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MAA:SPC  
F.#2005R00711

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

P.M. \_\_\_\_\_  
TIME A.M. \_\_\_\_\_

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UNITED STATES OF AMERICA

S U P E R S E D I N G  
I N D I C T M E N T

- against -

Cr. No. 05-0613 (S-1) (ILG)  
(T. 18, U.S.C., §§ 371,  
981(a)(1)(C), 1001(a)(1),  
1001(a)(2), 1348, 1349,  
1512(b)(1), 1512(b)(2)(A),  
1512(b)(3), 1512(k),  
1952(a)(3), 2 and 3551  
et seq.; T. 21, U.S.C.,  
853(p); T. 28, U.S.C., §  
2461(c))

KENNETH E. MAHAFFY, JR. ✓  
TIMOTHY J. O'CONNELL, ✓  
DAVID G. GHYSELS, JR., ✓  
ROBERT F. MALIN, ✓  
LINUS NWAIGWE, ✓  
MICHAEL A. PICONE and  
KEEVIN H. LEONARD,

Defendants.

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THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

THE DAY TRADING FIRMS

1. A.B. Watley Group, Inc., was the parent company of A.B. Watley, Inc., a broker-dealer of securities registered with the United States Securities and Exchange Commission ("SEC") and the National Association of Securities Dealers ("NASD"). For purposes of this Indictment, A.B. Watley Group, Inc. and A.B. Watley, Inc. are referred to collectively as "A.B. Watley." A.B. Watley maintained its principal office at 40 Wall Street, New York, New York. A.B. Watley also maintained several branch

offices, including offices in Forest Hills, New York, and Melville, New York. A.B. Watley operated primarily as a "day trading" firm.

2. Millennium Brokerage, LLC ("Millennium") was a broker-dealer of securities registered with the SEC and the NASD, and maintained its principal office in Woodcliff, New Jersey. Millennium also maintained a branch office at 3 Park Avenue, New York, New York. Millennium was a day trading firm. In or about March 2003, a group of former A.B. Watley day traders began working at Millennium's Park Avenue branch.

3. E\*Trade Professional Trading, LLC ("E\*Trade") was a broker-dealer of securities registered with the SEC and the NASD, and maintained its principal office at 135 East 57th Street, New York, New York. E\*Trade also sold an electronic trading platform that was marketed to professional stock traders. In or about and between October 2003 and December 2003, a group of former A.B. Watley traders began day trading on behalf of a hedge fund called Ellis Island Trading ("Ellis Island"), which used E\*Trade's trading platform. Ellis Island was located in the Amex Building in New York, New York. In or about December 2003, the same group of day traders terminated their relationship with Ellis Island and became employed at E\*Trade's principal office. The day traders continued to be employed at E\*Trade until at least February 2004.

4. "Day trading" is a stock trading strategy whereby stock traders, through a high volume of trading activity, attempt to profit from slight changes in the prices of securities by buying and selling securities within a very short period of time. Typically, day traders both buy and sell a given security within a single trading day.

THE DEFENDANTS AND OTHER RELEVANT PERSONS

The Brokers

5. The defendant KENNETH E. MAHAFFY, JR., was a stock broker licensed by the NASD. In or about and between 1997 and February 2003, MAHAFFY was employed as a stock broker at a branch office of Merrill Lynch & Co., Inc. ("Merrill Lynch") located at 1325 Franklin Avenue, Garden City, New York ("Merrill Lynch's Garden City branch"). In or about and between February 2003 and June 2005, MAHAFFY was employed as a stock broker by Smith Barney, a division of Citigroup Global Markets, Inc. (collectively, "Citigroup"). MAHAFFY was employed at a branch office of Citigroup located at 401 Broad Hollow Road, Melville, New York. Merrill Lynch and Citigroup were both broker-dealers of securities registered with the SEC and the NASD.

6. The defendant TIMOTHY J. O'CONNELL was a stock broker licensed by the NASD. In or about and between 1997 and February 2005, O'CONNELL was employed as a stock broker at Merrill Lynch's Garden City branch. In or about and between 2001

and February 2003, O'CONNELL and the defendant KENNETH E. MAHAFFY, JR., shared client commissions and worked together as partners at Merrill Lynch's Garden City branch.

7. The defendant DAVID G. GHYSELS, JR., was a stock broker licensed by the NASD. In or about and between March 2001 and April 2003, GHYSELS was employed as a stock broker at a branch office of Lehman Brothers ("Lehman") located in Palm Beach, Florida.

8. Ralph D. Casbarro ("Casbarro") was a stock broker licensed by the NASD. In or about and between 1998 and March 2005, Casbarro was employed as a stock broker at a branch office of Citigroup located at 1345 Avenue of the Americas, New York, New York.

9. Paul F. Coughlin ("Coughlin") was a stockbroker licensed by the NASD. In or about and between 1995 and December 2005, Coughlin was employed by Merrill Lynch as a stock broker. In or about and between 1997 and December 2005, Coughlin was employed as a stock broker at a Merrill Lynch branch office located at 1251 Avenue of the Americas, New York, New York.

10. As stock brokers at Merrill Lynch, Citigroup and Lehman (collectively, the "Brokerage Firms"), the defendants KENNETH E. MAHAFFY, JR., TIMOTHY J. O'CONNELL, RALPH D. CASBARRO and DAVID G. GHYSELS, JR., and Casbarro and Coughlin each owed fiduciary and other duties of trust and confidentiality to their

respective Brokerage Firms and the customers of their respective Brokerage Firms.

The A.B. Watley Defendants

11. The defendant ROBERT F. MALIN was Vice-Chairman of the Board of Directors of A.B. Watley Group, Inc., and President of A.B. Watley, Inc. MALIN, together with others, managed A.B. Watley's business activities and supervised its day traders. MALIN worked at A.B. Watley's principal office in New York, New York.

12. The defendant LINUS NWAIGWE was the Director of Compliance for A.B. Watley, Inc. NWAIGWE was therefore responsible for ensuring that A.B. Watley, Inc. and its employees complied with the federal securities laws, and followed the rules and regulations of the SEC. NWAIGWE worked at A.B. Watley's principal office in New York, New York. In or about and between 1986 and 1994, before joining A.B. Watley, NWAIGWE was employed as a compliance examiner and compliance specialist with the NASD.

13. In or about and between December 2002 and August 2003, the defendant MICHAEL A. PICONE was employed as the Chief Operating Officer of A.B. Watley Group, Inc. In or about August 2003, PICONE entered into a consulting agreement with A.B. Watley Group, Inc., through Worth Consulting, LLC, a company that PICONE controlled. In or about and between August 2003 and July 2005,

PICONE provided various financial and accounting services to A.B. Watley pursuant to this consulting agreement.

14. In or about and between December 2001 and September 2003, the defendant KEEVIN H. LEONARD was employed at A.B. Watley's principal office in New York, New York. Among other things, LEONARD managed, supervised and trained A.B. Watley's day traders. LEONARD was licensed by the NASD to act as a stock broker and a General Securities Principal.

#### THE FRONT-RUNNING SCHEME

15. In or about and between January 2002 and February 2004, both dates being approximate and inclusive, the defendants KENNETH E. MAHAFFY, JR., TIMOTHY J. O'CONNELL, DAVID G. GHYSELS, JR., ROBERT F. MALIN, LINUS NWAIGWE, MICHAEL A. PICONE and KEEVIN H. LEONARD, together with others, devised, implemented, oversaw and participated in a fraudulent "front-running" scheme. Among other circumstances, front-running occurs when a stock trader:

- (a) improperly obtains material, non-public information from a brokerage firm concerning large orders to purchase or sell securities, which have been placed with the brokerage firm by its institutional customers but have not yet been executed; and
- (b) subsequently executes trades in the same securities, prior to the execution of the larger customer orders, in anticipation of the movement in price that the large trades are likely to cause.

Front-running harms a brokerage firm's customers because it

allows the stock trader to take advantage of limited opportunities to purchase and sell the same securities in which the firm's customers are interested before the customers are able to do so. As a result, the firm's customers may not obtain as favorable a price as they would have absent the front-running.

The "Squawk Boxes"

16. It was a part of the scheme that the defendants KENNETH E. MAHAFFY, JR., TIMOTHY J. O'CONNELL and DAVID G. GHYSELS, JR., and Casbarro and Coughlin provided day traders at A.B. Watley, Millennium, Ellis Island and E\*Trade (the "Day Traders") with material, non-public customer order information by permitting the Day Traders to listen secretly to internal speaker systems known as "Squawk Boxes" within the Brokerage Firms. The information that was broadcasted through the Squawk Boxes included material, non-public information concerning large orders to purchase and sell securities that had been placed with the Brokerage Firms by their institutional clients. The large orders involved quantities of stock that were sufficiently large that the transactions could be expected to influence the market price for the stocks in question.

17. As a further part of the scheme, the Day Traders used material, non-public customer order information that was disseminated through the Squawk Boxes by purchasing and selling securities that were the subject of Squawk Box orders prior to

when the Brokerage Firms executed those orders. Thus, for example, when the Squawk Boxes disseminated information concerning a large order to buy a particular stock, the Day Traders would purchase shares of the same stock before the larger buy order was executed, expecting that the imminent execution of the large buy order would cause the market price of the particular stock to rise. Conversely, when the Squawk Boxes disseminated information concerning a large order to sell a particular stock, the Day Traders would short sell the same securities before the larger sell order was executed, expecting that the imminent execution of the large sell order would cause the market price of the particular stock to fall.

18. Short selling is a technique in which investors make money if the price of a stock falls. Specifically, short selling involves "borrowing" stock from another party and selling it, with an agreement to return the stock to the other party at a later date. The short seller anticipates that the stock's price will fall, allowing the short seller to buy the stock back later at a lower price and return the stock to the lender. Thus, short sellers profit from decreases in the price of a stock that they have sold short.

19. The A.B. Watley Day Traders engaged in this illegal trading activity at the direction and under the



supervision of the defendants ROBERT F. MALIN, LINUS NWAIGWE, MICHAEL A. PICONE and KEEVIN H. LEONARD and others.

20. The defendants KENNETH E. MAHAFFY, JR., TIMOTHY J. O'CONNELL and DAVID G. GHYSELS, JR., and Casbarro and Coughlin provided the material, non-public customer order information to the Day Traders in violation of fiduciary and other duties of trust and confidence that were owed by MAHAFFY, O'CONNELL, GHYSELS, Casbarro and Coughlin to their respective Brokerage Firms and the clients of those Brokerage Firms.

#### BRIBE PAYMENTS

21. It was a further part of the scheme that in exchange for access to the Brokerage Firms' Squawk Boxes, the Day Traders paid bribes in the form of cash, commissions and other things of value to the defendants KENNETH E. MAHAFFY, JR., TIMOTHY J. O'CONNELL and DAVID G. GHYSELS, JR., and Casbarro and Coughlin.

#### Wash Trades

22. One method by which the Day Traders bribed the defendants KENNETH E. MAHAFFY, JR., TIMOTHY J. O'CONNELL and DAVID G. GHYSELS, JR., and Casbarro was by generating commissions through the execution of "wash trades." The "wash trades" consisted of prearranged pairs of trades of the same securities between different accounts that the Day Traders maintained at various firms, including the Brokerage Firms. Typically, the Day

Traders executed the wash trades by simultaneously placing orders to: (1) purchase a block of stock at a particular price through one Brokerage Firm account; and (2) sell a similarly sized block of the same stock at the same price through a different Brokerage Firm account. The wash trades involved no net change in beneficial ownership of stock and had no legitimate investment purpose. The wash trades were executed solely as a means of generating commissions for MAHAFFY, O'CONNELL, GHYSELS and Casbarro in exchange for Squawk Box access.

23. In or about and between January 2002 and September 2003, the defendant KEEVIN H. LEONARD, together with others, coordinated the execution of wash trades through A.B. Watley's accounts at the Brokerage Firms. During this period, LEONARD also regularly collected cash from the A.B. Watley Day Traders for "desk fees." The purpose of the desk fees was to, among other things, reimburse A.B. Watley for the cash and commissions that were paid to the defendants KENNETH E. MAHAFFY, JR., TIMOTHY J. O'CONNELL and DAVID G. GHYSELS, JR. and Casbarro, in exchange for Squawk Box access.

#### Bribe Payments to Coughlin

24. In or about the fall of 2003, the defendants ROBERT F. MALIN and MICHAEL A. PICONE engaged in an effort to find new sources of Squawk Box access for A.B. Watley. In or about and between September 2003 and February 2004, MALIN and

PICONE, together with others, agreed to pay secret bribes to Coughlin, in exchange for access to Merrill Lynch's Squawk Box. During this period, MALIN and PICONE caused an A.B. Watley Day Trader ("John Doe"), an individual whose identity is known to the Grand Jury, to deliver cash bribes to Coughlin of approximately \$1,000 per month. MALIN and PICONE provided John Doe with the cash to make the bribe payments by causing A.B. Watley to issue reimbursement checks to John Doe for bogus business expenses.

#### THE COVER-UP

##### Efforts To Hide A.B. Watley's Squawk Box Access From the NASD

25. In or about and between January 2002 and February 2004, A.B. Watley typically provided its Day Traders with Squawk Box access using a system of external speakers and speaker phones that had been installed throughout the firm's trading floor. At various times during this period, NASD examiners visited A.B. Watley's New York City office to conduct compliance examinations. The defendants ROBERT F. MALIN, LINUS NWAIGWE and KEEVAN H. LEONARD, together with others, concealed A.B. Watley's Squawk Box access from the NASD by, among other things, causing the A.B. Watley's Day Traders to listen to the Squawk Boxes through headsets, rather than the external speaker systems, while the NASD examiners were present at A.B. Watley's New York City office.

O'CONNELL's Efforts to Obstruct Justice

26. In or about and between December 2003 and April 2005, the defendant TIMOTHY J. O'CONNELL, together with others, devised and agreed to devise false cover stories to provide to the SEC, law enforcement authorities and internal investigators at Merrill Lynch for the purpose of concealing O'CONNELL's participation in the fraudulent front-running scheme. In or about December 2003, O'CONNELL was interviewed by members of Merrill Lynch's internal compliance staff who were investigating O'CONNELL's use of Merrill Lynch's Squawk Box. During this interview, O'CONNELL falsely stated that he had never allowed day traders at Millennium to listen to Merrill Lynch's Squawk Box.

27. In or about May 2004, a duly empaneled grand jury in the United States District Court for the Eastern District of New York (the "Grand Jury"), with the assistance of the United States Attorney's Office for the Eastern District of New York and the United States Postal Inspection Service, began investigating, among other things, the defendant TIMOTHY J. O'CONNELL's involvement in the fraudulent front-running scheme (the "Grand Jury Investigation"). On or about June 7, 2004, a United States Postal Inspector assigned to the Grand Jury Investigation interviewed O'CONNELL. During this interview, O'CONNELL falsely denied providing the Day Traders with access to Merrill Lynch's Squawk Box.

28. In or about November 2004, the defendant TIMOTHY J. O'CONNELL became aware that the SEC and law enforcement authorities were seeking to interview his assistant at Merrill Lynch ("Jane Doe"), an individual whose identity is known to the Grand Jury, in connection with the Grand Jury Investigation and a parallel civil investigation that was being conducted by the SEC (the "SEC Investigation"). O'CONNELL directed Jane Doe to lie to law enforcement authorities and the SEC concerning, among other things, O'CONNELL's use of Merrill Lynch's Squawk Box. On or about December 14, 2004, during an interview in Brooklyn, New York, with an SEC staff member and a United States Postal Inspector in connection with the Grand Jury Investigation and the SEC Investigation, Jane Doe followed O'CONNELL's instructions and falsely stated that she had no knowledge of O'CONNELL providing the Day Traders with access to Merrill Lynch's Squawk Box.

29. In or about February 2005, the defendant TIMOTHY J. O'CONNELL became aware that Jane Doe had been subpoenaed to testify before the Grand Jury in connection with the Grand Jury Investigation. O'CONNELL instructed Jane Doe to lie to the Grand Jury about, among other things, O'CONNELL's use of Merrill Lynch's Squawk Box. On or about February 17, 2005, Jane Doe testified under oath before the Grand Jury. In accordance with O'CONNELL's instructions, during her Grand Jury testimony, Jane

Doe falsely denied any knowledge of O'CONNELL providing the Day Traders with access to Merrill Lynch's Squawk Box.

MAHAFFY's Lies to Law Enforcement and the SEC

30. On or about March 28, 2005, the defendant KENNETH J. MAHAFFY, JR., participated in an interview at the United States Attorney's Office in Brooklyn, New York, with a Postal Inspector assigned to the Grand Jury Investigation and several SEC staff members who were assigned to the SEC investigation. During this interview, MAHAFFY falsely stated, in substance and in part, that he only placed an open telephone line in close proximity to Merrill Lynch's Squawk Box for short periods of time so that his clients could listen to Merrill Lynch analysts who sometimes used the Squawk Boxes to disseminate investment advice. In fact, in or about and between January 2002 and January 2003, MAHAFFY routinely and deliberately placed open telephone lines next to Merrill Lynch's Squawk Box for lengthy portions of the trading day for the purpose of providing the Day Traders with confidential customer order information.

31. On or about April 4, 2005, the defendant KENNETH J. MAHAFFY, JR., participated in another interview at the United States Attorney's Office in Brooklyn, New York, with a Postal Inspector and several SEC staff members. During this interview, MAHAFFY falsely stated, in substance and in part, that while he often communicated with certain clients through an open telephone

line in his Citigroup office, he typically kept the line muted for lengthy portions of the trading day. MAHAFFY further stated that he believed this would make it difficult for the clients on the open line to listen to his Citigroup Squawk Box. In fact, in or about and between February 2003 and November 2003, MAHAFFY routinely and deliberately used the open telephone line in his office to provide the Day Traders with access to Citigroup's Squawk Box for lengthy portions of the trading day.

NWAIGWE's Lies to Law Enforcement and the SEC

32. On or about November 3, 2004, the defendant LINUS NWAIGWE appeared before the SEC in New York; New York, pursuant to a subpoena and gave testimony under oath in connection with the SEC Investigation. Prior to testifying, NWAIGWE was informed by A.B. Watley's counsel that his SEC testimony would be shared with the United States Attorney's Office for the Eastern District of New York. NWAIGWE falsely testified, in substance and in part, that: (a) he had first heard the term "Squawk Box" when he saw it mentioned in a subpoena he received from the SEC; and (b) he had never heard the term "box" in connection with proprietary trading at A.B. Watley. In fact, NWAIGWE then and there well knew and believed that, in or about and between February 2002 and February 2004, the A.B. Watley Day Traders had routinely listened to and purchased and sold securities based on

material, non-public information derived from devices known as "Squawk Boxes."

33. On or about July 12, 2005, the defendant LINUS NWAIGWE participated in an interview at the United States Attorney's Office in Brooklyn, New York, with a Postal Inspector assigned to the Grand Jury Investigation. During this interview, NWAIGWE reviewed a portion of a transcript of his SEC testimony that contained the false statements described above. NWAIGWE told the Postal Inspector that the statements set forth in his SEC testimony transcript were accurate, when in fact, as he then and there well knew and believed, the statements were false.

PICONE's Lies to the SEC

34. On or about July 20, 2005, the defendant MICHAEL A. PICONE appeared before the SEC in New York, New York, pursuant to a subpoena and gave testimony under oath in connection with the SEC Investigation. Prior to testifying, PICONE had been informed by, among others, the defendant ROBERT F. MALIN, that the United States Attorney's Office for the Eastern District of New York was conducting a parallel criminal investigation regarding the same subject matter as the SEC Investigation. Prior to when PICONE testified, he was presented with and reviewed a Form 1662, which stated that the SEC "often makes its files available to other governmental agencies, particularly United States Attorneys and state prosecutors."



35. The defendant MICHAEL A. PICONE falsely testified before the SEC, in substance and in part, that: (a) he approved a \$1,000 expense payment from A.B. Watley to John Doe in or about November 2003 so that John Doe could bring a Merrill Lynch broker to an adult entertainment establishment; (b) he believed that John Doe was attempting to develop a business relationship with the broker that would allow A.B. Watley to obtain access to secondary securities offerings through Merrill Lynch; and (c) he did not believe that John Doe planned to use the \$1,000 to compensate the broker for providing A.B. Watley with access to Merrill Lynch's Squawk Box. In fact, PICONE then and there well knew and believed that the \$1,000 expense reimbursement check was for the purpose of providing John Doe with funds to compensate Coughlin for providing the A.B. Watley Day Traders with access to Merrill Lynch's Squawk Box.

COUNT ONE

(Conspiracy to Commit Securities Fraud)

36. The allegations contained in paragraphs 1 through 35 are realleged and incorporated as though fully set forth in this paragraph.

37. In or about and between January 2002 and February 2004, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants KENNETH E. MAHAFFY, JR., TIMOTHY J. O'CONNELL, DAVID G. GHYSELS, JR., ROBERT F. MALIN, LINUS NWAIGWE, MICHAEL A. PICONE and KEEVIN

H. LEONARD, together with others, did knowingly and intentionally conspire to execute a scheme and artifice (a) to defraud persons in connection with securities of issuers with a class of securities registered under Section 12 of the Securities Exchange Act of 1934, to wit: shares of public companies for which customers of the Brokerage Firms placed orders to buy and sell, and (b) to obtain, by means of false and fraudulent pretenses, representations and promises, money and property in connection with the purchase and sale of securities of issuers with a class of securities registered under Section 12 of the Securities Exchange Act of 1934, to wit: shares of public companies for which customers of the Brokerage Firms placed orders to buy and sell, all in violation of Title 18, United States Code, Section 1348.

(Title 18, United States Code, Sections 1349 and 3551 et seq.)

COUNTS TWO THROUGH TWENTY-ONE  
(Securities Fraud)

38. The allegations contained in paragraphs 1 through 35 are realleged and incorporated as though fully set forth in this paragraph.

39. On or about the dates indicated below, within the Eastern District of New York and elsewhere, the defendants indicated below, together with others, did knowingly and intentionally execute a scheme and artifice (a) to defraud

persons in connection with securities of issuers with a class of securities registered under Section 12 of the Securities Exchange Act of 1934, to wit: shares of public companies for which customers of the Brokerage Firms placed orders to buy and sell, and (b) to obtain, by means of false and fraudulent pretenses, representations and promises, money and property in connection with the purchase and sale of securities of issuers with a class of securities registered under Section 12 of the Securities Exchange Act of 1934, to wit: shares of public companies for which customers of the Brokerage Firms placed orders to buy and sell, as indicated below:

COUNT	DEFENDANTS	TRANSACTIONS	DAY TRADERS	SOURCE OF LARGE ORDER	DATE
2	GHYSELS MALIN LEONARD	Purchases of at least 17,000 shares of Capital One Financial Corp. common stock at an average price of approximately \$37.64 per share	A.B. Watley	Lehman	8/22/02
3	GHYSELS MALIN LEONARD	Short sales of at least 22,000 shares of Commerce Bancorp Corp. common stock at an average price of approximately \$45.15 per share	A.B. Watley	Lehman	9/12/02

COUNT	DEFENDANTS	TRANSACTIONS	DAY TRADERS	SOURCE OF LARGE ORDER	DATE
4	GHYSELS MALIN LEONARD	Short sales of at least 22,000 shares of Supervalu Inc. common stock at an average price of approximately \$17.08 per share	A.B. Watley	Lehman	9/23/02
5	MAHAFFY O'CONNELL MALIN LEONARD	Purchases of at least 28,000 shares of Liberty Media Corp. common stock at an average price of approximately \$7.76 per share	A.B. Watley	Merrill Lynch	9/23/02
6	GHYSELS MALIN LEONARD	Short sales of at least 35,000 shares of Home Depot Inc. common stock at an average price of approximately \$25.52 per share	A.B. Watley	Lehman	10/2/02
7	GHYSELS MALIN LEONARD	Purchases of at least 13,000 shares of Deere and Co. common stock at an average price of approximately \$44.40 per share	A.B. Watley	Lehman	10/4/02
8	MAHAFFY O'CONNELL MALIN LEONARD	Sales and short sales of at least 54,000 shares of Citigroup, Inc. common stock at an average price of approximately \$33.66 per share	A.B. Watley	Merrill Lynch	10/16/02

COUNT	DEFENDANTS	TRANSACTIONS	DAY TRADERS	SOURCE OF LARGE ORDER	DATE
9	MAHAFFY O'CONNELL MALIN LEONARD	Purchases of at least 45,000 shares of Taubman Centers Inc. common stock at an average price of approximately \$16.42 per share	A.B. Watley	Merrill Lynch	11/13/02
10	O'CONNELL MALIN LEONARD	Purchases of at least 8,000 shares of Waters Corp. common stock at an average price of approximately \$21.31 per share	A.B. Watley	Merrill Lynch	1/28/03
11	MALIN LEONARD	Purchases of at least 38,800 shares of EMC Corp. common stock at an average price of approximately \$7.20 per share	A.B. Watley	Citigroup	1/28/03
12	O'CONNELL MALIN LEONARD	Purchases of at least 10,000 shares of American Financial Group, Inc. common stock at an average price of approximately \$19.79 per share	A.B. Watley	Merrill Lynch	2/5/03

COUNT	DEFENDANTS	TRANSACTIONS	DAY TRADERS	SOURCE OF LARGE ORDER	DATE
13	O'CONNELL MALIN LEONARD	Purchases of at least 54,000 shares of Cardinal Health, Inc. common stock at an average price of approximately \$53.52 per share	A.B. Watley	Merrill Lynch	4/24/03
14	O'CONNELL MALIN LEONARD	Purchases of at least 26,000 shares of First Data Corp. common stock at an average price of approximately \$43.47 per share	A.B. Watley	Merrill Lynch	6/5/03
15	MALIN LEONARD	Purchases of at least 29,000 shares of AMR Corp. common stock at an average price of approximately \$9.29 per share	A.B. Watley	Citigroup	6/24/03
16	MALIN LEONARD	Purchases of at least 44,000 shares of Duke Energy Corp. common stock at an average price of approximately \$17.34 per share	A.B. Watley	Citigroup	8/20/03

COUNT	DEFENDANTS	TRANSACTIONS	DAY TRADERS	SOURCE OF LARGE ORDER	DATE
17	O'CONNELL	Short sales of at least 9,100 shares of Fair Isaac Corporation common stock at an average price of approximately \$59.57 per share.	Millennium	Merrill Lynch	9/17/03
18	O'CONNELL	Purchases of at least 4,500 shares of The Ryland Group, Inc. common stock at an average price of approximately \$75.01 per share.	Millennium	Merrill Lynch	10/1/03
19	O'CONNELL	Purchases of at least 9,500 shares of AMR Corporation common stock at an average price of approximately \$14.12 per share.	Millennium	Merrill Lynch	10/9/03
20	O'CONNELL	Purchases of at least 11,000 shares of Wells Fargo & Co. common stock at an average price of approximately \$56.79 per share.	Ellis Island	Merrill Lynch	11/20/03

COUNT	DEFENDANTS	TRANSACTIONS	DAY TRADERS	SOURCE OF LARGE ORDER	DATE
21	O'CONNELL	Purchases of at least 20,000 shares of Bristol-Myers Squibb common stock at an average price of approximately \$29.07 per share.	E*Trade	Merrill Lynch	2/10/04

(Title 18, United States Code, Sections 1348, 2 and 3551 et seq.)

COUNT TWENTY-TWO

(Conspiracy to Violate the Travel Act)

40. The allegations contained in paragraphs 1 through 35 are realleged and incorporated as though fully set forth in this paragraph.

41. In or about and between January 2002 and February 2004, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants KENNETH E. MAHAFFY, JR., TIMOTHY J. O'CONNELL, DAVID G. GHYSELS, JR., ROBERT F. MALIN, MICHAEL A. PICONE and KEEVAN H. LEONARD, together with others, did knowingly and willfully conspire to use the mail and facilities in interstate commerce with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of unlawful activity, to wit: Commercial Bribe Receiving in the Second



Degree, in violation of New York Penal Law Section 180.05, and thereafter to perform the promotion, management, establishment, carrying on, and facilitation of the promotion, management, and carrying of such unlawful activity, to wit: by executing trades through the New York Stock Exchange and causing trade confirmations to be transported through the United States mail, in violation of Title 18, United States Code, Section 1952(a)(3).

42. In furtherance of the conspiracy and to effect its objectives, within the Eastern District of New York and elsewhere, the defendants KENNETH E. MAHAFFY, JR., TIMOTHY J. O'CONNELL, DAVID G. GHYSELS, JR., ROBERT F. MALIN, MICHAEL A. PICONE and KEEVAN H. LEONARD, together with others, committed and caused to be committed, among others, the following:

OVERT ACTS

a. On or about August 22, 2002, the defendants KENNETH E. MAHAFFY, JR., and TIMOTHY J. O'CONNELL executed an order to sell 15,000 shares of General Electric Co. common stock at a price of approximately \$32.40 per share on behalf of the day traders at A.B. Watley.

b. On or about August 22, 2002, the defendant DAVID G. GHYSELS, JR., executed an order to purchase 15,000 shares of General Electric Co. common stock at a price of approximately \$32.40 per share on behalf of the day traders at A.B. Watley.

c. On or about September 13, 2002, the defendants KENNETH E. MAHAFFY, JR., and TIMOTHY J. O'CONNELL executed an order to purchase 40,000 shares of Solectron Corp. common stock at a price of approximately \$3.79 per share on behalf of the day traders at A.B. Watley.

d. On or about September 13, 2002, the defendant DAVID G. GHYSELS, JR., executed an order to sell 40,000 shares of Solectron Corp. common stock at a price of approximately \$3.79 per share on behalf of the day traders at A.B. Watley.

e. On or about November 14, 2002, the defendants KENNETH E. MAHAFFY, JR., and TIMOTHY J. O'CONNELL executed an order to sell 30,000 shares of Solectron Corp. common stock at a price of approximately \$3.44 per share on behalf of the day traders at A.B. Watley.

f. On or about November 14, 2002, Casbarro executed an order to purchase 30,000 shares of Solectron Corp. common stock at a price of approximately \$3.44 per share on behalf of the day traders at A.B. Watley.

g. On or about December 19, 2002, the defendants KENNETH E. MAHAFFY, JR., and TIMOTHY J. O'CONNELL executed an order to sell 20,000 shares of Dole Food Company, Inc. common stock at a price of approximately \$32.65 per share on behalf of the day traders at A.B. Watley.

h. On or about December 19, 2002, Casbarro executed an order to purchase 20,000 shares of Dole Food Company, Inc. common stock at a price of approximately \$32.65 per share on behalf of the day traders at A.B. Watley.

i. On or about March 24, 2003, the defendant TIMOTHY J. O'CONNELL executed an order to purchase 20,000 shares of Barrick Gold Corp. common stock at a price of approximately \$15.02 per share on behalf of the day traders at A.B. Watley.

j. On or about March 24, 2003, Casbarro executed an order to sell 20,000 shares of Barrick Gold Corp. common stock at a price of approximately \$15.02 per share on behalf of the day traders at A.B. Watley.

k. On or about May 15, 2003, the defendant TIMOTHY J. O'CONNELL executed an order to sell 40,000 shares of Solectron Corp. common stock at a price of approximately \$3.75 per share on behalf of the day traders at A.B. Watley.

l. On or about May 15, 2003, Casbarro executed an order to purchase 40,000 shares of Solectron Corp. common stock at a price of approximately \$3.75 per share on behalf of the day traders at A.B. Watley.

m. On or about June 23, 2003, the defendant TIMOTHY J. O'CONNELL executed an order to purchase 50,000 shares of Ford Motor Co. common stock at a price of approximately \$11.60 per share on behalf of the day traders at A.B. Watley.

n. On or about June 23, 2003, Casbarro executed an order to sell 50,000 shares of Ford Motor Co. common stock at a price of approximately \$11.60 per share on behalf of the day traders at A.B. Watley.

o. On or about August 5, 2003, the defendant KENNETH E. MAHAFFY, JR., executed an order to purchase 25,000 shares of Lucent Technologies Inc. common stock at a price of approximately \$1.71 per share on behalf of the day traders at A.B. Watley.

p. On or about August 5, 2003, the defendant KENNETH E. MAHAFFY, JR., executed an order to sell 25,000 shares of Lucent Technologies Inc. common stock at a price of approximately \$1.71 per share on behalf of the day traders at A.B. Watley.

q. In or about November 2003, the defendants ROBERT F. MALIN and MICHAEL A. PICONE caused A.B. Watley to issue a check for \$1,000 to John Doe for the purpose of providing John Doe with funds to compensate Coughlin for providing A.B. Watley with access to Merrill Lynch's Squawk Box.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNTS TWENTY-THREE THROUGH THIRTY-THREE  
(Travel Act Violations)

43. The allegations contained in paragraphs 1 through 35 and 42 are realleged and incorporated as though fully set forth in this paragraph.

44. On or about the dates indicated below, within the Eastern District of New York and elsewhere, the defendants indicated below, together with others, did knowingly and intentionally use the mail and facilities of interstate commerce with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of unlawful activity, to wit: Commercial Bribe Receiving in the Second Degree, in violation of New York Penal Law Section 180.05, and thereafter perform and attempt to perform the promotion, management, establishment, carrying on, and facilitation of the promotion, management, and carrying of such unlawful activity, to wit: by executing trades through the New York Stock Exchange and causing trade confirmations to be transported through the United States mail, as indicated below:

COUNT	DEFENDANTS	TRANSACTION	COMMISSION/ BRIBE	ACCOUNT	DATE
23	MAHAFFY O'CONNELL	Sale of 15,000 shares of General Electric Co. common stock at a price of approximately \$32.40 per share	\$900	A.B. Watley's Merrill Lynch Account	8/22/02
24	GHYSELS	Purchase of 15,000 shares of General Electric Co. common stock at a price of approximately \$32.40 per share	\$900	A.B. Watley's Lehman Account	8/22/02
25	MAHAFFY O'CONNELL	Purchase of 40,000 shares of Solectron Corp. common stock at a price of approximately \$3.79 per share	\$2,400	A.B. Watley's Merrill Lynch Account	9/13/02
26	GHYSELS	Sale of 40,000 shares of Solectron Corp. common stock at a price of approximately \$3.79 per share	\$2,400	A.B. Watley's Lehman account	9/13/02

COUNT	DEFENDANTS	TRANSACTION	COMMISSION/ BRIBE	ACCOUNT	DATE
27	MAHAFFY O'CONNELL	Sale of 30,000 shares of Solectron Corp. common stock at a price of approximately \$3.44 per share	\$1,800	A.B. Watley's Merrill Lynch account	11/14/02
28	MAHAFFY O'CONNELL	Sale of 20,000 shares of Dole Food Company, Inc. common stock at a price of approximately \$32.65 per share	\$1,200	A.B. Watley's Merrill Lynch account	12/19/02
29	O'CONNELL	Purchase of 20,000 shares of Barrick Gold Corp. common stock at a price of approximately \$15.02 per share	\$1,200	A.B. Watley's Merrill Lynch account	3/24/03
30	O'CONNELL	Sale of 40,000 shares of Solectron Corp. common stock at a price of approximately \$3.75 per share	\$2,400	A.B. Watley's Merrill Lynch account	5/15/03

COUNT	DEFENDANTS	TRANSACTION	COMMISSION/ BRIBE	ACCOUNT	DATE
31	O'CONNELL	Purchase of 50,000 shares of Ford Motor Co. common stock at a price of approximately \$11.60 per share	\$3,000	A.B. Watley's Merrill Lynch account	6/23/03
32	MAHAFFY	Purchase of 25,000 shares of Lucent Technologies Inc. common stock at a price of approximately \$1.71 per share	\$1,250	A.B. Watley's Citigroup account	8/5/03
33	MAHAFFY	Sale of 25,000 shares of Lucent Technologies Inc. common stock at a price of approximately \$1.71 per share	\$1,250	A.B. Watley's Citigroup account	8/5/03

(Title 18, United States Code, Sections 1952(a)(3), 2 and 3551 et seq.)

COUNT THIRTY-FOUR

(Conspiracy to Commit Witness Tampering - O'CONNELL)

45. The allegations contained in paragraphs 1 through 35 are realleged and incorporated as though fully set forth in this paragraph.



46. In or about and between October 2004 and April 2005, both dates being approximate and inclusive, within the Eastern District of New York, the defendant TIMOTHY J. O'CONNELL, together with others, did knowingly and intentionally conspire to corruptly persuade and engage in misleading conduct toward Jane Doe with intent to (a) influence the testimony of Jane Doe in an official proceeding, to wit: the Grand Jury Investigation, (b) cause and induce Jane Doe to withhold testimony from an official proceeding, to wit: the Grand Jury Investigation, and (c) hinder, delay and prevent the communication to a law enforcement officer of the United States, to wit: a United States Postal Inspector, of information relating to the commission and possible commission of the federal offenses charged in Counts One through Thirty-Three, in violation of Title 18, United States Code, Sections 1512(b)(1), 1512(b)(2)(A) and 1512(b)(3).

(Title 18, United States Code, Sections 1512(k) and 3551 et seq.)

COUNT THIRTY-FIVE  
(Witness Tampering - O'CONNELL)

47. The allegations contained in paragraphs 1 through 35 are realleged and incorporated as though fully set forth in this paragraph.

48. In or about and between October 2004 and April 2005, both dates being approximate and inclusive, within the Eastern District of New York, the defendant TIMOTHY J. O'CONNELL,

together with others, did knowingly, intentionally and corruptly persuade and engage in misleading conduct toward Jane Doe, with intent to (a) influence and prevent the testimony of Jane Doe in an official proceeding, to wit: the Grand Jury Investigation, (b) cause and induce Jane Doe to withhold testimony from an official proceeding, to wit: the Grand Jury Investigation, and (c) hinder, delay and prevent the communication to a law enforcement officer of the United States, to wit: a United States Postal Inspector, of information relating to the commission and possible commission of the federal offenses charged in Counts One through Thirty-Three.

(Title 18, United States Code, Sections 1512(b)(1), 1512(b)(2)(A), 1512(b)(3), 2 and 3551 et seq.)

COUNT THIRTY-SIX  
(False Statement - O'CONNELL)

49. The allegations contained in paragraphs 1 through 35 are realleged and incorporated as though fully set forth in this paragraph.

50. On or about June 7, 2004, within the Eastern District of New York and elsewhere, the defendant TIMOTHY J. O'CONNELL knowingly and willfully (a) concealed material facts and (b) made a materially false, fictitious and fraudulent statement and representation in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit: the United States Postal Inspection Service, in that

O'CONNELL falsely stated that he never provided anyone with access to Merrill Lynch's Squawk Box.

(Title 18, United States Code, Sections 1001(a)(1), 1001(a)(2) and 3551 et seq.)

COUNT THIRTY-SEVEN  
(False Statement - MAHAFFY)

51. The allegations contained in paragraphs 1 through 35 are realleged and incorporated as though fully set forth in this paragraph.

52. On or about March 28, 2005, within the Eastern District of New York, the defendant KENNETH J. MAHAFFY, JR. knowingly and willfully (a) concealed material facts and (b) made a materially false, fictitious and fraudulent statement and representation in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit: the United States Postal Inspection Service and the SEC, in that MAHAFFY falsely stated that he only placed an open telephone line in close proximity to Merrill Lynch's Squawk Box for short periods of time for the purpose of allowing his clients to listen to Merrill Lynch analysts.

(Title 18, United States Code, Sections 1001(a)(1), 1001(a)(2) and 3551 et seq.)

COUNT THIRTY-EIGHT  
(False Statement - MAHAFFY)

53. The allegations contained in paragraphs 1 through 35 are realleged and incorporated as though fully set forth in this paragraph.

54. On or about April 4, 2005, within the Eastern District of New York, the defendant KENNETH J. MAHAFFY, JR. knowingly and willfully (a) concealed material facts and (b) made a materially false, fictitious and fraudulent statement and representation in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit: the United States Postal Inspection Service and the SEC, in that MAHAFFY falsely stated that he believed it would be difficult for certain clients who had access to an open telephone line in his Citigroup office to listen to his Citigroup Squawk Box because he typically kept the line muted for lengthy portions of the trading day.

(Title 18, United States Code, Sections 1001(a)(1), 1001(a)(2) and 3551 et seq.)

COUNT THIRTY-NINE  
(False Statements - NWAIGWE)

55. The allegations contained in paragraphs 1 through 35 are realleged and incorporated as though fully set forth in this paragraph.

56. On or about November 3, 2004, within the Southern District of New York and elsewhere, the defendant LINUS NWAIGWE knowingly and willfully (a) concealed material facts and (b) made materially false, fictitious and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit: the United States Attorney's Office and the SEC, in that NWAIGWE made the following false statements:

Specification One

NWAIGWE falsely stated that he had first heard the term "Squawk Box" when he saw it mentioned in a subpoena he received from the SEC.

Specification Two

NWAIGWE falsely stated that he had never heard the term "box" in connection with proprietary trading at A.B. Watley.

(Title 18, United States Code, Sections 1001(a)(1), 1001(a)(2) and 3551 et seq.)

COUNT FORTY

(False Statements - NWAIGWE)

57. The allegations contained in paragraphs 1 through 35 are realleged and incorporated as though fully set forth in this paragraph.

58. On or about July 12, 2005, within the Eastern District of New York, the defendant LINUS NWAIGWE knowingly and willfully (a) concealed material facts and (b) made materially

false, fictitious and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit: the United States Postal Inspection Service, in that NWAIGWE made the following false statements:

Specification One

NWAIGWE falsely stated that he had first heard the term "Squawk Box" when he saw it mentioned in a subpoena he received from the SEC.

Specification Two

NWAIGWE falsely stated that he had never heard the term "box" in connection with proprietary trading at A.B. Watley.

(Title 18, United States Code, Sections 1001(a)(1), 1001(a)(2) and 3551 et seq.)

COUNT FORTY-ONE

(False Statements - PICONE)

59. The allegations contained in paragraphs 1 through 35 are realleged and incorporated as though fully set forth in this paragraph.

60. On or about July 20, 2005, within the Southern District of New York and elsewhere, the defendant MICHAEL A. PICONE knowingly and willfully (a) concealed material facts and (b) made materially false, fictitious and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit:

the United States Attorney's Office and the SEC, in that PICONE made the following false statements:

Specification One

PICONE falsely stated that he approved a \$1,000 expense payment from A.B. Watley to John Doe in or about November 2003 for the purpose of providing John Doe with funds to bring a Merrill Lynch broker to an adult entertainment establishment.

Specification Two

PICONE falsely stated that he believed that John Doe was attempting to develop a business relationship with the broker that would allow A.B. Watley to obtain access to secondary securities offerings through Merrill Lynch.

Specification Three

PICONE falsely stated that he did not believe that John Doe planned to use the \$1,000 to compensate the broker for providing A.B. Watley with access to Merrill Lynch's Squawk Box.

(Title 18, United States Code, Sections 1001(a)(1), 1001(a)(2) and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION  
(Counts One Through Thirty-Five)

61. The United States hereby gives notice to the defendants charged in Counts One through Thirty-Five that, upon their conviction of any such offense, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section

2461(c), which require any person convicted of such offenses to forfeit any property constituting or derived from proceeds obtained directly or indirectly as a result of such offenses.

62. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any



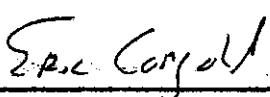
other property of such defendants up to the value of the forfeitable property described in this forfeiture allegation.

(Title 28, United States Code, Section 2461(c); Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p))

A TRUE BILL

  
\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
ROSLYNN R. MAUSKOPF  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

BY:   
\_\_\_\_\_  
ACTING UNITED STATES ATTORNEY  
PURSUANT TO 28 C.F.R. 0.136

F. #2005R00711  
CR-05-0613 (S-1) (ILG)  
FORM DBD-34  
JUN. 85

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF NEW YORK

Criminal Division

**THE UNITED STATES OF AMERICA**

KENNETH E. MAHAFFY, JR., TIMOTHY J. O'CONNELL,  
DAVID G. GHYSELS, JR., ROBERT F. MALIN, LINUS NWAIGWE,  
MICHAEL A. PICONE AND KEEVIN H. LEONARD,

**Defendants**

**SUPERSEDING  
INDICTMENT**

(T. 18, U.S.C., §§ 371, 981(a)(1)(C), 1001(a)(1),  
1001(a)(2), 1348, 1349, 1512(b)(1), 1512(b)(2)(A),  
1512(b)(3), 1512(k), 1952(a)(3), 2 and 3551 et. seq.;  
T. 21, U.S.C., 853(p); T. 28, U.S.C., §§ 2461(c))

A true bill.



Foreman

Filed in open court this \_\_\_\_\_ day,

of \_\_\_\_\_ A.D. 20 \_\_\_\_\_

Clerk

Bail, \$ \_\_\_\_\_

**AUSA Michael Asaro, (718) 254-7498**