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September 22, 2008

Securities and Exchange Commission
Division of Corporation Finance
Division of Investment Management
Division of Trading and Markets
100 F Street, NE
Washington, DC 20549

Re: **Auction Rate Securities --Global Exemptive Relief**

Dear Ladies and Gentlemen:

Background

A number of financial industry participants ("**Settling Firms**") have entered or will enter into settlements (as amended from time to time, the "**Settlements**")[1] with the Securities and Exchange Commission (the

[1] E.g., Press releases issued on August 7, 2008 regarding agreements reached between Citigroup Global Markets Inc. and the Commission, the Office of the New York State Attorney General, and the Texas State Securities Board on behalf of the North American Securities Administrators Association. Press release issued by the Commission on August 8, 2008 regarding settlement reached with UBS Securities LLC and UBS Financial Services, Inc. ("**UBS**"), press release issued on August 8, 2008 by the Office of the New York State Attorney General regarding settlement reached with UBS, and press release issued August 11, 2008 by the North American Securities Administrators Association regarding settlement reached with UBS. Press release issued by the Office of the New York State Attorney General on August 14, 2008 regarding the settlements by JPMorgan Chase & Co. and Morgan Stanley. Press release issued by Wachovia Corporation on August 15, 2008 regarding agreements in principle with the Commission, the Office of the New York State Attorney General, and the Missouri Secretary of State as the lead state in the North American Securities Administrators Association task force investigating the marketing and sale of auction rate securities. Press release issued by Merrill Lynch & Co. on August 21, 2008 regarding settlement reached with the Office of the New York State Attorney General and the North American Securities Administrators Association and press release issued by the Commission on August 22, 2008 regarding settlement reached with Merrill Lynch, Pierce, Fenner & Smith, Inc. Press release issued by The Goldman Sachs Group, Inc. on August 21, 2008 regarding settlement

"**Commission**"), one or more state Attorneys General or securities agencies, commissions, administrators or similar authorities and/or the Financial Industry Regulatory Authority ("**FINRA**") or a similar self-regulatory organization specified by the Commission or its Staff (together with the Commission, "**Competent Authorities**") with respect to certain auction rate securities sold by such Settling Firms and/or held by customers in accounts at such Settling Firms (such series of securities, "**Settling Firm Securities**"). Under various of the Settlements, each Settling Firm is required to offer to purchase Settling Firm Securities sold to and/or held by certain of its current and former customers subject to the various Settlements (such customers, together with one or more classes of additional present or former customers, if any, as the relevant Settling Firm may determine to include in the offer or offers to purchase which are the subject of this letter, being referred to as "**Settling Firm Eligible Customers**"). Certain other financial industry participants ("**Non-Settling Firms**") have not entered into and may not enter into Settlements with respect to auction rate securities ("**ARS**"), but may make voluntary offers to purchase some or all of the ARS sold by such Non-Settling Firms or held by customers in accounts at such Non-Settling Firms (such series of securities, "**Non-Settling Firm Securities**" and, together with the Settling Firm Securities, "**Subject Securities**") from the Non-Settling Firms' individual retail and other customers ("**Non-Settling Firm Eligible Customers**" and, together with the Settling Firm Eligible Customers, "**Eligible Customers**") in a manner and on terms consistent with those described herein and the Offer Protocol referred to below.[2] The Settling Firms and their affiliates and Non-Settling Firms and their affiliates are referred to herein as "**Participating Firms**". The offers to purchase the Subject Securities by the Settling Firms pursuant to the Settlements and by the Non-Settling Firms pursuant to the additional conditions applicable to the Non-Settling Firms set forth in Section 3 hereof ("**Non-Settling Firm Conditions**") are referred to herein as the "**Offers**".

The offers to purchase required by the Settlements and the purchase and ownership of Subject Securities by the Participating Firms as described herein present a number of issues under Sections 13(d), 13(e), 14(d), 14(e) and 16 and other provisions of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), Section 30(h) of the Investment Company Act of 1940, as amended (the "**Investment Company Act**"), and the rules and regulations promulgated thereunder by the Commission (such acts, rules and regulations

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in principle with the Office of the Attorney General of the State of New York and the Illinois Securities Department (on behalf of the North American Securities Administrators Association). Press release issued by Bank of America on September 10, 2008 regarding agreement in principle with the Massachusetts Securities Division.

[2] In addition, the Settling Firms may make voluntary offers to purchase ARS (other than the Settling Firm Securities) sold by such Settling Firms or held by customers in accounts at such Settling Firms. Any ARS subject to such offers shall be deemed to be "Non-Settling Firm Securities," and any Settling Firm that elects to make such offers shall, with respect to such offers only, be deemed to be a "Non-Settling Firm."

being referred to as the "**Relevant Authority**"). We and the other law firms below represent one or more Participating Firms and hereby request on behalf of all Participating Firms that the Staff of the Commission grant global exemptive or no-action relief, as more particularly specified below, to facilitate implementation of the Settlements and to promote and protect the interests of investors in enabling the prompt achievement of the objectives of the Settlements, as well as the provision of liquidity by Non-Settling Firms to Non-Settling Firm Eligible Customers.[3] The global exemptive relief or no-action relief sought by this letter would terminate on the later of (i) December 31, 2010 and (ii) with respect to each Settling Firm, the completion of its obligation to purchase Subject Securities pursuant to any Settlement applicable to it.

The relief sought by this request reflects the unique circumstances of the Settlements. The Settlements arise from the participation of the Settling Firms in the ARS market and benefit more than 100,000 customers and at least $50 billion par value of ARS. ARS are municipal bonds, corporate bonds, and preferred stocks with interest rates or dividend yields that are periodically reset through auctions, typically every 7, 14, 28, or 35 days. They are usually issued with maturities of 30 years, but the maturities can range from 5 years to perpetuity. Notwithstanding these differences, while ARS (including auction rate preferred stock, which is ostensibly an equity security) are structured as long-term fixed income securities, for the last 20 years the auction process has allowed them to be priced and marketed as short-term fixed income securities and sold at or near par. In a successful auction, ARS are sold at par so the return on the investment to the investor and the cost of financing to the issuer between auction dates is determined by the interest rate or dividend yield set through the auctions, subject to maximum rates. ARS functioned as highly rated and relatively high rate of interest vehicles for short-term investment by investors seeking relatively high returns and liquidity. Before widespread auction failures in February 2008, the ARS market had grown to well over $300 billion.

ARS auctions experienced distress in the credit crisis, and by the beginning of the second week in February 2008, auction failures were widespread and persistent. Widespread auction failures left many investors holding ARS as to which there were no successful auctions and no secondary market that would yield prices at or near par, thereby severely limiting liquidity in this market.

In response to the frequency and breadth of auction failures, the Commission, FINRA, and various states commenced investigations concerning the conduct of ARS market participants, including Settling Firms, and widespread auction failures. These investigations culminated, starting in early August 2008,

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[3] In addition to the relief sought in this letter, we are concurrently requesting relief in respect of issues arising under the Investment Company Act and the Investment Advisers Act of 1940, Section 7 of the Exchange Act and Regulation T, margin rules of various self-regulatory organizations, Rules 15c3-1 and 15c3-3 and net capital rules of various self-regulatory organizations.

with a series of Settlements involving Competent Authorities. The Settlements typically included, among other things, a requirement that the Settling Firm purchase illiquid ARS from certain customers.

The Offers referred to below to be made pursuant to the Settlements or on the initiative of Non-Settling Firms and as described herein will allow the Eligible Customers to reclaim an element of the value of their prior investment decisions – liquidity – that was lost as a result of unique and transformative market conditions. Put simply, the Offers will restore this liquidity to Eligible Customers by allowing them to sell their Subject Securities at par. Eligible Customers will include all customers to whom a Settling Firm is required to make an Offer pursuant to its Settlement. It is expected that, subject to certain exceptions, Eligible Customers will generally include individuals and certain small businesses and charitable investors, and not large institutional customers.

The objective of the Offers to be made by the Participating Firms is to provide certain of their current and former customers with liquidity; there is no coercive element to the Offers and none of the strategic, financial or operational benefits that commonly motivate conventional tender offers are present in this case. The Offers by the Settling Firms will be made pursuant to agreements entered into with the Competent Authorities. The purpose of the Settling Firms in entering into and complying with the Settlements, and the purpose of any Non-Settling Firms, including making the Offers, and the decision faced by Eligible Customers, are fundamentally different from the concerns that necessitate the federal regulation of tender offers. In fact, as described below, the Settlements contemplate offers structured on a basis inconsistent with a number of the protections provided by Regulations 14D and 14E. For example, the "all holders" rule (Rule 14d-10) is inconsistent with the approach taken in most of the Settlements to direct the benefit of the Settlements (and the Offers) to particular classes, but less than all holders, of Subject Securities. Similarly, the application of the Rule 14e-5 prohibition against purchases of Subject Securities outside of a tender offer would inhibit a Participating Firm's ability to provide prompt liquidity to certain customers (including Eligible Customers that hold ineligible securities). These and other provisions of the tender offer rules, which are discussed in more detail below, illustrate the need for the relief requested in this letter to enable the Eligible Customers of the Subject Securities to obtain the liquidity envisioned by the Settlements.

While the Non-Settling Firms are not currently legally required to make any Offers, in light of the numerous failed auctions for ARS sold by some of the Non-Settling Firms and the resulting illiquidity, some Non-Settling Firms would also like to provide liquidity to some or all their current and former customers and may decide to make one or more Offers. Providing such liquidity is important to the current and former clients of such Non-Settling Firms, as they are facing the same market dynamics, and may be facing the same personal challenges, as are the Eligible Customers of the Settling Firms. This liquidity is also important to such Non-Settling Firms due to the fact that some of the largest ARS dealers are

obligated to make such Offers and will be providing such liquidity to their current and former customers. Non-Settling Firms have the same interest as Settling Firms in assisting current and former customers by providing alternative sources of liquidity during this unprecedented disruption in the ARS market. In addition, Non-Settling Firms have received requests, demands and threats of litigation from their current and former customers that Non-Settling Firms provide the same relief and liquidity that the Settling Firms have announced. Therefore, the current and former customers of the Non-Settling Firms, particularly the retail customers, would be comparatively disadvantaged and harmed if the Non-Settling Firms were unable to make Offers on the terms set forth in the Offer Protocol.

The Non-Settling Firms believe that it is appropriate for the exemptive or no-action relief sought in this letter to be made available to the Non-Settling Firms even though such Non-Settling Firms have not entered into settlement agreements with any Competent Authority because (1) such relief would enable Non-Settling Firms to provide desired liquidity to investors on reasonable terms comparatively quickly as compared to the substantial delays that are otherwise likely given the large number of financial industry participants currently being investigated by one or more Competent Authorities, and (2) some Non-Settling Firms currently being investigated by a Competent Authority may not settle with a Competent Authority or be formally charged with any wrongdoing.

The Non-Settling Firms believe that a Competent Authority should not be required to review individual requests to make Offers since any Offer eligible for the requested relief must be made in conformity with the Offer Protocol, which requires, among other things, that Eligible Securities be purchased for cash at par (plus dividends and accrued but unpaid interest, if any), as well as compliance with the Non-Settling Firm Conditions. The Offer Protocol and the Non-Settling Firm Conditions will assure that the Offers are made in a manner that will adequately protect investors in light of the considerable logistical complexity posed by the large number of offers to purchase a large number of securities of different issuers. In addition any such review would only further delay the relief to the Non-Settling Firm Eligible Customers. Finally, as detailed in the Non-Settling Firm Conditions, the Offers would not be open-ended but would need to be completed by December 31, 2010 (unless a Non-Settling Firm becomes a Settling Firm and has a later completion date pursuant to the terms of its Settlement) and each Non-Settling Firm will publicly announce its intention to make a voluntary Offer. Non-Settling Firms believe that it would not be appropriate for the Commission to delay the provision of liquidity to the Non-Settling Firm Eligible Customers, in particular retail customers, so long as the Offer Protocol and the Non-Settling Firm Conditions have been met since the primary beneficiaries of the Offers will be the customers who are being bought out at par.

1. Offer Protocol.

The offers to purchase and the purchases by Participating Firms of Subject Securities in the manner and on the terms described below are referred to as being made in conformance with the "**Offer Protocol**".

A. The Offers

Pursuant to the relevant Settlement, each Settling Firm would make one or more Offers, and pursuant to the Non-Settling Firm Conditions, each Non-Settling Firm would make one or more Offers, to all of its Eligible Customers to purchase all Subject Securities held by such Eligible Customers for cash at par[4] plus dividends or accrued but unpaid interest, if any. Each Offer would be open for the tender of Subject Securities by Eligible Customers for a minimum of 20 business days (within the meaning of Exchange Act Rule 14d-1(g)(3)) from the date the relevant Offer Document referred to below is first distributed by the Participating Firm to its Eligible Customers, or (i) for such longer period as may be required by the relevant Settlement or (ii) for such additional longer period or periods, if any, as a Participating Firm may determine in order to continue to afford one or more classes of Eligible Customers the opportunity to obtain the liquidity presented by the Offers. We refer to the date on which any Offer expires as the "**Expiration Date**" of such Offer.

A tender of Subject Securities by Eligible Customers pursuant to an Offer would be accepted for payment by the Participating Firm not later than the latest applicable purchase dates described in the relevant Offer Document, which would be consistent for tenders of each Subject Security, although such purchase dates may vary from Subject Security to Subject Security. Such purchase dates may be, for example, the day following tender, the next auction/reset date for a tendered Subject Security after the Participating Firm begins to accept tenders or the next interest or dividend payment date for a tendered Subject Security after the Participating Firm begins to accept tenders. Subject Securities tendered for which no purchase has occurred between the date of tender and Expiration Date would be accepted for payment not later than immediately following the Expiration Date of the Offer.

A tender of Subject Securities could be withdrawn by the tendering Eligible Customer at any time prior to acceptance thereof for payment. In addition, payment for Subject Securities accepted for payment would be made promptly (within the meaning of Exchange Act Rule 14e-1(c)) following acceptance or at such earlier time as may be required by the relevant Settlement.

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[4] All references to par in this letter refer to principal amount or liquidation preference, as the case may be.

B. Purchases "Outside" Offers

In addition to the purchase of Subject Securities pursuant to the Offers, Participating Firms may purchase Subject Securities "outside" their Offers ("**out-of-offer purchases**") at times and on terms other than those provided in the Offers. Participating Firms will determine whether (and, in the case of sellers other than Eligible Customers, at what price) to make an out-of-offer purchase from any holder (including an Eligible Customer) on a case-by-case basis without special preference to directors, officers or employees of such Participating Firm. No Participating Firm will make an out-of-offer purchase unless (i) in the case of a Participating Firm's out-of-offer purchases of Subject Securities from its Eligible Customers, such purchases are made at par (plus dividends or accrued but unpaid interest, if any) and (ii) in the case of purchases from sellers of Subject Securities other than such Participating Firm's Eligible Customers, such purchases are made at a price not greater than par (plus dividends or accrued but unpaid interest, if any). In connection with any out-of-offer purchase in which a waiver is sought by a Participating Firm, any such waiver will be made in conformity with federal securities laws, including Section 29(a) of the Exchange Act.

The Non-Settling Firms also request relief to make out-of-offer purchases. The Non-Settling Firms' Offers would likely exclude many of the same kinds of customers that are excluded from the Offers to be made by the Settling Firms. The Non-Settling Firms would like to be able to provide limited relief to these excluded customers, but it would significantly increase the cost of making the Offers (in some cases preventing the making of the Offers), if the Non-Settling Firms were required to make offers to purchase all of the securities held by these excluded customers at par. Since only a few of the Settling Firms are required to purchase ARS from large institutional investor customers and since many are contemplating or actively negotiating purchases with individual large institutional customers at this time, the Non-Settling Firms believe that it would be unfair to prevent the Non-Settling Firms from doing the same. The Settlements do not employ a uniform definition of institutional investor (some have no definition at all), and any such uniform definition would not be appropriate for Non-Settling Firms. At a minimum, however, the Offers made by Non-Settling Firms would include all individual retail investors who purchased Non-Settling Firm Securities from, or who hold or held such securities in accounts at, the Non-Settling Firm.

C. No Brokerage Fees or Commissions; Other Settlement Obligations

A Participating Firm would not charge Eligible Customers any brokerage fees or commissions with respect to the purchase of Subject Securities pursuant to its Offer or in out-of-offer purchases.

We note that, in addition to the payment of par, plus dividends or accrued but unpaid interest, if any, Settling Firms may also, from time to time, and during the period of the Offers, be satisfying other obligations set forth in the

Settlements, such as reimbursement of "negative carry" in respect of liquidity loans, reimbursements for sales below par prior to the effective date of the Settlements and payment of consequential or other damages. Non-Settling Firms may also elect or be required to pay similar amounts.

D. Disclosure and Dissemination

Each Offer would be made by means of one or more written communication documents (together, the "**Offer Document**") which each Settling Firm would distribute in accordance with the relevant Settlement and using each Participating Firm's own account records to its Eligible Customers[5], and each Non-Settling Firm would distribute by first class mail. In each case, the Offer Document would be distributed in an envelope, marked, or otherwise prepared in a manner designed, to indicate prominently to the recipient the nature or subject matter, importance and time-sensitivity of the information being distributed. The Offer Document would not be filed with the Commission under Regulation 14D or Rule 13e-4.

The Offer Document will be prepared to "plain English" standards and will include disclosure of all material aspects of[6]:

1. the terms and conditions of the Offer, including definitions of Eligible Customers and Subject Securities;

2. the identity of the Participating Firm and any affiliate of the Participating Firm that is making the Offer;

3. other information the Participating Firm views as material to Eligible Customers' investment decisions to tender or not tender Subject Securities in the Offer[7];

4. how an Eligible Customer may determine (including by calling a toll-free telephone number or by calling a specified number collect), and a prominent statement to the effect that an Eligible Customer should ascertain, (i) the Subject Securities (including identifying information and CUSIP) held by such customer at the Participating Firm or otherwise eligible to be tendered pursuant to the Offer, (ii) the amount of securities, by CUSIP, so held or

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[5] Distribution would be made using the most recent available account address for each Eligible Customer.

[6] In addition, disclosure for clients advised by investment advisers (both discretionary and non-discretionary clients) will also be included in the Offer Document described in the concurrent request for relief in respect of issues arising under the Investment Company Act and the Investment Advisers Act of 1940.

[7] The Participating Firms do not expect to provide information relating to any individual Subject Security or issuer thereof.

eligible, (iii) interest or dividend reset/payment date frequency for such Subject Securities, (iv) purchase date(s) for such Subject Securities, and (v) most recent rate information, where such information is available on a reliable basis to the Participating Firm, for such Subject Securities;

5. in the case of Non-Settling Firms, the reasons for the Offer;

6. in the case of Offers made pursuant to a Settlement, (a) a prominent statement toward the forefront of the Offer Document to the effect that the Offer is being made pursuant to the Settlement, together with a reference to the location in the Offer Document where the Settlement is described, (b) a description of the Settlement (including (i) the nature of any allegations of violations of law giving rise to the Settlement, any of which may be denied, except to the extent not allowed by the Settlement, and (ii) to the extent set forth in the Settlement, the facts and circumstances giving rise to the Settlement, any of which may be denied, except to the extent not allowed by the Settlement), and (c) prominently displayed (by means of bold face type, a typographical box or other means of graphical highlighting, in a not inconspicuous location in the Offer Document such as, for example, following the description of the Settlement), information concerning, and a statement as to how to obtain additional information regarding, any arbitration or other dispute resolution provisions contained in such Settlement applicable to the Participating Firm;

7. a statement to the effect that neither the tender nor the purchase of Subject Securities pursuant to the Offer will result in or constitute a waiver of any claim (except as may otherwise be provided in the applicable Settlement, in which case such fact will be disclosed) of the tendering Eligible Customer;

8. the methods and timing by which an Eligible Customer may accept the Offer for Subject Securities;

9. the purchase dates, or the manner of determining the purchase dates (which may be limited to identifying the frequency of purchase dates), for Subject Securities pursuant to the Offer and the timing for acceptance of tendered Subject Securities for payment;

10. the timing of payment for Subject Securities accepted for payment in the Offer;

11. the methods and timing by which an Eligible Customer may elect to withdraw tendered Subject Securities from the Offer;

12. the Expiration Date of the Offer;

13. the source or sources of the funds to be used to pay for Subject Securities purchased pursuant to the Offer;

14. the fact that the Participating Firm may make out-of-offer or other purchases of Subject Securities or other ARS that are not Subject Securities and may otherwise buy, sell, hold or seek to restructure, redeem or otherwise dispose of Subject Securities and other ARS, to the extent legally permitted;

15. if the Participating Firm may during the period of the Offer participate in auctions of Subject Securities which are the subject of the Offer, a description of the principal possible effects which the Participating Firm's participation or non-participation in auctions for such Subject Securities may have on such auctions, the success or failure of such auctions and the rates, if any, set in such auctions;

16. a description, or information as to how customers can access or obtain without charge a copy, of the Participating Firm's material auction practices and procedures relating to ARS;

17. disclosure to the effect that a sale of Subject Securities pursuant to an Offer will generally be a taxable transaction, and a specific recommendation that Eligible Customers consult their tax advisors prior to making any decision to accept the Offer;

18. a description of such risk factors or other important considerations relating to the Offer as the Participating Firm deems appropriate;

19. how to obtain additional information concerning the Offer; and

20. the manner in which information concerning material amendments or changes to the Offer or Offer Document will be communicated to Eligible Customers.

Information concerning material amendments or changes to the Offer or Offer Document will be promptly disseminated to Eligible Customers and such information will also be made available by means of a toll-free telephone number.

In order to provide information concerning the Offer and identifying and other relevant information about the Eligible Customers' Subject Securities, each Participating Firm will include a toll-free telephone number in the Offer Document.

E. Extension of an Offer

In the event the Expiration Date of an Offer is extended, the relevant Participating Firm will promptly disseminate information concerning such extension in the same manner as a material amendment of the Offer.

2. Analysis.

As noted, the Offers to be made pursuant to the Settlements present a number of issues under the Relevant Authority. We summarize our analysis of these issues below:

A. Tender Offer Issues

Certain characteristics of the Offers might cause them to constitute "tender offers" within the meaning of Sections 14(d) and 14(e) of the Exchange Act and the relevant rules thereunder. In particular, the following rules would be potentially applicable to such Offers[8] and out-of-offer purchases if the Offers were to be treated as tender offers:

Rule 14d-2(b)(2) (pre-commencement communications), which we believe need not be applied to the Offers, since they are being made as described in press releases announcing the Settlements or press releases containing similar information, which adequately addresses the functional substance of this rule. We note that the pre-commencement communications issued to date include press releases, some of which have been issued by the Competent Authorities. In at least some cases, these Competent Authority press releases were issued without independent review or input from the Settling Firms. We believe that the requirements of Rule 14d-2(b)(2) should not apply to communications by third parties, particularly other regulators in the circumstances of the Settlements. Any separate press releases issued by the Settling Firms in relation to the Settlements should not be subject to the Rule 14d-2(b)(2) filing requirements in light of the compulsory character of their Offers and the implementation of the Offers on the basis of the Offer Protocol, which will ensure that investors are provided with sufficient information on a timely basis to make informed investment decisions.

In addition, we believe that the requirements to deliver copies of pre-commencement communications to issuers and other bidders should likewise not apply in the circumstances of the Offers. The Offers are unlike conventional tender offers in that the Offers are personal to Eligible Customers of the respective Participating Firm – customers who in many cases have been urging their brokers to purchase their Subject Securities. Noncompliance with Rule 14d-2(b)(2) will not disrupt markets, because the Offers are personal to Eligible

[8] Offers for securities, other than equity securities registered under Section 12 of the Exchange Act or equity securities issued by closed-end investment companies, would be subject only to Section 14(e) of the Exchange Act and/or Regulation 14E thereunder, though as a practical matter Offers are likely to cover both Section 12 equity securities and equity securities issued by closed-end investment companies as well as other securities, with the procedures and Offer Protocol applied to all Subject Securities.

Customers and there is no competition in relation to the purchase of the Eligible Securities that they hold. Accordingly, there is no risk that granting the relief would result in market disruption, deception or manipulation. Moreover, the press releases issued by the Competent Authorities have been widely disseminated, informing issuers of the impending Offers. In addition, communication to the Issuers of the Eligible Securities should be unnecessary because the Offers are not being made with a view to affecting the control or operations of any issuers of Subject Securities but are instead being made pursuant to the terms of the Settlements or the Non-Settling Firm Conditions with the objective of providing liquidity in the context of a widespread disruption of an entire securities market. Dissemination of pre-commencement communications among bidders is likewise unnecessary given the requirements under the terms of the Settlements and the Non-Settling Firm Conditions for the Participating Firms, as the Offers will be made pursuant to the terms of the Settlements or Non-Settling Firm Conditions to restore liquidity to Eligible Customers rather than as competing offers for all of the Subject Securities. To the extent that Participating Firms make Offers consistent with the Offer Protocol, the Offers of the Participating Firms would be made on bases sufficiently uniform to make it unnecessary for additional disclosures to be required.

Rule 14d-3 (filing and transmission of tender offer statement) and the requirements of Schedule TO, which we believe need not be applied to the Offers to the extent that the Offers are made in accordance with the Offer Protocol. The Offer Protocol adequately addresses the functional substance of this rule and the disclosure requirements contemplated by Schedule TO that are relevant to Eligible Customers considering the alternatives of participating in an Offer at par for the security where liquidity has been impaired or continuing to hold such security.

The disclosures made pursuant to the Offer Protocol will include the information which, in the context of the unique Offers contemplated by the Settlements and the Non-Settling Firm Conditions, are required to be made by the Participating Firms. In this regard, we note that a large number of the more particularized disclosures contemplated by Schedule TO, especially information specific to individual issuers and series of securities would not provide Eligible Customers with information likely to have relevance to their investment decision in the context of par offers for securities where liquidity has been impaired. Furthermore, much of the issuer- and security-specific information could not be assembled for inclusion in the Offer materials in time to comply with the timetables for the Offers contemplated by the Settlements for the commencement and completion of the Offers. Finally, as noted above, the requirement that information be disseminated to issuers and other bidders is unnecessary in circumstances where the terms of the Settlements requiring the Offers have already been communicated by Competent Authorities and the other bidders are making or may make parallel Offers in conformity with the Offer Protocol.

Rule 14d-4 (dissemination of tender offers to security holders), which we believe need not be applied to the Offers, since the Offers by the Settling Firms are being made to give effect to the Settlements, the Offers by Non-Settling Firms would likewise be made in accordance with the Offer Protocol, including by providing the information specified above, which adequately addresses the functional substance of this rule. It is expected that, because the Offers are being extended to Eligible Customers on the basis contemplated by the Settlements in the case of Settling Firms, and on a comparable basis in the case of Non-Settling Firms, and the Participating Firms will use the account addresses available to them to distribute Offer Documents, the alternate means of dissemination contemplated by the rule are unnecessary.

Rule 14d-5 (dissemination of certain tender offers by the use of stockholder lists and security position listings), which we believe need not be applied to the Offers, since they are being disseminated to Eligible Customers by means of the Participating Firm's own customer lists and databases. As noted above with respect to Rule 14d-4, this adequately addresses the functional substance of the rule.

Rule 14d-6 (disclosure requirements with respect to tender offers), which we believe need not be applied to the Offers, since the Offers by the Settling Firms are being made to give effect to the Settlements, the Offers by Non-Settling Firms would likewise be made to provide liquidity to their Eligible Customers and the Offers will be made in accordance with the Offer Protocol, including by providing the information specified above, which adequately addresses the functional substance of this rule. The disclosures contemplated by the Offer Protocol will convey to the Eligible Customers the information each Participating Firm views as generally material to an investment decision in the context of an offer at par for a security where liquidity has been impaired[9].

Rule 14d-7 and Exchange Act Section 14(d)(5) (withdrawal rights and additional withdrawal rights), which we believe need not be applied to the Offers, since the Offers by the Settling Firms are being made to give effect to the Settlements, the Offers by Non-Settling Firms would likewise be made to provide liquidity to their Eligible Customers and the Offers will be made in accordance with the Offer Protocol, which adequately addresses the functional substance of this rule and Section 14(d)(5) of the Exchange Act.

Rule 14d-7 and Exchange Act Section 14(d)(5) provide tendering security holders with the right to withdraw their tendered securities during the pendency of a tender offer. These provisions need to be read in conjunction with Rule 14e-1, which requires that tender offers be open for a minimum of 20 business days and which does not contemplate acceptances on a rolling basis during the initial offering period.

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[9] The Participating Firms do not expect to provide information relating to any individual Subject Security or issuer thereof.

In order to provide tendering Eligible Customers with liquidity consistent with the Settlements, some of the Settling Firms contemplate accepting, and we expect that Non-Settling Firms may also contemplate accepting, and paying for, tendered Subject Securities on a rolling basis and/or purchasing Subject Securities before the expiration of the initial offering period in some circumstances. Maintaining withdrawal rights throughout the initial offering period would prevent Participating Firms from being able to complete purchases and effect settlement of such purchases during the initial offering period. Pursuant to the Offer Protocol, the Participating Firms would offer Eligible Customers the ability to withdraw tendered Subject Securities at any time prior to acceptance for payment of such Subject Securities. In the case of the Offers at par to provide liquidity to Eligible Customers, there should be no need to require that holders be able to withdraw their securities after they have been accepted for payment where the provision of such withdrawal rights would have the effect of forestalling early purchases and related settlements for tendered Subject Securities, delaying the provision of liquidity to Eligible Customers.

Rules 14d-9 and 14e-2 (recommendation or solicitation by the subject company and others; position of subject company with respect to a tender offer), which we believe need not be applied to the Offers, since the Offers by the Settling Firms are being made to give effect to the Settlements, the Offers by Non-Settling Firms would likewise be made to provide liquidity to their Eligible Customers and the Offers will be made in accordance with the Offer Protocol. We submit that requiring hundreds or thousands of issuers of Subject Securities to prepare and disseminate recommendations about each of the Offers made by the Participating Firms would impose a burden on such issuers that would not, in the context of the unique Offers contemplated by the Settlements and the Non-Settling Firm Conditions, yield any corresponding benefit to the Eligible Customers to whom the Offers are made. Moreover, absent the provision of the exemptive relief sought with respect to these rules, it is possible that an Eligible Customer with a diverse portfolio of Subject Securities could be inundated with communications from the issuer of each series of Subject Securities held by the Customer, all of which would relate to the same Offer, namely the Offer to Eligible Customers affording them the opportunity to liquidate at par their investments in securities where liquidity has been impaired. As the Offers are being made with the objective of providing liquidity to the Eligible Customers and since the Offers are not expected to affect control or operations of any issuers of Subject Securities, the disclosures contemplated by Rules 14d-9 and 14e-2 would not be expected to have any substantial bearing on the investment analysis conducted by Eligible Customers weighing whether to accept the Offers at par.

Rule 14d-10 (equal treatment of security holders), which we believe need not be applied to the Offers, since the Offers by the Settling Firms are being made to give effect to the Settlements and the Offers by Non-Settling Firms would likewise be made on a targeted basis to provide liquidity to their Eligible Customers.

Pursuant to Rule 14d-10(a), the tender offer must be open to all security holders of a class of securities subject to the tender offer (subsection (a)(1)) and the consideration paid must be the highest paid to any other security holder (subsection (a)(2)). Unlike most conventional tender offers, the purpose of the Offers is to provide relief to a particular group of persons, not the acquisition of securities. The Offers by the Settling Firms only implement the Settlements, which require that Settling Firms offer to purchase Subject Securities from their Eligible Customers ("**Required Purchases**"). Were Participating Firms unable to so limit their Offers, Eligible Customers would be receiving multiple offers to purchase their Subject Securities, all at the same price. Moreover, Participating Firms may accommodate certain customers outside the scope of the group of investors specifically subject to the Settlements, and may extend the Offers to other investors, with other purchases to be undertaken on a voluntary basis and on a schedule that allows them to give priority to the Required Purchases.

For any particular Offer, Subject Securities may be limited to securities purchased not later than a cut-off date, and in many settlements Eligible Customers will exclude institutional customers. As such, the Offers (by reason of the fact that Subject Securities constitute less than all of the securities of a subject class, and Eligible Customers represent a universe of holders that is smaller than all holders of the subject class of securities) will not be made to all holders of any class of securities subject to an Offer equally and as a result, absent relief, would violate Rule 14d-10(a)(1). We request that exemptive relief be provided in order to enable the Settling Firms to perform their obligations in accordance with their respective Settlements and for the Non-Settling Firms to perform their obligations in accordance with the Non-Settling Firm Conditions.

Rule 14d-11 (subsequent offering period), which we believe need not be applied to the Offers. Rule 14d-11 provides for subsequent offering periods, subject to certain conditions, one of which is that the tender offer be for all the outstanding securities of the class of securities that is the subject of the tender offer. To the extent that Participating Firms wish to make a subsequent offering period available, they would be unable to meet the condition that the tender offer be for all outstanding securities of the subject class.

Furthermore, Rule 14d-11 limits the duration of any subsequent offer period to 20 business days. In light of the fact that several of the Settlements require that the Settling Firms engage in transactions lasting substantially longer, it is necessary that exemptive relief be granted in order to enable the Settling Firms to perform their obligations under their respective Settlements. We believe that the elimination of the duration limit for subsequent offer periods is also consistent with changes to certain of the tender offer rules adopted by the Commission at its open meeting on August 27, 2008.

Rule 14e-1(d) (announcement of extension) requires the issuance, within specified time periods, of a press release or other public announcement of any

extension of the length of a tender offer, which notice is required to include disclosure of the approximate number of securities deposited to date.

We believe that Rule 14e-1(d) should not be applied to the Offers, since the Offers will be made in accordance with the Offer Protocol, which contemplates that notice of any extension of an Offer will be promptly disseminated to Eligible Customers and will also be made available by means of a toll-free telephone number. In addition, we submit that information concerning the approximate number of securities deposited to date would not, in the context of the unique Offers contemplated by the Settlements and the Non-Settling Firm Conditions, be material to Eligible Customers' investment decisions to tender or not tender Subject Securities in the Offers.

Rule 14e-5 (prohibiting purchases outside of a tender offer), which we believe need not be applied to the out-of-offer purchases, since such purchases would be made in accordance with the Offer Protocol, which adequately addresses the functional substance of this rule. With respect to each Settling Firm, we request that this relief apply from the date of the announcement of the first Settlement applicable to it and, with respect to each Non-Settling Firm, from the date of the first announcement of its voluntary Offer.

The Settling Firms wish to be able to purchase Subject Securities in a broad variety of transactions at prices not greater than par (plus dividends or accrued but unpaid interest, if any). There are various types of purchases that Settling Firms may wish to make that would, absent relief, violate Rule 14e-5. These purchases could include:

- purchases of Subject Securities from Eligible Customers immediately (e.g., subsequent to the announcements of the Settlements or Offers but prior to the commencement of an Offer or ahead of the next applicable purchase date specified in an Offer);
- purchases of Subject Securities which are not within the parameters of the Settlements (e.g., ARS that were purchased after the relevant cut-off date under the Settlements) from Eligible Customers;
- purchases of Subject Securities from holders who are not Eligible Customers (e.g., purchases from institutional investors prior to any Offer being extended to them) and are therefore ineligible to participate in an Offer;
- purchases made pursuant to a Participating Firm's participation in an auction for Subject Securities;
- purchases of Subject Securities not subject to Settlements for technical reasons (e.g., a client of a Participating Firm may hold ARS in the client's account at that firm, but the bidding rights for those securities are held by another firm and the Participating Firm's Settlement defines Eligible Customers as those holding ARS in which such Participating Firm held bidding rights);

- purchases of Subject Securities by a Participating Firm from another Participating Firm effected to accommodate inclusion in the purchasing Participating Firm's Offer of Subject Securities initially purchased by an Eligible Customer from such purchasing Participating Firm but held in an account at the selling Participating Firm, so long as such acquisition is made at not more than par (plus dividends or accrued but unpaid interest, if any) (any such selling Participating Firm will continue to be subject to the requirement that its purchase of such Subject Securities from Eligible Customers be made at par (plus dividends or accrued but unpaid interest, if any)); or
- any other acquisition that results in the payment of not more than par (plus dividends or accrued but unpaid interest, if any). [10]

With respect to participation in auctions for Subject Securities, the Participating Firms are aware of the Staff's no-action letter relating to Municipal Auction Rate Securities dated March 14, 2008 and the disclosure guidance provided by such letter.

Rule 14e-5 is designed, as stated in paragraph (a) of the Rule, to prevent fraudulent, deceptive or manipulative acts or practices in connection with a tender offer. More specifically, as stated in the Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings, Release 34-42054 (October 1999), Section II.C.1, Rule 14e-5 is designed to "protect investors by preventing an offeror from extending greater or different consideration to some security holders by offering to purchase their shares outside the offer, while other security holders are limited to the offer's terms."

Although the Offers resemble conventional tender offers in certain respects, the Settlements affirmatively require that Eligible Customers of Settling Firms be afforded preferential treatment. Settling the complaints of retail customers on a basis different than institutional customers is not fraudulent, deceptive or manipulative. We submit that where all Eligible Customers will be paid the same price (par, plus dividends or accrued but unpaid interest, if any) for their Subject Securities, and where other holders of ARS, if the Participating Firm elects to purchase ARS from such holders, will receive no greater than par (plus dividends or accrued but unpaid interest, if any), the concerns underpinning Rule 14e-5 should not arise in the various scenarios posited above. Particularly when considered in light of the obligation of each Settling Firm to purchase all Subject

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[10] In connection with any other acquisition that results in the payment of not more than par (plus dividends or accrued but unpaid interest, if any), the Participating Firms will provide notice to the Division of Trading and Markets of the Commission not later than 30 days after the month in which such acquisition occurs. Any such notice will contain the following information: date and, if applicable, time of the acquisition; size of the acquisition; purchase price; reason for the acquisition; and the identities of the buyer and seller. Each Participating Firm will retain documents relating to any such acquisition for two years from the date of termination of the relief requested hereunder and will make available, by phone or in person, a representative to discuss any such acquisition with the Commission upon request.

Securities from Eligible Customers at par not later than a specified date, no Eligible Customer participating in an Offer would be disadvantaged by purchases outside the Offer, and we submit that no aspect of these purchases could be reasonably viewed as fraudulent, deceptive or manipulative acts or practices. We further respectfully submit that Non-Settling Firms, which on their own initiatives decide to afford liquidity to Eligible Customers by making Offers, should likewise be permitted to provide liquidity to their customers through out-of-offer purchases on the same terms applicable to Settling Firms.

Regulation 13E-4, including Rule 13e-4(f)(6) (tender offers by issuers and affiliates; prohibition of purchase of subject securities following expiration of offer) which could apply to an Offer for, and out-of-offer purchases of, equity securities in the event that the relevant Participating Firm is or becomes an "affiliate" of the issuer of Subject Securities subject to Regulation 13E-4 as a result of purchases pursuant to the Offer or out-of-offer purchases. We believe these rules should not be applied to the Offers or out-of-offer purchases, since the Offers are being made pursuant to the Settlements or the Non-Settling Firm Conditions, in each case in accordance with the Offer Protocol, including by providing the information specified above, which adequately addresses the functional substance of these rules.

Regulation 13E-4, including Rule 13e-4(f)(6), which prohibits purchases made by the issuer or its affiliates of equity securities subject to a tender offer, except if pursuant to such offer, until the expiration of at least 10 business days after the date of termination of the issuer tender offer, would apply in the unlikely scenario that a Participating Firm were deemed an affiliate of an issuer of Subject Securities at the time it commenced its tender offer and the tender offer were not subject to Regulation 14D (i.e., where a class of Subject Securities is not a class of equity securities registered under Section 12(g) or where, after consummation of an Offer, a Participating Firm would not be a beneficial owner of more than 5% of a class of Section 12 registered equity Subject Securities). We do not believe that Regulation 13E-4 should be deemed to apply to such a Participating Firm or, in the alternative, that relief be given from the provisions of the Regulation to the same extent as relief has been provided in respect of tender offers governed by Regulations 14D and 14E.

Rule 13e-1 (purchase of securities by the issuer during a third-party tender offer), which could apply to the issuer of the Subject Securities pending the Offers made by third-party Settling Firms as required by the Settlements or by Non-Settling Firms pursuant to the Non-Settling Firm Conditions and in accordance with the Offer Protocol.

Under Rule 13e-1, an issuer is prohibited from purchasing equity securities that are the subject of a third-party tender offer made under Section 14(d)(1), unless it complies with certain requirements provided therein. We submit that any restrictions on the ability of issuers to be a source of liquidity for

holders of Subject Securities, including without limitation through redemption of such securities, would be inconsistent with the purposes of the Settlements.

B. Other Exchange Act Issues.

Rule 13e-3 (going private transactions by certain issuers or their affiliates), which could apply to an Offer for, and out-of-offer purchases of, equity securities in the event that the relevant Participating Firm is deemed an affiliate of an issuer fund as a result of affiliation with the issuer fund's adviser or became an "affiliate" of the issuer as a result of purchases pursuant to the Offer or out-of-offer purchases. We believe this rule should not be applied to the Offers or out-of-offer purchases, since the Offers by the Settling Firms are being made to give effect to the Settlements, the Offers by Non-Settling Firms would likewise be made to provide liquidity to their Eligible Customers and the Offers will be made in accordance with the Offer Protocol, which requires that (i) purchases of Subject Securities from Eligible Customers be made at par (plus dividends or accrued but unpaid interest, if any) and (ii) the Participating Firms provide the information specified above, which adequately addresses the functional substance of this rule. In addition, out-of-offer purchases will be made (i) at par (plus dividends or accrued but unpaid interest, if any), in the case of purchases of Subject Securities from Eligible Customers, and (ii) at prices not greater than par (plus dividends or accrued but unpaid interest, if any), in the case of purchases of Subject Securities from sellers other than Eligible Customers.

Rule 13e-3 (with its mandate for enhanced disclosure) was promulgated in reaction to the potential "coercive effect" of "going private transactions" and the "potential for overreaching by issuers and their affiliates in going private transactions, the consequent harm to security holders, particularly small investors, and for adverse effects upon the confidence of investors in the securities markets... ." Release 34-17719 (April 1981). In Release 34-17719, the Commission cited the prospects faced by unaffiliated security holders of an illiquid market, termination of the protections under the federal securities laws and further efforts by the proponent to eliminate their equity interest as having a coercive effect. As stated in that Release, the overreaching of unaffiliated security holders by an issuer or its affiliates was viewed as flowing, in part, from the lack of arm's-length bargaining and the inability of unaffiliated security holders to influence corporate decisions to enter into such transactions. We submit that none of these factors would be implicated by the Offers or out-of-offer purchases, and that any potential mandated additional disclosure under Schedule 13E-3 would not further the interests of investors holding Subject Securities. We also seek exemptive relief to the effect that the acquisition by an issuer of Subject Securities from a Participating Firm that, in turn, acquired such Subject Securities pursuant to the Offers or out-of-offer purchases, will not be deemed to be a Rule 13e-3 transaction (as defined in Rule 13e-3(a)(3)).

Exchange Act Section 13(d) and Rules 13d-1 through 13d-7 (filing of Schedules 13D and 13G; filing of amendments to Schedule 13D or 13G;

determination of beneficial owner; disclaimer of beneficial ownership; acquisition of securities; exemption of certain acquisitions; dissemination). The Subject Securities include between approximately 900 and 2,000 different series of preferred stock issued by closed-end investment companies. These securities, although they have debt-like characteristics, are, in form, equity securities. To the extent they carry statutory or contractual rights to vote for one or more directors, they may constitute "voting securities" and therefore be subject to the beneficial ownership reporting requirements of Section 13(d). In addition, in such circumstances the securities will be subject to the insider trading reporting and liability provisions of Section 16 of the Exchange Act, which is discussed below.

We believe that the purchase of these securities pursuant to the Offers and out-of-offer purchases should not implicate the fundamental policy considerations involving contests for corporate control that Section 13(d) was intended to address. Nevertheless, it is possible that a very large number of filings under Section 13(d) could be required as a result of purchases in the Offers and out-of-offer purchases, which would impose substantial burdens on the Participating Firms. To facilitate the objective of the Offers and out-of-offer purchases, that is, to provide liquidity to certain holders of ARS, the Participating Firms are seeking to reduce the burden of preparing and filing the large volume of Section 13(d) filings that would otherwise be required. In formulating the proposed reporting treatment outlined below, the Participating Firms have attempted to balance the burden imposed by Section 13(d) reporting against the value to be obtained by issuers and market participants from Section 13(d) filings in these circumstances.

With respect to each class of Subject Securities subject to Section 13(d), each Participating Firm (including any of its affiliates which may acquire direct or indirect beneficial ownership of Subject Securities) would make a filing on Schedule 13G if such Participating Firm's or affiliate's ownership exceeds the relevant percentage of such class, as explained below, measured as of the end of a Filing Month, as defined below. A Participating Firm (including its affiliates) would not make any filings under Section 13(d) prior to its first Filing Month as a result of purchases in the Offers or out-of-offer purchases. For purposes of determining whether the percentage ownership threshold is exceeded, all series of preferred stock issued by an issuer of Subject Securities would be considered one "class".

Any filing required to be made with respect to Subject Securities by any Participating Firm and its affiliates pursuant to Section 13(d) would be made on Schedule 13G pursuant to Rule 13d-1(b), without regard to whether the entity actually purchasing or holding the Subject Securities was an entity described in Rule 13d-1(b)(ii)(A) through (I) (an "Eligible Institution") (so long as it or its affiliated Participating Firm is an Eligible Institution and the Participating Firm (and any such filing entity) is not a person specified in Rule 13d-1(e)(1)(i)), and would be deemed to have been made in the ordinary course of business. This relief is necessary because, although the Participating Firms are themselves

eligible to file on Form 13G because they are Eligible Institutions and not entities described in Rule 13d-1(e)(1)(i), certain of the Participating Firms may purchase the Subject Securities through an affiliated entity that is not an eligible institution under the referenced provisions. The Participating Firms and their affiliates undertake to clearly identify, in the body of the Schedule 13G, any filing person that is not an entity described in Rule 13d-1(b)(ii)(A) through (I) and will state that the Schedule 13G is filed by such person in reliance on the relief sought by this request.

A Filing Month, for purposes of this section, would be determined based on whether the Participating Firm is a Settling Firm and on the requirements of the applicable Settlement. A Filing Month would be (i) the first calendar month ending more than 15 days after the earlier of (x) expiration of the Settling Firm's first (or only) Offer period, if any, and (y) the 50th day after the commencement of the Settling Firm's first Offer, and (ii) any subsequent calendar month. For a Non-Settling Firm, a Filing Month would be determined on the same basis as for Settling Firms. In order for a Non-Settling Firm to file on a Filing Month basis with respect to Subject Securities and to qualify for the other relief requested herein with respect to the Schedule 13G and Section 16(a) filing requirements, the Non-Settling Firm would have to make an Offer for such Subject Securities pursuant to the Offer Protocol to its eligible individual retail clients holding Non-Settling Firm Securities. This Schedule 13G and Section 16(a) relief would not be available to Non-Settling Firms conducting only out-of-offer purchases.

Once the first Filing Month has occurred, each Participating Firm, and its affiliates, would file Schedules 13G and amendments thereto in accordance with Rule 13d-1(b) and Rule 13d-2(b) and (c). If December is a Participating Firm's first Filing Month, its initial Schedule 13G would be filed if the Participating Firm's ownership exceeds 5%, measured as of December 31, and would be made within 45 calendar days after December 31. If a month other than December is a Participating Firm's first Filing Month, its initial Schedule 13G would be filed if the Participating Firm's ownership, measured as of the end of such Filing Month, exceeds 10%, and would be filed within 10 calendar days after such month-end. If December is a Participating Firm's first Filing Month, and its beneficial ownership exceeds 10% at year-end, its initial Schedule 13G would be filed within 10 calendar days after December 31. For purposes of the Schedule 13G filings described herein, if the filing date is a Saturday, Sunday or holiday (as defined in Rule 0-3), the filing may be made on the first business day following such date.

The Participating Firms acknowledge that the relief relating to Section 13(d) and rules thereunder requested hereby does not extend to a Participating Firm, or any of its affiliates, which has incurred prior to the date hereof an obligation to file Schedule 13D or Schedule 13G with respect to a class of Subject Securities.

Exchange Act Section 16 (directors, officers, and principal stockholders). Each Participating Firm, and its affiliates, will also be subject to Section 16 (by virtue of Section 30(h) of the Investment Company Act) with respect to any class of Subject Securities which is a class of voting equity securities, to the extent such Participating Firm, and its affiliates, beneficially own in excess of 10% of such class. Also, certain affiliates of the Participating Firms may be treated as insiders of the issuers of Subject Securities under Section 30(h) and would thus be obligated to file reports under Section 16(a) if such entities were the purchasers of the applicable Subject Securities pursuant to the Offers or out-of-offer purchases. If traditional Section 16(a) reports were required in this setting, the filing burdens would be extremely high, yet it is in our view questionable whether the information contained in the filings would further the purposes of Section 16. Just as is the case for Section 13(d), the policies underlying Section 16 (preventing abuse of inside information) are, we believe, unlikely to be implicated in the context of the Offers or out-of-offer purchases of Subject Securities for cash at par (plus dividends, if any). The Subject Securities are designed to trade at par, and purchases pursuant to the Offer Protocol are required to be made for cash at par (plus dividends, if any). In this context, there does not appear to be any informational advantage, or corresponding potential for abuse, arising from the purchase and sale of the Subject Securities for cash at par (plus dividends, if any).

Accordingly, we believe that balancing the burden imposed on the Participating Firms and their affiliates of reporting under Section 16(a) against the questionable value to investors of such reports militates in favor of regulatory relief. This relief would be similar to and consistent with that previously granted by the Staff, see, e.g. *Select Sector SPDR Trust,* May 6, 1999 and *PDR Services Corporation*, June 29, 1998.

With respect to each class of Subject Securities subject to Section 16, each Participating Firm and its affiliates would make a filing on Form 3 if such Participating Firm or affiliate is or becomes an insider of the issuer of such Subject Securities. For a Participating Firm or its affiliate that becomes a Section 16 "insider" as a result of acquiring more than 10% of a class, the obligation to file Form 3 would be determined by ownership of more than 10% of the class, measured as of the end of each Filing Month. The timing and methodology for determining percentage ownership would be the same as that employed for Schedule 13G filing. The Forms 3 for a Participating Firm and its affiliates would be required to be filed no later than 10 calendar days after the end of the applicable Filing Month, except that if such 10th day is a Saturday, Sunday or holiday (as defined in Rule 0-3), such form may be filed on the first following business day.

Once a Participating Firm or affiliate has filed a Form 3, subsequent purchases of Subject Securities of such issuer pursuant to an Offer or out-of-offer purchases would not be required to be reported pursuant to Section 16(a), as long

as such purchases are effected for cash at par (plus dividends, if any). Similarly, sales of Subject Securities at par (plus dividends, if any) would not be required to be reported pursuant to Section 16(a). All other purchases or sales not described above would be reported in accordance with Section 16(a).

The Participating Firms understand that the relief requested herein for Form 3 and Form 4 reporting is granted in recognition of the extraordinary circumstances surrounding the Settlements and is intended to facilitate implementation of the Offer Protocol. Each Form 3 with respect to Subject Securities filed in the manner described herein will contain an undertaking to provide full information, as described below, upon request of the Staff, the issuer of such Subject Securities, or any securityholder of the issuer of such Subject Securities. Such full information would comprise information regarding dates, prices and share numbers with respect to transactions occurring after exceeding the 10% beneficial ownership threshold but prior to the month-end filing. The Participating Firms also undertake to provide, upon request of the Staff, the applicable issuer, or any security holder of such issuer, information about amounts and dates of transactions exempted from Form 4 reporting under the relief requested hereunder. The Participating Firms acknowledge that the relief afforded under this section does not extend to an obligation of a Participating Firm, or any of its affiliates, incurred prior to the date hereof, to file a Form 3 or Form 4 in respect of an issuer of Subject Securities, or to the reporting on Form 4 of any transactions prior to the date hereof in the securities issued by an issuer of Subject Securities.

3. Non-Settling Firm Conditions.

As a condition to any Non-Settling Firm relying on the relief requested herein, a Non-Settling Firm would be required to comply with the following conditions:

- Its Offers would need to comply with the Offer Protocol;
- Its Offers could not be subject to any condition which is within the control of the Non-Settling Firm and the Non-Settling Firm may not terminate the Offer once it has been commenced;
- Its Offers would need to be completed by December 31, 2010;
- Its Offers would need to be limited to only the ARS sold by the Non-Settling Firm or its affiliates or to ARS held by accounts at such Non-Settling Firm or its affiliates;
- Its Offers would need to include individual retail customers who purchased Non-Settling Firm Securities from, or who hold or held such securities in accounts at, the Non-Settling Firm, as may be specified in the Offer Document for such Offer; and

- The Non-Settling Firm would make a public announcement of its intention to make a voluntary Offer prior to the commencement of such Offer.

4. Conclusion.

We would like to specifically acknowledge the very substantial contribution of the other firms subscribing to this letter in discussions with the Staff that led to, and in the preparation of, this request and who join in this request:

Covington & Burling LLP -- Bruce C. Bennett and David B. H. Martin

Milbank, Tweed, Hadley & McCloy LLP -- Thomas C. Janson and Paul E. Denaro

Morgan, Lewis & Bockius LLP -- John V. Ayanian and David A. Sirignano

O'Melveny & Myers LLP – Marty Dunn, David Lavan and Bill Satchell

Paul, Weiss, Rifkind, Wharton & Garrison LLP -- Mark S. Bergman and David S. Huntington

Simpson Thacher & Bartlett LLP -- John D. Lobrano and Sarah E. Cogan

Wilmer Cutler Pickering Hale and Dorr LLP – Meredith B. Cross and Knute J. Salhus

We are very grateful for the time and attention that many members of the Commission's Staff, from many different divisions and offices, have devoted to consideration of the issues presented in this request.

If the Commission requires any additional information or explanation, please do not hesitate to contact John Bick, John Brandow, Peter Douglas, Arthur Einav, Edmond FitzGerald, Sophia Hudson, Nora Jordan, Michael Kaplan, Jane Lindabury, Barbara Nims, Greg Rowland or Lanny Schwartz of this office.

Very truly yours,

Peter R. Douglas