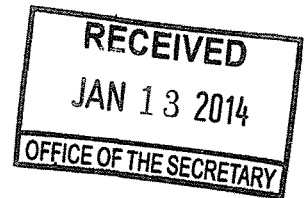


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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15574

In the Matter of

HARDING ADVISORY LLC and
WING F. CHAU,

Respondents.

ANSWER

RESPONDENTS HARDING ADVISORY LLC
AND WING F. CHAU'S ANSWER

Respondents, Harding Advisory LLC ("Harding") and Wing F. Chau ("Mr. Chau") (collectively "Respondents"), by their counsel, answer the U.S. Securities and Exchange Commission's ("SEC") Order Instituting Administrative and Cease and Desist Proceedings (the "OIP"). To the extent that any specific allegation in the OIP is not addressed, that allegation is denied.

To the extent various paragraphs of the OIP state legal conclusions and/or summarize the Division of Enforcement's ("Division") general theory of its case, no responsive pleading is required, and Respondents deny the same. Specifically, Respondents deny that they made any materially misleading statements or omissions, engaged in a scheme to defraud, breached any obligations under the Investment Advisers Act, or otherwise engaged in any actionable or wrongful conduct, including in connection with the synthetic collateralized debt obligations ("CDO") referred to as Octans I and Norma. Nevertheless:

1. Respondents deny the allegations contained in paragraph 1 of the OIP.

Respondents respectfully refer the Administrative Law Judge (“ALJ”) to the actual language contained in the relevant deal documents including, but not limited to, the engagement letter signed on or about May 26, 2006 (the “Engagement Letter”), the warehouse agreement executed on or about May 26, 2006 (the “Warehouse Agreement”), and the collateral management agreement executed on September 26, 2006 (the “Collateral Management Agreement”), for the rights and obligations contained therein.

2. Respondents deny the allegations contained in paragraph 2 of the OIP.

3. Respondents deny the allegations contained in paragraph 3 of the OIP, except admit, upon information and belief, that: (i) the Octans I transaction was a \$1.5 billion CDO that closed on September 26, 2006; (ii) the collateral for the transaction consisted mostly of credit default swaps (“CDS”) referencing subprime residential mortgage-backed securities (“RMBS”) as well as securities of other CDOs backed by RMBS; (iii) Octans I was structured and marketed by subsidiaries of Merrill Lynch & Co., Inc. (collectively “Merrill Lynch”); (iv) Octans I declared an event of default on or about April 3, 2008; and (v) Harding was paid various fees in connection with its work as a collateral manager for Octans I. Respondents respectfully refer the ALJ to the actual language contained in the Engagement Letter and Warehouse Agreement.

4. Respondents deny the allegations contained in paragraph 4 of the OIP, except admit that the Warehouse Agreement was signed by a representative of Harding’s predecessor in interest (Maxim), Merrill Lynch, and Magnetar. Respondents respectfully refer the ALJ to the actual language contained in the Warehouse Agreement.

5. Respondents deny the allegations contained in paragraph 5 of the OIP, and respectfully refer the ALJ to the actual language contained in the offering circular dated September 20, 2006 (the "Offering Circular") and marketing materials prepared in connection with Octans I, described in the OIP as the "so-called 'pitchbook'" (the "Pitchbook").

6. Respondents deny the allegations contained in paragraph 6 of the OIP, except admit that Mr. Chau executed the Collateral Management Agreement. Respondents respectfully refer the ALJ to the actual language contained in the Collateral Management Agreement.

7. Respondents deny the allegations contained in paragraph 7 of the OIP, except admit that: (i) Harding bought certain tranches of Norma securities for four CDOs that it managed; and (ii) Norma was underwritten by Merrill Lynch. Respondents respectfully refer the ALJ to the actual language contained in the collateral management agreements for each of those four CDOs and the relevant emails.

8. Respondents deny the allegations contained in the first sentence of paragraph 8 of the OIP. Respondents do not have, and are unable to obtain, sufficient information to admit or deny the allegations contained in the second and third sentences of paragraph 8 of the OIP. Respondents deny the allegations contained in the final sentence of paragraph 8 of the OIP.

9. Respondents deny the allegations contained in paragraph 9 of the OIP, except admit that (i) Harding is a registered investment adviser; (ii) Harding's principal is Wing Chau; (iii) Harding was founded in or about July 2006 as the successor to an affiliate of Maxim Group LLC; (iv) Harding has been the adviser or sub-adviser to CDOs, including Octans I; (v) Harding had approximately \$20 billion in assets under management at certain times during 2007; and (vi) Harding remains collateral manager for certain CDOs.

10. Respondents deny the allegations contained in paragraph 10 of the OIP, except admit that Mr. Chau, age 47 and a resident of Basking Ridge, New Jersey, has served since 2006 as Harding's CEO, Managing Member, and Chief Compliance Officer.

11. Respondents do not have, and are unable to obtain, sufficient information to admit or deny the allegations contained in paragraph 11 of the OIP, except admit, upon information and belief, that Merrill Lynch structured and marketed the Octans I transaction.

12. Respondents do not have, and are unable to obtain, sufficient information to admit or deny the allegations contained in paragraph 12 of the OIP, except admit, upon information and belief, that Merrill Lynch executed the Warehouse Agreement. Respondents respectfully refer the ALJ to the actual language contained in the Warehouse Agreement.

13. Respondents do not have, and are unable to obtain, sufficient information to admit or deny the allegations contained in paragraph 13 of the OIP, except admit that certain CDOs in which Magnetar purchased equity were named after constellations and were known in the market as "Constellation CDOs."

14. Respondents admit the allegations contained in paragraph 14 of the OIP.

15. Respondents deny the allegations contained in paragraph 15 of the OIP, except admit that typically: (i) a CDO is a special-purpose vehicle that issues securities, including debt securities, to investors and uses the proceeds to invest in fixed income securities or loans; (ii) a CDO's debt is issued in different tranches that feature varying levels of risks and returns; (iii) 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; (iv) 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; and (v) the inverse is true for the lowest-rated tranche in the CDO.

16. Respondents admit the allegations contained in paragraph 16 of the OIP.

17. Respondents deny the allegations contained in paragraph 17 of the OIP, except admit: (i) a CDO can be backed by bonds (a “cash CDO”) or by CDS (a “synthetic CDO”); (ii) a CDO backed by both bonds and CDS is called a “hybrid CDO;” (iii) Octans I was a hybrid CDO with approximately 90 percent synthetic assets; (iv) generally speaking, BWICs were sent out by a “long” party seeking quotes from potential “short” counterparties on the assets referenced in the BWIC; (v) the winner of a BWIC would be the party that offered to pay the highest premium amount; (vi) OWICs were sent out by a “short” party seeking quotes from a potential “long” counterparties on the assets referenced in the OWIC; and (vii) the winner of an OWIC would generally be the party willing to accept the lowest premium amount.

18. Respondents deny the allegations contained in paragraph 18 of the OIP, except admit that Harding had certain rights and obligations under the Engagement Letter, the Warehouse Agreement, and the Collateral Management Agreement. Respondents respectfully refer the ALJ to the actual language contained in these documents.

19. Respondents deny the allegations contained in paragraph 19, except admit that a CDO transaction may or may not have a collateral manager and that the role and importance of the collateral manager varies by deal as determined and described in the relevant transaction documents.

20. Respondents deny the allegations contained in paragraph 20 of the OIP, except admit that Octans I was structured and marketed by Merrill Lynch. Respondents respectfully refer the ALJ to the actual language contained in the Warehouse Agreement and other transaction documents for information about the warehouse and Harding’s obligations with respect thereto.

21. Respondents do not have and are unable to obtain sufficient information to admit or deny certain allegations contained in paragraph 21 of the OIP and deny the remaining allegations.

22. Respondents do not have and are unable to obtain sufficient information to admit or deny certain allegations contained in paragraph 22 of the OIP and deny the remaining allegations, and respectfully refer the ALJ to the to the actual language contained in the relevant emails.

23. Respondents deny the allegations contained in paragraph 23 of the OIP, except Respondents admit that inability to place various tranches of the capital structure of a CDO would be an impediment to closing the CDO.

24. Respondents do not have, and are unable to obtain, sufficient information to admit or deny the allegations contained in the first sentence of paragraph 24 of the OIP. Respondents deny the allegations contained in the second, third, and fourth sentences of paragraph 24 of the OIP, except admit that on or about May 26, 2006, Merrill Lynch, Magnetar, and Harding's predecessor in interest, Maxim, entered into an Engagement Letter. Respondents respectfully refer the ALJ to the actual language contained in the Engagement Letter.

25. Respondents deny the allegations contained in paragraph 25 of the OIP, except Respondents admit that in 2006 and 2007, Magnetar was investing in equity of certain CDOs and that many market participants hedged their long positions by taking off-setting short positions.

26. Respondents deny the allegations contained in paragraph 26 of the OIP, except admit: (i) Octans I was a CDO arranged by Merrill Lynch for which Harding became the

collateral manager; and (ii) after Octans I closed in 2006, Harding managed three other Constellation CDOs and other CDOs arranged by Merrill Lynch.

27. Respondents do not have and are unable to obtain sufficient information to admit or deny certain allegations contained in paragraph 27 of the OIP and deny the remaining allegations, except admit that: (i) on or about May 26, 2006, Merrill Lynch, Magnetar and Maxim, Harding's predecessor in interest, entered into the Warehouse Agreement; and (ii) Mr. Chau executed the Warehouse Agreement.

28. Respondents deny the allegations in paragraph 28 of the OIP and respectfully refer the ALJ to the actual language contained in the Warehouse Agreement for the rights and obligations of the parties to that agreement.

29. Respondents deny the allegations contained in paragraph 29 of the OIP.

30. Respondents deny the allegations contained in paragraph 30 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

31. Respondents deny the allegations contained in paragraph 31 of the OIP.

32. Respondents do not have and are unable to obtain sufficient information to admit or deny certain allegations contained in paragraph 32 of the OIP and deny the remaining allegations.

33. Respondents admit the allegations contained in paragraph 33 of the OIP.

34. Respondents do not have and are unable to obtain sufficient information to admit or deny certain allegations contained in paragraph 34 of the OIP and deny the remaining allegations, except admit that: (i) in or about May 2006, there were communications among Harding, Merrill Lynch, and Magnetar about acquiring exposure to the ABX index; (ii) the parties understood and agreed that Harding might not regard all the bonds in the ABX index as

acceptable; and (iii) the parties agreed that Harding would exclude from ABX index bonds it did not think were acceptable.

35. Respondents deny the allegations contained in paragraph 35 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

36. Respondents deny the allegations contained in paragraph 36 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

37. Respondents deny the allegations contained in paragraph 37 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

38. Respondents deny the allegations contained in paragraph 38 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

39. Respondents deny the allegations contained in paragraph 39 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

40. Respondents deny the allegations contained in paragraph 40 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails, except admit that the bonds from the ABX index that were rejected by Harding were excluded from the Octans I collateral pool and the bonds from the ABX Index that were selected by Harding were included in the Octans I collateral pool.

41. Respondents deny the allegations contained in paragraph 41 of the OIP.

42. Respondents deny the allegations contained in paragraph 42 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

43. Respondents deny the allegations contained in paragraph 43 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

44. Respondents deny the allegations contained in paragraph 44 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

45. Respondents deny the allegations contained in paragraph 45 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

46. Respondents deny the allegations contained in paragraph 46 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

47. Respondents deny the allegations contained in paragraph 47 of the OIP.

48. Respondents deny the allegations contained in paragraph 48 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

49. Respondents deny the allegations contained in paragraph 49 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

50. Respondents deny the allegations contained in paragraph 50 of the OIP.

51. Respondents deny the allegations contained in the first and second sentences of paragraph 51 of the OIP, except admit that: (i) Harding employees discussed the ABX index in or about August or September 2006; and (ii) Harding later executed ABX Index trades for other CDOs in which it acted as a collateral manager. Respondents deny the allegations contained in the third and fourth sentences of paragraph 51 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

52. Respondents deny the allegations contained in paragraph 52 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

53. Respondents deny the allegations contained in paragraph 53 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

54. Respondents deny the allegations contained in paragraph 54 of the OIP.

55. Respondents deny the allegations contained in paragraph 55 of the OIP and respectfully refer the ALJ to the actual language contained in the pitchbook.

56. Respondents deny the allegations contained in paragraph 56 of the OIP and respectfully refer the ALJ to the actual language contained in the Offering Circular.

57. Respondents deny the allegations contained in paragraph 57 of the OIP and respectfully refer the ALJ to the actual language contained in the Collateral Management Agreement.

58. Respondents deny the allegations contained in paragraph 58 of the OIP and respectfully refer the ALJ to the actual language contained in the Offering Circular.

59. Respondents deny the allegations contained in paragraph 59 of the OIP.

60. Respondents deny the allegations contained in paragraph 60 of the OIP and respectfully refer the ALJ to the actual language contained in the marketing materials and the relevant emails.

61. Respondents deny the allegations contained in paragraph 61 of the OIP and respectfully refer the ALJ to the relevant emails and communications for their contents.

62. Respondents deny the allegations contained in paragraph 62 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

63. Respondents deny the allegations contained in paragraph 63 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

64. Respondents deny the allegations contained in paragraph 64 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

65. Respondents deny the allegations contained in paragraph 65 of the OIP and respectfully refer the ALJ to the actual language contained in the relevant emails.

66. Respondents deny the allegations contained in paragraph 66 of the OIP, except admit that: (i) Harding placed its order for Norma in January 2007; and (ii) Harding did not purchase Norma notes and securities until on or about March 1, 2007. Respondents respectfully refer the ALJ to the actual language contained in the relevant emails.

67. Respondents deny the allegations contained in paragraph 67, except admit that Harding placed Norma notes into portfolios of four CDOs that it managed.

68. Respondents deny the allegations contained in paragraph 68, except admit that a representative of Harding executed collateral management agreements for the four CDOs in which Harding placed Norma notes. Respondents respectfully refer the ALJ to the actual language contained in the relevant collateral management agreements and offering circulars.

69. Respondents deny the allegations contained in paragraph 69 of the OIP.

70. Respondents deny the allegations contained in paragraph 70 of the OIP.

71. Respondents deny the allegations contained in paragraph 71 of the OIP.

72. Respondents deny the allegations contained in paragraph 72 of the OIP.

73. Respondents deny the allegations contained in paragraph 73 of the OIP.

To the extent the unenumerated paragraphs after paragraph 73 state legal conclusions and/or summarize the Division's general theory of its case, no responsive pleading is required, and Respondents deny the same.

AFFIRMATIVE DEFENSES

Respondents assert the following defenses without assuming the burden of proof or any other burden if such burdens would otherwise be on the Division.

1. The claims set forth in the OIP are barred by the applicable statute of limitations.

2. The claims set forth in the OIP are barred by the doctrine of laches.
3. The claims set forth in the OIP are barred by the doctrine of estoppel.
4. The claims set forth in the OIP are barred, in whole or in part, by the doctrine of unclean hands.
5. The proceeding violates Respondents' constitutional rights including, but not limited to, Respondents' right to due process and equal protection of the law.
6. The claims set forth in the OIP fail to state causes of action against the Respondents because of Respondents' reliance on advice of counsel.
7. The claims set forth in the OIP fail to state a claim.
8. The purported claims against Respondents and the allegations upon which they are based are improperly vague, ambiguous, and confusing, contain misstatements of fact, and omit certain other material facts.
9. The claims set forth in the OIP are barred because the investors assumed the risk of investing in the collateral pool.
10. The claims set forth in the OIP are barred, in whole or in part, because this proceeding violates Respondents' rights to a jury trial in a case seeking penalties.

ADDITIONAL DEFENSES

Respondents hereby reserve the right to amend this answer prior to the hearing of this matter and to file additional defenses.

Dated: January 10, 2014

Respectfully submitted:

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