

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75878 / September 10, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-15098

In the Matter of

Credit Suisse Securities USA (LLC);
DLJ Mortgage Capital, Inc.;
Credit Suisse First Boston Mortgage
Acceptance Corp.;
Credit Suisse First Boston Mortgage
Securities Corp.; and
Asset Backed Securities Corporation,

Respondents.

ORDER ESTABLISHING FAIR
FUND AND APPROVING PLAN
OF DISTRIBUTION BULK
SETTLEMENT PRACTICE

I.

On November 16, 2012, the Securities and Exchange Commission (“Commission”) issued an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”) against Credit Suisse Securities (USA) LLC (“Credit Suisse Securities”), DLJ Mortgage Capital, Inc., Credit Suisse First Boston Mortgage Acceptance Corp., Credit Suisse First Boston Mortgage Securities Corp., and Asset Backed Securities Corporation (collectively, “Credit Suisse” or “Respondents”).¹ In the Order, the Commission found that the Respondents engaged in misconduct including misrepresentations or omissions in the offer or sale of residential mortgage backed securities (“RMBS”) relating to

¹ Securities Act Rel. No. 9368 (Nov. 16, 2012), available at <http://sec.gov/litigation/admin/2012/33-9368.pdf>.

two undisclosed business practices that violated Sections 17(a)(2) and (3) of the Securities Act of 1933 (the “Securities Act”). 15 U.S.C. § 77q(a)(2) and (3)². The Commission ordered the payment of separate monetary sanctions for each set of business practices. The Order indicated that, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, the Commission may create two separate Fair Funds, one for each group of investors harmed by the relevant business practices.

This order pertains to one of those practices, the bulk settlement practice (“Bulk Settlement Practice”). For the Bulk Settlement Practice conduct, the Commission ordered Respondents to pay, jointly and severally, a total of \$101,747,769 in disgorgement, prejudgment interest, and civil money penalties. All payments required by the Order have been made.

As set out in the Order, the Commission’s findings involving the Bulk Settlement Practice relate to 75 RMBS offerings underwritten by Credit Suisse from 2005 to 2007.

Structure of the RMBS Offerings. Each of the 75 RMBS offerings involved the securitization of collateral, consisting of residential mortgage loans, many of which had been previously purchased by Credit Suisse. Credit Suisse created separate trusts for each offering and deposited residential mortgage loans into each trust (“RMBS Trusts”). The RMBS Trusts then issued numerous classes or “tranches” of debt securities (commonly referred to as “certificates”) backed by the RMBS collateral. Credit Suisse marketed and sold these certificates to investors using various offering documents. Each tranche of certificates held different rights to the mortgage payments and other defined funds (“cash flows”) going to the RMBS Trust, *e.g.*, to the principal and interest payments made on the underlying mortgages. In broad terms, the

² The Commission also found that one respondent, Asset Backed Securities Corp., violated Section 15(d) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78o(d), and Rules 12b-20, 15d-1, and 15d-14(d) thereunder, 17 C.F.R. §§ 240.12b-20, 15d-1, and 15d-14(d), as a result of materially misleading statements in certifications that had been attached to reports filed with the Commission.

“senior tranches” of certificates held the first rights to cash flows to the RMBS Trust, and as a result paid a lower interest rate to investors; the “junior tranches” paid higher interest rates to investors, and their cash flow rights were subordinated to the senior tranches. This cash-flow priority structure is commonly referred to as a “waterfall.”

The Bulk Settlement Practice. In general, when preparing for an RMBS offering, Credit Suisse purchased mortgage loans from entities that originated the loans (“originators”). The purchase agreements in these transactions typically contained provisions committing the originator to repurchase a loan if the originator breached various representations and warranties or if a borrower missed one of the first three payments due following Credit Suisse’s purchase of the loan. The failure to make such a payment is referred to in the Order as an early payment default (“EPD”). When Credit Suisse discovered that a loan suffered an EPD or otherwise breached an originator’s representation or warranty, Credit Suisse often demanded that the originator repurchase the loan. If an originator agreed to repurchase such a loan, and Credit Suisse had sold the loan to an RMBS Trust, Credit Suisse repurchased it from the Trust. However, as noted in the Order, Credit Suisse often settled repurchase claims against originators for loans sold to an RMBS Trust by accepting, and keeping for itself, cash payments from the originator in lieu of a repurchase while leaving the EPD loans underlying the settlements in an RMBS Trust. The Order describes such settlements as “bulk settlements” because they often involved cash payments for many different loans. Between 2005 and 2010, Credit Suisse entered into approximately 110 bulk settlements with originators related to loans previously sold to the 75 RMBS Trusts. As a result of its Bulk Settlement Practice, Credit Suisse improperly obtained approximately \$55.7 million, including approximately \$28.1 million in settlement proceeds and losses avoided of approximately \$27.6 million.

In connection with its Bulk Settlement Practice, Credit Suisse made untrue statements of material fact and omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading. As described in the Order, Credit Suisse made various statements in the relevant offering materials about its obligations to repurchase loans from RMBS Trusts that materially breached any representations and warranties to repurchase loans that Credit Suisse made to the RMBS Trusts, and other information relevant to the origination of the loans. For example, Credit Suisse represented that it would repurchase loans from the RMBS Trusts whenever it discovered or was notified of a material breach of one of its representations or warranties to the RMBS Trusts. Additionally, for some RMBS offerings, Credit Suisse expressly represented in offering documents that it would repurchase certain early defaulting loans from the RMBS Trust. Offering documents for all of the 75 RMBS offerings represented that certain Credit Suisse Securities affiliates transferred all “right, title and interest” to the loans, as well as all “proceeds” from the loans, into the trusts. Because Credit Suisse failed to disclose its Bulk Settlement Practice and, for some RMBS offerings failed to comply with offering document provisions that required it to repurchase early defaulting loans, these statements were materially misleading or omitted material information necessary to make the statements not misleading. For example, notwithstanding its representations about when it would repurchase loans from the RMBS Trusts, Credit Suisse did not disclose that at times it also enforced EPD rights without repurchasing loans or that it retained the proceeds from bulk settlements entered into in such situations.

In addition, the Bulk Settlement Practice operated as a fraud or deceit on investors purchasing certificates in the RMBS offerings. The relevant conduct included, but was not limited to: (1) the settling of repurchase claims against originators, and keeping the consideration

received, when Credit Suisse had sold the underlying loans to RMBS Trusts; (2) the collection of settlement proceeds for securitizations where Credit Suisse had passed through certain rights to an RMBS Trust or had itself promised to repurchase certain EPD loans; (3) the application of different quality review procedures for loans that Credit Suisse sought to put back to originators and the practice of not repurchasing such loans from trusts unless the originators had agreed to repurchase them; (4) the failure to disclose the bulk settlement practice when answering investor questions about EPDs; and (5) the failure to notify trustees or investors about the benefits Credit Suisse retained related to securitized loans, despite knowing that investors were unaware of the bulk settlement practice.

The Order stated that funds paid into each Fair Fund would be distributed pursuant to a distribution plan to be administered in accordance with the Commission's Rules of Practice governing Fair Fund and Disgorgement Plans (the "Commission's Rules"). On August 14, 2014, pursuant to the Order and Rule 1103 of the Commission's Rules, 17 C.F.R. § 201.1103, the Commission proposed the plan³ ("Proposed Bulk Settlement Plan" or "Proposed Plan") and issued a notice of the Proposed Plan and opportunity for comment (the "Notice").⁴ According to the Proposed Plan, the "purpose of this distribution is to compensate investors harmed by Credit Suisse's misrepresentations and omissions in its offering materials regarding the Bulk Settlement Practice." (¶ 5.)⁵

³ Available at <http://www.sec.gov/litigation/admin/2014/34-72850-ppd.pdf>.

⁴ Exchange Act Rel. No. 72850 (Aug. 14, 2014), available at <https://www.sec.gov/litigation/admin/2014/34-72850.pdf>. The Notice provided all interested persons thirty days to submit written comments on the Proposed Plan. The Notice advised such persons that they could obtain a copy of the Proposed Plan from the Commission's website or by submitting a written request to the Commission. The notice stated that all persons who desired to comment on the Proposed Plan could submit their comments no later than September 15, 2014.

⁵ Paragraph references in this order denoted by the symbol "¶" refer to the numbered paragraphs in the Proposed Bulk Settlement Plan.

The proposed distribution methodology allocates the Net Fair Fund among the RMBS Trusts based on the proportion of the disgorgement paid by Respondents for each trust relative to the total disgorgement paid by Respondents. (¶ 55.) The funds for each trust are then allocated⁶ to each trust's Eligible Claimants⁷ on a *pro rata* basis determined by the Eligible Claimant's investment in the specific trust divided by the sum of all Eligible Claimants' investments in that trust. (¶ 56.)

The Commission received two comments on the Proposed Plan. This order addresses those comments.

After careful consideration, the Commission has determined to order a Fair Fund for the amounts paid by Respondents relating to the Bulk Settlement Practice conduct (the "Bulk Settlement Fair Fund"), and, for the reasons explained in this order, that the Proposed Bulk Settlement Plan should be approved with technical modifications (hereinafter the "Bulk Settlement Plan" or "Plan").⁸

⁶ As explained in the Proposed Bulk Settlement Plan, a preliminary allocation is made and any Eligible Claimant whose preliminary calculation is less than a *de minimis* amount is removed from the pool of Eligible Claimants. (¶ 57.) In the event that a particular Trust is undersubscribed such that a small number of Eligible Claimants would stand to receive a disproportionately large recovery, the Fund Administrator, with agreement of the Commission staff, may use discretion in determining the final amount of the recovery. (¶ 59.)

⁷ The Proposed Plan defines "Eligible Claimants" as persons (other than Excluded Parties) who purchased Eligible Securities on Eligible Purchase dates. The Proposed Plan also defines the capitalized terms in the definition of Eligible Claimant.

⁸ The Bulk Settlement Plan contains minor technical modifications to its Proposed Bulk Settlement Plan. The technical modifications are: (i) in ¶ 59, wording changes were made to eliminate an undefined term, "Eligible Claim;" (ii) the modifier "proposed" is deleted wherever it appeared in the Proposed Bulk Settlement Plan because the Bulk Settlement Plan when adopted by the Commission is no longer "proposed;" and (iii) ¶ 85 is deleted because the Bulk Settlement Plan when adopted will not be published for further Notice and Comment. These technical modifications are minor. No substantive changes have been made to the methodology for calculating distributions or to the definition or eligibility criteria for Eligible Claimants. Commission staff does not deem these changes to be substantial or to require republication pursuant to Commission Rule 1103. Moreover, under Rule 1104, the Commission has complete discretion when considering whether to republish a plan for notice and comment, and the Commission is not required by Rule 1104 to republish a plan *even if* the Commission substantially modifies it prior to adoption.

II.

A. Public Comments on the Bulk Settlement Plan

1. Chris Katopis, Executive Director, Association of Mortgage Investors Letter

Chris Katopis, the Executive Director of the Association of Mortgage Investors (“AMI”), submitted a comment (the “AMI Comment”)⁹ that stated three concerns with the Proposed Plan: 1) that the Proposed Plan’s *pro rata* allocation “improperly override[s] the recognized payment priority or ‘waterfall’ established by the governing documents of the RMBS trust . . . thereby favoring senior certificate-holders, who may not in fact suffer losses, over more junior classes of certificate-holders”; 2) that the Proposed Plan arbitrarily excludes nearly all subsequent purchasers, potentially undermining the secondary market for RMBS; and 3) that by paying investors directly rather than paying the RMBS trustees, “the Proposed Plan fails to take advantage of [the RMBS waterfall,] a method of distribution that is more efficient, fair, and consistent with investor expectations.” The Commission has considered the AMI Comment and, for the reasons discussed below, is approving the Proposed Bulk Settlement Plan with only technical modifications.¹⁰

First, AMI’s contention that a *pro rata* allocation overrides the RMBS Trusts’ waterfall, thereby favoring senior certificate-holders “who may not in fact [have] suffer[ed] losses,” indicates that the harm that is the focus of AMI’s concern is limited to the *investment losses* that flowed from the *eventual performance* of certificates held by investors. Subsequent investment performance losses, however, are distinct from the harm to investors addressed in the

⁹The three concerns raised in the AMI Comment have also been raised for the Commission’s distribution plan for the previously noted other undisclosed Credit Suisse business practice, the first payment default practice (“FPD Practice”). Although these practices involved different conduct, the portion of this order responding to the AMI Comment and the corresponding portion of the order approving the distribution plan for FPD Practice are nearly identical because the analysis of the concerns is the same for both plans.

¹⁰ See fn. 7, *supra*.

Bulk Settlement Plan. A proportionate harm accrued to *all* investors *at the time of the initial offering* when, as a result of Credit Suisse’s misconduct including its misrepresentations and omissions in the offering documents and marketing materials, investors were deprived of the benefit of their bargain with Credit Suisse. The Bulk Settlement Plan’s purpose and design for addressing investor harm flow directly from the violations at issue in the Order. As noted in the Plan, the “purpose of this distribution is to compensate investors in RMBS Trusts harmed by Credit Suisse’s misrepresentations and omissions *in its offering materials* regarding the Bulk Settlement Practice.” (§ 5, emphasis added.) The Order found that Credit Suisse violated Sections 17(a)(2) and 17(a)(3) of the Securities Act because of material misstatements and omissions, and other acts that operated as a fraud or deceit on RMBS investors, “in the offer or sale of securities.” The misleading statements and omissions at issue in the Order were made in the securitizations’ offering documents and in other materials Credit Suisse used to market the offering to potential investors. In those documents and materials, Credit Suisse misled investors through various statements, noted above and in the Order, while failing to disclose the Bulk Settlement Practice, and with respect to certain RMBS transactions, by its failure to comply with offering document provisions that required Credit Suisse to repurchase certain loans. As noted in the Commission’s Order, Credit Suisse’s Bulk Settlement Practice would have been material to investors’ decisions whether to invest with Credit Suisse in these RMBS offerings had investors known about this practice.

Had Credit Suisse disclosed *to potential initial investors* the operation of its Bulk Settlement Practice, it stands to reason that *all initial* investors would have considered the information in their investment decisions. Investors may have decided to invest in different securities or demanded to be compensated (*e.g.*, to receive a higher interest rate) based on their

knowledge of the Bulk Settlement Practice. For that reason, even if there had been no losses from the failure of the mortgages underlying the 75 securitizations, there still would have been harm to *all initial* investors caused by the Respondents' conduct. Unlike investment performance harm, the harm in the offer and sale affected senior and junior certificate-holders alike. It is this harm that the Commission's Plan seeks to address through a *pro rata* distribution. The Plan is reasonably designed to compensate investors for such harm.

The Commission's objective is to distribute the Bulk Settlement Practice Fair Fund in a fair and reasonable manner, taking into account the relevant facts and circumstances.¹¹ In light of the factual and legal bases for Respondents' liability, the Commission exercises its discretion to distribute funds *pro rata* to all investors who purchased certificates in the RMBS Trusts' offerings or near the time of the offerings.

Closely related to AMI's first concern is AMI's third concern that the Proposed Plan fails to take advantage of the efficiencies, fairness and consistency with investor expectations associated with the waterfall priority of distributions. AMI's contention, however, that the Commission has "overlook[ed] the possibility that simply distributing proceeds through the trusts to flow through established waterfalls is a more fair and efficient means to compensate investors" is incorrect. The Commission staff carefully considered whether to distribute funds directly to the trustees for the RMBS Trusts as well as the significance of the RMBS Trusts' waterfalls. There are significant legal and practical barriers to a waterfall distribution, and the proceeds cannot be "simply" distributed through the RMBS Trusts. First, an RMBS Trust's waterfall generally determines the prioritization of defined cash flows from the collateral owned

¹¹ See *Official Committee of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 82 (2d Cir. 2006) ("So long as the district court is satisfied that 'in the aggregate, the plan is equitable and reasonable,' the SEC may engage in the 'kind of line-drawing [that] inevitably leaves out some potential claimants'"), citing *SEC v. Wang*, 944 F.2d 80, 88 (2d Cir. 1991).

by the Trusts. However, AMI does not contend that the funds held by the Fair Fund - which consist of ill-gotten gains obtained by certain Respondents, civil money penalties, and prejudgment interest - constitute such a defined cash flow. If funds held by the Fair Fund were paid to an RMBS Trust, the Trust's waterfall would not necessarily determine how such funds would be allocated. Second, assuming that, as noted by AMI, the governing documents of the RMBS Trust "provide for the allocation of the losses on a mortgage pool," this fact does not necessarily determine how a Fair Fund payment would be allocated. As noted above, the funds placed in the Bulk Settlement Practice Fair Fund were ill-gotten gains obtained by certain Respondents, civil money penalties, and prejudgment interest, not payments for investor damages or restitution. Thus, the Commission concludes that, rather than being a "simple solution," distributing funds directly to the RMBS Trusts would inject a great deal of uncertainty and complexity regarding how RMBS trustees would allocate funds to current or former investors in the RMBS Trusts due to the complex nature of the trusts and their waterfalls. The Commission's Plan avoids these uncertainties.

AMI's remaining concern is with the Proposed Plan's distribution of funds to investors who purchased securities at or near the time of the initial offerings, rather than investors who purchased certificates on the secondary market long after the initial offerings. This feature of the Proposed Plan is also derived from the factual and legal bases for Respondents' liability. Again, the Commission's Order found that the Respondents' liability stemmed from their conduct in the "*offer or sale of securities.*" All initial investors in the RMBS Trusts experienced harm caused by Respondents' material misrepresentations and omissions and other fraudulent acts depriving investors of the benefit of their bargain, including whether to decline to participate in the offering or to negotiate a more favorable purchase price. For that reason, the Proposed Plan distributes

the Bulk Settlement Practice Fair Fund to investors who purchased certificates at or near the time of the initial offering.

The Commission staff is not aware of extant records that would allow the Fund Administrator unambiguously to identify investors who bought directly from Respondents in the offering. In the absence of such records, the Plan treats investors who purchased certificates within 30 days of the offering as “initial investors.” The 30-day cutoff reasonably ensures that distributions are made to those investors most likely to have been directly harmed by the conduct at issue in the Order. Investors whose purchases fall outside the 30-day cutoff (“secondary investors”) were more likely to have had access to additional information about the RMBS collateral that was unavailable to initial investors at the time of the offering. Beginning approximately 30 days after the offering, and continuing each month thereafter, the RMBS trustee issued reports that provided updated performance data for the RMBS collateral. So, for example, a secondary investor who purchased several months after the offering would have typically had access to multiple trustee reports when making an investment decision. The trustee reports would have shown how the mortgages in the collateral pool performed during that time (*e.g.*, how many mortgages were 30, 60, or 90 days delinquent, how many were in foreclosure, etc.). As a result, relative to an initial investor, a secondary investor was *less dependent* on Credit Suisse’s representations in the offerings because the secondary investor had access to a larger data set of actual performance history. Therefore, by limiting distributions to initial investors, the Proposed Bulk Settlement Plan is reasonably designed to distribute funds to those investors whose harm is most closely linked to Respondents’ misrepresentations and omissions *in the offering* itself.

**2. Erik Haas, Patterson Belknap Webb & Tyler, LLP,
Representing MBIA Insurance Corporation**

Counsel for MBIA Insurance Corporation (“MBIA”) submitted a comment letter (“MBIA Comment”) requesting that the Commission revise the Bulk Settlement Plan with respect to one of the 75 RMBS offerings, the Home Equity Mortgage Trust, Series 2007-2 (HEMT 2007-2). Specifically, MBIA requests the Proposed Plan be revised “to clarify MBIA’s entitlement to the reimbursement of its claim payments” relating to HEMT 2007-02. In support of its request, MBIA indicates that it has issued an insurance policy to guarantee payments to HEMT 2007-02 to cover amounts due to certificate holders (“Policy”) and has made over \$390 million in Policy payments to HEMT 2007-02. MBIA claims that as a result of its Policy and its related payments “MBIA owns any claims of certificate holders – including securities law claims – to the extent of the claim payments made” based on the principles of subrogation. In support of its position, MBIA asserts that the Respondents’ disgorgement payment pursuant to the Order “represents funds that belong to the Trusts, including HEMT 2007-02.” MBIA cites the Order for the proposition that keeping the proceeds of bulk settlements was “contrary to Respondents’ obligation to transfer ‘right, title and interest’ to the loans, and all ‘proceeds’ from the loans, to the securitization Trusts.” As a result, MBIA takes the position that funds to be distributed by the Plan “must be distributed in accordance with the ‘waterfall’” which in turn requires, according to MBIA, that “after senior certificate holders are paid their monthly distribution, all remaining funds [be] distributed to MBIA to reimburse it for prior draws on the Policy and for any amounts owed to it under [its] [i]nsurance [a]greement.”

The Commission has considered the MBIA Comment and, for the reasons discussed below, declines to substantively modify the Proposed Plan as requested by MBIA and, instead, is approving the Proposed Bulk Settlement Plan with only technical modifications.¹²

MBIA's request that the Proposed Plan be revised to "clarify MBIA's entitlement to reimbursement" would require the Commission to adjudicate a potential claim that MBIA may have based on a contractual insurance arrangement. It is not appropriate for the Commission, in essence, to adjudicate claims unrelated to the federal securities laws in the context of a Fair Fund distribution, such as whether MBIA has a contractual claim or subrogation right against purchasers or holders of HEMT 2007-02 certificates.

Moreover, even if it were appropriate for the Commission to consider such a claim, the findings in the Order cited by MBIA in support of its entitlement claim to Fair Fund proceeds misconstrue those portions of the Order. The statement in the Order that "[o]ffering documents . . . represented that [Credit Suisse] transferred all 'right, title and interest' to the loans, as well as all 'proceeds' from the loans to the trusts" is a finding limited to what *representations* were made to investors in the offering documents. This finding does not establish or purport to establish who owned, or was entitled receive, the bulk settlement proceeds.

Similarly, the Commission's findings related to Credit Suisse's ill-gotten gains and order of disgorgement establish only that Credit Suisse obtained funds causally connected to violations of the federal securities laws and, as a result, that Credit Suisse was not entitled to retain those funds. Contrary to the implication in MBIA's Comment, findings of ill-gotten gain and a

¹² See fn. 7, *supra*.

disgorgement order do not address whether any particular third person has or might have a claim for damages for the same amount.¹³

The Bulk Settlement Plan's purpose is to compensate investors harmed by Respondents' misrepresentations and omissions in Credit Suisse's offering materials. The Plan establishes a process for identifying those harmed investors, calculating the amount of individual distributions, and distributing funds. The process of formulating a Fair Fund distribution plan is not the proper time or place to resolve potential claims by third parties to funds proposed to be allocated to investors under the Plan. To the extent that claims exist, they should be asserted in an appropriate forum.

Like AMI's comment, MBIA's comment that Fair Fund funds "must be distributed in accordance with the waterfall" is premised on an assumption that investors were harmed because the bulk settlement funds were owed to the trusts. However, as noted above, harm accrued to *all* investors *at the time of the initial offering* when, as a result of the misrepresentations and omissions in the offering documents and marketing materials, these initial investors were deprived of the benefit of their bargain with Credit Suisse. Moreover, the Commission's Order did not make findings related to the trusts' rights to the proceeds of the Bulk Settlement Practice. The Commission's Order found that Respondents violated Sections 17(a)(2) and 17(a)(3) of the Securities Act based on the impact of the Respondents' undisclosed Bulk Settlement Practice on the relevant offers or sales of securities to investors. For reasons discussed more fully above, the

¹³ Cf. *SEC v. Fischbach Corp.*, 133 F.3d 170 (2d Cir. 1997) ("Although disgorged funds may often go to compensate securities fraud victims for their losses, such compensation is a distinctly secondary goal."); *SEC v. Whitmore*, 659 F.3d 1, 11 n.2 (D.C. Cir. 2001) (stating, in response to an argument about apportioning among wrongdoers, that "this court has emphasized that the purpose of disgorgement is not to compensate for losses but to deprive the wrongdoer of his ill-gotten gain").

Commission finds that a *pro rata* distribution to investors is fair and reasonable in light of the legal and factual bases for Respondents' liability.

B. Establishment of Bulk Settlement Fair Fund

The Proposed Bulk Settlement Plan compensates investors using, in addition to the \$68,747,769 in disgorgement and prejudgment interest monies collected from Respondents, the \$33 million penalty also collected for the Bulk Settlement Practice conduct. Under Section 308(a) of the Sarbanes-Oxley Act, as amended, a penalty ordered in an administrative action “shall, . . . at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of [investor] victims.” 15 U.S.C. § 7246(a). The Commission, in its discretion, concludes that the circumstances here justify the addition of the penalty money to other funds collected to create a Fair Fund for the Bulk Settlement Practice.

Accordingly, IT IS HEREBY ORDERED that:

- A. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, the Bulk Settlement Fair Fund is established; and
- B. Pursuant to Rule 1104 of the Commission's Rules, 17 C.F.R. § 201.1104, the Bulk Settlement Plan is approved.

By the Commission.

Brent J. Fields
Secretary