UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. PARMALAT FINANZIARIA S.p.A., Defendant.	:	03 CV 10266 (PKC) **FIRST AMENDED COMPLAINT**

Plaintiff Securities and Exchange Commission (the "Commission") alleges as follows:

SUMMARY OF ALLEGATIONS

1. From at least 1997 through December 2003, defendant Parmalat Finanziaria S.p.A. ("Parmalat Finanziaria" or the "company") engaged in one of the largest financial frauds in history. Acting through certain of its directors and top managers, including former Chairman and Chief Executive Officer Calisto Tanzi and his son Stefano Tanzi, also a senior executive, Parmalat Finanziaria offered and sold more than one billion ($1,000,000,000) dollars in debt securities in the United States based on financial statements that were grossly and intentionally misstated as well as false representations by management concerning the company's financial soundness. As Parmalat Finanziaria first acknowledged in a press release dated December 19, 2003, the assets in its 2002 audited financial statements were overstated by at least 3.95 billion Euros ("€") ($4.9 billion)[1]. Moreover, during 2003 Parmalat falsely stated to prospective bond investors that it had used its excess cash balances—which in reality did not exist—to repurchase corporate debt securities worth €2.9 billion ($3.6 billion), when in fact it had not repurchased

[1] All conversions of amounts stated in Euros or Italian Lira to U.S. Dollars are approximate and based on the most appropriate conversion tables in effect at the relevant period.

those debt obligations and they remained outstanding. Subsequent investigation by Parmalat Finanziaria has revealed that the picture was even grimmer. As of September 30, 2003, Parmalat Finanziaria's actual debt was at least €14.3 billion ($16.6 billion), and thus its previously reported debt of €6.4 billion ($7.42 billion) was understated by at least €7.9 billion ($9.16 billion). The actual net worth of Parmalat Finanziaria was a deficit of approximately <€11.2> billion ($13.0 billion), and thus its previously reported net worth of €2.1 billion ($2.44 billion) was overstated by approximately €13.3 billion ($15.42 billion).

2. By engaging in the foregoing conduct, Parmalat Finanziaria directly, or indirectly through its officers and employees, violated the anti-fraud provisions of the United States federal securities laws. Specifically, Parmalat Finanziaria violated Section 17(a) of the Securities Act of 1933 (the "Securities Act") as well as Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 thereunder. As a result of these violations of law, the Commission requests, among other relief, that this Court enjoin Parmalat Finanziaria from committing further violations of the federal securities laws.

JURISDICTION

3. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

4. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and (e) and 78aa].

5. Venue properly lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because offers and sales of the securities at issue in this case occurred in this

judicial district and because certain of the acts and transactions constituting the violations in this case occurred in this judicial district.

6. The defendant will, unless enjoined, continue to engage in the acts, practices or courses of business alleged herein, or in transactions, acts, practices and courses of business of similar purport and object.

THE DEFENDANT

7. Parmalat Finanziaria, whose stock traded on the Milan Stock Exchange until December 2003, is based in Parma, Italy. Its main operating subsidiary, Parmalat S.p.A., sells dairy products throughout the world. Parmalat S.p.A. is consolidated into the financial statements of Parmalat Finanziaria and, during the period at issue, its revenue comprised approximately seventy (70%) percent of the reported sales of the consolidated entity. Until the revelations beginning in December 2003, Parmalat Finanziaria employed 36,000 people and had operations in thirty (30) countries, including the United States. On December 24, 2003, following the disclosure of some of the facts alleged in this litigation, Parmalat Finanziaria filed for bankruptcy protection in Parma, Italy. It was declared insolvent on December 27, 2003 and is presently under Extraordinary Administration in Italy and in the process of reorganization. It has also filed a case ancillary to the foreign bankruptcy in the Federal Bankruptcy Court for the Southern District of New York.

FACTS

A. <u>The Fraudulent Scheme</u>

8. Prior to and throughout the period that Parmalat Finanziaria offered and sold bonds in the United States, its founder, Chairman and Chief Executive Officer Calisto Tanzi ("Tanzi") and its Chief Financial Officer Fausto Tonna ("Tonna") were involved in a wide-

ranging scheme to misrepresent the company's financial performance. To this end they, and others acting at their direction, routinely manipulated the books and records of Parmalat Finanziaria, Parmalat S.p.A., and their various subsidiaries, in order falsely to portray Parmalat Finanziaria as a viable, thriving entity. In this manner they were able to depict the company as capable of taking on an ever-increasing amount of debt and thus facilitate the sale of its debt instruments. This deceit also gave the false appearance of less leverage and thus better financial ratios, enabling Parmalat Finanziaria to hide its financing covenant defaults.

Parmalat S.p.A. Hid Losses and Overstated Assets through Related Entities

9. Beginning as early as 1995 and continuing through its declaration of bankruptcy in December 2003, Parmalat Finanziaria used various wholly-owned "nominee" entities to cause losses generated in its operating subsidiaries to "disappear." The financial impact of this scheme was to overstate materially the assets and pretax net earnings of both Parmalat Finanziaria and Parmalat S.p.A. As Tonna admitted, this structure was used "to unload [Parmalat S.p.A.'s] losses."

10. A number of schemes were used to effectuate this unloading of losses. First and foremost, uncollectible and impaired receivables were transferred to nominee entities, where their diminished or nonexistent value was hidden. As a result, Parmalat S.p.A. carried assets at inflated values and avoided the negative impact on its income statement that would have been associated with a proper reserve or write-off of bad debt. Other schemes employed included:

> (a) Fabrication by the nominee entities of non-existent financial operations intended to offset losses of the operating subsidiaries. For example, if a subsidiary experienced losses due to exchange rate fluctuations, the nominee entity would fabricate foreign exchange contracts to offset the losses. Similarly, if a subsidiary had exposure due to interest rate fluctuations, the nominee entity would fabricate interest rate swaps to curb the exposure.

(b) Use of the nominee entities to disguise intercompany loans from one Parmalat S.p.A. subsidiary to another subsidiary that was experiencing operating losses. Specifically, a loan from one subsidiary would be made to another subsidiary operating at a loss. The recipient would then improperly apply the loan proceeds to offset its expenses and thereby increase the appearance of profitability. As a result, rather than having a neutral effect on the consolidated financials, the loan transaction would serve to inflate both assets and net income.

(c) Subsidiaries' recording of fictional revenue through sales to controlled nominee entities, including distributors of Parmalat S.p.A. products, at inflated or entirely fictitious amounts. In order to avoid unwanted scrutiny due to the aging of the receivables associated with these fictitious or overstated sales, the related receivables would be transferred or sold to nominee entities.

11. In essence, the nominee entities had no commercial activities or purposes and no real assets. Instead, the nominee entities entered fictitious assets and commercial activities on their books and records to provide facial support for the improper accounting treatment.

12. One of the nominee entities used as a vehicle for hiding losses was Bonlat Financing Corporation ("Bonlat"), a Cayman Islands entity created in 1998. Simultaneously with its creation, Parmalat S.p.A. transferred approximately €1.5 billion ($1.75 billion) in nonexistent assets from two other pre-existing nominees. Tonna has admitted that Bonlat's assets were entirely invented and that its books and records, as well as account statements for a nonexistent bank account, were fabricated as well. By the end of 2001, the amount of valueless assets recorded by Bonlat had grown to approximately $2.0 billion. By the end of 2002, this number had grown to approximately $7.0 billion. Thus, during 2002 alone, approximately $5.0 billion in operating losses and worthless assets were hidden in this fraudulent structure alone and Parmalat S.p.A.'s pretax net earnings were overstated by a like amount. By September 2003, Bonlat's unsubstantiated assets had risen even higher and totaled €8.6 billion ($9.97 billion).

Parmalat S.p.A. Understated Its Debt

13. As of September 30, 2003, Parmalat S.p.A. understated its debt by €7.9 billion ($9.16 billion), or 123.4 percent, through a variety of tactics including improperly removing debt from its balance sheet, simply not recording debt in its books, and improperly recording debt as equity.

14. Tactics used to achieve this understatement of the varied. They included:

(a) Improperly eliminating approximately €3.3 billion ($3.83 billion) of debt by Bonlat's fraudulent recording of – and creation of falsified documentation to substantiate – a repurchase of the debt of two other Parmalat S.p.A. subsidiaries. In fact, Bonlat made no such debt repurchases.

(b) Recording approximately €1.0 billion ($1.16 billion) of debt as equity through fictitious loan participation agreements with a nominee entity.

(c) Inappropriately removing approximately €500 million ($580 million) of liabilities from Parmalat S.p.A.'s books by falsely describing the sale of certain receivables as non-recourse, when in fact Parmalat S.p.A. retained an obligation to ensure that the receivables ultimately were paid.

(d) Removing approximately €300 million ($348 million) of debt associated with a Brazilian subsidiary from Parmalat S.p.A.'s books during the sale of the subsidiary. The subsidiary had no means of repaying the debt, however, and thus under Brazilian law Parmalat S.p.A. should have retained the liability.

(e) Mischaracterizing €300 million ($348 million) of bank debt as intercompany debt and, therefore, inappropriately eliminating it in consolidation.

(f) Eliminating approximately €200 million ($232 million) of Parmalat S.p.A. payables as though they had been paid when, in reality, they had not and were still due.

(g) Failing to record a liability of approximately €400 million ($464 million) associated with a put option.

Parmalat S.p.A. Diverted Company Cash to Tanzi Family Members

15. Between 1997 and 2003, Parmalat S.p.A. transferred approximately €350 million ($406 million) to various businesses owned and operated by Tanzi family members. These

family members did not perform any equivalent services for the company that would warrant these payments. Further, Parmalat S.p.A. failed to disclose that the transfers were to related parties. The amount of these payments by year is as follows: 1997 – €31 million; 1998 – €16 million; 1999 – €7 million; 2000 – €6 million; 2001 – €88 million; 2002 – €161 million; 2003 – €36 million. These payments were recorded as "receivables" on Parmalat S.p.A.'s books then, through a series of transfers and forgeries, were disguised to appear as receivables from third parties unrelated to either the Tanzis, Parmalat Finanziaria or any of its related entities.

16. These related-party transactions were not disclosed in either Parmalat Finanziaria's or Parmalat S.p.A's financial statements that were provided to prospective investors in connection with debt offerings. Furthermore, even if proper disclosure of these related party loans had been made, the related parties lacked the means to repay the loans and, indeed, they were not repaid. Accordingly, the loans should have been fully reserved or alternatively written off in the period made, and Parmalat S.p.A.'s receivables reduced – and expenses increased – by their full amount.

B. Parmalat Finanziaria's Bond Offerings in the United States

17. Between October 1997 and December 2003, while the fraud described above was ongoing, Parmalat Finanziaria sold over $1 billion in bonds to United States insurance companies in private placements that were exempt from registration with the Commission. Each offering's materials included a detailed Private Placement Memorandum ("PPM") and the audited consolidated financial statements of Parmalat S.p.A. On occasion the PPMs also included financial data from Parmalat Finanziaria. Given the magnitude of Parmalat S.p.A.'s contribution to Parmalat Finanziaria's consolidated financial statements (approximately 70 percent of reported sales) and that the majority of the fraudulent conduct was reflected in the

Parmalat S.p.A. financial data, the prospective investors were misled regardless of whether they relied on Parmalat Finanziaria's or Parmalat S.p.A.'s financial data.

18. Furthermore, for each of the debt offerings prospective investors were invited to attend meetings in Italy during which they typically received a packet of promotional information and had an opportunity to ask questions directly of Parmalat Finanziaria's management, including Tonna. In October 2002 and again in July 2003, Parmalat Finanziaria officials, including Tonna, met with prospective investors in the United States to promote ongoing offerings and to answer questions about financial performance as reflected in the misstated audited financial statements.

October 1997

19. On October 10, 1997, Parmalat S.p.A. sold $150 million of notes with a ten-year maturity. Investors received audited Parmalat S.p.A. consolidated financial statements for years 1995 and 1996, and audited Parmalat Finanziaria consolidated financial statements for 1995 and 1996. According to the falsified audited financial information given to prospective investors, in 1996 Parmalat S.p.A. had total assets of 5.95 trillion Italian Lira ("₤") ($3.92 billion), long-term debt of ₤1.496 trillion ($986 million), cash and cash equivalents of ₤1.13 trillion ($745 million) and pretax earnings of ₤327 billion ($212 million).

September 1998

20. On September 29, 1998, Parmalat S.p.A. offered two private placements to raise capital for its operations in Venezuela and Brazil. In the first, a trust purchased $80 million in notes issued by a Parmalat S.p.A. financing subsidiary and United States institutional investors in turn purchased certificates issued by the trust. Parmalat S.p.A. guaranteed the subsidiary's

obligations to the trust. The second private placement raised $100 million in a similar trust structure guaranteed, again, by Parmalat S.p.A.

21. The July 1998 PPM, July 1998 Private Placement Presentation and the September 1998 PPM given to investors in connection with the September offerings included audited financial data for Parmalat S.p.A. According to that falsified data, in 1997 Parmalat S.p.A. had total assets of ₤8.2 trillion ($4.66 billion), long-term debt of ₤2.53 trillion ($1.44 billion), cash and cash equivalents of ₤1.91 trillion ($1.09 billion), and pretax earnings of ₤358 billion ($210 million).

December 1999

22. On December 17, 1999, Parmalat S.p.A. raised $300 million in financing for its Brazilian subsidiary. First, a United States financial institution bought $150 million in notes sold by a Parmalat S.p.A. Special Purpose Vehicle ("SPV"). Second, a different Parmalat S.p.A. SPV sold $150 million in notes to a trust that sold certificates to United States institutional investors. The two SPVs entered into a put agreement with yet another Parmalat S.p.A. entity in which the latter would assume the SPVs' obligations under specified circumstances. Parmalat S.p.A. guaranteed this entity's obligations under the put agreements. Taken as a whole, after collapsing the legs of the transaction, the United States institutional investors in effect incurred Parmalat S.p.A. credit risk.

23. The June 1999 PPM provided to investors included falsified audited financial data for Parmalat S.p.A. that showed that as of year-end 1998, Parmalat S.p.A. had total assets of ₤11.45 trillion ($6.9 billion), long-term debt of ₤4.87 trillion ($2.75 billion), cash and cash equivalents of ₤2.15 trillion ($1.30 billion), and pretax earnings of ₤507 billion ($292 million). The prospective investors also received an August 1999 Investor Presentation providing

Parmalat Finanziaria financial data. The presentation falsely reflected that Parmalat Finanziaria had cash and marketable securities of ₤2.86 trillion ($1.62 billion) and ₤3.562 trillion ($2 billion) in 1997 and 1998 respectively.

June 2001

24. In June 2001, the Parmalat S.p.A. SPV that had sold $150 million in notes to a United States financial institution on December 17, 1999 (as described above) sold approximately $157 million in notes to the United States institutional investors to raise funds to redeem the earlier notes bought by the financial institution. The April 2001 PPM and November 2000 Information Memorandum provided falsified audited financial data that reflected that for year-end 1999, Parmalat S.p.A. had total assets of ₤15.09 trillion ($7.84 billion), long-term debt of ₤5.6 trillion ($2.92 billion), cash and cash equivalents of ₤2.48 billion ($1.29 billion), and pretax earnings of ₤546 billion ($300 million). In an Investors Presentation booklet dated May 2001, Parmalat Finanziaria falsely stated that it had cash and marketable securities of €2.207 billion ($2.22 billion) at year-end 1999 and €2.647 billion ($2.49 billion) at year-end 2000.

25. By this point in time, Parmalat Finanziaria's unusual practice of selling large amounts of debt securities while maintaining a large and growing cash balance had begun to attract attention. In a March 2001 written response to investors' questions, Parmalat Finanziaria falsely stated that it "holds large amounts of cash for several reasons . . . and has never squandered them." Parmalat Finanziaria further falsely represented that "cash is held both [at the parent level] in Italy and in other mainly finance and investing subsidiaries located in countries with better tax regimes, such as Luxembourg and Ireland but in any event within Europe. . . . Generally the cash is in liquid investments and is readily available subject to normal investment and tax considerations." In an April 2001 written response, investors falsely were told that "the

CFO has confirmed that . . . most of the cash is in high quality investments in solid European jurisdictions. There are no material restrictions on the company's access to the vast proportion of the cash." In fact, Parmalat Finanziaria had ***no*** material amounts of marketable securities as far back as January 1, 1999, and ***no*** marketable securities whatsoever as of June 2001. Thus, based on information currently available, the "Other Securities" line of Parmalat Finanziaria's balance sheet was overstated by its entire amount, specifically €929.5 million ($933.9 million) for 1999 and €782.2 million ($736.9 million) for 2000.

December 2001

26. On December 20, 2001, Parmalat S.p.A. sold United States institutional investors $80 million in participation certificates from a trust used for Parmalat S.p.A.'s benefit. The July 2001 PPM contained falsified audited financial data for Parmalat S.p.A. that showed that as of year-end 2000, Parmalat S.p.A. had total assets of ₤16.42 trillion ($7.98 billion), long-term debt of €6.39 trillion ($3.11 billion), cash and cash equivalents of ₤3.61 trillion ($1.76 billion), and pretax earnings of ₤673.8 billion ($303 million).

27. As was the case with the June 2001 offering, the United States investors asked Parmalat Finanziaria questions about its cash levels and received the same responses. Potential investors received a 30-page Investor Due Diligence Presentation that contained false financial data for Parmalat S.p.A. for year-end 2000. The presentation stated that Parmalat S.p.A. had total debt of ₤8.3 trillion ($4.04 billion), cash and marketable securities of £5.124 trillion ($2.5 billion) and pretax earnings of £674 billion ($328 million). As noted above, at year-end 2000, Parmalat Finanziaria had ***no*** marketable securities, and its cash and marketable securities were overstated by at least €782.2 million ($736.5 million).

December 2002

28. On December 12, 2002, a Parmalat S.p.A. subsidiary sold $115 million of notes to United States institutional investors. Parmalat S.p.A. guaranteed the subsidiary's obligations. Both the June 2002 Information Memorandum and the October 2002 PPM provided to potential investors contained falsified audited Parmalat S.p.A. financial statements that reflected that as of year-end 2001, Parmalat S.p.A. had total assets of €9.0 billion ($7.98 billion), long-term debt of €3.25 billion ($2.88 billion), cash and cash equivalents of €1.4 billion ($1.01 billion), and pretax earnings of €395 million ($350 million). Audited year-end 2000 figures falsely reflected total assets of €8.47 billion ($7.98 billion), long-term debt of €3.3 billion ($3.11 billion), cash and cash equivalents of €1.86 billion ($1.75 billion), and pretax earnings of €348 million ($327.7 million).

29. In October 2002, Parmalat Finanziaria conducted a United States "road show" for prospective investors. Tonna met with potential investors in Massachusetts, Connecticut, New York, Indiana, and Illinois, often in one-on-one meetings that lasted for approximately two hours. The investors also received a 40-page Prospective Investor Presentation including the following falsified year-end 2001 data for Parmalat S.p.A.: total debt of €4.253 billion ($3.77 billion), cash and marketable securities of €2.86 billion ($2.53 billion) and pretax earnings of €432 million ($382.8 million). For the year ending 2001, Parmalat Finanziaria falsely stated that it had gross debt of €4.925 billion ($4.36 billion), cash and marketable securities of €2.97 billion ($2.63 billion) and pretax earnings of €414 million ($366.8 million).

November 2003

30. Beginning in 2002 Parmalat Finanziaria marketed $100 million of unsecured Senior Guaranteed Notes to United States institutional investors. The PPM included falsified

audited financials for Parmalat S.p.A. for fiscal year 2002. They reflected long-term debt of €3.38 billion ($3.54 billion), total assets of €10.03 billion ($10.51 billion), cash and marketable securities of €3.5 billion ($3.67 billion) and pretax earnings of €301 million ($315.5 million). In addition to the material misrepresentations set forth in the audited financials that accompanied the PPM, Parmalat also falsely stated to prospective investors that it had used excess cash balances to repurchase corporate debt worth €2.9 billion ($3.6 billion). In fact, no excess cash balances existed and no debt obligations were repurchased. Ultimately, this offering failed this and other misrepresentations came to light at the end of 2003.

C. Parmalat Finanziaria's Denouement

31. As noted above, by 2003 the financial community had begun to question Parmalat Finanziaria's continued efforts to raise debt given its reported high levels of cash and cash equivalents.

32. In an effort to quell such concerns, in March 2003, Parmalat Finanziaria replaced Tonna as Chief Financial Officer. In a series of worldwide investor meetings held in April 2003, the new CFO announced his intention to provide greater transparency in Parmalat Finanziaria's financial reporting and to reduce its high debt levels. Notwithstanding his representations, the fraud continued. Indeed, Parmalat Finanziaria falsely represented that as of year-end 2001 it had cash and marketable securities of €2.86 billion ($2.53 billion) and total debt of €4.25 billion ($3.77 billion), and that at year-end 2002 it had cash and marketable securities of €3.36 billion ($3.52 billion) and total debt of €5.4 billion ($5.66 billion). In fact, for 2001, Parmalat Finanziaria's marketable securities were overstated by at least €1.5 billion ($1.33 billion), and for 2002 they were overstated by at least €2.4 billion ($2.52 billion).

33. In July 2003, the new CFO and other members of management conducted an Investor Update Presentation in nine United States cities in an effort to entice more United States institutions to invest in Parmalat debt securities. The promotional materials they distributed at these presentations falsely represented that for the year ended December 31, 2002, Parmalat S.p.A. had total debt of €4.36 billion ($4.57 billion), cash and marketable securities of €3.29 billion ($3.45 billion), and pretax earnings of €319 million ($334 million). They further falsely represented that Parmalat Finanziaria had pretax earnings of €373 million ($391 million).

34. On November 11, 2003, Parmalat Finanziaria's auditor refused to sign off on Parmalat Finanziaria's half-year financial statements. This refusal was in part due to Parmalat Finanziaria's inability to verify €500 million ($582 million) of assets purportedly held by a hedge fund located in the Cayman Islands. Parmalat Finanziaria announced that it would liquidate its hedge fund investment.

35. In early December 2003, Parmalat Finanziaria, without explanation, stated that it could not liquidate the Cayman Islands hedge fund. It also failed to repay a €150 million ($184 million) bond payment when due.

36. On December 9, 2003, Calista Tanzi and Stefano Tanzi met with representatives from a New York City-based private equity and financial advisory firm regarding a possible leveraged buyout of Parmalat Finanziaria. During that meeting, in response to a comment by one of the Tanzis about liquidity problems at Parmalat Finanziaria, one of the New York firm's representatives noted that according to its financial statements the company had a large amount of cash. In response, Stefano Tanzi stated that the cash did not exist and that Parmalat Finanziaria really had only €500 million ($611.7 million) in cash.

37. After this revelation, Parmalat Finanziaria's CFO disclosed to the New York firm's representatives that Parmalat Finanziaria's debt was actually €10 billion ($12.2 billion), almost twice the amount of €5.4 billion ($5.66 billion) reflected on the balance sheet for fiscal year 2002. He advised that the discrepancy arose from Parmalat S.p.A.'s failure to repurchase €2.9 billion ($3.55 billion) of company debt, as was represented on the balance sheet.

38. Shortly thereafter, the media reported that Bonlat, one of its nominee entities discussed earlier, had nearly $5 billion in an account at a United States financial institution. Within days, however, the financial institution denied that any such account existed. It was then discovered that Parmalat Finanziaria had created a forged confirmation letter purporting to be from the financial institution as well as forged statements for the account.

39. Parmalat Finanziaria filed for bankruptcy on December 24, 2003.

CLAIMS FOR RELIEF

First Claim – Violation of Section 17(a) of the Securities Act

40. Paragraphs 1 through 39 above are incorporated herein by reference.

41. Defendant Parmalat Finanziaria, in the offer or sale of the securities described above, by the use of 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, in the light of the circumstances under which they were 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 the securities.

42. In connection with the above-described acts and omissions, defendant Parmalat Finanziaria, through its officers or members of its senior management, acted knowingly or recklessly.

43. By reason of the foregoing, Parmalat Finanziaria violated Section 17(a) of the Securities Act.

Second Claim – Violation of Section 10(b) of the Exchange Act and Rule 10b-5

44. Paragraphs 1 through 39 above are incorporated herein by reference.

45. Defendant Parmalat Finanziaria, in connection with the purchase or sale of the securities described above, by the use of 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) made untrue statements of material fact and omitted facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person.

46. In connection with the above-described acts and omissions, defendant Parmalat Finanziaria, through its officers or members of its senior management, acted knowingly or recklessly.

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

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter judgment:

A. Permanently restraining and enjoining Parmalat from violating Section 17(a) of the Securities Act as well as Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and

B. Granting such other relief as this Court may deem just and proper.

Respectfully submitted,

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