



**Financial Crisis Inquiry Commission  
Agenda Item 3 for Business Meeting of October 27, 2010  
Minutes of Telephonic Business Meeting of  
October 12, 2010**

**ATTACHMENT  
Confidential Referral Memorandum Supplement**

**FROM:** Financial Crisis Inquiry Commission Legal Staff  
**TO:** Commissioners of the Financial Crisis Inquiry Commission  
**Cc:** Wendy Edelberg  
**DATE:** October 11, 2010  
**RE:** Confidential Referral Memorandum Supplement

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Pursuant to section 5(c) (4) of the Fraud Enforcement and Recovery Act of 2009, one function of the Financial Crisis Inquiry Commission is to:

refer to the Attorney General of the United States and any State attorney general any person that the Commission finds may have violated the laws of the United States in relation to such crisis.

This Confidential Referral Memorandum Supplement is further to our prior Memorandum of September 12, 2010, discussed at the Commission's Telephonic Business Meeting of September 14, 2010 .

**Merrill Lynch & Co., Inc.** Evidence discovered during the investigation of Merrill Lynch & Co., Inc. ("Merrill") indicates

(1) that former CEO Stanley O'Neal and former CFO Jeffrey Edwards may have violated the federal securities laws by making materially false and misleading representations and omissions

about (a) Merrill's exposures to retained CDO positions, (b) the value of those positions and (c) the firm's risk management.

(2) that Merrill may have made materially false and misleading representations in the offering documents related to the \$1.5 billion Norma CDO issued in March 2007.

(3) Merrill may have aided and abetted fraud or breaches of fiduciary duty by collateral managers to the investors in the CDOs they managed by purchasing CDO tranches from Merrill without performing sufficient due diligence because Merrill told the collateral managers that they would not be retained as collateral managers unless they purchased collateral from Merrill for the CDOs they managed.

**Possible False and Misleading Statements and Omissions About Merrill's Risk Management, Retained CDO Positions and the Value of the Retained CDO Positions**

**Buildup of Retained CDO Positions.** Documents produced by Merrill to the FCIC staff, including a 9/26/07 Market Risk Management Update show that Merrill's "net" exposures to ABS CDOs increased from \$7.2 billion as of 8/31/06 to \$32.2 billion as of 7/07.

*Merrill ABS CDO Positions – Net (in millions)*

Date	High Grade	Mezzazine	CDO^2	Total
8/06	5,580	1,610	0	7,190
9/06	7,210	2,075	0	9,285
1/07	12,810	4,524	0	17,334
2/07	15,175	4,737	370	20,282
3/07	18,620	6,109	700	25,429
4/07	23,220	6,192	1,340	30,752
5/07	22,310	6,117	440	28,867
6/07	22,310	6,423	1,620	30,353
7/07	24,120	6,438	1,505	32,158
8/07	18,286	6,228	1,201	25,715
9/07	18,158	6,173	1,201	25,532

A December 3, 2007 presentation to the Merrill Board of Directors showed that Merrill's "net" ABS CDO exposures varied from the amounts shown in the September 26, 2007 presentation and certain earnings calls: \$18.9 billion as of September 30, 2006 (not \$9.3 billion), \$28.5 billion as of December 31, 2006, \$31.5 billion as of March 31, 2007 (not \$25.4 billion), \$33.9 billion as of June 30, 2007 (not \$30.4 billion), \$15.8 billion as of September 30, 2007 (not \$25.5 billion), and \$14.6 billion as of October 31, 2007.

Dow Kim, the former co-president of Merrill's Global Markets and Investment Banking ("GMI") segment told FCIC staff that the buildup of the retained CDO positions was part of a strategy begun in late 2006 to reduce the firm's warehouse exposure to subprime.



In a 3/30/07 memo prepared by the SEC's Office of Prudential Supervision and Risk Analysis ("OPSRA"), it was reported that Merrill was "actively pushing their subprime mortgage inventory into several ABS CDO deals" because there was an increase in the demand for lower rated tranches of ABS CDOs, particularly from hedge funds. It was also reported that Merrill was "experiencing difficulty in placing the higher rated product, causing the desk to bump up against its limits."

An "ABS Warehouse/CDO Inventory Chronology" produced by Merrill reported deterioration in the ABS CDO market from 3/07 to 5/07 and further increases in ABS CDO inventory. Specifically, it was reported that from 3/07-5/07 (1) Merrill began an active risk-mitigation strategy, (2) Merrill's warehouse declined to \$3.5 billion while inventory increased to \$30.7 billion as the firm actively reduced the warehouse by printing deals, (3) Merrill was required to retain senior and mezzanine tranches to complete deals, (4) Merrill had to enhance mezzanine tranches to the detriment of senior tranches to complete deals, (5) there was a market for selling senior and mezzanine tranches but at a loss, and (6) \$10 billion of deals were completed with Merrill taking significant senior and mezzanine tranches into inventory.

During a July 22, 2007 Finance Committee Meeting and a July 23, 2007 Board of Directors meeting, it was reported that Merrill's retained CDO interests were approximately \$32 billion due to a risk transformation strategy begun in 12/06 that reduced substantial warehouse risk by securitizing and hedging the warehouse. Both meetings were attended by Mr. O'Neal and Mr. Edwards. Mr. O'Neal told FCIC staff this was the first time he learned of the retained CDO positions but the initiation of the risk transformation strategy in 12/06, the buildup of retained CDO positions shortly thereafter and other documents indicate he may have known earlier. For example, during an April 26, 2007 Board meeting, it was reported that Merrill was pursuing an active risk mitigation strategy that included (1) reducing warehouse loans, (2) discontinuing whole loan purchases, (3) reducing originations by First Franklin, and (4) limiting the level of retained residual interests which were \$1.5 billion as of 4/07 and projected to be \$1.6 billion in 6/07.<sup>1</sup> In addition, it was reported in a summary of a 11/29/07 meeting between Merrill executives (including CFO Edwards) and the Federal Reserve that "senior executives were involved in key determinations about the subprime-related businesses at Merrill *throughout 2007*" and that "senior executives get regular risk reports as a matter of course and were involved in discussions about the business, particularly focused on First Franklin in the first half of the year and later the CDO business."<sup>2</sup>

**1Q07 Earnings Conference Call.** On April 19, 2007, Merrill reported 1Q07 results - its second highest quarterly revenues ever and record net revenues from the FICC (Fixed Income, Currencies and Commodities) business (the business housing the increased retained ABS CDO positions) but Merrill failed to disclose the increase in the ABS CDO positions or the fact that the firm was only able to sell senior and mezzanine CDO tranches at a loss even though analysts asked about Merrill's exposure to subprime.

During the conference call, then CFO Edwards indicated that Merrill's results would not be adversely affected by the dislocation in the subprime market because "revenues from subprime mortgage-related activities comprise[d] less than 1% of our net revenues" over the last five quarters, and because Merrill's "risk management capabilities are better than ever, and crucial to our success in navigating turbulent

<sup>1</sup> 4/27/07 U.S. Residential Mortgage Update, BAC-ML-CDO-000076828-6861, at 6847-54.

<sup>2</sup> 11/29/07 Senior Supervisors Meetings, Merrill Lynch, November 29, 2007; FCIC-125522-527 at 125523 and 125525.



markets.” He provided further assurances, stating, “we believe the issues in this narrow slice of the market remain contained and have not negatively impacted other sectors.”

Analysts indicated that they understood the message to be that the dislocation in the subprime market had not adversely impacted Merrill but asked Edwards if Merrill was changing its risk appetite. Edwards said nothing about the increase in retained ABS CDO positions or the fact that Merrill was selling ABS CDOs at a loss, repeated the importance of Merrill’s risk management and said the FICC business “powered right through” the dislocation in the subprime market.

Well, let me make a couple of points about that. Certainly risk management, as I said in the prepared remarks, is a crucial aspect of our business. I think we have done a very good job in negotiating these markets as a result of that. So how are we approaching that? We are certainly looking at new ways to do business where there are opportunities for us to either share risk or pre-sell some of the risk and still do good business. So I think we are approaching it in a prudent way given the environment.

But let me just reiterate that in these markets, in these asset classes, it is important to recognize that there are going to be periods of dislocation. This particular quarter, there was one in the U.S. subprime business and it’s, as you point out, it is important to react to that. But it is going to – as part of a broader portfolio of businesses, you are able to deal with those types of markets. As you can see, the fixed income business just powered right through that.

Edwards responded to a question about CDO trends that Merrill was able to price 28 CDO transactions during the quarter but said nothing about the increase in retained ABS CDO positions or the fact that ABS CDO tranches were being sold at a loss.

In response to a question about whether there were “any big shifts since the beginning of the year” in “the level of [] overall retained interest for mortgage securitizations,” Edwards failed to disclose the increase and stated that the majority of retained interests were “investment grade rated securities that are either part of our CDO warehouse or the result of securitizations that are effectively in inventory, that we intend to sell on to investors” and that there was “only a small part that reflects the sub-prime residuals.”

**2Q07 Earnings Conference Call.** On July 17, 2007, Merrill reported 2Q07 results including “very strong net revenues, net earnings and earnings per diluted share for the second quarter of 2007, which enabled the company to achieve record net revenues, net earnings and net earnings per diluted share for the first half of 2007.” During the conference call, CFO Edwards repeated the results reported in the press release and after completing his prepared remarks, UBS analyst Glenn Schorr asked Edwards to provide some color on Merrill’s exposure to retained ABS CDO positions. Similar to the 1Q07 earnings conference call, Edwards stressed Merrill’s risk management and the fact that the CDO business was a small part of Merrill’s overall business. He also said that there were significant reductions in Merrill’s exposures to lower-rated segments of the market. However, the “net” exposure of Merrill’s ABS CDO retained interests had increased from \$17.3 billion in January 2007 to \$25.4 billion in March 2007 and to \$30.4 billion in June 2007. Edwards failure to disclose the increase in CDO exposure could be construed as material information that made his statements about reductions in exposures to lower-rated segments of the market misleading.

Deutsche Bank analyst Mike Mayo asked Edwards to disclose the level of assets related to subprime mortgages, CDOs and warehouse lines so he would know how much of the firm's capital was at risk from these asset classes but Edwards responded that "we don't disclose our capital allocations against any specific or even broader group."

**3Q07 Earnings Call and Disclosure of CDO Losses but Refusal to Provide Gross Exposures.** On 10/24/07, Merrill reported 3Q07 results including a net loss from continuing operations of \$2.3 billion, or \$2.85 per diluted share. The results included write-downs of \$7.9 billion related to the retained CDOs (\$6.9 billion) and U.S. sub-prime mortgages (\$1.0 billion). Merrill also reported for the first time its net exposures to retained CDO positions, which were \$15.2 billion. The disclosure of the retained CDO exposures and related write-downs indicate that the statements made by Edwards during the 1Q07 and 2Q07 earnings calls may have been materially false and misleading. In addition, O'Neal and Edwards may have made materially false and misleading representations or omissions during the 10/24/07 conference call. First, the amount of subsequent write-downs indicates that it is possible Edwards and O'Neal knew that the reported 3Q07 write-downs were insufficient. As shown below, Merrill reported more than \$20 billion of additional CDO-related write-downs over the next 5 quarters.

*Write-Downs and Credit Valuation Allowances (in billions)*

	3Q07	4Q07	1Q08	2Q08	3Q08	4Q08	Total
ABS CDO Writedowns	5.80	8.70	1.80	3.50	6.40	0.40	<b>26.60</b>
Other Retained & Warehouse Exposures	1.10	1.10	(0.30)	0.20	0.20	(0.10)	<b>2.20</b>
Credit Valuation Allowances	0.00	2.60	3.00	2.90	1.30	3.20	<b>13.00</b>
Subprime Writedowns	1.00	1.60	0.30	0.50	0.40	0.10	<b>3.90</b>
Alt-A	N/R	0.40	0.40	0.50	0.50	0.00	<b>1.80</b>
USB Subprime	N/R	0.90	0.70	0.30	0.10	0.20	<b>2.20</b>
USB Alt-A	N/R	0.70	0.20	1.40	0.60	0.80	<b>3.70</b>
USB CRE	N/R	0.30	0.70	(0.30)	0.40	0.10	<b>1.20</b>
Non U.S.		0.50	0.10	0.20	1.30	0.20	<b>2.30</b>
<b>Total</b>	<b>7.90</b>	<b>16.80</b>	<b>6.90</b>	<b>9.20</b>	<b>11.20</b>	<b>4.90</b>	<b>56.90</b>

*Merrill Lynch Net Income/(Loss) (in billions)*

3Q07	4Q07	1Q08	2Q08	3Q08	4Q08	Total
(\$2.30)	(\$9.90)	(\$2.10)	(\$4.90)	(\$7.50)	(\$16.00)	(\$42.70)

Further, O'Neal and Edwards may have made misleading statements about Merrill's exposures to CDOs. During the 10/24/07 conference call, CEO O'Neal and CFO Edwards refused to disclose Merrill's gross exposures despite repeated requests from analysts. In response to a request to breakdown what was sold and what was hedged, CFO Edwards stated "I just don't want to get into the details behind that." When pressed for more information on the exposures, CFO Edwards stated "let me just say that what we have provided again we think is extraordinarily high level of disclosure and it should be sufficient." Deutsche



Bank analyst Mike Mayo disagreed and asked management to provide additional information but his request was rejected.

Documents obtained from Merrill and the SEC, and subsequent disclosures by Merrill after O'Neal and Edwards left the firm indicate that O'Neal and Edwards representations about Merrill's CDO net exposures may have been materially false and misleading because they failed to disclose that there were billions of dollars of hedges that they knew might not be effective.

Merrill hedged its long exposures of U.S. super senior ABS CDOs with the monolines, either through a guarantee or through a credit default swap. Documents produced by the SEC to the FCIC reveal that Merrill began to increase the amount of credit default protection purchased from financial guarantors in July 2007 to offset its long exposure to the super senior ABS CDO positions. The SEC became concerned with the viability of the financial guarantors in early Fall 2007 as rating agencies began to downgrade them and the SEC raised those concerns with Merrill because it had purchased \$95.9 billion of notional credit default protection from the financial guarantors. Indeed, the SEC told Merrill that it would impose a punitive capital charge on the firm if it purchased additional credit default protection from the financial guarantors. The SEC's threat of a capital charge resulted in Merrill ceasing any further purchases.

The SEC also reported that Merrill recognized there was uncertainty about the value of the credit default protection purchased from the financial guarantors. The 11/6/07 SEC Office of Prudential Supervision and Risk Analysis memo reported that Merrill had purchased CDS protection from several financial guarantors but that Merrill was beginning to question their ability to perform under all scenarios since the financial guarantors had recently reported GAAP-based losses. As shown in the chart above, beginning in 4Q07, Merrill recorded \$13.0 billion of credit valuation allowances ("CVAs") because of the deteriorating financial condition of the monolines and their inability to comply with the terms of the guarantees.

During Merrill's January 17, 2008 conference call, newly hired CFO Nelson Chai reported that Merrill's net exposure to super-senior ABS CDOs was \$4.8 billion as of December 31, 2007, but was \$30 billion when excluding the impact of hedges and short positions. On April 17, 2008, Merrill reported that its super senior ABS CDO exposure was \$26 billion as of March 31, 2008. On July 17, 2008, Merrill reported that at the end of 2Q08 it had \$20 billion of long ABS CDO positions and \$16 billion of short positions, but \$9.6 billion of the short positions were hedges with the monolines which were valued at just \$2.9 billion. Eleven days later, Merrill reported that it had sold \$30.6 billion of ABS CDOs (with a carrying value of \$11.6 billion) to Lone Star Funds for \$6.7 billion. Merrill's ABS CDO exposures caused Merrill to record tens of billions of dollars in write-downs and related charges (e.g., CVAs on monoline hedges) in 2007 and 2008. These facts indicate that the gross CDO exposures, particularly given the questionable value of the monoline hedges, was material information that should have been disclosed given the representations that were made by O'Neal and Edwards during the 1Q07, 2Q07 and 3Q07 earnings calls.

#### **A. Possible False and Misleading Representations in the Norma CDO Offering Documents**

The FCIC discovered evidence indicating that Merrill Lynch may have violated the federal securities laws by misstating and omitting key facts regarding its issuance of a \$1.5 billion "hybrid" CDO called

“Norma,” which was created and marketed in March 2007. NIR Capital Management, LLC (“NIR”) was the collateral manager for Norma. The Norma Preliminary Offering Circular, marketing materials and NIR engagement letter all represented that NIR, as the collateral manager, bore sole responsibility for the selection of the Norma collateral.<sup>3</sup> As a collateral manager, NIR was responsible for purchasing CDO assets and managing them according to specified guidelines.<sup>4</sup> The Norma Preliminary Offering Circular provided a specific description of NIR’s role as the collateral manager, stating that the collateral manager will perform:

certain advisory functions and certain administrative functions with respect to the Collateral pursuant to a collateral management agreement . . . the Collateral Manager will manage the Acquisition and Disposition of the Collateral Debt Securities, including exercising rights and remedies associated with the Collateral Debt Securities, Disposing of the Collateral Debt Securities and certain related functions.<sup>5</sup>

The Preliminary Offering Circular described the collateral management agreement with NIR, which stated that NIR “will be authorized to supervise and direct the investment, reinvestment and Disposition of Collateral Debt Securities, Equity Securities and Eligible Investments, with full authority and at its discretion (without specific authorization from the Issuer), on the Issuer’s behalf and at the Issuer’s risk,”<sup>6</sup>

While NIR was the collateral manager, Magnetar Capital LLC (“Magnetar”), a hedge fund, was an equity investor in Norma, purchasing the \$50 million equity tranche in Norma for \$15.5 million, the G and H tranches at par (\$38 million), \$9.25 million of CDS against the B tranche and receiving \$4.5 million in fees.<sup>7</sup> During a discussion on October 4, 2010, SEC staff told FCIC staff that Magnetar was short about \$94 million into the deal. Evidence obtained by the FCIC indicates that Merrill failed to disclose two important facts. First, Merrill did not disclose the fact that Magnetar was involved in the collateral selection process of the CDO. Second, Merrill failed to disclose that Magnetar had taken a short position in the assets it was selecting for Norma’s portfolio. By concealing Magnetar’s role in selecting the assets and its short interest, the Preliminary Offering Circular failed to disclose to Norma’s investors that assets were being selected by an investor that would profit if the value of the collateral declined.

Information obtained from counsel for Rabobank (a bank that sued Merrill to recover the balance of a \$58 million loan to Norma, and settled) indicates that Merrill knew that (i) Magnetar selected collateral for the Norma CDO, (ii) Magnetar had the right to veto collateral decisions made by NIR and (iii) Magnetar would take short positions in the assets it selected for the Norma CDO. The FCIC is in the process of obtaining documents directly from Merrill that were identified by Rabobank’s counsel and referenced in a letter to the court that will reportedly show the following:

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<sup>3</sup> BAC-ML-CDO 000057429-782 (Offering Circular); 59222-301 (marketing materials); 59153-164 (NIR engagement letter).

<sup>4</sup> Suresh Sundaresan, “Fixed Income Markets and their Derivatives,” Academic Press, p. 400 (2009).

<sup>5</sup> Preliminary Offering Circular of Norma CDO I LTD and Norma CDO I LLC dated January 18, 2007, p 5.

<sup>6</sup> Preliminary Offering Circular of Norma CDO I LTD and Norma CDO I LLC dated January 18, 2007, p 197.

<sup>7</sup> BAC-ML-CDO-000079743 (Magnetar investments in Norma); BAC-ML-CDO-000059221 (fees received).



In August 2006, Magnetar assumed NIR's role in directing the collateral purchases, as evidenced by the quote of Magnetar's James Prusko ("Prusko"), Head of Structured Products, stating, "Here is the first batch of protection purchases I'm planning for NIR."<sup>8</sup>

By November 2006, Magnetar had executed about \$600 million in trades for Norma without involving NIR, as evidenced by an unattributed quote, "Apparently NIR allowed Magnetar to do some trading for their portfolio (in the area of 600MM). This accounted for a large chunk of trading that NIR originally didn't recognize."<sup>9</sup> In response to this statement, a Merrill corporate risk manager asked, "Dumb question. Is Magnetar allowed to trade for NIR?"<sup>10</sup>

Magnetar exercised veto rights on the trades that NIR actually executed, as Prusko told NIR that "I definitely want to approve any CDO's that go in the deal. . . ."<sup>11</sup>

Merrill recognized that Magnetar's short positions in Norma were more important to it than its long positions, as evidenced by an unattributed quote most likely made by a Merrill employee, stating "I think Jim [Prusko] is less worried about his deal pricings and more worried about where he can short paper in the aftermarket."<sup>12</sup>

The circumstances surrounding Merrill's conduct in the Norma CDO are similar to Goldman's alleged conduct in the Abacus 2007-AC1 CDO that resulted in the SEC lawsuit and subsequent \$550 million settlement. In that case, Goldman represented in the ABACUS marketing materials and offering circular that ACA Management LLC acted as collateral manager for the CDO when in fact Paulson & Co. Inc. ("Paulson") participated in the collateral selection process and took a short position against the CDO.<sup>13</sup>

FCIC staff has spoken with SEC officials who have confirmed the SEC is investigating the Norma CDO. In addition, Rabobank sued Merrill on June 12, 2009, to recover the balance of a \$58 million loan to Norma. The Rabobank complaint alleged that Merrill fraudulently induced Rabobank to provide a \$57.7 million senior secured loan to Norma.<sup>14</sup> Rabobank settled its case with Merrill, and on August 6, 2010 the case was dismissed.<sup>15</sup> The terms of the settlement are confidential.

**Possible Improprieties by Merrill and Collateral Managers to Help Merrill Sell CDOs** As noted above, Merrill was retaining super senior tranches of CDO and selling the subordinate tranches in 2006 and 2007 in an effort to reduce warehouse risk. Many of the subordinate tranches were sold to collateral managers that put them in other CDOs they managed. For example, at least 10 of the 12 purchasers of the Norma tranches were collateral managers in CDOs underwritten by Merrill.<sup>16</sup> FCIC has obtained from Merrill a listing of 44 CDOs underwritten by Merrill from 4Q06 through 8/07 that includes (1) the purchasers of each tranche, (2) the collateral manager for each CDO, (3) the performance of the CDO and

<sup>8</sup> Document provided by Rabobank's counsel, ML01395145.

<sup>9</sup> Document provided by Rabobank's counsel, ML01396714.

<sup>10</sup> Document provided by Rabobank's counsel, ML01396714.

<sup>11</sup> Document provided by Rabobank's counsel, ML01396692.

<sup>12</sup> Document provided by Rabobank's counsel, ML01486349.

<sup>13</sup> SEC Release No. 21592 (July 15, 2010).

<sup>14</sup> *Coöperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v. Merrill Lynch & Co.*, Case No. 09601832 (New York Supreme Court), Complaint at ¶4.

<sup>15</sup> *Centrale Raiffeisen-Boerenleenbank, B.A. v. Merrill Lynch & Co.*, Index No. 601832/09 (August 6, 2010).

<sup>16</sup> BAC-ML-CDO-000079743 (listing of Norma cash note purchasers) and 79752 (listing of collateral managers).



(4) a listing of Merrill's collateral managers. Many of the purchasers in these CDOs were collateral managers in CDOs underwritten by Merrill. During the July 22, 2007 presentation to the Merrill Finance Committee, it was reported that new CDO deals were contingent on managers committing to or placing equity tranches.<sup>17</sup> The purchase of the CDO tranches by Merrill's collateral managers may have been improper if they purchased the tranches without proper due diligence and at the request – or demand – by Merrill. It is possible that there was a quid pro quo that the collateral managers had to buy Merrill's CDOs to continue to receive collateral manager business from Merrill.

FCIC staff spoke to SEC officials who said that the SEC is investigating CDOs and specifically the role of these collateral managers and their purchase of CDOs for other CDOs they managed. In fact, the SEC filed charges against ICP Asset Management on 6/22/10 alleging ICP fraudulently managed multi-billion-dollar CDOs by repeatedly causing the CDOs to purchase securities at inflated prices to make money for ICP and to protect certain ICP clients from realizing losses.<sup>18</sup> More specifically, the SEC alleged in the complaint filed on 6/21/10 that "ICP and the other Defendants put their interests ahead of their advisory clients and improperly obtained tens of millions of dollars in fees and undisclosed profits at the expense of clients and investors."<sup>19</sup> George S. Canellos, Director of the SEC's New York Regional Office, further discussed the complaint, stating that "[t]he CDOs were complex but the lesson is simple: collateral managers bear the same responsibilities to their clients as every other investment adviser. When they violate their clients' trust, we will hold them accountable."<sup>20</sup>

The FCIC has information produced by Merrill related to the purchasers of 44 CDO Merrill underwrote and issued from 4Q06 through 8/07 and databases of information on CDOs obtained from Moody's and S&P. We do not know if the SEC has this information and believe we should make it available given the fact the SEC is investigating collateral manager dealings with Merrill and other CDO underwriters.

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<sup>17</sup> BAC-ML-CDO-000076862-884, at 869-870.

<sup>18</sup> SEC Complaint against ICP Asset Management, LLC, ICP Securities, LLC, Institutional Credit Partners, LLC and Thomas C. Priore, filed June 21, 2010.

<sup>19</sup> SEC Complaint against ICP Asset Management, LLC, ICP Securities, LLC, Institutional Credit Partners, LLC and Thomas C. Priore, filed June 21, 2010, pg 3.

<sup>20</sup> Press Release, SEC Charges N.Y.-Based Investment Adviser With Fraudulent Management of CDOs Tied to Mortgage-Backed Securities, June 21, 2010, p 2.