

SECURITIES REGULATION
THE LIABILITY RISKS OF E-BROKER CHAT ROOMS

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AUGUST 15, 1998

Hot stock tips have been whispered in the ears of prospective investors for as long as stocks have been traded. When such tips are “whispered” inside Internet chat rooms, however, the whisper can become a roar that moves stock prices.¹

It was no surprise, then, that securities regulators sat up and took notice last February when E*Trade shocked the brokerage industry with an announcement that it planned to add investor chat rooms to its Web site. E*Trade since has opened its chat room area for use by some customers and reportedly plans to permit non-customer participation by the end of August. Consequently, e-broker chat rooms have come under increasing scrutiny. They even have been the subject of recent testimony before a Congressional subcommittee.²

Such scrutiny is warranted. So-called “financial chat” on the Internet has been a headache for securities regulators since at least 1996.³ There recently have been a number of reported instances where so-called “Cybergossip” has played a role in wide swings in stock prices.⁴ With E*Trade’s new chat room area, now comes the added risk that investors can conduct securities trades at the very same Web site which, in theory, could offer a vehicle for unlawful market manipulation schemes.

E-brokers who offer investment chat rooms face a variety of risks including liability risks, risks of SEC enforcement actions and risks of violating self regulatory organization (“SRO”) rules. Moreover, e-broker chat rooms present securities regulators with a conundrum – while such sites may add an additional vehicle for unlawful stock manipulation schemes, they also permit the timely and efficient exchange of sometimes thoughtful analyses and investment information that many believe should be part of the total mix of information available to investors. The benefits would seem to outweigh the risks, particularly if e-brokers are encouraged to take reasonably appropriate measures to minimize the chance of fraudulent chat.

After addressing some of the risks of offering e-broker chat rooms, this article concludes with a summary of some of the principal protective measures that prudence would seem to dictate for e-brokers willing to accept the risks of offering chat.

RISKS OF LIABILITY

There is a risk that an e-broker could face lawsuits for defamation, trade libel, negligence or even fraud perpetrated by chat room participants.⁵ An e-broker faced with such claims, however, would not be without defenses.

For example, courts and Congress have struggled with issues relating to the potential liability of bulletin board or chat room operators for alleged defamatory statements posted by third parties. The two leading cases seem, at first blush, to be in conflict.

In *Cubby v. CompuServe, Inc.*⁶, the court granted summary judgment dismissing libel and related claims against CompuServe arising out of allegedly defamatory remarks by a third party who used CompuServe's online forum service. The court analogized CompuServe's role to that of a content distributor or bookstore operator because CompuServe exercised no editorial control over the content posted to its online forum.⁷

In contrast, in *Stratton Oakmont, Inc. v. Prodigy Services Co.*⁸, the court held Prodigy liable as a publisher of a third party's defamatory postings on Prodigy's "Money Talk" bulletin board because Prodigy: held itself out as exercising editorial control over the content of postings on its bulletin boards; used filtering software to block offensive postings; and posted guidelines describing prohibited conduct.⁹

One commentator reads the decisions in *Cubby* and *Stratton Oakmont* to suggest that a chat room operator should exercise little or no editorial control or monitoring of content.¹⁰ While this may be so, such a tack would seem to be ill-advised in the e-broker context. Given the applicable regulatory environment, it would seem prudent to take a proactive approach to prevent fraudulent chat. See *infra* at discussion of "Guidelines for E-Broker Chat Rooms."

Congress quickly moved to overturn the decision in *Stratton Oakmont*. It enacted Section 230(c) of the Communications Decency Act of 1996, 47 U.S.C.A. § 230(c).¹¹ That provision, known as the Good Samaritan Provision, states in part that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."

Although the issue likely will be litigated at some point, the phrase "interactive computer service" would seem to be defined sufficiently broadly to encompass an e-broker that operates a chat room. The phrase means "any information service, system or access software provider that provides or enables computer access by multiple users to a computer server" ¹²

It is at least possible that the Good Samaritan Provision may not apply to providers of interactive computer services deemed to know about the defamatory content of an objectionable posting, but who nevertheless publish it. Proponents of such a theory were dealt a blow on June 22, when the U.S. Supreme Court denied plaintiff's Petition for Writ of Certiorari seeking

review of the decision in *Zeran v. America Online, Inc.*¹³ In *Zeran*, the court of appeals affirmed the district court's judgment dismissing claims that AOL had been unreasonably slow to remove from a message board a series of allegedly defamatory messages about the plaintiff that AOL had been told were untrue. The court based its ruling on section (c)(1) of the Good Samaritan Provision.¹⁴

Moreover, questions may arise over the scope of the protections offered by the Good Samaritan Provision and whether it applies to non-defamatory, but fraudulent chat. See Campbell, *Chat Rooms*, at 788. As one noted commentator has emphasized, however, although the language of the provision might, at first blush, appear to grant limited protection to an interactive computer service provider, "the congressional intent seems to have been to give broad protection to online services from common law suits based on a failure to monitor information content providers."¹⁵ Admittedly, however, most of the reported cases decided so far under the Good Samaritan Provision are of little assistance in resolving this issue since they involve claims of allegedly defamatory content.¹⁶

In short, the Good Samaritan Provision may offer chat room operators a defense to claims for libel, trade libel and negligence.¹⁷ But the scope of the immunity available under that provision is likely to come under siege by plaintiffs seeking to avoid its breadth.

Moreover, claims for libel, trade libel, negligence and fraud may not be the only sorts of claims available against e-brokers that offer chat. There are risks of section 10(b) and Rule 10b-5 liability arising from employee participation (as moderators or otherwise) in investor chat rooms that address the e-broker's own securities. Moderators, or even employees on their "personal" time, must avoid making statements that might be viewed as disclosures about the firm. While the e-broker may view such statements as beyond the employees' authority, chat room participants might reasonably believe otherwise. And, as one commentator has emphasized, substantive participation in such online chat "could be analogized to an employee's appearing and speaking at the meeting of an investment club" and could lead to Rule 10b-5 liability in the event of inaccuracies.¹⁸

There also is some risk of vicarious liability for employee activity in investor chat rooms. If an employee of an e-broker actually uses a chat room to commit securities fraud, through a stock manipulation scheme¹⁹ or otherwise, there is at least a risk in some jurisdictions that the e-broker could be sued, under a theory of respondeat superior, to answer for its employee's misconduct. Granted, there is a raging debate over whether respondeat superior liability survived the decision in *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*²⁰, but the fact remains that in some jurisdictions, courts have held that such a theory remains viable.²¹

In view of such as yet unanswered questions, and the magnitude of potential damages that could flow from false or fraudulent financial chat, it would seem prudent for e-brokers who decide to offer chat rooms at their Web sites to implement measures to reduce the risk of false, fraudulent or defamatory postings. Indeed, there would seem to be little downside to taking such steps given the immunity provided by Section 230(c)(2) of the Good Samaritan Provision

which protects against civil liability on account of actions taken in good faith to restrict access to or availability of "objectionable" material.²²

RISKS OF SEC ENFORCEMENT ACTIONS

There is also the risk of SEC enforcement action in the event of false or fraudulent chat at the e-broker's site. It is true that the SEC has "never sued an access provider or bulletin board service because of fraud perpetrated [via] the service, thus far."²³ But, the SEC staff "has long indicated that 'a broker-dealer conducting business over the Internet should consider the extent to which it may be responsible for content provided by a third party.'"²⁴

Moreover, the Private Securities Litigation Reform Act of 1995 has given the SEC an important weapon in the arsenal to combat Internet securities fraud. A new section of that statute, in essence, authorizes enforcement proceedings against aiders and abettors of securities law violations. It states that "any person that knowingly provides substantial assistance to another person in violation of a provision of this chapter . . . shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided."²⁵

To the extent it can be claimed that offering a chat function at an e-broker Web site is an act of "knowingly" providing substantial assistance to third parties when such parties engage in false or fraudulent chat in violation of the federal securities laws, there is at least the risk that the SEC will pursue aiding and abetting charges against the e-broker in an effort to stop such practices or even to deter future incidents.

Once again, however, the Good Samaritan Provision may provide a viable defense. Although that provision says "nothing about liability as an aider and abetter, the congressional intent seems to have been to give broad protection to online services from common law suits based on a failure to monitor information content providers."²⁶ In any event, absent some form of advance warning that a particular chat participant or a particular chat area likely would be involved in a violation of the securities laws, there is at least an argument that the e-broker could not be found to have "knowingly" provided substantial assistance merely by offering the chat function on its site.

RISKS OF VIOLATING SRO RULES

Perhaps one of the greatest risks arising from e-broker chat rooms is the risk of violating SRO rules. Such a risk, of course, raises the possibility of SEC enforcement actions as well.²⁷

E-broker chat rooms implicate a host of SRO rules. For example, member firms and registered representatives who participate in chat rooms must comply with the NASD's Rules of Fair Practice and, of course, the general anti-fraud provisions of the federal securities laws.²⁸ Moreover, brokerage firms are required to supervise the activities of registered representatives and associated persons to ensure compliance with applicable securities laws, rules and regulations.²⁹

Communications between registered representatives and the public via the Web generally are subject to recently-amended NYSE Rule 472 (Communications with the Public) and NASD Rule 2210 (Communications with the Public).³⁰ These rules now require broker-dealers to implement “reasonable procedures” for reviewing the public communications of their registered representatives, to document their communications reviews and to make the documentation available to the pertinent SRO upon request. Additionally, a firm’s Web site is deemed an advertisement under NYSE Rule 472(a) and NASD Rule 2210(a) and, thus, is subject to principal review prior to electronic postings.³¹

One issue becomes immediately apparent: should chat rooms be deemed “advertisements” or “sales literature” that are subject to principal review instead of the equivalent of extemporaneous speech that would not be subject to principal review? At least one commentator has suggested that a firm or broker’s use of a chat room “would be defined as the use of an advertisement or sales literature and require pre-review at the firm”.³² The NASD, however, has suggested otherwise.³³

The NASD’s view would seem to be the better approach. Chat rooms permit electronic “chat” in real time and typically are not archived for later use as advertising or sales literature. Thus, it would seem inappropriate — given the nature of the medium — to apply the SRO rules regarding advertising or sales literature to the chat function.³⁴

Another issue involves whether e-brokerage brokers should moderate or otherwise participate in the firm’s investor chat rooms. The answer is no.

A broker might be tempted to misuse the chat rooms to solicit customers and run afoul of the advertising and sales literature rules requiring advance principal review. Additionally, brokerage firms are required to supervise the activities of registered representatives and associated persons to ensure compliance with applicable securities laws, rules and regulations. *See, e.g.*, NASD Rule 3010. NASD Regulation has determined that firms should prohibit correspondence with customers through electronic communications unless the brokerage firm can adequately supervise such communications. Because such supervision is difficult, if not impossible, to achieve in an extemporaneous chat room, brokers should not be allowed to participate in, or moderate, investor chat rooms.³⁵

Another e-broker chat issue that is likely to arise involves customer chat that might be deemed to be a customer complaint received in electronic form. Such complaints must be reported in accordance with well-established procedures.³⁶ Thus, to the extent that it is reasonably determined, in good faith, that a chat participant’s comments may constitute criticism of the e-broker, its services or employees, the SRO’s procedures for documenting, handling and reporting such complaints should be followed in an appropriate fashion.

E-broker chat rooms also present intriguing record retention issues. For example, NASD Rule 3110 requires that correspondence with public customers, both written and electronic, be maintained in compliance with NASD Rules and with SEC Rules 17a-3 and 17a-4.³⁷ For

example, records of customer complaints made during chat sessions arguably may have to be retained for specified periods of time.³⁸ Moreover, recently the SEC granted a no-action letter to a company offering an electronic bulletin board trading system based, in part, on the understanding the company “will keep records of all indications of interest entered into the system and make those records available to the Commission and any regulated market on which the issuer’s securities are listed upon reasonable request”.³⁹ In short, E-brokers who wish to offer a chat function at their Web sites must consider record retention issues based upon “the nature of the communications appearing in a chat room.” Campbell, *Chat Rooms*, at 789.

Other difficult issues can be expected to arise for e-brokers that choose to offer investor chat rooms. For example, E*Trade apparently offers no independent research. Other brokerage firms, however, prepare research reports. What are such firms’ duties if an unscrupulous third party fraudulently misquotes or misrepresents the firm’s own research reports in a chat room offered on the firm’s Web site? Should a publicly-traded e-broker offer a chat room for investors in its own stock?⁴⁰ If it does, what are its duties and obligations to correct inaccurate chat about its own securities?⁴¹ Should a chat room area contain a direct link to the customer trading area and, if so, what rules and regulations would be implicated? What, if anything, should an e-broker do when a chat participant excessively touts the e-broker’s own products or services? What are the implications for the e-broker if a chat room participant makes an offer to buy or to sell securities.⁴² What are the e-broker’s obligations, if any, if it becomes aware of an issuer’s employee using a chat room to supplement a statutory preliminary prospectus during the issuer’s waiting period when no such comment otherwise would be permitted?

GUIDELINES FOR E-BROKER CHAT ROOMS

These and other such questions must be considered by e-brokers and their securities counsel before offering investor chat rooms on the e-broker’s Web site. Once a decision is made to offer chat, however, there are certain minimal guidelines that should be followed.

- Run the chat rooms separately from the brokerage business to minimize the appearance of conflicts of interest that might arise in the event stocks are touted in a chat room and then are traded through the e-broker.
- Specify clear rules for chat room participants and utilize a customer agreement or, at least, a clickwrap agreement that: (a) requires participants to provide accurate information including their names, addresses and e-mail contact information; (b) contains an agreement that they will not violate the law or use the chat rooms to manipulate stocks or to offer to buy or to sell stocks.⁴³
- Post appropriate disclaimers in the chat area as well as notices that participants are not agents of the e-broker. Make clear that the views expressed in the chat rooms are those of the participants and not those of the e-broker. Consider posting disclaimers that make clear that information conveyed in the chat room may be false or inaccurate and

that no investment decisions should be made based solely on information conveyed in the chat room.

- Take steps to minimize the potential for participant fraud. For example, prohibit chat about smaller stocks, options or mutual funds.⁴⁴ Monitor and periodically reconsider those companies for which chat is permitted. For example, Motley Fool closes message board folders for companies whose stock prices fall below \$3 per share and will not open a folder for a company whose shares trade for less than \$5 per share.⁴⁵
- Delete or block comments from anonymous remailers like www.anonymizer.com since anonymous messages often are used in Internet stock manipulation schemes. *See Coffee, Brave New World, supra*, 52 Bus. Law. at 1227.
- Close chat rooms that are repeatedly used for inappropriate chat.
- Use independent moderators who are not otherwise involved with the e-brokerage business. The firm's brokers certainly should *not* be used as chat room moderators.
- Select and train moderators carefully, ensuring that they are truly independent and well versed in what is and is not proper under applicable securities laws.
- Force moderators to question chat room participants who attempt to tout stocks online. The moderators should proactively attempt to expose possible touting and should be trained to grill such chat room participants about the company's business and fundamentals.⁴⁶
- Prohibit moderators from engaging in any substantive chat, other than posing questions to expose unreasonable efforts to tout or hype a stock. Do not permit moderators to engage in any chat about the e-brokerage firm, its securities or services.
- Use the moderator system to maintain control over the chat rooms. There should either be one moderator per chat room or moderators should be given responsibility for a sufficiently small number of chat rooms to permit them to monitor effectively and to retain a reasonable modicum of control.
- Monitor each moderator's performance closely.
- Actively discourage hyping and touting of stocks, particularly small stocks. Last year Motley Fool hired 25 full time moderators to do just that. Luchetti, *supra*, at C18, col. 3.
- Restrict access by those who repeatedly ignore or break the chat room rules. *Id.*

- Use state of the art technology. For example, technologies to “gag certain comments” made in chat rooms reportedly exist. Luchetti, *supra*, at C18. Indeed, Motley Fool reportedly began using such technology last January. *Id.*
- Retain copies of all chat room messages. But, take steps to ensure that neither the archives nor copies of any such chat room postings are ever used in connection with advertisements, sales literature or any form of customer solicitation.
- Generally, neither moderators nor anyone else affiliated with the firm should use scripted presentations in chat rooms, unless the firm is prepared to comply with NASD Conduct Rule 2210, including the record keeping requirements under Rule 2210(b). Such presentations, at a minimum, require principal review and approval and may require filing and approval with NASDR’s Advertising/Investment Companies Regulation Department Under Rule 2210(c).
- Ensure that “chat” which might be deemed to be a customer complaint about the e-broker, its services or employees is handled appropriately following SRO procedures for reporting customer complaints.

Traditionally, securities regulators have been sensitive to the importance of maintaining a good mix of widely-available and easily accessible information in the marketplace. The mere fact that the Internet has been misused in stock manipulation schemes in the past would be seem to be an inadequate reason for prohibiting e-broker chat rooms. Moreover, the ease with which investor chat participants can leave chat rooms offered by non-brokers like Microsoft and Yahoo! and immediately access and trade via their online securities accounts would seem to counsel against a knee-jerk reaction that prohibits investor chat on e-broker sites. The more reasoned approach would be to view such sites as a welcome addition to the ever-increasing arsenal of information available to the individual investor and to scrutinize such sites carefully in an effort to work with the brokerage business to reduce the risk that such sites will be misused.

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ENDNOTES

1. Investor chat rooms permit investors to interact in real time with one another to exchange information about investments and investment opportunities. Some of the most widely-used investor chat room areas are the “Stock Chat” area of Yahoo! Finance <<http://quote.yahoo.com>> and the investor chat area of Microsoft Investor <<http://www.investor.com>>. In contrast, investor message boards are electronic bulletin boards that typically do not involve “real time” chat. Examples of such message board sites include Motley Fool <<http://www.fool.com>> and Silicon Investor

- <<http://www.siliconinvestor.com>>. This article focuses on chat rooms, although many of the issues presented by such chat areas also arise in the message board context.
2. See *Witness Testimony: Testimony of Joseph Fox [Web Street Securities]*, taken before the Subcommittee on Finance and Hazardous Materials of the House Commerce Committee on June 18, 1998 <<http://com-notes.house.gov/cchear/Hearings.nsf/f45b74b7a7c2939a852564f1004886c1/44042e3bad8d059285266210073dc62?OpenDocument>>. See also Beth Lipton, *E*Trade Chat Plans Face Scrutiny*, c/net News.Com, May 29, 1998 <<http://www.news.com/News/Item/0,4,22557,00.html>> (noting that Henry Carter, Vice President of Compliance for E*Trade, was asked to testify before a House subcommittee about e-broker chat rooms).
 3. See Barbara Boydston, *Financial Chat on the Internet Is a Headache for Regulators*, Wall St. J. Interactive Ed., Dec. 9, 1996 <<http://www.wsj.com/public/current/articles/SB849537190500897500.htm>>; *Wallman Concerned that Chat Rooms on Internet Can Be Used To Move Markets*, Sec. Reg. & Law Rep. (BNA), June 14, 1996, at 751; Deborah Lohse, *Stock Regulators Are Worried Dangers Lurk for Investors in On-Line Chat Sites*, Wall St. J., Sept. 12, 1996, at C1, col. 3; *Smear Campaign Against Cold-Cure Company Hides in the Murky Shadows of Online Media*, Interactive PR, Jan. 27, 1997 (available in LEXIS, News Library, Allnws File); see also Joseph J. Cella & John Reed Stark, *SEC Enforcement and the Internet: Meeting the Challenge of the Next Millennium - A Program for the Eagle and the Internet*, 52 Bus. Law. 815, 837-44 (May 1997) (describing a number of SEC enforcement actions dating back to 1996 and involving Internet market manipulation schemes); John Reed Stark, *The Internet's Impact Upon SEC Rules of Engagement*, 12(2) Insights 10, 11 (Aspen Feb. 1998) (describing how chat rooms can be used in stock "pump and dump" scheme).
 4. See, e.g., *Company Blames Stock Drop on Net Rumors*, ZDNet, June 3, 1998 <http://www.zdnet.com/zdnn/stories/zdnn_display/0,3440,2109614,00.html>; Andy Riga, *Site Seeing: Teleglobe Deal Was Old News in Chat Groups*, Montreal Gazette, June 17, 1998 <<http://www.montrealgazette.com/WEBPAGE/980617/1792236.html>>; Mark Maremont, *Predeal Trading in U.S. Surgical Puts Spotlight on Cyberinvestors*, Wall St. J., May 28, 1998, at C1, col.; David Stowry, *Secret Seer Memo Leaked to Public on Web*, Triangle Bus. J., May 4, 1998 <http://www.amcity.com/journals/high_tech/triangle/1998-05-04/story5.html>; see also Howard M. Friedman, *SECURITIES REGULATION IN CYBERSPACE* § 13.03, at 13-8 (Bowne & Co. 1997)(describing "roller-coaster price swings" of stocks of Iomega Corp. And Diana Corp. Due to postings at the Motley Fool site).
 5. See Scott W. Campbell, "Chat Rooms and Related Issues" in *Securities Law & the Internet* 785, 787 (PLI 1998) (hereinafter "Campbell, *Chat Rooms*"). For an excellent discussion of the potential liabilities faced by operators of chat rooms, Usenet newsgroups and

- electronic message boards generally, *see* Friedman, SECURITIES REGULATION IN CYBERSPACE, *supra*, § 13.03, at 13-7 through 13-14.
6. 776 F. Supp. 135 (S.D.N.Y. 1991).
 7. *Id.* at 139-41.
 8. No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct., May 24, 1995).
 9. *Id.* at *4.
 10. Campbell, *Chat Rooms*, at 787.
 11. The legislative history confirms this point. *See* Joint Explanatory Statement of the Congressional Conference Committee, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. (1996), published in 142 Cong. Rec. H 1078, at H 1130 (Jan. 31, 1996). *See also* John C. Coffee, Jr., *Brave New World?: The Impact(s) of the Internet on Modern Securities Regulation*, 52 Bus. Law. 1195, 1226 n.109 (1997).
 12. 47 U.S.C.A. § 230(e)(2).
 13. 129 F.3d 327 (4th Cir. 1997), *cert. denied*, 66 U.S.L.W. 3798.
 14. 129 F.3d at 332. *See also* *Doe v. America Online, Inc.*, No. Civ. CL 97-631 AE, 1997 WL 374223 (Fla. Cir. Ct., June 26, 1997) (relying on Good Samaritan Provision to dismiss parent's claim that AOL was on notice that chat room area was being used to advertise pornographic material but negligently failed to stop the improper use of the chat room before sexually explicit videotape of parent's child was offered for sale via the chat room).
 15. Coffee, *Brave New World?*, *supra*, 52 Bus. Law. at 1226.
 16. *See Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997) (dismissing defamation and related claims arising from failure timely to remove allegedly defamatory postings), *cert. denied*, 66 U.S.L.W. 3798 (U.S. June 22, 1998); *Blumenthal v. Drudge*, 992 F. Supp. 44 (D.D.C. 1998) (dismissing defamation claims against AOL arising from erroneous news report of prior spousal abuse); *Acquino v. Electriciti Inc.*, 26 Media L. Rep. 1032 (San Francisco Super. Ct. 1997) (dismissing state law claims arising from postings to bulletin board accusing plaintiffs of involvement in satanic abuse of children). *But see Doe v. America Online, Inc.*, *supra*, 25 Media L. Rep. 2112.
 17. The immunity offered by section 230(c)(1) of the Good Samaritan Provision provides for no exception in cases where fraud can be demonstrated. Paradoxically, it is at least

- arguable that the defense would still apply in such circumstances -- particularly in those instances in which claims of fraud are founded upon allegedly defamatory content.
18. Robert A. Prentice, *The Future of Corporate Disclosure: The Internet, Securities Fraud, and Rule 10b-5*, 47 Emory L.J. 1, 77 (Winter 1998). In addition, even accurate representations could be viewed as "selective" and, if acted upon by chat room participants, might "invite insider trading liability." *Id.*
 19. There are a number of provisions of the Exchange Act of 1934 that arguably prohibit the manipulation of stock prices through false or misleading Internet chat including: (i) Section 10(b), 15 U.S.C.A. § 78j(b); (ii) Rule 10b-5, 17 C.F.R. § 240.10b-5 (1996); (iii) Rule 10b-1, 17 C.F.R. § 240.10b-1; (iv) Section 9(a)(2), 15 U.S.C.A. § 78i(a)(2); (v) Section 9(a)(3), 15 U.S.C.A. § 78i(a)(3); and (vi) Section 9(a)(4), 15 U.S.C.A. § 78i(a)(4).
 20. 511 U.S. 164 (1994).
 21. *See, e.g., Seolas v. Bilzerian*, 1997 U.S. Dist. LEXIS 1036 (D. Utah, Jan. 28, 1997); *Pollack v. Laidlaw Holdings, Inc.*, [1995 Binder] Fed. Sec. L. Rep. (CCH) ¶ 98,741, at 92,497 (S.D.N.Y., May 2, 1995). *See also* Prentice, *The Future of Corporate Disclosure*, 47 Emory L.J. at 77 n.345.
 22. 47 U.S.C.A. § 230(c)(2).
 23. Beth Lipton, *E*Trade Chat Plan Faces Scrutiny*, C/Net News.Com, May 29, 1998 (quoting John Stark, head of SEC's Internet Enforcement Program) <<http://www.news.com/News/Item/0,4,22557,00.html>>.
 24. Coffee, *Brave New World*, 52 Bus. Law. at 1226 (citing *Charles Schwab & Co., Inc.*, SEC No-Action Letter, 1996 SEC No-Act LEXIS 976, at *5 n.1 (Nov. 27, 1996)).
 25. 15 U.S.C. § 78t(f) (Supp. 1995) (New Section 20(f) of the Securities Exchange Act of 1934).
 26. Coffee, *Brave New World*, *supra*, 52 Bus. Law. at 1226.
 27. *See* 15 U.S.C.A. §§ 78u(d)(1) & (3) (authorizing proceedings for injunctive relief and monetary penalties for violating exchange rules, registered securities association rules, registered clearing agency rules or rules of the Municipal Securities Rulemaking Board). *See also* 15 U.S.C.A. § 78t(f) (permitting SEC prosecution of aiders and abettors in cases brought under 15 U.S.C.A. §§ 78u(d)(1) & (3)).
 28. *See* Campbell, *Chat Rooms*, at 788. Indeed, because of the difficulties of supervision and potential liabilities, many firms limit or prohibit their registered representatives from participating in chat rooms. *See Internet Guide for Registered Representatives* (visited July

- 3, 1998) <<http://www.nasdr.com/4040.htm>>; see also *Broker-Dealer Launches Chat Room for Investors, With Passive Moderators*, Sec. Reg. & Law (BNA), May 29, 1998, at 824 (noting that Merrill Lynch & Co. prohibits brokers from participating in chat rooms anonymously or as Merrill Lynch registered representatives and that E*Trade has similar restrictions).
29. See, e.g., NASD Rule 3010.
30. See Exchange Act Release No. 34-39510, 1997 SEC LEXIS 2726 (Dec. 31, 1997); Exchange Act Release No. 34-39511, 1997 WL 799981 (S.E.C.) (Dec. 31, 1997).
31. See NASDR, *Internet Guide for Registered Representatives* (visited July 2, 1998) <www.nasdr.com/4040.htm>.
32. John R. Hewitt, *SRO Rules on Review of Electronic Communications*, N.Y.L.J., Feb. 5, 1998 <<http://www.ljx.com/practice/securities/0205srosec.html>> (citing NYSE Rule 472(a) and NASD Rule 2210(a)).
33. "Ask the Analyst About Electronic Communications," NASD Regulatory & Compliance Alert, April 1996, at 4-6 (chat rooms are akin to an extemporaneous public forum). See also NASDR, *Internet Guide for Registered Representatives* (visited June 29, 1998) <<http://www.nasdr.com/4040.htm>> ("Because chat rooms are live, unprepared communications, an RR cannot normally get his/her comments approved in advance. Therefore, live chat communications are not subject to the filing requirements of NASD Conduct Rule 2210(c), but the General Standards under Rule 2210(d) do apply.").
34. There is, of course, an odd "flip side" to this issue: should the terms "advertisement" and "sales literature" apply to the chat posted by customers who visit the site? The answer would appear to be "no." See NASD Notice to Members 95-74 (Aug. 1995) ("advertisement" does not include communications by members of the public); see also Campbell, *Chat Rooms*, at 788.
35. See *Broker-Dealer Launches Chat Room For Investors, With Passive Moderators*, Sec. Reg. & Law (BNA), May 29, 1998, at 824 (reporting comments of Kenneth Spirer of Merrill Lynch).
36. See, e.g., NASD Rule 3070(c); NYSE Rule 351(d).
37. 17 C.F.R. § 240.17a-3 (1994); 17 C.F.R. § 240.17a-4 (1994).
38. See, e.g., NASD Rule 3110(d) & (e).
39. *Internet Capital Corp.*, SEC No-Action Letter, 1998 WL 9357 at *9 (S.E.C.) (Dec. 22, 1997).

40. For a recent article about an issuer that permits a company official to participate in electronic bulletin board discussions about the issuer's publicly-traded securities, see Portia Richardson, *Investor Relations: The Delicate Job of Chatting With Investors Online*, 1(8) wallstreetlawyer.com 18 (Jan. 1988).
41. For a discussion of considerations that arise when an issuer becomes aware of such misleading postings, see Prentice, *The Future of Corporate Disclosure*, 47 Emory L.J. at 71-76 (1998).
42. See Cella & Stark, *SEC Enforcement and the Internet*, supra, 52 Bus. Law. 823-24; see also *Regulation of Exchanges*, Int'l Series Concept Release No. IS-1085, 1997 WL 276278 (S.E.C.) at *40 (May 23, 1997).
43. For an example of terms of use used at Microsoft Investor chat area, see <<http://investor.msn.com/common/disclaim.asp>>. For an example of a clickwrap agreement used in connection with the Yahoo! Finance stock chat area, see <<http://chat.yahoo.com/chat/agreement.html>>.
44. See Aaron Lucchetti, *Some Web Sites Getting Tough on Stock Chat*, Wall St. J., May 28, 1998, at C1, col. 5 (noting that "Internet stock forums" -- message boards -- are beginning to restrict or prohibit postings about "small and micro-cap stocks"); Beth Lipton, *Finance Sites Walk Fine Line*, c/net News.Com, June 18, 1998 <<http://www.news.com/News/Item/0,4,23337,00.html?st.ne.1.head>> (noting that Yahoo! recently removed 100 message boards from its Yahoo! Finance area that dealt with so-called over-the-counter, bulletin-board and penny stocks).
45. See Lucchetti, supra, Wall St. J., May 28, 1998, at C1, col. 5.
46. E*Trade reportedly plans to use "passive" moderators. See *Broker Dealer Launches Chat Room For Investors, With Passive Moderators*, Sec. Reg. & Law Rep. (BNA), May 29, 1998, at 824-25. Although it is not clear what is meant by "passive" moderators, it would seem advisable to permit moderators the leeway to query chat participants about the bases for their views in appropriate circumstances in an effort to weed out those whose only goal is to tout a particular security. Establishing such a system as part of the effort to restrict access to or availability of objectionable material would seem to be protected under section (2) of the Good Samaritan Provision. 47 U.S.C.A. § 230(c)(2).