

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BURTON G. FRIEDLANDER,
FRIEDLANDER INTERNATIONAL LIMITED,
FRIEDLANDER MANAGEMENT LIMITED,
FRIEDLANDER CAPITAL MANAGEMENT
CORPORATION,
OPAL INTERNATIONAL FUND, and
FRIEDLANDER LIMITED PARTNERSHIP,

Defendants.

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COMPLAINT

The Securities and Exchange Commission ("SEC") alleges that:

NATURE OF THE ACTION

1. The SEC brings this action to stop a massive fraud perpetrated by Defendants Friedlander, Friedlander Management Limited ("FML"), Friedlander Capital Management Corporation ("FCMC"), Opal International Fund ("Opal") and Friedlander Limited Partnership ("FLP") in connection with an investment entity known as Friedlander International Limited ("the Hedge Fund"). Since August 2000, or earlier, Defendants Friedlander, FML, and FCMC have misrepresented and inflated the net asset value ("NAV") of the Hedge Fund to its shareholders by overstating the value of certain assets of the Hedge Fund, have induced investments in the Hedge Fund based upon misrepresented and inflated statements of performance results, and have redeemed their own interests in the Hedge Fund at misrepresented and inflated values, to the detriment of the Hedge Fund's other investors. In perpetrating their fraudulent scheme, Friedlander

and FCMC have used the assets of Opal and FLP, other investment funds managed by Friedlander and FCMC, to make month-end purchases of a security, in order manipulate the price upward and thereby artificially inflate the value of securities held by the Hedge Fund.

2. By engaging in such conduct, Friedlander, the Hedge Fund, FML, FCMC, Opal and FLP have violated, and unless enjoined will continue to violate, Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5. In addition, Friedlander, FML and FCMC have violated, and unless enjoined will continue to violate, Section 206(1) and (2) of the Investment Advisors Act of 1940 ("Adviser's Act"), 15 U.S.C. § 80b-6.

3. The SEC brings this action seeking to preliminarily and permanently enjoin the Defendants from engaging in the wrongful conduct alleged in this Complaint. The SEC also seeks a final judgment ordering the Defendants to account for and to disgorge any ill-gotten gains and to pay prejudgment interest thereon, and ordering the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

JURISDICTION AND VENUE

4. This court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), Sections 21(e) and 27 of the Exchange Act, 15 U.S.C. §§ 77u(e) and 78aa, and Section 214 of the Advisors Act, 15 U.S.C. § 80b-14.

5. Venue in this Court is proper because certain of the transactions, acts, practices and courses of business alleged in this Complaint occurred within the Southern

District of New York, including the purchase of investments on behalf of the Hedge Fund by Friedlander, FML, FCMC, Opal and FLP through accounts at Bear Stearns Securities Corp. ("Bear Stearns") as well as other brokerage accounts located in this District. Substantially all of the assets of the Hedge Fund are located in an account at Bear Stearns, which is located in this District.

DEFENDANTS

6. BURTON G. FRIEDLANDER, age 62, is an unregistered investment advisor who lives and works in Greenwich, Connecticut. Friedlander is a director of Friedlander International Limited (the Hedge Fund), and is a director of and controls both Friedlander Management Limited (FML) and Friedlander Capital Management Corporation (FCMC), which act as the investment advisor for the Hedge Fund.

7. FRIEDLANDER INTERNATIONAL LIMITED (the Hedge Fund) is a hedge fund incorporated as an International Business Company in the Commonwealth of the Bahamas, with its registered office in Nassau, Bahamas. The Hedge Fund is managed by Friedlander Management Limited (FML).

8. FRIEDLANDER MANAGEMENT LIMITED (FML) is an International Business Company incorporated in the Bahamas. FML manages the Hedge Fund through subcontracts with other entities, including Friedlander Capital Management Corporation (FCMC). FML is also a shareholder in the Hedge Fund

9. FRIEDLANDER CAPITAL MANAGEMENT CORPORATION (FCMC) is a Connecticut corporation in the business of investment management and based in Greenwich, Connecticut. Friedlander controls FCMC and is solely responsible for the

day-to-day operations and investment advice rendered by FCMC. FCMC was retained by FML to manage the assets of the Hedge Fund.

10. OPAL INTERNATIONAL FUND (Opal) is an investment vehicle incorporated in the Cayman Islands. The assets of Opal are managed by Friedlander and FCMC, who make all investment decisions for Opal.

11. FRIEDLANDER LIMITED PARTNERSHIP (FLP) is an investment vehicle formed as a Limited Partnership in the State of Connecticut. Friedlander and FCMC also manage and make investment decisions regarding the assets of FLP.

Other Involved Entities

12. Morning Star Management Limited ("MSML"), is an International Business Company formed under the laws of the Bahamas, and controlled by Dean W. Lodmell ("Lodmell"), a resident of Connecticut. FML used MSML to perform the Hedge Fund's administrative functions, including a month end calculation of the net asset value (NAV) using information supplied by Friedlander, FCMC, Bear Stearns, and public resources. On August 4, 2000, MSML resigned as administrator effective November 2, 2000. However, Lodmell continued to perform administrative services for the Hedge Fund, including calculation of the NAV through at least January 2001.

13. Lion Investor Services (Bahamas) ("Lion"), an entity organized under the laws of the Bahamas, began providing administrative services to the Hedge Fund in January 2001, replacing MSML.

14. eNote.com Inc. ("eNote") is a Delaware corporation with its principal place of business in Williston, Vermont. The stock of eNote is traded over-the-counter and quoted on the OTC Bulletin Board system. eNote purports to be in the business of

developing a system to allow access to electronic mail through a television set.

According to its most recent filing with the SEC, as of September 30, 2000, the liabilities of eNote exceeded its assets. eNote has not generated any substantial revenue from operations since its inception in April 1999, and has relied upon loans from Friedlander, FCMC and others to meet its operating expenses.

THE FRAUD

15. Since October 2000, or earlier, the defendants distributed false and misleading account statements to investors in the Hedge Fund, and, by means of these misrepresentations, induced additional investors to invest in the Hedge Fund. While directing and assisting in the calculation of the Net Asset Value (NAV) of the Hedge Fund, Friedlander overstated the value of certain unmarketable warrants in eNote held by the Hedge Fund and failed to account for the dilution of the common stock that would occur should the warrants be exercised and additional stock issued by eNote. In the calculation of the NAVs for October, November and December 2000, Friedlander valued the warrants at a price higher than the market price of the underlying common stock and continued to ignore the dilutive effect that the exercise of the warrants would cause.

16. In addition, at the end of each month from August 2000 to December 2000, Friedlander manipulated the stock price of eNote upward to be included in the month-end NAV. FCMC and Friedlander used the assets of Opal and FLP to purchase eNote stock in the month-end manipulations. On the last day of trading in August, September, October, November, and December 2000, Friedlander caused those two funds to purchase large amounts of eNote stock, which resulted in a price increase for each of those months. The price of eNote stock doubled on the last trading days of October 2000

and December 2000. At no other time during those five months did Friedlander (through FLP and Opal) purchase stock except at month's end.

17. Friedlander continued to sell shares in the Hedge Fund to investors through December 2000, using the Fund's inflated NAV. Between September 2000 and February 2001, Friedlander caused FML to redeem approximately \$2.4 million in the Hedge Fund shares at inflated asset values for his benefit and that of FML and FCMC.

The Operations of the Hedge Fund, MSML and FCMC.

18. Defendant Friedlander controlled FML and FCMC and was solely responsible for overseeing their day-to-day operations. Through these entities, he exercised *de facto* control over the investment program of the Hedge Fund and had the authority and discretion to effect securities transactions for the Hedge Fund. Friedlander effected transfers of monies belonging to the Fund, had sole discretion in managing the Fund's assets, had the ability to hire or remove the Fund's administrator, and had the sole ability to modify the terms of the Hedge Fund's "explanatory memorandum", which served as the Hedge Fund's offering memorandum. As compensation for managing and advising the Hedge Fund, FML received a monthly management fee based upon a percentage of the total NAV of the Hedge Fund as well as a quarterly performance fee based upon the net profits of the Hedge Fund. FML then distributed the fee proceeds to FCMC and Friedlander as compensation for their role in the management of the Hedge Fund.

19. The Hedge Fund was not "transparent" in that its investors were not provided with the identity of the securities held in the Hedge Fund. The sole disclosure made to Hedge Fund investors was a statement of the per-share NAV of the Hedge Fund

as of the last trading day of each month. The Hedge Fund was not registered with the SEC and did not make public filings of its holdings or financial condition.

20. Since the Fund's inception in 1998 through January 2001, MSML and Lodmell calculated the NAV of the Hedge Fund on a monthly basis under Friedlander's direction. MSML then sent monthly account statements based on the NAV to the Hedge Fund's investors. In performing the NAV calculation, MSML and Lodmell first determined the value of the total assets of the Hedge Fund, then divided that value by the number of shares outstanding.

21. MSML and Lodmell used published closing prices for the last trading day of the month when assigning value to publicly traded Hedge Fund assets. However, from April 2000, or earlier, through January 2001, MSML or Lodmell requested the prices of unlisted securities from Friedlander and FCMC and relied on the value provided by Friedlander to calculate the Fund's NAV. MSML and Lodmell provided the NAV to Friedlander and FCMC for approval before MSML transmitted it to the Hedge Fund's investors in their monthly account statements.

The Fund's Holdings of eNote Securities

22. In April 1999, Friedlander caused the Hedge Fund to invest \$5 million in eNote, which had recently become a public company through a reverse merger. In exchange, the Hedge Fund received 5 million shares of preferred convertible stock (the "Preferred Stock"), becoming the sole holder of preferred stock in eNote.com. The fund also received a warrant that entitled the Hedge Fund to obtain an additional 2 million shares of eNote common stock at an exercise price \$1.00 per share (the "Original Warrant") through April 2004.

23. Between August 2000 and March 2001, FCMC has been the main source of funding for eNote, lending a total of approximately \$1.5 million in exchange for convertible debt instruments given by eNote to FCMC. For no further consideration, eNote also gave additional warrants for the purchase of 11,666,667 shares of eNote common stock to FCMC between August 2000 and November 2000, which were purportedly “gifted” to the Hedge Fund by FCMC. These warrants varied as to exercise price and expiration date.

24. A warrant is a security that entitles the buyer to buy a quantity of common stock at a specified exercise price for a stated period of time. If a warrant has an exercise price of \$2.50, a rational investor would exercise the warrant only if the price of the common stock was above \$2.50. If that price were below \$2.50, a rational investor would buy the stock on the open market rather than exercise the warrant and take a loss. The eNote warrants were not publicly traded on an exchange or over-the-counter, and prices for these securities were not quoted in any market. As a result, the “price” or “value” of the warrants were not publicly available from a ticker or computer service.

25. As of December 31, 2000, these eNote holdings (the warrants and the Preferred Stock) constituted approximately 40 percent of the NAV represented to investors.

26. From March 2000 to the present, the market price for eNote’s common stock has declined from \$6.00 to \$0.08 per share. The Hedge Fund continues to hold the Preferred Stock, the Original Warrant, and the additional warrants obtained without consideration, as a significant portion of its holdings.

The Defendants Overstated the Value of the Fund's eNote Warrants

27. From April 2000, or earlier through October 2000, FCMC and Friedlander valued the warrants by utilizing the Bloomberg Standard Option Valuation Program, a computer service for the valuation of options. An FCMC employee entered five variables into this program and used the results to establish a value for the eNote warrants. The option program did not take into account either the exercise price of the warrants (it would cost the Hedge Fund \$1.00 to purchase a share of eNote common stock were it to exercise the option) nor did it account for the dilutive effect on the eNote common stock if the warrants were exercised and additional shares issued.

28. FCMC's valuation of the warrants also conflicted with the value assigned to those warrants by eNote. In August and September 2000, FCMC obtained warrants for 2.8 million shares of common stock in partial consideration for loans of \$350,000 to eNote. In December 2000, FCMC assigned a value of over \$4,000,000 to these warrants, while eNote valued the warrants at \$325,500 in a filing with the SEC, stating that that the value was "determined by their proportionate share of value based upon the ratio of the warrant value, as determined by using Black-Scholes, to the aggregate value of the note and the warrant multiplied by the total proceeds received".

29. When calculating the NAVs for the periods ending November 30, 2000, and December 31, 2000, FCMC and Friedlander departed from the use of the computer program to value the warrants. Instead, FCMC and Friedlander arbitrarily assigned a value to the eNote warrants which had no relationship to the market price of eNote common stock, and in fact valued the warrants at a higher price than the market price for the underlying common stock.

30. On or about February 15, 2001, FCMC sent a letter to the new administrator of the Hedge Fund, Lion Corporate Services, in which FCMC represented the values of the preferred/convertible stock and warrants remained the same as those values misrepresented by Friedlander in connection with the NAV valuation for the end of January 2000.

31. The overstatement of the value of eNote warrants by Friedlander and FCMC caused continuing and substantial overvaluations of the Hedge Fund's net asset value, which resulted in new investors paying more for shares in the fund than the shares were worth. The overvaluation also caused the Hedge Fund to pay redemptions to shareholders, including FML and Friedlander, for more than their shares were worth, to the detriment of remaining shareholders, whose interest in the Fund was diminished.

Friedlander and FCMC Manipulated the Price of eNote Common Stock

32. In addition to the overvaluation of the warrants, which resulted in an inflated NAV for the Hedge Fund, Friedlander and FCMC also knowingly or recklessly manipulated the price of eNote common stock to overstate the Hedge Fund NAV.

33. At the end of each month from August through December 2000, Friedlander and FCMC purchased substantial quantities of eNote common stock through various brokerage accounts held for the benefit of FLP and Opal, with the intent to raise the market price of eNote stock and thereby inflate the value of the eNote holdings in the Hedge Fund for the calculation of NAV. To effect these purchases, Friedlander placed a series of orders, at increasing prices, on the last trading day of each month.

34. On the last trading day of November and December 2000, Friedlander also "marked the close" of trading in eNote common stock. "Marking the close" is a

manipulative device by which a trader conducts the last trade of the day at a higher price than the prior trade, with the intent of affecting the reported closing price of the stock for that day.

35. In December of 2000, Friedlander purchased 140,000 shares of eNote common stock from an individual who wished to sell them to incur a tax loss. Friedlander only paid \$1.00 for *all* of these shares to prevent those shares from entering the open market and thereby interfering with his manipulative scheme. His manipulative conduct pushed up the closing price of eNote common stock to \$.50 per share at the end of that same month.

36. The end-of-the-month transactions by Friedlander between August 2000 and December 2000 were made with the intent to create actual or apparent active trading in eNote stock, raise the price of eNote stock, and maintain the price at an artificial level for the purpose of calculation of the Hedge Fund's NAV. The ultimate goal was to induce the purchase of shares in the Hedge Fund, and to inflate the value of the redemption or sale of shares in the Hedge Fund for the benefit of Friedlander and FML.

37. Friedlander directly benefited from the manipulative conduct. FCMC used the closing stock price of eNote on the last trading day of each month to determine the value to be assigned to the Hedge Fund's holdings of eNote Preferred Stock. Through October 2000 Friedlander used this month-end price to value the warrants held by eNote as well. These values were used to calculate the Hedge Fund's NAV, which increased the value of shares held by FML in the Hedge Fund for the benefit of FCMC and Friedlander. The overstated value also attracted additional investors to the Hedge Fund resulting in increased compensation paid to the FML for the benefit of FCMC and

Friedlander, since the compensation of FML by the Hedge Fund was based on the net asset value and the performance of the Hedge Fund.

38. Friedlander was successful in manipulating the price of eNote stock upward at the end of each month, as follows:

<u>Date</u>	<u>Closing Price</u>	<u>Previous Day's Close</u>	<u>Percentage Increase</u>
8/31/2000	\$3.00000	\$1.68750	78%
9/29/2000	\$2.50000	\$1.75000	43%
10/31/2000	\$1.09375	\$0.40625	169%
11/30/2000	\$0.50000	\$0.40625	23%
12/29/2000	\$0.50000	\$0.18750	167%

39. The table below sets forth the details of Friedlander's trading, which was not disclosed to the investors in the Hedge Fund:

<u>Purchase Date</u>	<u>No. of shares</u>	<u>Purchasing Entity</u>
<u>August</u>		
08/31/2000	49,000	Opal
<u>September</u>		
09/29/2000	31,000	Opal
<u>October</u>		
10/31/2000	208,500	Opal
<u>November</u>		
11/30/2000	10,000	FLP
<u>December</u>		
12/29/2000	45,000	FLP

Friedlander dominated and controlled the market for eNote common stock on each of those days, where his purchases accounted for 80% or more of the retail purchase volume.

Friedlander, FML and FCMC Misappropriated \$2.3 Million of the Fund's Assets

40. FML receives shares in the Hedge Fund on a monthly basis as partial compensation for managing the Hedge Fund, and holds those shares for the benefit of FCMC. The number of shares received is based upon the NAV of the Hedge Fund.

41. Between August 2000 and February 2001, redemptions in the amount of approximately \$2.4 million were wired from the Hedge Fund account at Bear Stearns to a Citibank account in the name of FCMC, including a \$1M transfer on February 5, 2001 which was used solely for Friedlander's personal expenses. The remainder of these proceeds have been used for his personal expenses, to fund loans made by FCMC to eNote, and conduct the business of FCMC.

42. The redemptions made by FML for the benefit of FCMC were based upon inflated NAV caused by the misrepresentation of the value of eNote securities and by the manipulative devices set forth above, and have benefited FCMC and Friedlander to the detriment of the remaining shareholders in the Hedge Fund. Friedlander personally profited by increasing the rate and amount of the share redemptions during the period of the fraud.

Recent Activity

43. In May 2000, Friedlander sent letters and memoranda to some investors in the Hedge Fund which state that there was an earlier overvaluation of the eNote holdings and that the SEC was conducting an investigation. Friedlander announced his intention to liquidate the Hedge Fund. He failed to inform the investors of the inflated and preferential redemptions earlier received by himself and FCMC, and gave no assurances that such preferential treatment would not continue during the liquidation process. He

also represented that the SEC investigation was focused on eNote, rather than on himself, and his entities, including the Hedge Fund.

FIRST CLAIM

**Violations of 17(a) of the Securities Act
Misrepresentation of NAV by Defendants Friedlander,
The Hedge Fund, FML and FCMC**

44. The SEC realleges and incorporates by reference the allegations contained in Paragraphs 1 through 43, above.

45. In knowingly or recklessly misrepresenting the NAV of the Hedge Fund, the defendants Friedlander, the Hedge Fund, FML and FCMC, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, not misleading; or (c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

46. By reason of the foregoing, defendants violated Section 17(a) of the Securities Act.

SECOND CLAIM

**Violations of Section 10(b) of the Exchange Act and Rule 10b-5
Misrepresentation of NAV by Defendants Friedlander,
The Hedge Fund, FML and FCMC**

47. The SEC realleges and incorporates by reference the allegations contained in Paragraphs 1 through 43, above.

48. In knowingly or recklessly misrepresenting the NAV of the Hedge Fund, the defendants Friedlander, the Hedge Fund, FML and FCMC, directly or indirectly, by use of the means or instruments of interstate commerce, or of the mails, or of a facility of a national securities exchange, knowingly or recklessly: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, transactions, practices, and courses of business which operated or would operate as a fraud or deceit upon the purchasers of securities and upon other persons, in connection with the purchase or sale of a security.

49. By reason of the foregoing, the defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

THIRD CLAIM

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Manipulation of eNote Stock Price by Defendants Friedlander, FCMC, Opal and FLP

50. The SEC realleges and incorporates by reference the allegations contained in Paragraphs 1 through 43, above.

51. In carrying out their scheme to manipulate the price of eNote common stock, the defendants Friedlander, FCMC, Opal and FLP, directly or indirectly, by use of the means or instruments of interstate commerce, or of the mails, or of a facility of a national securities exchange, knowingly or recklessly: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts,

transactions, practices, and courses of business which operated or would operate as a fraud or deceit upon the purchasers of securities and upon other persons, in connection with the purchase or sale of a security.

52. By reason of the foregoing, the defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

FOURTH CLAIM
Violations of Section 206 of the Investment Advisors Act
by Defendants Friedlander, FML and FCMC

53. The SEC realleges and incorporates by reference the allegations contained in Paragraphs 1 through 43, above.

54. Defendants Friedlander, FML and FCMC acted as investment advisers to the Hedge Fund. For compensation, they engaged in the business of advising the Hedge Fund and its investors, directly and through publications and writings, as to the value of securities and as to the advisability of investing in, purchasing, or selling securities.

55. In misrepresenting the NAV of the Hedge Fund, defendants Friedlander, FML and FCMC, with the intent to deceive, manipulate or defraud, by the use of the mails or any means or instrumentality of interstate commerce, directly or indirectly: (1) employed devices, schemes, or artifices to defraud a client or prospective client; and (2) engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon a client or prospective client.

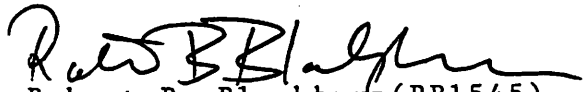
56. By reason of the foregoing, defendants Friedlander, FML and FCMC violated Sections 206(1) and (2) of the Advisers Act.

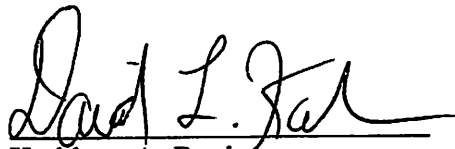
PRAYER FOR RELIEF

WHEREFORE, Plaintiff SEC respectfully requests that this Court enter a Final Judgment:

1. finding that Friedlander, the Hedge Fund, FML, FCMC, Opal and FLP have violated Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5, and that Friedlander and FCMC have violated Section 206(1) and (2) of the Investment Advisors Act, 15 U.S.C. § 80b-6.
2. permanently enjoining Friedlander, the Hedge Fund, FML, FCMC, Opal and FLP from further violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5;
3. permanently enjoining Friedlander, FML and FCMC from violating Section 206(1) and (2) of the Investment Advisors Act, 15 U.S.C. § 80b-6;
4. ordering Friedlander, the Hedge Fund, FML, FCMC, Opal and FLP to account for and to disgorge any ill-gotten gains realized from the conduct alleged herein and to pay prejudgment interest thereon;
5. ordering Friedlander, FML, and FCMC to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and
7. granting such other relief as the Court deems just and proper.

Dated: May 31, 2001
Washington, D.C.


Robert B. Blackburn(RB1545)
Securities & Exchange Commission
7 World Trade Center (1300)
New York, NY 10048
212-748-8185
Local Counsel


Kathleen A. Ford
Assistant Chief Litigation Counsel
David L. Kornblau (DLK-4518)
Chief Litigation Counsel
Attorneys for Plaintiff
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0911
(202) 942-2787 (Ford)
(202) 942-9581 (facsimile)

Of Counsel:

William R. Baker III
Brian Ochs
Douglas McAllister
Matthew Finnegan