

Edgar Filing: TRIARC COMPANIES INC - Form SC 13D/A

TRIARC COMPANIES INC
Form SC 13D/A
May 23, 2005

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE 13D

UNDER THE SECURITIES EXCHANGE ACT OF 1934

(AMENDMENT NO. 20) *

TRIARC COMPANIES, INC.
(Name of Issuer)

CLASS A COMMON STOCK, PAR VALUE \$.10 PER SHARE
CLASS B COMMON STOCK, SERIES 1, PAR VALUE \$.10 PER SHARE
(Title of Class of Securities)

CLASS A COMMON STOCK: 895927 10 1
CLASS B COMMON STOCK: 895927 30 9
(CUSIP Number)

PETER W. MAY
C/O TRIARC COMPANIES, INC.
280 PARK AVENUE
NEW YORK, NEW YORK 10017
TEL. NO.: (212) 451-3000
(Name, Address and Telephone Number of
Person Authorized to Receive Notices
and Communications)

MAY 9, 2005
(Date of Event which Requires Filing
of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 1(f) or 1(g), check the following box [].

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-1(a) for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the

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Notes).

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Class A Common Stock: CUSIP NO. 895927 10 1
Class B Common Stock: CUSIP NO. 895927 30 9

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1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

NELSON PELTZ

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a)
(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

Not applicable

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO
ITEMS 2(d) or 2(e) |_

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States

7 SOLE VOTING POWER (See Item 5)

NUMBER OF
SHARES
BENEFICIALLY OWNED
BY EACH
REPORTING
PERSON
WITH

8 SHARED VOTING POWER (See Item 5)
11,101,149 (Class A Common Stock)
14,417,649 (Class B Common Stock)

9 SOLE DISPOSITIVE POWER (See Item 5)
7,077,218 (Class A Common Stock)
9,145,828 (Class B Common Stock)

10 SHARED DISPOSITIVE POWER (See Item 5)

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
(See Item 5)
11,101,149 (Class A Common Stock)
14,417,649 (Class B Common Stock)

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

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13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
 42.4% (Class A Common Stock)*
 30.5% (Class B Common Stock)*

14 TYPE OF REPORTING PERSON
 IN

* These percentages are calculated based on 23,902,892 shares of Class A Common Stock and 42,663,278 shares of Class B Common Stock outstanding as of April 29, 2005, as reported in the Company's Quarterly Report on Form 10-Q for the quarterly period ended April 3, 2005.

Class A Common Stock: CUSIP NO. 895927 10 1
 Class B Common Stock: CUSIP NO. 895927 30 9

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1 NAME OF REPORTING PERSON
 S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON
 PETER W. MAY

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a)
 (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS
 Not applicable

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION
 United States

	7	SOLE VOTING POWER (See Item 5)
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	8	SHARED VOTING POWER (See Item 5) 11,077,399 (Class A Common Stock) 14,216,899 (Class B Common Stock)
	9	SOLE DISPOSITIVE POWER (See Item 5) 3,851,026 (Class A Common Stock) 4,692,145 (Class B Common Stock)
	10	SHARED DISPOSITIVE POWER (See Item 5)

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
(See Item 5)
11,077,399 (Class A Common Stock)*
14,216,899 (Class B Common Stock)*

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
42.3% (Class A Common Stock)
30.1% (Class B Common Stock)

14 TYPE OF REPORTING PERSON

IN

* These percentages are calculated based on 23,902,892 shares of Class A Common Stock and 42,663,278 shares of Class B Common Stock outstanding as of April 29, 2005, as reported in the Company's Quarterly Report on Form 10-Q for the quarterly period ended April 3, 2005.

Class A Common Stock: CUSIP NO. 895927 10 1
Class B Common Stock: CUSIP NO. 895927 30 9

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AMENDMENT NO. 20 TO SCHEDULE 13D

This Amendment No. 20 amends and supplements the Schedule 13D dated October 13, 1992 (the "Original Statement"), as amended and restated by Amendment No. 6 dated May 3, 1993, as amended by Amendment No. 7 dated February 14, 1996, as amended by Amendment No. 8 dated October 13, 1998, as amended by Amendment No. 9 dated March 12, 1999, as amended by Amendment No. 10 dated May 4, 1999, as amended by Amendment No. 11 dated November 12, 2002, as amended by Amendment No. 12 dated April 25, 2003, as amended by Amendment No. 13 dated July 1, 2003, as amended by Amendment No. 14 dated September 24, 2003, as amended by Amendment No. 15 dated December 4, 2003, as amended by Amendment No. 16 dated January 15, 2004, as amended by Amendment No. 17 dated April 20, 2004, as amended by Amendment No. 18 dated June 29, 2004 and as amended by Amendment No. 19 dated July 23, 2004 (the Original Statement, as so amended shall be known as the "Statement"), with respect to the Class A Common Stock, par value \$.10 per share (the "Class A Common Stock"), and the Class B Common Stock, Series 1, par value \$.10 per share (the "Class B Common Stock"), in each case of Triarc Companies, Inc., a Delaware corporation and successor by merger to Triarc Companies, Inc., an Ohio corporation formerly named DWG Corporation (the "Company"). Unless otherwise indicated, all capitalized terms used herein shall have the same meaning as set forth in the Statement.

Except as set forth below, there are no changes to the information set forth in the Statement. As noted in Amendment Nos. 14, 15, 16, 17, 18 and 19, all references in the Statement to "Common Stock" shall be deemed to refer to the Class A Common Stock.

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Class A Common Stock: CUSIP NO. 895927 10 1

Class B Common Stock: CUSIP NO. 895927 30 9

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ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION.

Item 3 of the Statement is amended by adding the following:

On September 22, 2004, Mr. Peltz acquired 50 shares of Class B Common Stock in an open market purchase and made a bona fide gift of such shares to an unrelated person.

On September 29, 2004, each of Messrs. Peltz and May acquired 50 shares of Class B Common Stock in an open market purchase and made a bona fide gift of such shares to an unrelated person.

On October 4, 2004, each of Messrs. Peltz and May acquired 100 shares of Class B Common Stock in an open market purchase and made a bona fide gift of such shares to an unrelated person.

On November 29, 2004, Mr. Peltz exercised stock options with respect to 240,000 shares of Class A Common Stock and 480,000 shares of Class B Common Stock and paid the exercise price by delivery of 205,742 shares of Class B Common Stock, at a price per share equal to the closing price of a share of Class B Common Stock on November 29, 2004. Out of the option shares, Mr. Peltz received 67,876 shares of Class A Common Stock (and delivery of 172,124 shares of Class A Common Stock was deferred and such shares placed in a rabbi trust) and received 135,754 shares of Class B Common Stock (and delivery of 344,246 shares of Class B Common Stock was deferred and such shares placed in a rabbi trust).

Class A Common Stock: CUSIP NO. 895927 10 1

Class B Common Stock: CUSIP NO. 895927 30 9

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On November 29, 2004, Mr. May exercised stock options with respect to 160,000 shares of Class A Common Stock and 320,000 shares of Class B Common Stock and paid the exercise price by delivery of 137,162 shares of Class B Common Stock, at a price per share equal to the closing price of a share of Class B Common Stock on November 29, 2004. Out of the option shares, Mr. May received 45,251 shares of Class A Common Stock (and delivery of 114,749 shares of Class A Common Stock was deferred and such shares placed in a rabbi trust) and received 90,503 shares of Class B Common Stock (and delivery of 229,497 shares of Class B Common Stock was deferred and such shares placed in a rabbi trust).

On March 14, 2005, Mr. Peltz was granted 149,155 restricted shares of Class A Common Stock and 200,000 restricted shares of Class B Common Stock from the Company as compensation, which shares are subject to specified vesting conditions but may be voted by Mr. Peltz prior to the time, if any, that they are forfeited by Mr. Peltz.

On March 14, 2005, Mr. May was granted 178,926 restricted shares of Class B Common Stock from the Company as compensation, which shares are subject to specified vesting conditions but may be voted by Mr. May prior to the time, if any, that they are

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forfeited by Mr. May.

On May 9, 2005, Mr. Peltz made a bona fide gift of 153,250 shares of Class B Common Stock to the Nelson and Claudia Peltz Family Foundation, a trust established for charitable purposes (the "Peltz Family Foundation").

Class A Common Stock: CUSIP NO. 895927 10 1
Class B Common Stock: CUSIP NO. 895927 30 9

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ITEM 5. INTEREST IN SECURITIES OF THE ISSUER.

Part (a) through (c) of Item 5 is amended by deleting the eleventh through nineteenth paragraphs thereof and replacing them with the following:

Mr. Peltz directly owns and has the sole power to dispose of and the shared power to vote 5,618,884 shares of Class A Common Stock, has the shared power to vote and, upon vesting thereof, the sole power to dispose of 149,155 restricted shares of Class A Common Stock and beneficially owns 1,458,334 shares of Class A Common Stock issuable upon exercise of options that he may exercise within 60 days of the date of this Statement. Mr. May directly owns and has the sole power to dispose of and the shared power to vote 3,034,360 shares of Class A Common Stock and beneficially owns 816,666 shares of Class A Common Stock issuable upon exercise of options that he may exercise within 60 days of the date of this Statement.

The Peltz L.P. is the beneficial owner of 23,550 shares of Class A Common Stock. On May 9, 2004, Mr. Peltz transferred all of his general partnership interests in the Peltz L.P. to Claudia Peltz, his wife, as a result of which Mrs. Peltz became the sole general partner of the Peltz L.P. Immediately thereafter, Mrs. Peltz contributed all of the general partnership interests in the Peltz L.P. to a limited liability company of which she is the sole member. In addition, Mr. Peltz's minor children are the beneficial owners of 200 shares of Class A Common Stock. Mr. Peltz may be deemed to beneficially own the shares of Class A Common Stock owned by the Peltz L.P. and his minor children. Mr. Peltz disclaims beneficial ownership of such shares.

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Pursuant to the Voting Agreement, Mr. Peltz may also be deemed to share voting power (but has no dispositive power) with respect to the 3,851,026 shares of Class A Common Stock beneficially owned by Mr. May (including options that may be exercised by Mr. May within 60 days of the date of this Statement), and Mr. May may also be deemed to share voting power (but has no dispositive power) with respect to the 7,226,373 shares of Class A Common Stock beneficially owned by Mr. Peltz (including restricted shares that may be voted by Mr. Peltz and options that may be exercised by Mr. Peltz within 60 days

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of the date of this Statement, but excluding shares beneficially owned by the Peltz L.P. and Mr. Peltz's minor children). Accordingly, Mr. Peltz may be deemed to beneficially own such shares of Class A Common Stock beneficially owned by Mr. May, and Mr. May may be deemed to beneficially own such shares of Class A Common Stock beneficially owned by Mr. Peltz.

As a result, Mr. Peltz may be deemed to beneficially own an aggregate of 11,101,149 shares of Class A Common Stock (including shares of Class A Common Stock beneficially owned by Mr. May, the Peltz L.P. and Mr. Peltz's minor children and restricted shares of Class A Common Stock that may be voted by Mr. Peltz), representing approximately 42.4% of the outstanding shares of Class A Common Stock. In addition, Mr. May may be deemed to beneficially own an aggregate of 11,077,399 shares of Class A Common Stock (including shares of Class A Common Stock beneficially owned by Mr. Peltz and restricted shares of Class A Common Stock that may be voted by Mr. Peltz, but excluding shares beneficially owned by the Peltz L.P. and Mr. Peltz's minor

Class A Common Stock: CUSIP NO. 895927 10 1
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children), representing approximately 42.3% of the outstanding shares of Class A Common Stock.

Mr. Peltz directly owns and has the sole power to dispose of and the shared power to vote 6,229,160 shares of Class B Common Stock, has the shared power to vote and, upon vesting thereof, the sole power to dispose of 200,000 restricted shares of Class B Common Stock and beneficially owns 2,916,668 shares of Class B Common Stock issuable upon exercise of options that he may exercise within 60 days of the date of this Statement. Mr. May directly owns and has the sole power to dispose of and the shared power to vote 3,058,813 shares of Class B Common Stock, has the shared power to vote and, upon vesting thereof, the sole power to dispose of 178,926 restricted shares of Class B Common Stock and beneficially owns 1,633,332 shares of Class B Common Stock issuable upon exercise of options that he may exercise within 60 days of the date of this Statement.

The Peltz L.P. is the beneficial owner of 47,100 shares of Class B Common Stock. On May 9, 2004, Mr. Peltz transferred all of his general partnership interests in the Peltz L.P. to Claudia Peltz, his wife, as a result of which Mrs. Peltz became the sole general partner of the Peltz L.P. Immediately thereafter, Mrs. Peltz contributed all of the general partnership interests in the Peltz L.P. to a limited liability company of which she is the sole member. In addition, Mr. Peltz's minor children are the beneficial owners of 400 shares of Class B Common Stock. Mr. Peltz may be deemed to beneficially own the shares

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of Class B Common Stock owned by the Peltz L.P. and his minor children. Mr. Peltz disclaims beneficial ownership of such shares.

The Peltz Family Foundation is the beneficial owner of 153,250 shares of Class B Common Stock. Mr. and Mrs. Peltz, one of their adult children and an unrelated person serve as the trustees of the Peltz Family Foundation. Mr. Peltz may be deemed to beneficially own the shares of Class B Common Stock owned by the Peltz Family Foundation. Mr. Peltz disclaims beneficial ownership of such shares.

Pursuant to the Voting Agreement, Mr. Peltz may also be deemed to share voting power (but has no dispositive power) with respect to the 4,871,071 shares of Class B Common Stock beneficially owned by Mr. May (including restricted shares that may be voted by Mr. May and options that may be exercised by Mr. May within 60 days of the date of this Statement), and Mr. May may also be deemed to share voting power (but has no dispositive power) with respect to the 9,345,828 shares of Class B Common Stock beneficially owned by Mr. Peltz (including restricted shares that may be voted by Mr. Peltz and options that may be exercised by Mr. Peltz within 60 days of the date of this Statement, but excluding shares beneficially owned by the Peltz L.P., Mr. Peltz's minor children and the Peltz Family Foundation). Accordingly, Mr. Peltz may be deemed to beneficially own such shares of Class B Common Stock beneficially owned by Mr. May, and Mr. May may be deemed to beneficially own such shares of Class B Common Stock owned by Mr. Peltz.

Class A Common Stock: CUSIP NO. 895927 10 1
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As a result, Mr. Peltz may be deemed to beneficially own an aggregate of 14,417,649 shares of Class B Common Stock (including shares of Class B Common Stock beneficially owned by Mr. May, the Peltz L.P., Mr. Peltz's minor children and the Peltz Family Foundation and restricted shares of Class B common Stock that may be voted by Messrs. Peltz and May), representing approximately 30.5% of the outstanding shares of Class B Common Stock. In addition, Mr. May may be deemed to beneficially own an aggregate of 14,216,899 shares of Class B Common Stock (including shares of Class B Common Stock beneficially owned by Mr. Peltz and restricted shares of Class B Common Stock that may be voted by Messrs. Peltz and May, but excluding shares beneficially owned by the Peltz L.P., Mr. Peltz's minor children and the Peltz Family Foundation), representing approximately 30.1% of the outstanding shares of Class B Common Stock.

Accordingly, as a result of the Voting Agreement, Mr. Peltz may be deemed to beneficially own approximately 40.6% of the combined voting power in the Company, and Mr. May may be deemed to beneficially own approximately 40.5% of the combined voting power in the Company.

ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO THE COMMON STOCK OF THE ISSUER.

Item 6 of the Statement is amended by adding the following:

On May 6, 2005, the shares of Class A Common Stock and Class B Common Stock owned by the Peltz L.P. that were pledged to secure the

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BOA Loans to Mr. Peltz were released from such pledge and the Pledge and Security

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Agreement entered into by the Peltz L.P. with respect to such shares of Class A Common Stock and Class B Common stock was terminated.

Class A Common Stock: CUSIP NO. 895927 10 1
Class B Common Stock: CUSIP NO. 895927 30 9

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SIGNATURES

After reasonable inquiry and to the best of its knowledge and belief, each of the undersigned certifies that the information set forth in this Statement is true, complete and correct.

Dated: May 23, 2005

/s/ Nelson Peltz

Nelson Peltz

/s/ Peter W. May

Peter W. May

Class A Common Stock: CUSIP NO. 895927 10 1
Class B Common Stock: CUSIP NO. 895927 30 9

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EXHIBIT INDEX

EXHIBIT

DESCRIPTION

PAGE NO.

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1	Stock Purchase Agreement dated as of October 1, 1992 by and between the Purchaser, Posner, Posner Trust and Security Management.	Filed with Original Statement
2	Exchange Agreement dated as of October 12, 1992 between the Company and Security Management.	Filed with Original Statement
3	Agreement dated as of October 1, 1992 between the Company and the Purchaser.	Filed with Original Statement
4	Agreement of Limited Partnership of the Purchaser dated as of September 25, 1992.	Filed with Original Statement
5	Joint Filing Agreement of the Purchaser, Peltz and May.	Filed with Amendment No. 14
6	Memorandum of Understanding, dated January 21, 1993, by and between the Purchaser and William A. Ehrman, individually and derivatively on behalf of SEPCO.	Filed with Amendment No. 2
7	Letter dated January 25, 1993 from Steven Posner to the Purchaser (including proposed terms and conditions of Consulting Agreement to be entered into between the Company and Steven Posner).	Filed with Amendment No. 2
8	Undertaking and Agreement, dated February 9, 1993, executed by the Purchaser.	Filed with Amendment No. 3
9	Amendment No. 3 dated as of April 14, 1993 to Agreement of Limited Partnership of the Purchaser.	Filed with Amendment No. 4
10	Citibank Loan Documents (Exhibits and Schedule omitted).	Filed with Amendment No. 4
11	Republic Loan Documents (Exhibits and Schedules omitted).	Filed with Amendment No. 4
12	Pledge and Security Agreement, dated as of April 5, 1993, between the Purchaser and Citibank.	Filed with Amendment No. 5
13	Custodial Loan Documents.	Filed with Amendment No. 5
14	Agreement, dated May 2, 1994 among Nelson Peltz, Peter W. May and Leon Kalvaria.	Filed with Amendment No. 6
15	Amended and Restated Pledge and Security Agreement, dated as of July 25, 1994 between the Purchaser and Citibank.	Filed with Amendment No. 6
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16	Amendment No. 1 dated as of November 15, 1992 to Agreement of Limited Partnership of the Purchaser.	Filed with Amendment No. 7
17	Amendment No. 2 dated as of March 1, 1993 to Agreement of Limited Partnership of the Purchaser.	Filed with Amendment No. 7
18	Amendment No. 4 dated a January 1, 1995 to Agreement of Limited Partnership of the Purchaser.	Filed with Amendment No. 7
19	Amendment No. 5 dated as of January 1, 1996 to Agreement of Limited Partnership of the Purchaser.	Filed with Amendment No. 7
20	BOA Loan documents (Exhibits and Schedules omitted).	Filed with Amendment No. 7
21	Letter, dated October 12, 1998, from Messrs. Nelson Peltz and Peter W. May to the Company.	Filed with Amendment No. 8
22	Press release, issued by the Company, dated October 12, 1998.	Filed with Amendment No. 8
23	Letter, dated October 12, 1998, from the Company to Messrs. Nelson Peltz and Peter W. May.	Filed with Amendment No. 8
24	Press release issued by the Company, dated March 10, 1999.	Filed with Amendment No. 9
25	Amended and Restated Agreement of Limited Partnership of the Purchaser, amended and restated as of November 11, 2002.	Filed with Amendment No. 11
26	Pledge Agreement dated April 2, 2001, made by Peltz Family Limited Partnership, in favor of Bank of America, N.A.	Filed with Amendment No. 13
27	Pledge and Security Agreement dated April 2, 2003, made by Peter W. May, in favor of Bank of America, N.A. (Schedule II omitted).	Filed with Amendment No. 13
28	Voting Agreement, dated June 26, 2004, by and among Messrs. Nelson Peltz, Peter W. May and Gregory H. Sachs.	Filed with Amendment No. 18
29	Voting Agreement dated July 23, 2004, between Messrs. Nelson Peltz and Peter W. May.	Filed with Amendment No. 19
30	Pledge and Security Agreement dated July 23, 2004, made by Nelson Peltz, in favor of Bank of America, N.A. (Exhibit and Schedules omitted).	Filed with Amendment No. 19
31	Form of Amendment No. 5 to Pledge and Security Agreement dated July 23, 2004, made by Peter W. May, in favor of Bank of America, N.A. (Schedules omitted).	Filed with Amendment No. 19

