 million that he will receive when he leaves the Exchange that will also be placed in his SESP account – The Exchange's non-qualified Savings Plan

  –Like the Special Payment we made last year, the $5 million will not be eligible for the Capital Accumulation Plan, nor will it be a part of Dick's retirement calculation.

- As a result, all in, the Committee recommends that Dick's compensation be raised $2.5 million, including a deferred special payment of $5 million

EXHIBIT 8

NYSE
New York Stock Exchange

Memorandum

Date: February 2, 2001

To: Keith Helsby

From: Frank Z. Ashen

Subject: ICP/LTIP

The Board of Directors, at its meeting yesterday, approved an ICP award for the NYSE at 155% for the company portion of the award. The Division adjustments have been communicated to Sal Tuminello and Human Resources and Finance are in agreement on those final results.

The Human Resources Policy & Compensation Committee of the Board, at its meeting yesterday, approved an LTIP payment at 54.1%. Please see the attached schedule for individual awards.

Reports detailing all payments have also been sent to Alan Holzer.

Please call if you have any questions.

Attachment

cc: Dale B. Bernstein

Chief Executive Officer

Richard A. Grasso

	Base Salary	ICP	LTIP	Variable Comp	Total Cash Comp	CAP	Total Compensation
1999	$1,400,000	$5,652,000	$948,000	$6,600,000	$8,000,000	$3,300,000	$11,300,000
2000	$1,400,000	$12,519,000	$1,081,000	$13,600,000	$15,000,000	~~$6,800,000~~	$21,800,000

Mr. Grasso will also receive a capital accumulation award equal to 50% of the Variable Compensation.

EXHIBIT 9

Hewitt

Date: March 4, 1999

To: The New York Stock Exchange, Inc.
File

From: Jeffrey S. Hyman

Subject: Compensation/Board Meeting Re. Contract Extension

cc: RECCT/NY
S. Allen/CT-1W
J. Anderson/LS90-1W-5
M. Guthman/CT-1W
[redacted]
V. Jack/CT-1W
P. Shafer/CT-1W
Sec. File

Client #: N-4580 Billing#: 012

I attended the Compensation Committee and Board meetings for the purpose of soliciting approval for Bernie Marcus to renegotiate contracts for Dick Grasso and Billy Johnston. Both bodies quickly approved nearly all of the original proposed terms. The only change was to freeze base salaries at existing levels, while increasing target bonuses instead. In essence, the approved contract will have no impact on cash compensation, since the Committee typically approves a bonus level that is a "plug" required to ensure total compensation is the right amount. The big change is the addition of Capital Accumulation Plan participation for both executives. This will enhance Grasso's wealth accumulation over the next six years to roughly $17 million; Johnston's by $2.5 million. In addition, the extended service credit and enhancements to pension formulation will improve retirement income by another $15 million.

The proposal was approved unanimously with very little discussion in the Compensation Committee, and absolutely no discussion at the full Board level. Incidentally, no one raised the question as to how much Grasso will aggregate over his career by virtue of these enhancements. The answer is roughly $60 million from the pension and capital accumulation plans alone. Salary, bonus, and long-term incentive earnings will be incremental.

/kul