UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VICKI M. MULLER, on behalf of herself and all others similarly situated, Plaintiff, vs. DIVERSA CORP., BEAR STEARNS CO., INC., J.P.MORGAN SECURITIES, INC. (AS SUCCESSOR-IN-INTEREST TO CHASE H&Q), CHASE H&Q, DEUTSCHE BANC ALEX. BROWN, CREDIT SUISSE FIRST BOSTON (AS SUCCESSOR-IN-INTEREST TO DLJ), ABN AMRO SECURITIES (AS SUCCESSOR-IN-INTEREST TO ING BARING FURMAN SELZ), ING BARING FURMAN SELZ, MERRILL LYNCH PIERCE FENNER & SMITH, INC., MORGAN STANLEY, ROBERTSON STEPHENS, INC. (AS SUCCESSOR-IN-INTEREST TO FLEETBOSTON ROBERTSON STEPHENS INC.), SALOMON SMITH BARNEY, INC., SG COWEN SECURITIES CORP., WARBURG DILLON READ, RBC DAIN RAUSCHER (AS SUCCESSOR-IN-INTEREST TO DAIN RAUSCHER WESSELS), DAIN RAUSCHER, NEEDHAM & COMPANY, INC., PACIFIC GROWTH EQUITIES, INC., RBC DAIN RAUSCHER (AS SUCCESSOR-IN-INTEREST TO TUCKER ANTHONY), TUCKER ANTHONY, JAY M. SHORT, KARIN EASTHAM, and JAMES H. CAVANAUGH, Defendants.	02 Civ. CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS JURY TRIAL DEMANDED

Plaintiff, by the undersigned attorneys, individually and on behalf of the Class described below, upon information and belief, based upon, *inter alia*, the investigation of counsel, which includes a review of public announcements made by and about Defendants, interviews with individuals with knowledge of the acts and practices described herein, Securities and Exchange

Commission ("SEC") filings made by Defendants, press releases, and media reports, except as to Paragraph 12 applicable to the named Plaintiff which is alleged upon personal knowledge, brings this Complaint (the "Complaint") against the Defendants named herein, and alleges as follows:

NATURE OF THE ACTION

1. This is a securities class action alleging violations of the federal securities laws in connection with the initial public offering conducted on or about February 14, 2000 (the "IPO" or the "Offering") of 7,250,000 shares of Diversa Corporation ("Diversa" or the "Issuer") and the trading of Diversa common stock in the aftermarket from the date of the IPO through December 6, 2000, inclusive (the "Class Period").

2. In connection with the IPO, the underwriters named as Defendants herein participated in a scheme to improperly enrich themselves through the manipulation of the IPO and aftermarket trading in Diversa common stock following the IPO.

3. In this regard, the Underwriter Defendants created artificial demand for Diversa stock by conditioning share allocations in the IPO upon the requirement that customers agree to purchase shares of Diversa in the aftermarket and, in some instances, to make those purchases at pre-arranged, escalating prices ("Tie-in Agreements"). Purchases made pursuant to such "Tie-in Agreements" were not made by investors for investment purposes and were routinely sold almost immediately after purchase.

4. As part of the scheme, the Underwriter Defendants required their customers to repay a material portion of profits obtained from selling IPO share allocations in the aftermarket through one or more of the following types of transactions: (a) paying inflated brokerage commissions on aftermarket trades; (b) entering into transactions in otherwise unrelated

securities for the primary purpose of generating commissions; and/or (c) purchasing equity offerings underwritten by the Underwriter Defendants, including, but not limited to, secondary (or add-on) offerings that would not have been purchased but for the unlawful scheme alleged herein. (the transactions described in "(a)" through "(c)" above will be, at varying times, collectively referred to hereinafter as "Undisclosed Compensation").

5. In connection with the IPO, Diversa filed with the SEC a registration statement ("Registration Statement") and a prospectus ("Prospectus"). The Registration Statement and Prospectus will be, at varying times, collectively referred to hereinafter as the "Registration Statement/Prospectus." The Registration Statement/Prospectus was declared effective by the SEC on or about February 14, 2000.

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

7. As part and parcel of the scheme alleged herein, certain of the underwriters named as Defendants herein also improperly utilized their analysts, who, unbeknownst to investors, were compromised by conflicts of interest, to artificially inflate or maintain the price of Diversa stock by issuing favorable recommendations in analyst reports.

8. The Issuer Defendants (defined below) not only benefitted from the manipulative and deceptive schemes described herein as a result of, among other things, the Individual Defendants' personal holdings of the Issuer's stock, these Defendants also knew of or recklessly

disregarded the conduct complained of herein through their participation in the "Road Show" process by which underwriters generate interest in public offerings.

JURISDICTION

9. This Court has jurisdiction over the subject matter of this action pursuant to Section 22 of the Securities Act of 1933 (the "Securities Act") (15 U.S.C. § 77v), Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

10. Plaintiff brings this action pursuant to Sections 11 and 15 of the Securities Act (15 U.S.C. §§ 77k and 77o) and Section 10(b) and 20(a) of the Exchange Act as amended (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5). Venue is proper in this District as many of the material acts and injuries alleged herein occurred within the Southern District of New York.

11. In connection with the acts alleged in the Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

PARTIES

PLAINTIFF

12. Plaintiff Vicki M. Muller ("Plaintiff") purchased or otherwise acquired shares of Diversa common stock traceable to the IPO, in the open market or otherwise during the Class Period, at prices that were artificially inflated by Defendants' misconduct and was damaged thereby.

DEFENDANTS

THE UNDERWRITER DEFENDANTS

13. Plaintiff hereby incorporates by reference the "Underwriter Defendants" section of the Master Allegations filed with this Court in *In re Initial Public Offering Securities Litigation*, 21 MC 92 (SAS)(April 19, 2002)(as corrected)("Master Allegations"), as if set forth herein at length.

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

LEAD MANAGER

Bear Stearns

CO-MANAGERS

J.P. Morgan Securities, Inc. (as successor- in- interest to Chase H&Q)

Chase H&Q

D.B. Alex. Brown

SYNDICATE MEMBERS

CSFB (as successor-in-interest to DLJ)

ABN Amro (as successor-in-interest to ING)

ING

Merrill Lynch

Morgan Stanley

Robertson Stephens (as successor-in-interest to Fleetboston Robertson Stephens Inc.)

Salomon

SG Cowen

Warburg Dillon Read

RBC Dain Rauscher (as successor-in-interest to Dain Rauscher)

Dain Rauscher

Needham

Pacific Growth Equities, Inc.

RBC Dain Rauscher (as successor-in-interest to Tucker Anthony)

Tucker Anthony

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

THE ISSUER DEFENDANTS

THE ISSUER

16. At the time of the Offering, Defendant Diversa was a Delaware corporation with its principal executive offices located in San Diego, California. Diversa describes itself in the Registration Statement/Prospectus as a company that discovers and develops enzymes and other biologically active compounds.

INDIVIDUAL DEFENDANTS

17. Defendant Jay M. Short ("Short") served, at the time of the Offering, as the Issuer's President, Chief Executive Officer, Chief Technology Officer and as a member of the Board of Directors. Short signed the Registration Statement.

18. Defendant Karin Eastham ("Eastham") served, at the time of the Offering, as the Issuer's Senior Vice President-Finance, Chief Financial Officer and Secretary. Eastham signed the Registration Statement.

19. Defendant James H. Cavanaugh ("Cavanaugh") served, at the time of the Offering, as the Issuer's Chairman of the Board of Directors. Cavanaugh signed the Registration Statement.

20. Defendants Short, Eastham and Cavanaugh will be, at varying times, collectively referred to hereinafter as the "Individual Defendants."

21. The Issuer and the Individual Defendants will be, at varying times, collectively referred to hereinafter as the "Issuer Defendants."

CLASS ACTION ALLEGATIONS

22. Plaintiff brings this action as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class consisting of all persons and entities who purchased or otherwise acquired the common stock of the Issuer during the Class Period and were damaged thereby (the "Class"). Excluded from the Class are Defendants herein, Defendants' legal counsel, members of the immediate family of the Individual Defendants, any entity in which any of the Defendants has a controlling interest, and the legal representatives, heirs, successors or assigns of any of the Defendants.

23. Members of the Class are so numerous that joinder of all members is impracticable.

(a) Millions of shares of common stock were sold in the IPO and the stock was actively traded during the Class Period; and

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

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

25. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Furthermore, since the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it economically impracticable for the members of the Class to seek redress individually for the wrongs they have suffered.

26. The names and addresses of the record purchasers of the Issuer's common stock are available from the Issuer, its agents, and the underwriters who sold and distributed the Issuer's common stock in the IPO. Notice can be provided to Class members via a combination of published notice and first class mail using techniques and forms of notice similar to those customarily used in class actions arising under the federal securities laws.

27. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) Whether the federal securities laws were violated by Defendants' misconduct as alleged herein;

(b) Whether the Registration Statement/Prospectus omitted and/or misrepresented material facts;

(c) Whether Defendants participated in the course of conduct complained of herein;

(d) Whether, solely with respect to claims brought under the Exchange Act, the Defendants named thereunder acted with scienter; and

(e) Whether the members of the Class have sustained damages as a result of Defendants' conduct, and the proper measure of such damages.

SUBSTANTIVE ALLEGATIONS

28. Plaintiff hereby incorporates by reference the "Introductory Section" of the Master Allegations as if set forth herein at length. Plaintiff also adopts and incorporates herein by reference the allegations set forth in the Master Allegations that specifically relate to each of the Underwriter Defendants as if set forth herein at length.

THE IPO

29. Diversa's IPO of 7,250,000 shares was priced at $24.00 on or about February 14, 2000. The sale and distribution of this firm commitment offering was effected by an underwriting syndicate consisting of the Underwriter Defendants. Additionally, Diversa granted

the underwriting syndicate an option to purchase up to an additional 1,087,500 shares at the initial offering price less underwriting discounts and commissions.

30. On the day of the IPO, the price of Diversa stock shot up dramatically, trading as high as $79.375 per share, or more than 230% above the IPO price on substantial volume. This "impressive" debut, however, was not the result of normal market forces; rather, it was the result of Defendants' unlawful practices more fully described herein.

31. The manipulative conduct described herein continued as Diversa stock climbed in the weeks following the Offering. In this regard, Diversa hit a high of $157.00 per share on March 3, 2000, just prior to the end of the quiet period.

UNLAWFUL CONDUCT IN CONNECTION WITH THE IPO

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

33. Customers of each of the Underwriter Defendants, as a condition to obtaining an allocation of stock in the IPO, were required or induced to enter into Tie-in Agreements and/or pay Undisclosed Compensation. Examples of such conduct are described in Paragraph 34 of the Master Allegations. With regard to Diversa, for example, one customer, in order to obtain shares of the Diversa IPO from Bear Stearns, was required or induced to and did purchase from Bear Stearns in the aftermarket, at prices substantially above the IPO price, tens of thousands of additional Diversa shares.

34. The Underwriter Defendants also solicited and received Undisclosed Compensation from investors in exchange for allocations in initial public offerings. The Undisclosed Compensation required by the Underwriter Defendants, which took several forms, was calculated by the Underwriters to maximize their own pecuniary return on their clients' investment.

35. For example, in order to obtain IPO allocations during the 1999-2000 period, various customers were required to generate commissions in open market transactions involving other securities, in which they otherwise would not have engaged. Examples of such IPOs, listed by Underwriter Defendant, are set forth on Exhibit "B" in the Master Allegations.

36. In addition to the examples cited with regard to Bear Stearns in Exhibit "B" to the Master Allegations, customers paid Undisclosed Compensation to Bear Stearns in order to receive allocations of in excess of 300,000 shares of Diversa in the Diversa IPO at the IPO price of $24.00 per share.

THE REGISTRATION STATEMENT/PROSPECTUS
WAS MATERIALLY FALSE AND MISLEADING

37. In conducting the IPO, the Underwriter Defendants violated Regulation M promulgated pursuant to the Exchange Act. Rule 101(a) of Regulation M reads as follows:

> *Unlawful Activity.* In connection with a distribution of securities, it shall be unlawful for a distribution participant or an affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period.

17 C.F.R § 242.101.

38. As explained by the SEC's Staff Legal Bulletin No. 10, dated August 25, 2000, tie-in agreements violate Regulation M:

> **Tie-in agreements are a particularly egregious form of solicited transactions prohibited by Regulation M**. As far back as 1961, the Commission addressed reports that certain dealers participating in distributions of new issues had been making allotments to their customers only if such customers agreed to make some comparable purchase in the open market after the issue was initially sold. The Commission said that such agreements may violate the anti-manipulative provisions of the Exchange Act, particularly Rule 10b-6 (which was replaced by Rules 101 and 102 of Regulation M) under the Exchange Act, and may violate other provisions of the federal laws.
>
> **Solicitations and tie-in agreements for aftermarket purchases are manipulative because they undermine the integrity of the market as an independent pricing mechanism for the offered security**. Solicitations for aftermarket purchases give purchasers in the offering the impression that there is a scarcity of the offered securities. This can stimulate demand and support the pricing of the offering. Moreover, traders in the aftermarket will not know that the aftermarket demand, which may appear to validate the offering price, has been stimulated by the distribution participants. Underwriters have an incentive to artificially influence aftermarket activity because they have underwritten the risk of the offering, and a poor aftermarket performance could result in reputational and subsequent financial loss. (Emphasis added).

39. In particular, the Registration Statement/Prospectus stated:

> In order to facilitate this offering, persons participating in this offering may engage in transactions that stabilize, maintain or otherwise affect the price of the common stock during and after this offering. Specifically, the underwriters may over-allot or otherwise create a short position in the common stock for their own account by selling more shares of common stock than we have actually sold to them. The underwriters may elect to cover any such short position by purchasing shares of common stock in the open market and may impose penalty bids, under which selling concessions allowed to syndicate members or other broker-dealers participating in this offering are reclaimed if shares of common

> stock previously distributed in this offering are repurchased in connection with stabilization transactions or otherwise. The effect of these transactions may be to stabilize or maintain the market price at a level above that which might otherwise prevail in the open market. The imposition of a penalty bid may also affect the price of the common stock to the extent that it discourages resales thereof. No representation is made as to the magnitude or effect of any such stabilization or other transactions. Such transactions may be effected on the Nasdaq National Market or otherwise and, if commenced, may be discontinued at any time.

40. The statements contained in the previous paragraph were materially false and misleading because the Underwriter Defendants required customers to commit to Tie-in Agreements and created the false appearance of demand for the stock at prices in excess of the IPO price and in violation of Regulation M. At no time did the Registration Statement/Prospectus disclose that the Underwriter Defendants would require their customers seeking to purchase IPO shares to engage in transactions causing the market price of Diversa common stock to rise, in transactions that cannot be characterized as stabilizing transactions, over-allotment transactions, syndicate covering transactions or penalty bids.

41. Because the Undisclosed Compensation was, in reality, underwriter compensation, it was required to be disclosed in the Registration Statement/Prospectus. As Regulation S-K, Item 508(e) provides:

> Underwriter's Compensation. Provide a table that sets out the nature of the compensation and the amount of discounts and commissions to be paid to the underwriter for each security and in total. The table must show the separate amounts to be paid by the company and the selling shareholders. **In addition, include in the table all other items considered by the National Association of Securities Dealers to be underwriting compensation for purposes of that Association's Rules of Fair Practice.** (Emphasis added).

42. The NASD specifically addresses what constitutes underwriting compensation in NASD Conduct Rule 2710(c)(2)(B) (formerly Article III, Section 44 of the Association's Rules of Fair Practice):

> **For purposes of determining the amount of underwriting compensation, all items of value received or to be received from any source** by the underwriter and related persons which are deemed to be in connection with or related to the distribution of the public offering as determined pursuant to subparagraphs (3) and (4) below shall be included. (Emphasis added).

43. NASD Conduct Rule 2710(c)(2)(c) specifically requires:

> If the underwriting compensation includes items of compensation in addition to the commission or discount disclosed on the cover page of the prospectus or similar document, a footnote to the offering proceeds table on the cover of the prospectus or similar document shall include a cross-reference to the section on underwriting or distribution arrangements.

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

45. Instead, the Registration Statement/Prospectus misleadingly stated that the underwriting syndicate would receive as compensation an underwriting discount of $1.68 per share, or a total of $12,180,000, based on the spread between the per share proceeds to Diversa ($22.32) and the Offering price to the public ($24.00 per share). This disclosure was materially false and misleading as it misrepresented underwriting compensation by failing to include Undisclosed Compensation.

46. In addition, the Registration Statement/Prospectus stated:

> The underwriters propose to offer the shares of common stock directly to the public at the offering price set forth on the cover page of this prospectus [$24.00] and at that price less a concession

> not in excess of $1.00 per share of common stock to other dealers who are members of the National Association of Securities Dealers, Inc. The underwriters may allow, and those dealers may reallow, concessions not in excess of $0.10 per share of common stock to other dealers . . .

47. The Registration Statement/Prospectus was materially false and misleading in that in order to receive share allocations from the Underwriter Defendants in the IPO, customers were required to pay an amount in excess of the IPO price in the form of Undisclosed Compensation and/or Tie-in Agreements.

48. NASD Conduct Rule 2330(f) further prohibits an underwriter from sharing directly or indirectly in the profits in any account of a customer:

> [N]o member or person associated with a member shall share directly or indirectly in the profits or losses in any account of a customer carried by the member or any other member.

49. The Underwriter Defendants' scheme was dependent upon customers obtaining substantial profits by selling share allocations from the IPO and paying a material portion of such profits to the Underwriter Defendants. In this regard, the Underwriter Defendants shared in their customers' profits in violation of NASD Conduct Rule 2330(f).

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

51. NASD Conduct Rule 2440 governs Fair Prices and Commissions and, in relevant part, provides that a member:

> shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances, including market conditions with respect to such security at the

> time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and market therefor.

52. Guideline IM-2440 of the NASD states, in relevant part:

> It shall be deemed a violation of . . . Rule 2440 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission which is not reasonable . . . . A mark-up of 5% or even less may be considered unfair or unreasonable under the 5% policy.

53. The Registration Statement/Prospectus was materially false and misleading due to its failure to disclose the material fact that the Underwriter Defendants were charging customers commissions that were unfair, unreasonable, and excessive as consideration for receiving allocations of shares in the IPO.

MARKET MANIPULATION THROUGH THE USE OF ANALYSTS

54. As demonstrated in the "Use of Analysts" section of the Master Allegations, in furtherance of their manipulative scheme, Underwriter Defendant D.B. Alex. Brown improperly used analysts who suffered from conflicts of interest, to issue glowing research reports and positive recommendations at or about the expiration of the "quiet period" so as to manipulate the aftermarket stock price.

55. On March 13, 2000, just after the expiration of the "quiet period" with respect to the Diversa IPO, Underwriter Defendant D.B. Alex. Brown initiated analyst coverage of Diversa and issued a "Buy" recommendation with a 12-month price target of $157 per share. Diversa stock closed at $91.00 per share that day. Two days later, D.B. Alex. Brown reiterated its "Buy" recommendation repeating its 12-month price target of $157 per share.

56. The price target set forth in the D.B. Alex. Brown report was materially false and misleading as it was based upon a manipulated price.

THE END OF THE CLASS PERIOD

57. On December 6, 2000, The Wall Street Journal published an article concerning an investigation of various improper initial public offering practices.

DEFENDANTS' UNLAWFUL CONDUCT ARTIFICIALLY INFLATED THE PRICE OF THE ISSUER'S STOCK

58. Defendants' conduct alleged herein had the effect of inflating the price of the Issuer's common stock above the price that would have otherwise prevailed in a fair and open market throughout the Class Period.

VIOLATIONS OF THE SECURITIES ACT

FIRST CLAIM

(AGAINST THE ISSUER, THE INDIVIDUAL DEFENDANTS AND THE UNDERWRITER DEFENDANTS FOR VIOLATION OF SECTION 11 RELATING TO THE REGISTRATION STATEMENT)

59. Plaintiff repeats and realleges the allegations set forth above as if set forth fully herein, except to the extent that any such allegation may be deemed to sound in fraud.

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

61. As set forth above, the Registration Statement, when it became effective, contained untrue statements of material fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading.

62. The Issuer is the registrant for the IPO shares sold to Plaintiff and other members of the Class. The Issuer issued, caused to be issued and participated in the issuance of materially false and misleading written statements and/or omissions of material facts to the investing public that were contained in the Registration Statement.

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

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

65. The Defendants named in this Claim are liable to Plaintiff and other members of the Class who purchased or otherwise acquired shares of the Issuer's common stock pursuant to the materially false and misleading Registration Statement.

66. By virtue of the foregoing, Plaintiff and other members of the Class who purchased or otherwise acquired the Issuer's common stock pursuant to the materially false and misleading Registration Statement are entitled to damages pursuant to Section 11.

67. This Claim was brought within the applicable statute of limitations.

SECOND CLAIM

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

68. Plaintiff repeats and realleges the allegations set forth above in the First Claim as if set forth fully herein.

69. This Claim is brought against the Individual Defendants pursuant to Section 15 of the Securities Act, 15 U.S.C. § 77o, on behalf of Plaintiff and other members of the Class who purchased or otherwise acquired the Issuer's common stock pursuant to the materially false and misleading Registration Statement.

70. The Issuer is liable under Section 11 of the Securities Act as set forth in the First Claim herein with respect to the IPO.

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

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

73. As a result, the Individual Defendants are liable under Section 15 of the Securities Act for the Issuer's primary violation of Section 11 of the Securities Act.

74. By virtue of the foregoing, Plaintiff and other members of the Class who purchased or otherwise acquired the Issuer's common stock pursuant to the materially false and misleading Registration Statement and traceable to the IPO are entitled to damages against the Individual Defendants.

VIOLATIONS OF THE EXCHANGE ACT

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

75. Plaintiff relies, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

(a) Defendants named under Claims brought pursuant to the Exchange Act made public misrepresentations or failed to disclose material facts during the Class Period regarding the Issuer as alleged herein;

(b) The omissions and misrepresentations were material;

(c) Following the IPO and continuing throughout the Class Period, the Issuer's stock was traded on a developed national stock exchange, namely the NASDAQ National Market, which is an open and efficient market;

(d) The Issuer filed periodic reports with the SEC;

(e) The Issuer was followed by numerous securities analysts;

(f) The market rapidly assimilated information about the Issuer which was publicly available and communicated by the foregoing means and that information was promptly reflected in the price of the Issuer's common stock; and

(g) The misrepresentations and omissions and the manipulative conduct alleged herein would tend to induce a reasonable investor to misjudge the value of the Issuer's common stock.

EXCHANGE ACT CLAIMS - THE UNDERWRITER DEFENDANTS

THE UNDERWRITER DEFENDANTS ACTED WITH SCIENTER

76. As alleged herein, the Underwriter Defendants acted with scienter in that they: (a) knowingly or recklessly engaged in acts and practices and a course of conduct which had the effect of artificially inflating the price of the Issuer's common stock in the aftermarket; (b) knowingly or recklessly disregarded that the Registration Statement/Prospectus as set forth herein was materially false and misleading; and/or (c) knowingly or recklessly misused their analysts in connection with analyst reports.

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

78. As evidenced by the public statements of CSFB published by The Wall Street Journal on or about June 29, 2001, the practices employed by the Underwriter Defendants in connection with public offerings complained of herein, were widespread throughout the financial underwriting community. In this regard, CSFB, which recently settled regulatory claims of misconduct concerning its initial public offering allocation practices, stated during the pendency of the government's investigation, "[w]e continue to believe our [initial public offering] allocation policies are consistent with those employed by others in the industry."

79. The Underwriter Defendants knew from their direct participation in the manipulation of the IPO, or recklessly disregarded as a result of their experience with other manipulated offerings as set forth herein and with respect to the IPOs described in the "Matrix" section of the Master Allegations, that the manipulations alleged herein were taking place with respect to the IPO and were not disclosed.

80. As required by NASD Conduct Rule 3010(c), each of the Underwriter Defendants had in place compliance procedures so as to better inform itself whether it was acting in the unlawful manner alleged herein.

81. Senior management of each of the Underwriter Defendants had regular access to and received timely written reports tracking the account activity of each of its customers. By comparing the ratio of brokerage firm commission income per account with the amount of dollars invested by such account that received allocations of shares in the IPO, senior management knew, or was reckless in not knowing, that such commissions were disproportionately high relative to that customer's total investment, and this imposed on management a duty of inquiry as is customary in the industry. Such inquiry would have revealed the illegal practices described herein. Any failure to conduct such inquiry was, at the very least, reckless and further demonstrates that the Underwriter Defendants knew or recklessly disregarded the misconduct alleged herein.

82. Certain of the Underwriter Defendants also had the motive and opportunity to engage in the wrongful conduct described herein for the following reasons, among others:

(a) Such conduct increased the likelihood that the Issuer would retain certain of the Underwriter Defendants to undertake future investment banking services such as public offerings of equity or debt securities, financial consulting, and possible future acquisitions, thus permitting the Underwriter Defendants to receive additional fees in connection with those services. (See "Additional Investment Banking Business" section of the Master Allegations).

(b) Such conduct increased the likelihood of attracting the business of new issuers for the underwriting of initial and secondary public offerings, as well as debt and convertible offerings, and related investment banking fees, while simultaneously sustaining and/or enhancing their reputations as investment banks. (See "Attracting New Investment Banking Clients" section of the Master Allegations).

(c) The Undisclosed Compensation of the Underwriter Defendants was directly proportional to the amount of the aftermarket price increase achieved by the manipulative scheme as their customers were required to pay a percentage of their profits. The larger the profits, the greater the payment. (See "Maximizing Undisclosed Compensation" section of the Master Allegations).

(d) Certain of the Underwriter Defendants' analysts were motivated to and did issue favorable recommendations for companies they covered because their compensation was, at least in part, tied to the amount of investment banking fees received by their respective firms in connection with financial services provided to such companies. (See "Market Manipulation Through the Use of Analysts" section of the Master Allegations).

(e) Certain of the Underwriter Defendants' analysts were further motivated to and did issue favorable recommendations because they personally owned pre-IPO stock in companies they were recommending. (See "Personal Investments of Analysts" section of the Master Allegations).

THIRD CLAIM

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

83. Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein at length except for Claims brought pursuant to the Securities Act.

84. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, on behalf of Plaintiff and the other members of the Class against the Underwriter Defendants. This Claim is based upon the deceptive and manipulative practices of the Underwriter Defendants.

85. During the Class Period, the Underwriter Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (a) deceive the investing public, including Plaintiff and other members of the Class by means of material misstatements and omissions, as alleged herein; (b) artificially inflate and maintain the market price and trading volume of the Issuer's common stock; and (c) induce Plaintiff and other members of the Class to purchase or otherwise acquire the Issuer's common stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, the Underwriter Defendants took the actions set forth herein.

86. The Underwriter Defendants employed devices, schemes, and artifices to defraud and/or engaged in acts, practices and a course of business which operated as a fraud and deceit upon the Plaintiff and other members of the Class in an effort to inflate and artificially maintain high market prices for the Issuer's common stock in violation of Section 10(b) of the Exchange

Act and Rule 10b-5. The Underwriter Defendants are sued as primary participants in the unlawful conduct charged herein.

87. The Underwriter Defendants, individually and in concert, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal their unlawful practices and course of business which operated as a fraud and deceit upon Plaintiff and other members of the Class.

88. The Underwriter Defendants had actual knowledge of or recklessly disregarded the existence of the Tie-in Agreements, the Undisclosed Compensation arrangements and the manipulations alleged herein.

89. Each of the Underwriter Defendants held itself out as an NASD member and was required to observe high standards of commercial honor and just and equitable principles of trade (NASD Conduct Rule 2110). The Underwriter Defendants owed to Plaintiff and other members of the Class the duty to conduct the IPO and the trading of the Issuer's common stock in a fair, efficient and unmanipulated manner.

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

91. As a result of the manipulative conduct set forth herein, Plaintiff and other members of the Class purchased or otherwise acquired the Issuer's common stock during the Class Period at artificially inflated prices and were damaged thereby.

FOURTH CLAIM

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

92. Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein at length except for Claims brought pursuant to the Securities Act.

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

94. The Underwriter Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted material facts necessary to make the statements not misleading; and (c) engaged in acts, practices and a course of business which operated as a fraud and deceit upon the Plaintiff and other members of the Class in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

95. During the Class Period, the Underwriter Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (a) deceive the investing public, including Plaintiff and other member of the Class, as alleged herein; (b) artificially inflate and maintain the market price of and demand for the Issuer's common stock; and (c) induce Plaintiff and other members of the Class to purchased or otherwise acquire the Issuer's common stock at artificially inflated prices. In furtherance of this unlawful course of conduct, the Underwriter Defendants took the actions set forth herein.

96. The Underwriter Defendants, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal material information as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the Plaintiff and other members of the Class.

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

98. The material misrepresentations and/or omissions were made knowingly or recklessly and for the purpose and effect of, *inter alia*: (a) securing and concealing the Tie-in Agreements; (b) securing and concealing the Undisclosed Compensation; and/or (c) concealing that certain of the Underwriter Defendants and their analysts who reported on the Issuer's stock had material conflicts of interest.

99. As a result of making affirmative statements in the Registration Statement/Prospectus, or otherwise, or participating in the making of such affirmative statements, the Underwriter Defendants had a duty to speak fully and truthfully regarding such representations and to promptly disseminate any other information necessary to make the statements made, in the light of the circumstances in which they were made, not misleading.

100. The Underwriter Defendants also had a duty to disclose the material, non-public information complained of herein or to abstain from selling the Issuer's common stock in the IPO, and/or trading or recommending the Issuer's stock while in possession of such information.

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

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

EXCHANGE ACT CLAIMS - THE ISSUER DEFENDANTS

THE ISSUER DEFENDANTS ACTED WITH SCIENTER

103. As alleged herein, the Issuer Defendants acted with scienter in that they: (i) knowingly or recklessly engaged in acts and practices and a course of conduct which had the effect of artificially inflating the price of the Issuer's common stock in the aftermarket; (ii) knowingly or recklessly disregarded that the Registration Statement/Prospectus as set forth herein was materially false and misleading; and/or (iii) knowingly or recklessly disregarded the misconduct of the Underwriter Defendants alleged herein.

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

105. In this regard, the Underwriter Defendants provided detailed presentations to the Issuer Defendants regarding the registration process leading up to the IPO and the expected price

performance in aftermarket trading based upon previous companies taken public by these underwriters. In addition, the Underwriter Defendants explained the process by which the Issuer Defendants could utilize the Issuer's publicly traded stock as currency in stock-based acquisitions, the analyst coverage they would provide for the Issuer upon the successful completion of the IPO and the effect that such positive coverage would have on the aftermarket price of the Issuer's stock. Such presentations also included a discussion of the potential for secondary or add-on offerings.

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

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

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

109. In addition, certain of the Issuer Defendants also had the motive and opportunity to engage in the wrongful conduct described herein for, among others, the following reasons:

(a) The Individual Defendants beneficially owned substantial amounts of the Issuer's common stock. For example, as of the IPO, Defendant Short owned in excess of 700,000 shares, Defendant Eastham owned in excess of 69,000 and Defendant Cavanaugh had beneficial ownership of in excess of 5.7 million shares. These holdings, which were purchased or otherwise acquired at prices below the IPO price, substantially increased in value as a result of the misconduct alleged herein.

(b) The Issuer Defendants were motivated by the fact that the artificially inflated price of the Issuer's shares in the aftermarket would enable Individual Defendants to sell personal holdings in the Issuer's securities at artificially inflated prices in the aftermarket or otherwise. In this regard, after Diversa's IPO, Defendants Eastham and Short filed SEC Form 144's indicating the sale or intention to sell thousands of shares.

Name	**Date**	**Shares**
Eastham	02/05/2001	10,000
	2/06/2001	4,500
	05/01/2001	5,500
	12/13/2001	10,000
Short	03/15/2001	40,000

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

FIFTH CLAIM

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

110. Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein at length except for Claims brought pursuant to the Securities Act.

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

112. The Issuer and the Individual Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices and a course of business which operated as a fraud and deceit upon Plaintiff and other members of the Class in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

113. During the Class Period, the Issuer and the Individual Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (a) deceive the investing public, including Plaintiff and other members of the Class, as alleged

herein; (b) artificially inflate and maintain the market price of and demand for the Issuer's common stock; and (c) induce Plaintiff and other members of the Class to acquire the Issuer's common stock at artificially inflated prices. In furtherance of this unlawful course of conduct, the Issuer and the Individual Defendants took the actions set forth herein.

114. The Issuer and the Individual Defendants, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal material information as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon Plaintiff and other members of the Class.

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

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

117. As a result of making such affirmative statements, or participating in the making of such affirmative statements, the Issuer and the Individual Defendants had a duty to speak fully and truthfully regarding such representations and to promptly disseminate any other information necessary to make the statements made, in the light of the circumstances in which they were made, not misleading.

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

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

SIXTH CLAIM

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

120. Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein at length except for Claims brought pursuant to the Securities Act.

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

122. Each of these Individual Defendants had direct and/or supervisory involvement in the day-to-day operations of the Issuer and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations herein.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for judgment as follows:

A. Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and certifying Plaintiff as representative of the Class and Plaintiff's counsel as class counsel;

B. Awarding damages to Plaintiff and the Class;

C. Awarding Plaintiff and the Class prejudgment and post-judgment interest, as well as reasonable attorneys' and experts' witness fees and other costs; and

D. Awarding such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: December 6, 2002

MILBERG WEISS BERSHAD HYNES & LERACH LLP

By: ____________________
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Plaintiffs' Executive Committee

PLAINTIFF'S CERTIFICATION

Vicki M. Muller ("Plaintiff"), declares under penalty of perjury, as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed the complaint and authorized its filing.

2. Plaintiff did not purchase the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in this private action.

3. Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.

4. Plaintiff's transactions in Diversa Corporation securities during the Class Period are as follows:

(Complete only one trade per line; place any additional trades on the attached sheet)

# of Shares Purchased	# of Shares Sold	Price Per Share	Date of Purchase/Sale
20		57.00	2/14/00
	20	19.25	12/27/00

5. During the three years prior to the date of this Certification, Plaintiff has not sought to serve or served as a representative party for a class under the federal securities laws.

6. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond the Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of November 2002.

Vicki M. Muller