

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CRIMINAL NO.
vs.)	
)	VIOLATION:
PNC ICLC Corp,)	18 U.S.C. § 371
a Delaware Corporation,)	
)	(Conspiracy to Commit
Defendant.)	Securities Fraud)

DEFERRED PROSECUTION AGREEMENT

Defendant PNC ICLC Corp. (“PNCICLC”), a Delaware Corporation, by its undersigned attorneys, pursuant to authority granted by its Board of Directors, and the United States Department of Justice, Criminal Division, Fraud Section (the “Fraud Section”), enter into this Deferred Prosecution Agreement (“Agreement”).

1. PNCICLC accepts and acknowledges that the United States will file a criminal complaint in the United States District Court for the Western District of Pennsylvania charging PNCICLC with conspiracy to commit securities fraud, in violation of Title 18, United States Code, Section 371.
2. PNCICLC accepts and acknowledges responsibility for its behavior as set forth in the Statement of Facts attached hereto as Annex A and incorporated by reference herein by entering into this Agreement and by, among other things, the extensive remedial actions that it has taken to date, its continuing commitment of full cooperation with the Fraud Section and other governmental agencies, and its agreement to establish a restitution fund and the other undertakings it has made as set forth herein.

3. PNCICLC expressly agrees that it shall not, through its present or future attorneys, board of directors, agents, officers or employees, make any public statement contradicting any statement of fact contained in the Statement of Facts. Any such contradictory public statement by PNCICLC, its present or future attorneys, board of directors, agents, officers or employees, shall constitute a breach of this Agreement as governed by paragraph 12 of this Agreement, and PNCICLC would thereafter be subject to prosecution pursuant to the terms of this Agreement. The decision of whether any public statement by any such person contradicting a fact contained in the Statement of Facts will be imputed to PNCICLC for the purpose of determining whether PNCICLC has breached this Agreement shall be at the sole discretion of the Fraud Section. Should the Fraud Section decide at its sole discretion to notify PNCICLC of a public statement by any such person that in whole or in part contradicts a statement of fact contained in the Statement of Facts, PNCICLC may avoid breach of this Agreement by publicly repudiating such statement within 48 hours after such notification. PNCICLC agrees that in the event that future criminal proceedings were to be brought in accordance with Paragraphs 12 and 14 of this Agreement PNCICLC will not contest the admissibility of the Statement of Facts in any such proceedings. Consistent with PNCICLC's obligations as set forth above, PNCICLC shall be permitted to raise defenses and/or assert affirmative claims in civil and regulatory proceedings relating to the matters set forth in the Statement of Facts.

4. During the term of this Agreement, PNCICLC agrees to cooperate fully with the Fraud Section, and with any other agency designated by the Fraud Section, regarding any matter about which PNCICLC has knowledge.

5. PNCICLC agrees that its cooperation, as agreed to in Paragraph 4 above, shall include, but is not limited to, the following:

(a) Completely and truthfully disclosing all information with respect to the activities of PNCICLC and its affiliates, and its present and former officers, agents, and employees, concerning all matters inquired into by the Fraud Section as may be requested by the Fraud Section;

(b) Assembling, organizing and providing on request from the Fraud Section, all documents, records, or other tangible evidence in PNCICLC's possession, custody, or control;

(c) Not asserting a claim of attorney-client or work-product privilege as to any documents, information, or testimony requested by the Fraud Section related to factual internal investigations or contemporaneous advice given to PNCICLC concerning the conduct at issue. In making production of any such documents, PNCICLC neither expressly nor implicitly waives its right to assert any privilege with respect to the produced documents or the subject matters thereof that is available under law against non-parties to this Agreement.

(d) Using its best efforts to make available its employees to provide information and/or testimony as requested by the Fraud Section, including sworn testimony before a federal grand jury or in federal trials, as well as interviews with federal law enforcement authorities. Cooperation under this paragraph will include identification of witnesses who, to PNCICLC's knowledge, may have material information regarding the matters under investigation.

(e) Using its best efforts to make available for interviews, or for testimony, present or former PNCICLC officers, directors, and employees as requested by the Fraud Section.

(f) Providing testimony and other information deemed necessary by the Fraud Section or a court to identify or establish the original location, authenticity, or other evidentiary

foundation necessary to admit into evidence documents in any criminal or other proceeding as requested by the Fraud Section.

(g) Remaining a viable institution during the duration of this agreement.

6. PNCICLC shall continue to comply with any currently in force agreements between PNCICLC and the Securities and Exchange Commission or any other federal agency as long as any such agreements shall remain in effect; as any such agreements may be amended or modified or terminated from time to time by the respective parties to said agreements.

7. PNCICLC agrees to pay a total of \$90,000,000 dollars into a fund established for victim restitution, including for the settlement of any pending shareholder securities law litigation, payable within 30 days of execution of this Agreement. The payment of this money into the fund shall not constitute an adjudication of any individual claim asserted or to be asserted by any victim. The fund will be administered by a third party administrator selected by PNCICLC and acceptable to the Fraud Section, who shall, at six months intervals from the execution of this agreement, and at the conclusion of the distribution of the fund, provide to the Fraud Section and PNCICLC reports identifying the name and address of each recipient of a portion of the fund and the amount of the fund distributed to each recipient. None of the proceeds of the fund shall be payable as attorney's fees. All costs of administering the victim fund are to be borne by PNCICLC. To the extent that any money in the fund is not claimed by victims within four (4) years, the remaining amount shall revert to the United States Treasury.

8. PNCICLC agrees to pay a monetary penalty of \$25,000,000 dollars to the United States Treasury, payable within 10 days of execution of this Agreement.

9. In light of PNCICLC's exceptional remedial actions to date and its willingness to (i) acknowledge responsibility for its behavior; (ii) continue its cooperation with

the Fraud Section and other governmental regulatory agencies; (iii) demonstrate its future good conduct and full compliance with the securities laws and generally accepted accounting procedures; and (iv) consent to payment into a restitution fund and the assessment of the monetary penalty as set forth in paragraphs 7 and 8 above, the Fraud Section shall recommend to the Court that prosecution of PNCICLC on the criminal complaint filed pursuant to Paragraph 1 be deferred for a period of 12 months.

10. The Fraud Section agrees that if PNCICLC is in full compliance with all of its obligations under this Agreement, the Fraud Section, within thirty (30) days of the expiration of 12 months from the date of this Agreement, will seek dismissal with prejudice of the criminal complaint filed against PNCICLC pursuant to Paragraph 1 and this Agreement shall expire.

11. Should the Fraud Section determine during the term of this Agreement that PNCICLC has committed any federal crime commenced subsequent to the date of this Agreement, PNCICLC shall, in the sole discretion of the Fraud Section, thereafter be subject to prosecution for any federal crimes of which the Fraud Section has knowledge. Except in the event of a breach of this Agreement, it is the intention of the parties to this Agreement that all investigations relating to the matters set forth in the Statement of Facts that have been, or could have been, conducted by the Fraud Section prior to the date of this Agreement shall not be pursued further as to PNCICLC.

12. Should the Fraud Section determine that PNCICLC has committed a willful and knowingly material breach of any provision of this Agreement, the Fraud Section shall provide written notice to PNCICLC of the alleged breach and provide PNCICLC with a two-week period in which to make a presentation to the Assistant Attorney General in charge of the Criminal Division to demonstrate that no breach has occurred, or, to the extent applicable, that

the breach is not willful or knowingly material or has been cured. The parties hereto expressly understand and agree that should PNCICLC fail to make a presentation to the Assistant Attorney General in charge of the Criminal Division within a two-week period, it shall be conclusively presumed that PNCICLC is in willful and material breach of this Agreement. The parties further understand and agree that the Assistant Attorney General's exercise of discretion under this paragraph is not subject to review in any court or tribunal outside the Criminal Division of the Department of Justice. In the event of a breach of this Agreement that results in a prosecution of PNCICLC, such prosecution may be premised upon any information provided by or on behalf of PNCICLC to the Fraud Section at any time, unless otherwise agreed when the information was provided.

13. PNCICLC shall expressly waive all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, Title 18, United States Code, Section 3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court for the Western District of Pennsylvania for the period that this Agreement is in effect.

14. In case of the willful and knowingly material breach of this Agreement, any prosecution of PNCICLC relating to the PAGIC transactions that are not time-barred by the applicable statute of limitations as of the date of this Agreement may be commenced against PNCICLC notwithstanding the expiration of any applicable statute of limitations during the deferred prosecution period and up to the determination of any such willful and knowingly material breach. PNCICLC's waiver of the statute of limitations is knowing and voluntary and in express reliance on the advice of counsel.

15. PNCICLC agrees that, if it sells or merges all or substantially all of its business operations as they exist as of the date of this Agreement to or into a single purchaser or group of affiliated purchasers during the term of this Agreement, it shall include in any contract for sale or merger a provision binding the purchaser/successor to the obligations described in this Agreement.

16. It is understood that this Agreement is binding on PNCICLC, the Fraud Section and the United States Attorneys Office for the Western District of Pennsylvania, but specifically does not bind any other federal agencies, or any state or local law enforcement or licensing authorities, although the Fraud Section will bring the cooperation of PNCICLC and its compliance with its other obligations under this Agreement to the attention of state and local law enforcement or licensing authorities, if requested by PNCICLC or its attorneys. This Agreement also excludes any natural persons.

17. PNCICLC and the Fraud Section agree that, upon filing of the criminal complaint in accordance with Paragraph 1, this Agreement shall be publicly filed in the United States District Court for the Western District of Pennsylvania.

18. This Agreement sets forth all the terms of the Deferred Prosecution Agreement between PNCICLC and the Fraud Section. No modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Fraud Section, PNCICLC's attorneys, and a duly authorized representative of PNCICLC.

On Behalf of the Government

DATE

JOSHUA R. HOCHBERG
Acting United States Attorney
Chief, Fraud Section
Criminal Division
United States Department of Justice
10th & Constitution Ave., NW
Bond Building 4th Floor
Washington, D.C. 20530

DATE

JOHN D. ARTERBERRY
Deputy Chief, Fraud Section
Criminal Division
United States Department of Justice

DATE

PAUL E. PELLETIER
Special Counsel for Litigation, Fraud Section
Criminal Division
United States Department of Justice

DATE

MICHAEL K. ATKINSON
Trial Attorney, Fraud Section
Criminal Division

United States Department of Justice

DATE

CHRISTINE LEE
Trial Attorney
Antitrust Division
United States Department of Justice

DIRECTOR'S CERTIFICATE

I have read this agreement and carefully reviewed every part of it with counsel for PNCIC, LC ("PNCICLC"). I understand the terms of this Agreement and voluntarily agree, on behalf of PNCICLC, to each of the terms. Before signing this Agreement, I consulted with the attorney for PNCICLC. The attorney fully advised me of PNCICLC's rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of PNCICLC, in any way to enter into this Agreement. I am also satisfied with the attorney's representation in this matter. I certify that I am a director of PNC, and that I have been duly authorized by PNCICLC to execute this plea agreement on behalf of PNCICLC.

DATE

PNCIC, LC

CERTIFICATE OF COUNSEL

I am counsel for PNCIC, LC (“PNCICLC”). In connection with such representation, I have examined relevant PNCICLC documents, and have discussed this Agreement with the authorized representative of PNCICLC. Based on my review of the foregoing materials and discussions, I am of the opinion that:

1. [PNCICLC signee] is duly authorized to enter into this Agreement on behalf of PNCICLC.
2. This Agreement has been duly and validly authorized, executed and delivered on behalf of PNCICLC, and is a valid and binding obligation of PNCICLC.

Further, I have carefully reviewed every part of this Agreement with directors of PNCICLC. I have fully advised these directors of PNCICLC’s rights, of possible defenses, of the Sentencing Guidelines’ provisions, and of the consequences of entering into this Agreement. To my knowledge, PNCICLC’s decision to enter into this Agreement is an informed and voluntary one.

[Counsel]

Date

[Counsel]

Date

Attorneys for Defendant

PNCIC, LC

CERTIFIED COPY OF RESOLUTION

Upon motion duly made by Director Mutterperl, seconded by Director Pfirman, and unanimously carried by the affirmative vote of all the Directors present, the following resolutions were adopted:

RESOLVED, that PNC ICLC Corp. (“PNCICLC”), which has been engaged in discussions with the United States Department of Justice in connection with the PAGIC transactions, consents to a resolution of such discussions and will, in the Western District of Pennsylvania, consent to the filing of a criminal complaint charging PNCICLC with conspiracy to violate the securities laws and enter into a deferred prosecution agreement; and

RESOLVED FURTHER, that Chairman and President William Mutterperl of this Corporation be, and hereby is, authorized to execute the Deferred Prosecution Agreement on behalf of the Corporation substantially in such form as reviewed by this Board of Directors at this meeting.

CERTIFICATION

I, _____, hereby certify that I am the duly elected Secretary of PNCIC, LC; that the foregoing is a full, true and correct copy of resolutions duly adopted by the Board of Directors of said Corporation, at a meeting thereof duly held at the office of the Corporation, in Pennsylvania, in the United States of America, and have not been rescinded or revoked; and that the foregoing resolutions are not contrary to any provisions in the Articles of Incorporation or By-Laws of PNCIC, LC.

IN WITNESS WHEREOF, I have hereunto signed my name as Secretary and affixed the Seal of said Corporation this _____ day of May, 2003.

Secretary