SEC NEWS DIGEST

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COMMISSION ANNOUNCEMENTS

SEC COMMISSIONER LAURA S. UNGER RELEASES REPORT, RECOMMENDS IMPROVEMENTS TO REGULATION FD

Commissioner Laura S. Unger of the U.S. Securities and Exchange Commission today issued a report examining the impact of Regulation Fair Disclosure on the marketplace. In effect since October 2000, the Commission adopted Regulation FD to end issuers selectively disclosing important or "material" company information to analysts. Reviewing Regulation FD's first year, the report, "Regulation FD Revisited," makes certain findings and recommendations based on an April SEC Roundtable and industry surveys.

Commissioner Unger's report makes three key recommendations. First, the report recommends that the SEC should tell companies more definitively what information has to be made public under Regulation FD by providing additional guidance on materiality. Second, the report recommends that the Commission should incentivize companies to provide more information by allowing greater use of technology to satisfy Regulation FD's public information dissemination requirements. Third, the report recommends the Commission should closely examine post-Regulation FD market information and filings to better determine the regulation's impact on the depth and quality of company information in the marketplace.

"At the meeting adopting Regulation FD, the Commissioners promised to monitor the regulation's impact on information flow. I am gratified to make good on that promise today by issuing this report. Rather than revisit the merits of Regulation FD, the report studies the SEC Roundtable transcript and public surveys and makes constructive suggestions to the Commission about how to refine the regulation to increase marketplace information," said Commissioner Unger.

The report also releases a transcript of the SEC's roundtable discussion. Participants included SEC Commissioner Isaac C. Hunt, Jr., issuers, analysts, investors and information disseminators.

The report is available on the Commission's website at www.sec.gov/news/studies/regfdstudy.htm. (Press Rel. 2001-145)

ENFORCEMENT PROCEEDINGS

COMMISSION CHARGES PINNACLE HOLDINGS, INC. WITH IMPROPER ACCOUNTING FOLLOWING MAJOR ACQUISITION

The Commission today instituted and simultaneously settled public administrative cease and desist proceedings against Pinnacle Holdings, Inc. (Pinnacle) based upon violations of the reporting and books and records provisions of the federal securities laws. The order finds that Pinnacle improperly accounted for its 1999 acquisition of Motorola, Inc.'s (Motorola) North American Antenna Site Business (Motorola Acquisition). Pinnacle improperly established liabilities and improperly capitalized costs in connection with the acquisition. As a result, Pinnacle's financial statements for 1999 and the first three quarters of 2000 were materially misstated. The Commission ordered Pinnacle to cease and desist from committing or causing any violation or any future violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 and Rules 12b-20, 13a-1 and 13a-13 thereunder. Pinnacle consented to the entry of a cease and desist order against it without admitting or denying the Commission's allegations.

Pinnacle is engaged in the business of acquiring, integrating, operating and leasing communications site space, principally antenna space for wireless telephony, land mobile, two-way radio systems and paging service providers and other wireless devices. Pinnacle's headquarters are in Sarasota, Florida, and its common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act. Pinnacle's common stock is quoted on the Nasdaq National Market System.

In August 1999 Pinnacle acquired from Motorola over 1,800 antenna towers, management agreements and leases, the result of which was effectively to double the number of communications sites operated by Pinnacle. In connection with the Motorola Acquisition, Pinnacle improperly established at least $24 million of liabilities, which were improper because they did not represent liabilities at the time of the acquisition. Pinnacle also improperly capitalized over $8.5 million in costs against those liabilities. These costs, most of which were consulting fees paid to Pinnacle's former auditor, related to the integration and ongoing business operation of assets acquired from Motorola, and, under Generally Accepted Accounting Principles, should have been expensed. By capitalizing these costs as directly and incrementally related to the Motorola Acquisition, instead of treating them as ongoing operating expenses, Pinnacle understated its general and administrative and corporate development expenses for the periods ended from September 30, 1999 to September 30, 2000.

The investigation is continuing as to other parties. (Rel. 34-45135; AAE Rel. 1476; File No. 3-10647)

TLC ENTITIES ENJOINED AND ORDERED TO PAY DISGORGEMENT AND CIVIL PENALTIES

The Commission announced that on November 19, 2001, the Honorable David O. Carter, United States District Judge for the Central District of California, entered a Final Judgment of Permanent Injunction and Other Relief Against TLC Investments & Trade Co., TLC America, Inc., dba Brea Development Company, TLC Brokerage, Inc., dba TLC Marketing, and TLC Real Properties RLLP-1 (TLC Entities). The Final Judgment enjoins each of them from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act), AND rule 10b-5 thereunder. The Final Judgment further orders the TLC Entities collectively to pay disgorgement of $106.6 million and prejudgment interest. The Final Judgment also provides that, in the event the Court-appointed Receiver for the TLC Entities recovers more than $106.6 million in the liquidation of their assets, those funds shall be paid to the Commission as a civil penalty. The TLC Entities consented to the entry of the Final Judgment of Permanent Injunction without admitting or denying the allegations of the Commission's complaint.

The Commission's complaint alleged that between 1998 and October 2000, the TLC Entities committed securities fraud in connection with a real estate Ponzi scheme, raising over $150 million from more than 1,800 investors, most of whom are senior citizens. The TLC Entities promised investors a safe, liquid investment that would pay guaranteed returns of 8 to 15%. The complaint further alleged that TLC Entities' principals misused at least $28.3 million in investor funds to pay other investors, invest in a prime bank scheme, buy racehorses, make charitable contributions and wire funds overseas. [SEC v. TLC Investments & Trade Co., et al., Civil Action No. SACV-00-960 DOC, MLGx, USDC, CDCA] (LR-17255)

TEMPORARY RESTRAINING ORDER ENTERED AGAINST BIJ FINANCIAL SERVICES D/B/A MOLLA INVESTMENTS NEW ERA ENTERPRISES COMPANY AND BRIAN MILES

On December 4, United States District Court Judge Zita L. Weinshienk issued an *ex parte* temporary restraining order against BIJ Financial Services d/b/a Molla Investments, New Era Enterprises Company and Brian K. Miles, all of Denver. The order prohibits violations of the antifraud provisions of the federal securities laws set forth in Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The order also freezes the defendants' assets and orders them to provide an accounting. A hearing on the Commission's motion for a preliminary injunction against the defendants has been scheduled for December 12, 2001.

The Commission's complaint alleged that, beginning in November 2000 the defendants fraudulently raised at least $200,000 from investors through the sales of "units" in their "Venture Capital Program." The Commission further alleged that the defendants promised investors returns of 20% monthly or 40% quarterly with no risk to their

principal. The returns were to be generated through defendant Miles' trading in S&P 500 futures. The Commission alleged that these representations were on their face false and misleading. Additionally, the Commission alleged that the defendants stopped paying investors their promised returns in August 2001. The defendants claimed, the Commission alleged, that they could no longer pay the returns because the Commission had frozen the funds in defendant Molla Investments' Nevada bank account. In fact, the Commission had not brought any type of enforcement action against any of the defendants before this one and had not obtained a freeze of the defendants' assets. In addition to preliminary injunctions against the defendants, the Commission's action seeks permanent injunctions, disgorgement of the defendants' ill-gotten gains plus prejudgment interest, and civil penalties against each defendant. [SEC v. BIJ Financial Services d/b/a Molla Investments, New Era Enterprises Company and Brian K. Miles, Civil Action No. 01-Z-2322, District of Colorado] (LR-17257)

SEC SETTLES CIVIL ACTION AGAINST INDIANA INSURANCE SALESMAN FOR INVOLVEMENT IN SALE OF FICTITIOUS PRIME BANK INSTRUMENTS

The Commission announced that on November 17, 2001, the Honorable Matthew F. Kennelly of the United States District Court for the Northern District of Illinois entered an Order of Permanent Injunction and Other Equitable Relief against Jerome Coppage (Coppage), a resident of Schererville, Indiana, for his participation in a widespread fraudulent "prime bank" scheme known as The Gateway Association (Gateway).

Without admitting or denying the allegations in the complaint, Coppage consented to the entry of an Order that enjoins him from violating Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and orders him to disgorge his ill-gotten gains and pay civil penalties in an amount to be determined in a separate hearing by the Court.

On April 30, 2001, the Commission filed a complaint against Coppage and others based on their participation in raising over $10 million in the Gateway prime bank scheme. The Commission's complaint alleges that from about November 1997 through about March 1999, the Gateway investment scheme raised approximately $10 million from at least 400 investors who were told that their money would be invested in a purported overseas bank debenture trading program. At numerous meetings held across the country, Coppage and others promised investors a 1,250% rate of return on a ten-month, $100,000 investment. In reality, the promised high rate of return lacked a reasonable basis, since, among other things, prime bank securities described by Coppage do not exist and are inherently fraudulent. To date, Gateway has not paid investors their promised rates of return. Nor have investors received their money back. None of the investment proceeds were used to purchase or sell financial instruments. In fact, most of the money raised from investors has been spent or wired to offshore bank accounts. [SEC v. Richard Collins, et al., Civil Action No. 01C-3085, USDC, N.D. Ill.] (LR-17258)

SEC SUES CORPORATE OFFICER AND HIS BROTHER FOR INSIDER TRADING

On December 4, the Commission filed an insider trading case against a senior officer of Carreker Corporation and his brother. Named as defendants were George P. Matus, a senior vice president of Carreker and his brother, Peter T. Matus, a licensed stockbroker. According to the Commission's Complaint, the Matus brothers obtained $209,940 in illegal trading profits by trading on inside information concerning Carreker's May 22, 2001, announcement that the company would miss its first-quarter earnings estimate.

The defendants are:

- George P Matus, age 33, a resident of Allen, Texas, and Senior Vice President of Investor Relations at Carreker, a Dallas, Texas, based company traded on the Nasdaq stock market.

- Peter T. Matus, age 27, a resident of Holladay, Utah, and brother of George Matus. Peter Matus is a registered representative with a brokerage firm.

The case was filed in the United States District Court for the Eastern District of Texas, Sherman Division, and has been assigned to Judge Paul N. Brown.

Specifically, the SEC alleges that George Matus had advance knowledge of Carreker's negative earnings news and participated in both the drafting of the press release announcing the negative news and the decision as to when to release the news. However, rather than maintain the confidentiality of the news and abstain from trading in Carreker stock, George Matus conveyed the confidential negative information to his brother and transferred $50,000 to him in order to trade in Carreker securities and profit from the non-public information. Pursuant to their plan, Peter Matus then used his brother's funds to purchase 750 Carreker put options, effectively betting that the price of Carreker shares would decline once the negative news was made public. Predictably, upon release of the negative news, the price of Carreker stock declined-- by approximately 28%. When brother Peter sold the options a week later, the price had declined more than 40%, netting the brothers a profit of over $200,000.

In its lawsuit, the SEC is seeking a permanent injunctions, disgorgement of illegal profits and pre-judgment interest, a penalty under the Insider Trading Sanctions Act, against George Matus and Peter Matus for violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, in connection with illegal insider trading while in the possession of material, non-public information. The SEC is also seeking an officer-and-director bar against George Matus, effectively prohibiting him in the future from serving as an officer or director of any publicly traded company. [SEC v. George Matus and Peter Matus, USDC ED/TX, Civ. 4:01CV359-PB] (LR-17259)

COMMISSION MOVES FOR CONTEMPT FINDING AGAINST DEVIN DANEHY

On November 19, the Commission moved for a finding of contempt against Devin A. Danehy (Danehy), alleging that Danehy had violated the Final Judgment entered against him on September 25, by the United States District Court in Louisville, Kentucky in a settled insider trading case. In its motion, the Commission alleged that Danehy failed to pay his first installment of $50,000 in disgorgement and prejudgment interest as outlined in the Final Judgment by October 25. Danehy has subsequently filed for Chapter 13 bankruptcy, and the Court has ordered a show cause hearing for January 4, 2002. [SEC v. Devin A. Danehy, United States District Court, Western District of Kentucky, Civil Action No. 3:01CV555] (LR-17260)

INVESTMENT COMPANY ACT RELEASES

FIRST ALLMERICA FINANCIAL LIFE INSURANCE COMPANY, ET AL.

A notice has been issued giving interested persons until December 27 to request a hearing on an application filed by First Allmerica Financial Life Insurance Company (First Allmerica), Fulcrum Separate Account of First Allmerica Financial Life Insurance Company (the First Allmerica Separate Account), Allmerica Financial Life Insurance and Annuity Company (Allmerica Financial Life), Fulcrum Separate Account of Allmerica Financial Life Insurance and Annuity Company (the Allmerica Financial Life Separate Account), Allmerica Investment Trust (AIT), The Fulcrum Trust (Fulcrum), and Gabelli Capital Series Funds, Inc. (Gabelli) (collectively, the Applicants). The Applicants request an order pursuant to Section 26(c) of the Investment Company Act approving the substitution of shares of three series of AIT and one series of Gabelli for shares of series of Fulcrum held by the First Allmerica Separate Account and the Allmerica Financial Life Separate Account to support variable life insurance contracts or variable annuity contracts issued by First Allmerica or Allmerica Financial Life. Applicants also request an order exempting them from Section 17(a) of the Act to the extent necessary to permit the Applicants to, by means of in-kind redemptions and purchases, carry out the above-referenced substitutions of securities. (Rel. IC-25311 – December 5)

SELF-REGULATORY ORGANIZATIONS

PROPOSED RULE CHANGE

The Chicago Stock Exchange filed a proposed rule change (SR-CHX-99-18) relating to the display of limit orders on the Exchange. Publication of the notice in the Federal Register is expected during the week of December 10. (Rel. 34-45122)

IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGE

A proposed rule change filed by the Philadelphia Stock Exchange extending a pilot program for the Volume Weighted Aver : Price Trading (VWAP) System (SR-Phlx 2001-95) has become effective under Section 19(b)(3)(A) of the Securities Exchange Act of 1934. Publication of the proposal is expected in the Federal Register during the week of December 10. (Rel. 34-45125)

SECURITIES ACT REGISTRATIONS

The following registration statements have been filed with the SEC under the Securities Act of 1933. The reported information appears as follows: Form, Name, Address and Phone Number (if available) of the issuer of the security; Title and the number and/or face amount of the securities being offered; Name of the managing underwriter or depositor (if applicable); File number and date filed; Assigned Branch; and a designation if the statement is a New Issue.

Registration statements may be obtained in p .son or by writing to the Commission's Public Reference Branch at 450 Fifth Street, N.W., Washington, D.C. 20549 or at the following e-mail box address: <publicinfo@sec.gov>. In most cases, this information is also available on the Commission's website: <www.sec.gov>.

F-6 HENKEL LTD PARTRNERSHIP \ADR, 111 WALL ST, C/O CITIBANK NA, NEW YORK, NY
10043 (212) 657-7827 - 50,000,000 ($2,500,000)
DEPOSITARY RECEIPTS FOR COMMON STOCK. (FILE 333-14136 - NOV. 28) (BR. 99)

F-6 HENKEL LTD PARTRNERSHIP \ADR, 111 WALL ST, C/O CITIBANK NA, NEW YORK, NY
10043 (212) 657-7827 - 50,000,000 ($2,500,000)
DEPOSITARY RECEIPTS FOR PREFERRED STOCK. (FILE 333-14138 - NOV. 28) (BR. 99)

F-3 ATTUNITY LTD, INDUSTRIAL PARK, T.CHNION CITY, HAIFA ISRAEL, L3 32000
(508) 651-3888 - 8,311,543 ($12,467,314.50) FOREIGN COMMON STOCK. (FILE
333-14140 - NOV. 28) (BR. 3)

S-8 ALVARION LTD, ATIDIM TECHNOLOGICAL PARK, 972-3-645-6262,
TEL AVIV 61131 ISRAE, L3 00000 (212) 310-8000 - 3,428,600 ($15,747,137.54)
FOREIGN COMMON STOCK. (FILE 333-14142 - NOV. 28) (BR. 7)

S-4 EXELIXIS INC, 170 HARBOR WAY, P O BOX 511, SOUTH SAN FRANCISCO, CA 94083
(650) 825-2200 - 8,268,799 ($101,573,824) COMMON STOCK. (FILE 333-74120 -
NOV. 29) (BR. 1)

S-3 PENNEY J C CO INC, 6501 LEGACY DR, PLANO, TX 75024 (972) 431-1000 - 650,000,000 ($650,000,000) CONVERTIBLE DEBENTURES AND NOTES. (FILE 333-74122 - NOV. 29) (BR. 2)

S-8 AVANEX CORP, 40919 ENCYCLOPEDIA CIRCLE, FREMONT, CA 94538 (510) 897-4172
- 4,110,145 ($28,367,040) COMMON STOCK. (FILE 333-74124 - NOV. 29) (BR. 5)

S-3 AVANEX CORP, 40919 ENCYCLOPEDIA CIRCLE, FREMONT, CA 94538 (510) 897-4172
- 2,750,318 ($20,544,875.46) COMMON STOCK. (FILE 333-74126 - NOV. 29) (BR. 5)

S-8 WINMAX TRADING GROUP INC, 429 SEABREEZE BLVD STE 227, FT LAUDERDALE, FL
33316 (954) 523-4500 - 185,000 ($77,700) COMMON STOCK. (FILE 333-74128 -
NOV. 29) (BR. 9)

S-8 VICTOR INDUSTRIES INC, 4810 NORTH WORNATH ROAD, MISSOULA, MT 59804
(406) 251-8501 - 7,437,500 ($1,004,063) COMMON STOCK. (FILE 333-74130 -
NOV. 29) (BR. 4)

S-8 ENTERTAINMENT TECHNOLOGIES & PROGRAMS INC, 16055 SPACE CENTER BLVD, SUITE 230, HOUSTON, TX 77062 (281) 486-6115 - 278,572 ($19,500.04) COMMON STOCK. (FILE 333-74132 - NOV. 29) (BR. 4)

S-3 MAXCOR FINANCIAL GROUP INC, TWO WORLD TRADE CTR, 84TH FL, NEW YORK, NY
10048 (212) 748-7000 - 7,437,500 ($1,004,062.50) COMMON STOCK. (FILE 333-74164 - NOV. 29) (BR. 7)