UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9493 / December 12, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 71051 / December 12, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15642

In the Matter of **MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTIONS 15(b)(4) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPFS" or "Respondent," and together with affiliates, "Merrill").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

A. Summary

1. MLPFS violated the federal securities laws in connection with its structuring and marketing of a series of collateralized debt obligation transactions ("CDOs") in 2006 and 2007.

2. In a CDO, a special purpose vehicle (an "Issuer") issues tranches of securities backed by a portfolio of assets – the collateral – owned by the Issuer. CDOs commonly have collateral managers responsible for the selection, acquisition, and monitoring of this portfolio. This Order concerns CDO Issuers named Octans I CDO Ltd. ("Octans I"), Norma CDO I Ltd. ("Norma"), and Auriga CDO Ltd. ("Auriga"). The collateral for all three CDOs consisted primarily of credit default swaps ("CDS") referencing subprime Residential Mortgage Backed Securities ("RMBS").[2]

3. MLPFS failed to inform investors in Octans I and Norma that an undisclosed third party named Magnetar Capital LLC (together with affiliates, "Magnetar") – a hedge fund firm that bought the equity in the transactions but whose interests were not necessarily the same as those of the CDOs' other investors – had rights relating to, and exercised significant influence over, the selection of the CDOs' collateral.

4. In particular, with Octans I, a $1.5 billion CDO that closed September 26, 2006, Magnetar had a contractual right to object to the inclusion of collateral selected by the collateral manager during the so-called "warehouse" phase that precedes closing. Yet the disclosure that MLPFS provided to investors stated that the collateral acquired by Octans I on closing was "selected by [the collateral manager] and held by [Merrill] pursuant to warehousing agreements between [Merrill] and [the collateral manager]." This was a material misstatement in that it made no mention of Magnetar's rights.

5. With Norma, a $1.5 billion CDO that closed March 1, 2007, a third of the assets for the portfolio were acquired during the warehouse phase by Magnetar rather than by the designated collateral manager. The collateral manager for Norma initially did not know about Magnetar's purchases but then eventually accepted them. Magnetar also exercised the equivalent of a veto over the collateral manager's selection of certain other assets for Norma. Yet with

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] Residential Mortgage Backed Securities are bonds backed by pools of residential mortgage loans, in this case subprime loans. CDS are explained below.

Norma, too, the disclosure that MLPFS provided to investors stated that the collateral on closing would consist of a portfolio "selected by the Collateral Manager." This was a material misstatement because it made no mention of Magnetar's involvement in collateral selection. MLPFS also failed to disclose in the offering circulars and pitchbook used to market the Norma transaction that Magnetar received a $35.5 million discount on its equity investment in Norma and a separate $4.5 million payment that Magnetar referred to as a "sourcing fee."

6. Finally, MLPFS violated books-and-records requirements of the Exchange Act in connection with Auriga, a $1.5 billion CDO that closed December 20, 2006 and, unlike the other CDOs, was managed by an affiliate of MLPFS. Merrill had agreed (as with the other CDOs discussed in this Order) to pay "carry" from the Auriga warehouse (essentially, interest or returns that accumulated on the warehoused assets) to Magnetar. To benefit itself, however, MLPFS improperly avoided recording many of the warehoused trades at the time they occurred, which was in September and October 2006. Seeking to avoid having to pay Magnetar and having to trade out of the positions in the event that Auriga did not close or that these trades were excluded from its portfolio, MLPFS delayed recording these trades until after Auriga priced on November 22, 2006, when it became reasonably clear that Auriga would close and that the September and October 2006 trades would be included in its portfolio.

B. Respondent and Other Relevant Entities

7. **Merrill Lynch, Pierce, Fenner & Smith Incorporated**, a registered broker-dealer and investment adviser based in New York, at all relevant times was Merrill Lynch & Co., Inc's. ("ML & Co.") principal U.S. broker-dealer subsidiary. ML & Co., formerly one of the world's leading investment banks, was acquired by Bank of America Corporation on January 1, 2009.

8. **Merrill Lynch International** ("MLI"), a MLPFS affiliate incorporated under the laws of England, was the warehouse provider in connection with the CDO transactions at issue in this Order.

9. **Harding Advisory LLC** (together with its predecessor, "Harding") is a registered investment adviser based in Morristown, New Jersey. Harding served as collateral manager for Octans I.

10. **NIR Capital Management, LLC** ("NIR") was an unregistered investment adviser based in Charlotte, North Carolina. NIR was an affiliate of The NIR Group, LLC, which was formerly an investment management firm based in Roslyn, New York. NIR served as collateral manager for Norma.

11. **250 Capital LLC** ("250 Capital"), a MLPFS affiliate until February 2010 (when it was acquired by a third party), was an unregistered New York-based investment adviser that served as collateral manager for Auriga.

12. **Magnetar Capital LLC** is a hedge fund manager headquartered in Evanston, Illinois. During 2006 and 2007 Magnetar was involved in creating a series of CDOs with Merrill

and other arranging banks. These CDOs were typically named after astronomical constellations, and so are sometimes known as "Constellation CDOs." Octans I, Norma, and Auriga were Constellation CDOs. Magnetar purchased the equity piece of each of these transactions.

13. **Octans I CDO Ltd.**, **Norma CDO I Ltd.**, and **Auriga CDO Ltd.** were special-purpose vehicles incorporated in the Cayman Islands.

C. Facts

Background on CDOs and CDS

14. A CDO is a special purpose vehicle that issues debt to investors and uses the proceeds to invest in fixed income securities or loans. The CDO's debt is issued in different tranches that feature varying levels of risk and reward. The senior tranche is the highest rated, is first in the priority of repayment through what is called the CDO's waterfall and has the lowest risk of default. Because of the lower risk of default and the priority of repayment in the CDO's waterfall, the holders of the senior tranche have lower rates of return. The inverse is true for the lowest-rated tranche in the CDO. Typically, that tranche (usually referred to as "equity") is unrated, has the highest rate of return, is last in terms of the priority of repayment through the CDO's "waterfall" and has the highest risk of default.

15. A CDS is a type of derivative through which two parties transfer the risk of ownership of a particular reference obligation. The protection buyer ("short") of a CDS pays to purchase protection in the event of, *e.g.*, default, failure to pay interest, writedowns or substantial credit ratings downgrade of the reference obligation (collectively, "Credit Events"). The protection seller ("long") sells that protection and assumes the risk of a Credit Event on the reference obligation. In 2006, the protection buyer normally paid the protection seller a premium or spread as part of the CDS.[3] There are different types of reference obligations; the ones relevant here were RMBS or CDOs comprised of RMBS. In many respects, a CDS mimics the performance of the referenced asset. Thus, an investor can gain exposure to an asset by entering into a CDS that references the asset, instead of by purchasing the asset itself.

16. A CDO can be backed by bonds or by CDS (a "synthetic CDO"). A CDO backed by both bonds and CDS is called a "hybrid CDO." Octans I, Norma, and Auriga were hybrid CDOs with a very high percentage of synthetic assets (approximately 90%).

17. Typically, if a CDO has a collateral manager, it is the collateral manager that independently directs the selection and purchase of assets warehoused at the arranging bank. At closing, this collateral is then acquired by and transferred to the CDO issuer. The arranging bank normally executes a warehouse agreement with the collateral manager governing the acquisition

[3] For example, a protection buyer may agree to pay a protection seller 150 basis points to purchase protection against default on a $10 million of a designated reference obligation, or $150,000 per annum, paid periodically.

of collateral, as well as the allocation of risk (losses) and carry (gains) while assets are being warehoused and also in the event the CDO fails to close.

Overview of the Merrill-Magnetar Relationship

18. In the spring of 2006, Magnetar approached MLPFS to arrange a series of CDO transactions.

19. In May 2006, a Magnetar representative ("Magnetar Representative") met with the co-heads of MLPFS's CDO structuring group ("Co-Head One" and "Co-Head Two," or the "CDO Co-Heads"), the head of MLPFS's CDO syndicate group ("Syndicate Head"), and the MLPFS salesperson covering Magnetar ("Salesperson") to discuss working together on CDOs backed by synthetic mezzanine RMBS.[4] As the Salesperson later put it in an email, the meeting participants discussed an arrangement "whereby we pick mutually agreeable [collateral] managers to work with, Magnetar plays a significant role in the structure and composition of the portfolio . . . and in return [Magnetar] retain[s] the equity class and we distribute the debt. We agreed in principle to do a series of mezz[anine] abs[5] deals . . . with largely synthetic collateral. . . . We have agreed to a short list of [collateral] managers."

20. The equity piece of a CDO transaction was typically the hardest to sell and therefore the greatest impediment to closing a CDO. Magnetar's willingness to buy the equity in a series of CDOs therefore gave it substantial leverage in the assembly of these transactions, including influence over portfolio composition.

21. Officials at MLPFS, including the CDO Co-Heads, understood that Magnetar sought to use the returns on its equity investments to fund protection premiums for short positions on the junior (mezzanine) tranches of the same or similar CDOs. Officials at MLPFS also understood that Magnetar sometimes entered into CDS in which it was the short party facing a CDO in which Magnetar also had an equity position – that is, Magnetar sometimes "shorted into" the CDOs it helped create.[6]

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[4] RMBS were commonly issued in tranches of increasing risk and potential reward, all backed by a given pool of loans. As relevant to this matter, "mezzanine" refers to tranches that are below the "senior" (i.e., safest) tranches and are rated BBB and BBB-. Mezzanine tranches are riskier than senior tranches but offer a higher potential return.

[5] "ABS" refers to asset-backed securities. The term includes, but was sometimes used interchangeably with, RMBS.

[6] For example, in a July 2006 email Co-Head Two wrote to Co-Head One: "[l]et's propose to Magnetar that they do the same strategy in CLOs [i.e. collateralized loan obligations] that they r doing in ABS CDOs . . . They take the equity, we work for less, we get mgrs [i.e. collateral managers] who they select to work for less and they can short BBB rated CLOs into the deal." That same month, Co-Head Two noted in an email to Co-Head One that Magnetar was "[b]asically putting on no trigger equity – only to get positive carry to use versus their shorts (including BBB rated ABS CDOs)."

22. MLPFS accordingly should have understood that Magnetar's interests were not necessarily the same as those of potential investors in the debt tranches of the CDOs, whose investments depended solely on the CDO and its collateral performing well.

23. On July 13, 2006, the MLPFS Salesperson wrote to a Magnetar principal ("Magnetar Principal"): "Extremely important to us that you know this partnership is the top priority of the cdo group (top to bottom) . . . . They are def approaching as a partnership with you and want you to feel that way. They view you as an issurer [sic] rather than a cpty. Their ultimate goal is to maximize your return with the best structure possible."

24. Similarly, on August 18, 2006, Co-Head Two wrote to the Magnetar Principal and Representative on behalf of himself and Co-Head One, copying the Salesperson and a group of senior Merrill executives going up three levels of supervision from the CDO Co-Heads: "We view our relationship as a partnership and will do whatever it takes to make this [i.e. Octans I] (/future) transaction(s) successful and are committed to helping your platform in every way possible."

25. Merrill and Magnetar ultimately collaborated on four CDOs, including the three discussed in this Order. MLPFS's CDO structuring group received approximately $40 million in gross fees from the Constellation CDOs. In addition, Merrill received millions of dollars more in intermediation fees and warehouse carry relating to the Constellation CDOs.

<u>Octans I</u>

26. Octans I was the first CDO that MLPFS and Magnetar worked on together. MLPFS and Magnetar agreed on Harding as the collateral manager for Octans I.

27. On or about May 26, 2006, MLPFS, Harding, and Magnetar entered into an Engagement Letter that set forth broad parameters for the Octans I transaction and assigned the parties roles in it. The agreement contemplated that Magnetar would purchase the equity in Octans I.

28. After Octans I closed on September 26, 2006, Merrill assisted Magnetar in taking short positions via CDS on Octans I's mezzanine tranches.[7] That is, Magnetar "shorted" the very CDO it helped to create and in which it held equity.

[7] On August 22, 2006, after MLPFS had priced Octans I, the Magnetar Representative emailed Co-Head One, a CDO banker, and the Salesperson: "Now that we are priced, if you can find anyone who wants to take exposure synthetically, we would like to buy protection on any of the [Octans I] tranches." Through Merrill, Magnetar shorted $10 million worth of Octans I's notes. Through other firms, Magnetar took much larger short positions on Octans I's notes. Magnetar's long equity exposure to Octans I at closing was $94 million, although months later Magnetar sold $64 million of its equity interest into a different CDO. Magnetar had informed the CDO banker in July 2006 that it would seek to "repack" the equity stake, which would diminish Magnetar's long exposure to Octans I . The CDO Co-Heads, too, were aware of Magnetar's interest in diminishing its equity stake and had approved of structural features in Octans I to make that possible.

Magnetar's Warehouse Rights and Influence on Collateral Selection

29. On or about May 26, 2006, MLI, Harding, and Magnetar also entered into a warehouse agreement approved by MLPFS's CDO Co-Heads. This agreement was a departure from Merrill's usual practice in that it gave Magnetar the dominant stake in the warehouse carry, as well as substantive rights relating to the selection and acquisition of collateral for the Octans I investment portfolio. Specifically, the warehouse agreement gave Magnetar the right to receive 85% of the warehouse carry in exchange for taking 85% of the risk.

30. The warehouse agreement, which was sent to the outside law firm that represented Merrill and Octans I in the transaction, also gave Magnetar rights relating to collateral selection, including (i) the right to object to the inclusion of collateral selected by Harding prior to purchase for the warehouse; and (ii) the right to veto any decision by MLI to trade out of collateral because Harding or MLI has determined that the collateral no longer meets criteria for inclusion in the CDO.

31. Consistent with the warehouse agreement and Magnetar's status as the anticipated equity investor, Merrill and Harding consulted with Magnetar throughout the process of acquiring assets for the portfolio.

32. For example, MLPFS sought Magnetar's approval for the composition of the so-called "CDO bucket," which was a segment of the Octans I portfolio reserved for CDO securities (as opposed to RMBS). On June 1, 2006, the MLPFS banker immediately responsible for the Octans I transaction ("CDO Banker") asked the Magnetar Representative:

> [Harding's President] and I were just talking and we thought it might be beneficial to utilize the 10% CDO bucket for cash CDO trades . . . . So if you add in the 5% BB bucket, that makes it an 85% synthetic/15% cash deal. Does that work for you?
>
> On[e] other thought was to include a 5% limit for CDOs managed by [Harding] within the collateral portfolio. Are you okay with that?

The Magnetar Representative responded: "Rather not have [Harding] cdo's in deal, just seems off. No problem w cash cdo's, although I may want to buy protection," i.e. short the CDOs separately.

33. A particularly pronounced example of Magnetar's influence on the selection of collateral for Octans I relates to an investment product known as the ABX Index.[8] Magnetar was

[8] Launched in January 2006, the ABX Index was a standardized CDS referencing a benchmark basket of 20 RMBS. The ABX Index was available at various levels of credit rating. New ABX Indices became available twice per year, and in each case referenced RMBS issued in the preceding six months. Thus, for example, ABX 2006-1 BBB referenced "BBB" rated tranches of 20 RMBS issued in the second half of 2005.

seeking, for reasons related to its own investment strategy, to have its CDOs acquire exposure to the RMBS bonds referenced in the ABX Index.

34. In May 2006, Magnetar initiated discussions with Merrill about having Octans I acquire exposure to the ABX Index. On or about May 23, 2006, the Magnetar Representative explained in a telephone conversation with the CDO Banker and MLPFS's head of ABS trading ("Head Trader") Magnetar's view of the mechanism by which the trade could be accomplished. Later that day the Magnetar Representative emailed his Salesperson at MLPFS: "Let's buy some index!" The next morning, the Magnetar Representative again emailed the Salesperson: "ABX opening weaker, lets do call, BUY!!!" The Salesperson replied: "hunting [the CDO Banker] down."

35. On or about May 30, 2006, the Magnetar Representative again reviewed the mechanics of buying the index in a telephone call that included at least the MLPFS Salesperson and Head Trader. The participants conferenced in a representative of Harding to find out if there were any index bonds to which Harding did *not* want Octans I to be exposed (so these could be "shorted" or neutralized from the portfolio's block index exposure).

36. Soon after the call, the Salesperson wrote to the Magnetar Representative (emphasis added): "We'll push to get [index] names they [i.e. Harding] have issue with [i.e. want excluded from the index exposure] tomorrow am. . . . [The Head Trader] is on board with *what you need done as far as the index goes*."

37. From June 1 to June 8, Merrill, Magnetar, and Harding worked together to acquire approximately $300 million worth of block exposure to the ABX Index at the BBB and BBB- levels. After excluding twelve bonds (out of 40 in the index at the two rating levels) that Harding said it disfavored, the Octans I portfolio had net exposure to approximately $220 million worth of ABX Index bonds, representing nearly 15% of the Octans I portfolio.

Misrepresentations and Omissions

38. Outside investors in Octans I were not informed of Magnetar's warehouse rights and role in collateral selection. This information would have been important to investors; they would have wanted to know that someone other than the collateral manager, and in particular an equity investor with interests not necessarily the same as their own, had played a significant role in selecting collateral for the portfolio.

39. MLPFS provided to investors offering circulars for Octans I. These disclosure documents stated that collateral to be acquired by the Issuer at closing was "selected by the Collateral Manager" pursuant to "warehousing agreements between MLI and the Collateral Manager." This was a misstatement: omitted entirely were Magnetar's rights under the agreement and role in selecting assets for Octans I.

40. The section of the offering circulars concerning the collateral manager also stated that the "Collateral Manager will undertake to select all Collateral Debt Securities" employing a

process that "depends heavily on the skills of the Collateral Manager in analyzing and selecting the" collateral. These too were misstatements in that no mention was made of Magnetar's rights and involvement throughout the warehousing process.

41. MLPFS also created and distributed "pitchbooks" for Octans I to potential investors. The pitchbooks, like the offering circulars, described the warehouse agreement as between Merrill and Harding, without disclosing that Magnetar was a party to, and had rights under, the agreement. The pitchbooks also referred to Harding's experience as a collateral manager "in analyzing and selecting the collateral debt securities," but were silent as to Magnetar's role in the selection of collateral. Again, these were misstatements.

42. In July 2006, Co-Head One reviewed a pitchbook that the CDO Banker had prepared. Having identified oversights in disclosure related to other risk factors, Co-Head One chided the CDO Banker in an email:

> Looks very sloppy. You and whoever speaks to investors need to be up to speed on this. Please pay attention to these details – this deal is different from our standard deal. We cannot afford to make mistakes – will get back to [the Magnetar Representative]. When I met with him today he talked about wanting to do 5 deals with us. I am depending on you to be the last line of defence when on this deal . . .

Co-Head One said nothing about the omission from the pitchbook of Magnetar's rights regarding, and involvement in, collateral selection.

<u>Norma</u>

Magnetar Reaffirms Its Interest in Portfolio Selection, in the ABX Index, and in Shorting Against Its CDOs As Well As on Them

43. MLPFS introduced NIR to Magnetar as the potential collateral manager for what became the Norma transaction. On July 1, 2006, after performing due diligence on NIR, the Magnetar Representative wrote to the MLPFS Salesperson that he would accept NIR as manager (emphasis added): "I like NIR, experienced guys, smart, quantitative approach. Negative is that they are newbies, have one h[igh] g[rade] deal, haven't even really thought about a mezz[anine] deal yet, ... A bit risky, I'll do it because I like their approach, *but will want to be very involved*."

44. The Magnetar Representative added:

> The big issue for us is hedging. To proceed with [a transaction managed by] NIR, we would like [Merrill] to commit to selling us a certain amount of protection on the A and BBB tranches of each deal we've done with you. That way we know our equity allocation isn't getting ahead of our hedges.
>
> For example, [Merrill] would agree to sell us an amount of CDS and CDO protection equal to our equity investment on the A and BBB tra[nc]hes of [the transactions managed

by] Harding, [another manager], and NIR no worse than 20bp back of where cash is placed.

45. On July 9, 2006, the Magnetar Representative wrote to Co-Head One and the Salesperson (emphasis added): "Going fwd, we would like to be in loop on trading approval emails for our deals . . . . *For cdo's we want to buy protection from the deal*" – i.e. take a short position opposite the CDO through Merrill – "on most or all of the cdo allocation," i.e. the assets selected for the "CDO buckets" within the CDO portfolios.

46. This turned out to be the case for Norma. Magnetar, through Merrill, shorted approximately $89 million of CDO securities in Norma's portfolio of collateral.[9] (At closing the figure was $80 million.) By comparison, Magnetar's total long exposure to Norma was approximately $39 million.

47. Magnetar also sought to have the Norma portfolio acquire exposure to the ABX Index, which by July 2006 was available in the 2006-1 and 2006-2 versions. On July 31, 2006, the Magnetar Representative wrote to Co-Head One, the CDO Banker, and the Salesperson (emphasis added): "Need to be aggressive in doing the index arb[itrage] trades on ABX 1 and 2 right out of the gate. *Have to push the managers to use as many bonds as possible out of the indices*."

48. The Magnetar Representative attached to the email a draft of an engagement letter (that was never finalized) among MLPFS, Magnetar, and NIR with language that would have obligated MLPFS to "facilitate the execution of pass through trades on the ABX indices by purchasing each of the ABX.1 and ABX.2 indexes and, in respect of index securities acceptable to the [Collateral] Manager, simultaneously buying protection in the form of single-name ABS CDS from the Issuer."

49. On August 11, 2006, Magnetar sent to the Salesperson, who forwarded it to Co-Head One and the CDO Banker, a draft of an equity purchase agreement between Magnetar and Merrill. The draft, which also was never finalized, repeated Magnetar's interest in having Norma acquire exposure to the ABX index: "To facilitate the ramping of warehouse, [Merrill] will . . . assist the [Collateral] Manager to, immediately upon opening of the warehouse, sell CDS on all Manager approved names in the ABX 06-1 and 06-2 indices[.]"

Magnetar Pushes Merrill To Open the Norma Warehouse

50. On or about August 11, 2006, the Salesperson assured the Magnetar Principal: "[The CDO Co-Heads] want to get to a place where they have earned place to be one of your short-list of go-to dealers. Our job [is] to get us there by performing."

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[9] Magnetar also took a short position on approximately $5 million of securities issued by Norma.

51. By mid-August 2006, Magnetar was urging Merrill to open the warehouse and begin acquiring collateral for Norma and another CDO. On August 16, 2006, the Magnetar Principal emailed the Salesperson: “I was straightforward asking to have two more warehouses open and having managers in place to opportunistically buy paper. Why is there a hold up . . .?”

52. The next day, the Salesperson wrote to the Magnetar Representative: “for index trades we need to know what names are good in both 06-1 & 06-2 yes? and do you want to execute both Baa2 & Baa3 [i.e. acquire the index at both the BBB and BBB- levels]?”

53. That evening, the Salesperson wrote to Co-Head One: “I know the warehouse committee meeting is tomorrow am . . . we have promised [the Magnetar Representative and Magnetar Principal] once that meeting is over, warehouses will be open for [Norma and another CDO]. . . . I cannot go back again and tell them they can’t get going tomorrow . . . will they be able to start buying tomorrow after this meeting?”

54. On August 21, 2006, the Salesperson wrote to Co-Head One and the CDO Banker: “I told [Magnetar] the [Norma] warehouse is open tomorrow. . . .Their biggest sensitivity is timing and meeting deadlines when we say we will. . . . [The Magnetar Principal] is all over me. He will get p_ssed very quickly if things not moving forward. . . . he will want to ramp [Norma] tomorrow . . . . We can’t afford to turn [him] off.”

Merrill Allows Magnetar To Trade for the Norma Portfolio

55. Within two days Merrill and Magnetar started buying the ABX Index as collateral for the Norma portfolio. They did so without NIR’s involvement. This was a departure from normal practice: generally the collateral manager, not an investor, works together with the arranging bank to acquire assets for a CDO.

56. MLPFS’s CDO structuring group understood that it was the collateral manager’s responsibility to select assets for a CDO portfolio. For example, in April 2006, Co-Head One had written to MLPFS’s CDO structuring group, copying Co-Head Two: “Please note that all assumptions relating to collateral that form the basis for showing analyses to investors require collateral manager sign off. NO EXCEPTIONS.”

57. On the morning of August 22, 2006, the Salesperson advised the Magnetar Representative that Co-Head One and the CDO Banker were “talking to nir about buying” and “coordinating index with [the Head Trader].”

58. The Salesperson also asked: “How much of the index are you looking to do?” The Magnetar Representative replied: “We should do $300MM each of ABX 1 and 2, should discuss with [the Head Trader] whether Baa2 or Baa3 makes more sense, inclined to stick with Baa2 . . . . Lets do a call.” NIR was not included in this email communication.

59. That afternoon the CDO Banker, Head Trader, and Salesperson convened a telephone call with the Magnetar Representative to discuss the index trade for Norma. NIR was not included in this telephone call.

60. After the call, the Magnetar Representative sent the CDO Banker and Salesperson a chart, titled "Ranking of Baa2 ABX.HE Bonds," that NIR had prepared and given to the Magnetar Representative. The Salesperson forwarded the chart to the Head Trader. The chart divided the 40 bonds in the 2006-1 and 2006-2 ABX Indices at the Baa2 (BBB) level into three categories: "Top Rated" (containing 20 bonds), "Middle" (10 bonds), and "Bottom" (10 bonds).[10]

61. Beginning the next day, Magnetar acquired nearly $600 million in long synthetic block index purchases for the Norma portfolio. These purchases, done in a series of trades from August 23 to September 5, 2006, referenced the ABX 2006-1 and 2006-2 Indices at the BBB (Baa2) level. This block exposure consisted of $15 million worth of exposure to each of the 40 bonds on the indices. Each time Magnetar made a purchase for the portfolio, the Magnetar Representative emailed the Salesperson, CDO Banker, and Head Trader, but did not copy NIR.

62. On August 24, 2006, the CDO Banker left a voice message for NIR advising NIR that, as the NIR principal who received the message ("NIR Principal One") wrote in an email to the other NIR principal ("NIR Principal Two"), "the [Norma] warehouse is open" and [the Magnetar Representative] has done some index trades." NIR appears not to have contacted Merrill about the voice message.

63. In September 2006, shortly after finishing with the nearly $600 million in purchases of the ABX Indices, Magnetar and Merrill sought to eliminate or reduce exposure to the $150 million of exposure to ten bonds that NIR had classified in the "Bottom" category. Specifically, they sought to execute short trades that would offset, or net out, the long exposure to those bonds caused by the block index exposure. The Magnetar Representative and MLPFS's Head Trader did this, too, independently of NIR. NIR (along with MLPFS's Salesperson and CDO Banker) was copied on emails between the Head Trader and the Magnetar Representative concerning the short trades, but was not consulted in advance by Merrill in connection with the short trades. Ultimately, Magnetar and Merrill offset only $127.5 million out of $150 million of exposure, leaving $22.5 million in exposure to four bonds that NIR had classified as "Bottom."

64. NIR was apparently unaware that Magnetar and Merrill were trading ABX Index for the Norma portfolio. Indeed, beginning in August 2006, NIR had been independently

[10] NIR had advised the Magnetar Representative in an email six days earlier that: (i) NIR "would choose to stay away from" the "Bottom" category, "assuming that the market premium does not compensate for the heightened risk of default"; (ii) the 10 bonds in the "Middle" category "are characterized by some weakness that would not disqualify them from purchase, but would require some degree of enhanced premium for inclusion"; and (iii) the 20 "Top Rated" bonds had "the most appealing characteristics, and [NIR] would look to aggressively add these to the portfolio assuming acceptable relative value. We would expect the premiums to be tight on the majority of these bonds, and will need to evaluate how much we can fill once we study the final transaction model in greater detail."

acquiring assets for the Norma warehouse. For example, on September 19, 2006, the Head Trader sent an electronic message to NIR Principal Two: "do you have a record of the trades that Magnetar has done on the index and single names." NIR Principal Two responded: "not on index. When you say single names, do you mean the trades we've [i.e. NIR has] done for the warehouse or something else? We obviously have the trades we've done for warehouse, but not aware of any other trades Magnetar has done."

65. Similarly, on October 11, 2006, a Merrill employee, having noticed discrepancies between Merrill's and NIR's records for the Norma portfolio, asked an NIR employee: "the first big difference I found was that we [i.e. Merrill] have a set of index trades in the warehouse. . . . Are you familiar with any of these index trades? Do they belong in Norma?" NIR Principal Two advised his employee: "Per our conversations with [the CDO Banker], none of these trades go in our warehouse."

NIR Accepts Magnetar's Index Trades

66. On or about November 9, 2006, the Salesperson, CDO Co-Heads, and CDO Banker became aware that NIR did not know about the index-related trades Magnetar had executed for the Norma portfolio. With both Magnetar and NIR having acquired assets for the portfolio, the total collateral exceeded the $1.5 billion limit on the portfolio size.

67. In November and December 2006, Merrill and NIR (with Magnetar) were involved in reconciling their records. Merrill and NIR decided that the excess collateral – this turned out to be approximately $260 million in assets that NIR had independently sourced – could be securitized in a new CDO, eventually named Fourth Street Funding, Ltd. ("Fourth Street").

68. During the reconciliation process, NIR advised Merrill of its interest in "shorting out" – i.e. reducing or eliminating exposure to – some of the RMBS bonds to which Magnetar's index trades exposed the Norma portfolio. For example, on November 13, 2006, NIR Principal Two sent the CDO Banker a portfolio list identifying $82.5 million in collateral for shorting that was attributable to the Magnetar index trades but that nonetheless ended up in Norma's closing portfolio. The $82.5 million included the $22.5 million in remaining exposure to four index bonds in what NIR had called the "Bottom" category.

69. On November 27 and 28, Merrill representatives (including the CDO Banker and Salesperson), the Magnetar Representative, and NIR held telephone calls to discuss the Norma warehouse.

70. On November 29, 2006, NIR Principal One emailed the CDO Banker and others on MLPFS's CDO desk: "attached is the latest portfolio . . . . The portfolio has been updated to reflect the ABX adjustments that we discussed." The attached portfolio included all of Magnetar's index purchases, including assets that NIR had expressed a desire to short in communications with Merrill.

71. In December 2006, NIR and MLI entered into a warehouse agreement for Fourth Street. In January 2007, Merrill and NIR moved approximately $260 million of collateral from the Norma warehouse into the warehouse for the Fourth Street transaction.

72. Leading up to Norma's close on March 1, 2007, NIR repeatedly sought to have Merrill reduce the portfolio's exposure to the $22.5 million in remaining exposure to the "Bottom" of the index. NIR made one final effort on February 23, 2007, advising the CDO Banker and other Merrill employees in an email from NIR Principal Two: "we'd prefer not to add the longs that correspond to the pending shorts until we've finalized our trading strategy, which should be shortly after closing. In the event we're unable to execute shorts and stay in compliance with [a rating agency hedge test], we don't want to be long these bonds." In response, the Head Trader emailed a subordinate trader and other Merrill employees, stating: "This is NOT to change in any way. The portfolio has been agreed upon."

73. The Norma portfolio ultimately included all of Magnetar's index-related trades.

Magnetar's Control Over Norma's CDO Bucket

74. As discussed above, the "CDO Bucket" was a segment of the portfolio reserved for securities issued in other CDO transactions. Magnetar insisted that it approve – and in most cases short – the positions in Norma's $150 million CDO bucket.

75. On November 27, 2006, the Magnetar Representative wrote to the NIR Principals and the MLPFS Salesperson, both CDO Co-Heads, the CDO Banker, and the Head Trader:

> First of all, I'm starting to feel like I'm not seeing any of the trade approval requests. I should be on the regular distribution list for those, resi [i.e. RMBS], CDO or anything else (especially anything else!), as I'm sure has been discussed.
>
> Second, I definitely want to approve any CDO's that go in the deal, don't recall approving any, so I assume 'Approved' [in a list NIR had sent] means only that NIR has internally approved the credit.
>
> For [three specified cash CDO securities], I only want them in the deal if I'm buying the protection [i.e. if the warehouse acquires them in synthetic form], absolutely do NOT want any of those three bonds in the deal as cash bonds.

76. That night, the Magnetar Representative wrote to the Salesperson: "After all of our painful discussions on communications, . . . I can't begin to understand how someone approved 11 CDO's into Norma without me knowing about them."

77. The next morning, the Salesperson reassured the Magnetar Representative: "I hear you. . . . [I] spoke to [the CDO Banker] this am. . . . [The CDO Banker] has to make sure that the [collateral] manager sends list of prospective collateral [to you] to check if any issues 'prior' to sending requests [to the Head Trader for the warehouse]."

78. Merrill and NIR complied with the Magnetar Representative's demands – NIR removed the three cash CDO positions to which he had objected (and changed two of those CDO positions from cash to synthetic).

79. Through emails variously sent to, among others, the CDO Banker, Syndicate Head, Head Trader, Salesperson, and NIR Principals, Magnetar also selected or approved three more CDO positions subsequently added to Norma's portfolio.[11] And in many cases Magnetar, through Merrill, took the short side opposite Norma's long synthetic exposure (dictating the spread levels at which it would do so). Magnetar ultimately was the short counterparty on all but one of Norma's eight synthetic positions (seven of them at closing), meaning that it was short into Norma approximately $89 million ($80 million at closing), with an additional $5 million short on debt tranches of Norma.

Misrepresentations and Omissions

80. Outside investors in Norma were not informed of Magnetar's involvement in collateral selection. This information would have been important to investors; they would have wanted to know that someone other than the collateral manager, and in particular an equity investor with interests not necessarily the same as their own, had played a significant role in selecting collateral for the portfolio.

81. MLPFS provided to investors offering circulars for Norma. These disclosure documents stated that collateral to be acquired by the Issuer at closing was "selected by the Collateral Manager," with no mention of Magnetar's role in collateral selection.

82. The offering circulars also stated that the "Collateral Manager will perform certain investment management functions, including directing and supervising the investment by the Issuer in [its collateral]," employing a process whose success "depends heavily on the skills of the Collateral Manager in analyzing and selecting the" collateral. Again, no mention was made of Magnetar's involvement throughout the warehouse phase.

83. The offering circular for Norma contained the following disclosure:

> *Initial Preference Shareholder may Enter Into Credit Derivative Transactions Relating to [Collateral] in the Issuer's Portfolio.* On or after the Closing Date, the Initial Preference Shareholder [i.e. the equity investor – Magnetar] may enter into credit derivative transactions relating to [collateral] included in the Issuer's portfolio under which it takes a short position (for example, by buying protection under a credit default swap relating to such obligation or security) or otherwise

[11] In one instance, the Syndicate Head wrote to the Magnetar Representative and NIR Principal One, copying the CDO Banker, to ask them to consider a non-Constellation CDO for inclusion in the Norma portfolio as a favor to Harding. Harding, the Syndicate Head wrote, had been a big buyer of other Constellation CDOs and "very likely the Norma deal."

> hedges certain of the risks to which the Issuer is exposed. The Issuer and Noteholders will not receive the benefit of these transactions by the Initial Preference Shareholder and, as a result of these transactions, the interests of the Initial Preference Shareholder may not be consistent with those of Noteholders.

84. This disclosure advised debt investors in Norma that the unnamed equity investor (Magnetar) might have a short position on assets as to which the Issuer was long, or might otherwise hedge certain of the risks to which the Issuer was exposed. This disclosure, however, did not apprise investors that Magnetar, through Merrill, was taking short positions opposite the Issuer on assets that Magnetar helped *select for the Issuer* in the warehouse phase. The conflict of interest, in other words, was substantially greater than what was disclosed, rendering the disclosure materially misleading.

85. MLPFS also created and distributed "pitchbooks" for Norma to potential investors. The pitchbooks, like the offering circulars, discussed only NIR's experience as a collateral manager and approach to the selection of collateral, and were silent as to Magnetar's role in the selection of collateral. The pitchbooks were therefore misleading.

86. MLPFS structured Norma so that the CDO would provide Magnetar with a $35.5 million discount on its equity investment and with a $4.5 million payment at closing that Magnetar referred to as a "sourcing fee." The offering circular for Norma failed to disclose that the CDO subsidized Magnetar's investment with a discount and therefore the gross proceeds in the offering circular were overstated by the $35.5 million amount. As a result, investors were told that Norma had more cash flowing into the deal at closing than it actually did, and were never informed that the CDO was financing a large discount. In addition, the offering circular and pitchbook for Norma failed to disclose Magnetar's receipt of the $4.5 million fee even though the MLPFS CDO structuring group's protocol (as reflected in draft written procedures) at the time was to disclose the receipt of fees by third parties. In an October 2006 email concerning a different Constellation CDO, the Salesperson had noted in an email to the Magnetar Representative (following a conversation that included both of them as well as the CDO Banker and Syndicate Head) that debt investors would view the $4.5 million fee as "excess cash coming out of the deal" and so were not possible in the Constellation CDO under discussion, but "in the upcoming deals" – i.e., future transactions, including Norma, whose closing at the time of this email was still months away – such a fee was a possibility because it "can [be disclosed] in the marketing materials" for those transactions.

<u>Auriga</u>

Overview

87. The collateral manager for Auriga was MLPFS affiliate 250 Capital. Auriga's warehouse phase lasted from September 2006 to December 20, 2006, when the transaction closed.

88. Auriga's portfolio at closing consisted of 121 CDS in which Auriga sold protection to certain counterparties on various RMBS. Thus, Auriga was "long," and the ultimate counterparties were "short," those assets.

89. For 79 of those 121 CDS, the ultimate counterparty was MLI, which shared a system of records with MLPFS.[12] Thus, when collateral was being assembled for Auriga during its warehouse phase, a MLPFS affiliate effectively bought protection on 79 assets from another MLPFS affiliate, 250 Capital, which was acting on behalf of the Auriga warehouse.

90. MLPFS had agreed to pay most of the "carry" on Auriga's warehouse to Magnetar. Magnetar and 250 Capital in turn agreed to share the carry, so that Magnetar would receive 75%, and 250 Capital 25%, of the carry. Thus, Magnetar was entitled to most of the premiums that short counterparties paid to the warehouse for protection under the CDS

91. The 79 trades took place in September and October 2006 (the "September and October Trades"). In order to benefit Merrill, however, MLPFS's ABS trading desk ("Desk") did not record 68 of the September and October Trades in the MLPFS books and records where its CDS trades were regularly recorded at the time they occurred. Rather, to avoid paying carry to Magnetar in the event that any of the trades was excluded from Auriga's portfolio before the deal closed, the Desk delayed recording those 68 trades until after Auriga priced on November 22, 2006, when it became reasonably clear that each of those CDS would ultimately be included in Auriga's portfolio. That date was as much as two months after the September and October Trades occurred.

92. The Desk also delayed entering those 68 September and October Trades in MLPFS's books and records in the belief that it would avoid the necessity of having to trade out of those CDS in the event that they were not ultimately included in Auriga's portfolio. If any of the long positions that 250 Capital acquired for Auriga were not transferred from the warehouse to the CDO, the Desk believed that they would remain on MLPFS's books, potentially requiring Merrill to unwind them. The Desk believed that it could avoid this problem by delaying the recording of the trades.

93. When the Desk entered those 68 trades in MLPFS's books and records after Auriga priced on November 22, 2006, the Desk inaccurately recorded the trade date as November 22, 2006, rather than the September and October 2006 dates when the trades actually took place.

[12] As was typical of CDOs at the time, for the CDS in Auriga's portfolio, MLI served as the initial counterparty. In the initial counterparty role, MLI directly faced Auriga as the short on the CDS in the portfolio, and then acted as an intermediary by entering into an offsetting long position with an "ultimate" short counterparty, such as another dealer, on the same reference RMBS, leaving MLI with no net exposure. For 83 of the CDS acquired for Auriga's portfolio during the warehouse period and after closing, however, MLI did not enter into such offsetting trades, and thus, MLI itself was also the ultimate counterparty with short exposure on those trades.

MLPFS's Failure To Properly Record the September and October Trades

94. 250 Capital (on behalf of the Auriga warehouse) and the Desk (on behalf of MLI) agreed to the following CDS trades on or about the respective dates and at the notional values below:

Trade Date	Notional Value	Number of Trades
09/19/2006	$132,000,000	19
09/20/2006	$90,000,000	7
09/21/2006	$47,000,000	7
10/02/2006	$85,000,000	10
10/06/2006	$120,000,000	15
10/10/2006	$90,000,000	6
10/13/2006	$40,000,000	4

95. Together, the 68 CDS trades above had a notional value of $604 million, representing approximately 40 percent of the total notional value of Auriga's fully-ramped portfolio, and 75 percent of the notional value of the total number of CDS trades between 250 Capital (on behalf of Auriga) and MLI before and after closing.

96. At the time of each of the September and October Trades, 250 Capital and the Desk agreed upon the reference RMBS asset on which Auriga was to sell protection as well as the spread payable to Auriga.

97. Although MLPFS did not generate confirmations for the September and October Trades, both 250 Capital and the Desk understood that they were bound to execute the CDS, and that the trades occurred, when they agreed upon the RMBS reference assets and spreads on the respective September and October dates above.

98. In contemporaneous emails, both 250 Capital and the Desk referred to trades as having been "locked" once they agreed upon spreads. For example, in an email to 250 Capital dated October 6, 2006 – one of the trade dates set forth above – referring to an asset on which 250 Capital had agreed to sell protection, a trader on the Desk ("Trader") wrote: "spreads are locked effective now. Cool?" Similarly, an October 11, 2006 spreadsheet that 250 Capital sent to the Desk records the October 6 Trades as "locked."

99. The Desk's informal platform for retaining information from prior trades, known as "Xlint," further reflected the Desk's understanding that the September and October Trades took place on the September and October dates set forth above, in that the Desk's entries for 14 of the Auriga CDS trades in Xlint show dates in September or October.

100. MLPFS's "US Based Credit Derivative Business Compliance Supervision Manual," which applied to the Desk in 2006, required, *inter alia*, that "[a]ll business transactions must be properly recorded on the Firm's 'Books and Records' in a prompt and timely manner (processed the same day as the transaction is executed)[.]"

101. Despite the parties' understanding that the September and October Trades were effective in September and October, and MLPFS's policy that trades were to be recorded "in a prompt and timely manner," the Desk delayed recording 68 of those trades in MLPFS's database for synthetic trades, known as "Aurora." The Desk did so in order to benefit Merrill by avoiding the need to pay carry to Magnetar on any of the September and October Trades that might be excluded from Auriga's portfolio prior to closing.

102. Ordinarily, to compensate Merrill for the risk it assumed in keeping the CDS in Auriga's warehouse on its books during the ramping period, Merrill would have kept for itself the warehouse carry, including CDS spread, paid to the warehouse prior to closing. However, in exchange for Magnetar's agreement to purchase the equity in Auriga, MLPFS agreed to pay the carry to Magnetar, which subsequently agreed to pay 25% of the carry it received to 250 Capital, but MLPFS did not promptly record that liability. The Desk therefore deferred recording the trades in Aurora until after Auriga priced on November 22, 2006, when it became reasonably certain that each of the September and October Trades would be transferred from the warehouse into Auriga's portfolio.

103. In a November 15, 2006 email to the Head Trader, the Trader, who had executed the September and October Trades, wrote: "Most single name trades [facing the Desk] are not done as I didn't want to give [Magnetar] carry if the bond was thrown out of the vehicle."

104. Similarly, in a December 20, 2006 email to the Head Trader under the subject heading "CDS for auriga", 250 Capital's Managing Director wrote: "[The Trader] mentioned a concern about the cds names and the way we booked them. I was insistant [*sic*] that we lag the trade, but lock the spreads. the negative carry ml would have on that for the warehouse was about 750k /month given Magnetar's warehouse carry arrangement. There was no reason to start paying a derivative early."

105. Moreover, the Desk postponed the entry of the September and October trades in Aurora because it believed that doing so might avoid a need for Merrill to trade out of the CDS if they were not ultimately included in Auriga's portfolio. If the CDS trades were not transferred from the warehouse to the CDO, the long positions that 250 Capital acquired on behalf of Auriga would have remained on MLPFS's books, potentially requiring that the Desk unwind them. In the Desk's view, it could obviate any need to do so by delaying the recording of the September and October Trades.

106. As the Trader explained to the Head Trader in a November 27, 2006 email: "[250 Capital] and I discussed the option of booking the trades and we mutually decided not to. I saw no reason to pay carry … and I thought I was giving us/[250 Capital] more flexibility if names were kicked out of the deal (i.e. if the trade doesn't exist there's nothing to liquidate)."

107. Accordingly, Merrill did not record 68 of the September and October Trades in its systems until after Auriga priced on November 22, 2006, when it became reasonably certain that the September and October Trades would be included in Auriga's portfolio.

108. Moreover, Merrill inaccurately recorded the date for the September and October Trades in Aurora as November 22, 2006, rather than the September and October dates on which the trades actually occurred. Thus, MLPFS's books and records showed a trade date for the September and October 2006 Trades that was as much as two months later than the actual trade dates.

D. Violations

109. As a result of the conduct described above, MLPFS willfully[13] violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit, in the offer or sale or securities, respectively "obtain[ing] money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading," and "engag[ing] in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."

110. As a result of the conduct described above, MLPFS willfully[14] violated Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(2) thereunder, which require every registered broker or dealer to make and keep current ledgers or other records reflecting, among other things, all assets and liabilities.

[13] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).
[14] *See supra* note 13.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent MLPFS's Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b)(4) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent MLPFS cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(2) thereunder.

B. Respondent MLPFS is censured.

C. Respondent shall, within ten (10) business days of the entry of this Order, pay disgorgement of $56,286,000 and prejudgment interest of $19,228,027 and a civil money penalty in the amount of $56,286,000 (for a total payment of $131,800,027) to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying MLPFS as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Andrew M. Calamari, Director, New York Regional Office, Securities and Exchange Commission, 3 World Financial Center Suite 400, New York, NY 10281.

By the Commission.

Elizabeth M. Murphy
Secretary