

backed the entire amount of PLNs outstanding (it did not); and that PLN proceeds would be used only to fund allegedly low-risk commercial equipment leasing (they were used for other, riskier purposes as well, including for funding other of Judah's business ventures). Judah and Excel also failed to provide investors any financial disclosures, and omitted the fact that millions of dollars of leases were pledged to secure Excel's credit line with a bank in which Judah had ownership interests.

3. In offering and selling the unregistered PLNs, Judah and Excel violated the antifraud and securities registration provisions of the federal securities laws. In addition, Judah (who is not a registered broker) violated the broker registration requirements of the federal securities laws by selling the PLNs.

4. Since Plaintiff began investigating his activities, Judah has repaid all unaccredited PLN investors, and completed a rescission offer to remaining PLN holders through a *bona fide* private placement of subordinated debentures for accredited investors, all of whom have converted their PLNs to debentures. At this time, there are no PLNs outstanding or any claims of investor losses.

5. Nevertheless, because of defendants' serious violations, the Commission files this suit to enjoin their further violations of the federal securities laws and to obtain an appropriate civil money penalty.

JURISDICTION

6. The Court has jurisdiction over this action pursuant to Section 22 of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77v] and Section 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78(aa)].

7. Defendants used means and instrumentalities of interstate commerce and the mails in connection with the acts, practices, or courses of business alleged herein, all or most of which occurred within the Lubbock Division of the Northern District of Texas.

PARTIES

8. Judah is an individual residing in Lubbock, Texas.

9. Excel is a corporation incorporated under the laws of the State of Texas, with its principal place of business in Lubbock, Texas. Before June 1, 2000, Excel consisted of two separate companies, BLJ & Associates, Inc. ("BLJ") and Excel, both wholly owned by Judah. Judah offered PLNs through both companies. Effective June 1, 2000, BLJ merged into Excel, with Excel the surviving corporation.

FACTUAL BACKGROUND

Judah Begins Offering PLNs to the Public

10. Judah and Excel are principally in the business of commercial equipment leasing. They started leasing equipment in 1985, focusing on small to medium sized businesses throughout the United States. They currently have more than 4,000 leases, totaling \$34 million. These leases, which average about \$8,000 in amount and 30 months in term, involve all types of equipment, but are predominantly for commercial trailers, medical devices and office and restaurant equipment.

11. From 1985 to 1987, Judah funded his leasing business primarily by factoring profitable leases to different banks. In 1987, however, he began selling PLNs, principally to friends and family members, to replace bank financing. Judah was quite successful raising funds through the PLNs. By 1989, there were around \$1 million in outstanding PLNs, paying 13% interest. Later, as Judah's leasing business boomed, more

and more PLNs were sold. At May 31, 2000, Judah and Excel had over \$32 million of PLNs outstanding.

12. Judah and Excel obtained investors principally through word-of-mouth, and they paid a 3% “finders fee” or commission to unlicensed persons who brought them investors. Judah and Excel did not try to ascertain investors’ financial position, investment objectives or level of sophistication, and did not inquire into whether PLNs were suitable investments or whether any investor was accredited. Essentially, Judah and Excel accepted money from anyone willing to invest in PLNs.

12. All PLNs were essentially the same, except in principal amount. Each PLN had a one-year term, bearing the same interest rate (most recently, 11%). Investors could opt to receive monthly interest payments or to accrue interest until some later date. At the end of the one-year period, investors could roll their PLNs into a new note (for another year), or cash out upon 30 days’ notice.

The False and Misleading “Proposal”

13. Prospective investors typically received an eight-page Proposal, originally created in 1987 and substantially unchanged for the next 13 years. The Proposal touted the supposedly safe and lucrative nature of the PLNs, but was otherwise devoid of financial or risk disclosures.

14. Many of the Proposal’s key claims were false. For example, the Proposal represented that each PLN was “guaranteed” and “secured” by lease contracts equal to the PLN’s face amount. PLNs, however, were neither guaranteed nor secured by leases or other assets, and PLN holders had no enforceable security interests against Judah’s or Excel’s assets.

15. The Proposal further asserted that PLN proceeds would only be used to fund supposedly low-risk, high-return commercial equipment leasing. This representation was false, since Judah had, over time, expanded into other business ventures funded at least in part by PLN proceeds. For example, Excel funded over \$6 million of consumer auto leases written by an auto leasing company Judah controls, and Excel's records show another \$1.7 million in loans to certain of Judah's other ventures. In other words, almost \$8 million of Judah's lease portfolio – or nearly 25% – related to purposes other than commercial equipment leasing, and to funding of ventures in which Judah had ownership interests, which was not disclosed to investors.

16. The Proposal also claimed that, if Judah died, outstanding principal and interest would be paid from the proceeds of a key man life insurance policy on Judah. Judah, however, only had \$11 million of term life coverage, not even payable to Excel, over \$20 million less than outstanding PLNs, and there is no indication that PLN investors would be entitled to the proceeds from that coverage in any event.

17. The misrepresentations identified in paragraphs 14 and 16 were repeated on the face of the PLNs themselves.

18. The Proposal also omitted important information. First, it lacked any financial statements or other financial disclosures about Excel. Second, it failed to disclose any risks associated with Judah's business activities, risks that likely increased as Judah and Excel started lending to non-commercial clients, through companies in which Judah has interests. Third, it did not disclose the 3% commissions paid to those who brought investors to Judah and Excel. Finally, the Proposal omitted that Excel had pledged millions of dollars of leases to a bank in which Judah had ownership interests.

Excel maintained a credit line with the bank and, at various times, had drawn more than \$2.5 million on this line. In return, Excel pledged an equal amount of leases to the bank as security. As more funds were drawn on the line of credit, more leases were pledged. Judah did not disclose this security interest to investors.

COUNT I

FRAUD IN THE OFFER OR SALE OF SECURITIES

Violations of Sections 17(a)(1), (2) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), (2) and (3)]

19. Paragraphs 1 through 18 are realleged and incorporated herein by reference.

20. Judah and Excel, by engaging in the conduct described above, singly and in concert with others, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or of the mails, have:

- (a) employed devices, schemes and artifices to defraud;
- (b) obtained money or property by means of untrue statements of material fact or by omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and
- (c) engaged in transactions, practices or courses of business that operated or would operate as a fraud or deceit upon the purchasers of such securities.

21. By reason of the foregoing, Judah and Excel violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act. Further, Judah and Excel intentionally, knowingly or recklessly made the untrue statements and omissions and engaged in the devices, schemes, artifices, transactions, acts, practices, and courses of

business described above, so that they violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act.

COUNT II

FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and
Rule 10b-5 Thereunder [17 C.F.R. § 240.10b-5]

22. Paragraphs 1 through 18 are realleged and incorporated herein by reference.

23. Judah and Excel, by engaging in the conduct described above, singly and in concert with others, directly and indirectly, in connection with the purchase and sale of securities, and by use of the means and instrumentalities of interstate commerce and of the mails, have:

- (a) employed devices, schemes and artifices to defraud;
- (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and
- (c) engaged in acts, practices or courses of business which have operated or will operate as a fraud and deceit upon other persons.

24. Judah and Excel intentionally, knowingly or recklessly made the untrue statements and omissions and engaged in the devices, schemes, artifices, transactions, acts, practices and courses of business described above. Because of the foregoing, Judah and Excel violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

COUNT III

SALE OF UNREGISTERED SECURITIES

Violations of Sections 5(a) & 5(c) of the Securities Act [15 U.S.C. § 77e(a, c)]

25. Paragraphs 1 through 18 are realleged and incorporated herein by reference.

26. Judah and Excel, without a registration statement in effect as to the PLNs, directly or indirectly used means or instruments of transportation or communication in interstate commerce or of the mails to sell PLNs, and carried or caused to be carried through the mails or in interstate commerce, by any means of instruments of transportation, PLNs for the purpose of sale or for delivery after sale. Accordingly, Judah and Excel violated and, unless enjoined, will continue to violate Section 5(a) of the Securities Act.

27. In addition, Judah and Excel directly or indirectly used means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell PLNs, without any registration statement having been filed as to the PLNs. In so doing, Judah and Excel violated and, unless enjoined, will continue to violate Section 5(c) of the Securities Act.

COUNT IV

BROKER REGISTRATION VIOLATIONS (AGAINST JUDAH ONLY)

Violations of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)]

28. Paragraphs 1 through 18 are realleged and incorporated herein by reference.

29. Judah used the mails and other means or instrumentality of interstate commerce to effect transactions in, and to induce or attempt to induce the purchase or sale of, PLNs on behalf of another without being registered as a broker in accordance

with Section 15(b) of the Exchange Act. Therefore, Judah violated and, unless enjoined, will continue to violate Section 15(a) of the Exchange Act.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

1. Permanently enjoin Judah and Excel from violating Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, and Sections 5(a), 5(c) and 17(a) of the Securities Act.
2. Order Judah to pay a civil penalty of \$50,000 pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act for his violations of the federal securities laws as alleged herein.
3. Order such further relief as this Court may deem just and proper.

Respectfully submitted,



David L. Peavler
Texas Bar No. 00784738
Spencer C. Barasch
D.C. Bar No. 388886
SECURITIES AND EXCHANGE
COMMISSION
801 Cherry Street, 19th Floor
Fort Worth, Texas 76102
Telephone: (817) 978-3821
Facsimile: (817) 978-2700

ATTORNEYS FOR PLAINTIFF
SECURITIES AND EXCHANGE
COMMISSION