SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

COÖPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK, B.A.,

Plaintiff,

-against-

MERRILL LYNCH & CO.,

Defendant.

Date Purchased:

09601832

SUMMONS

TO: MERRILL LYNCH & CO.
222 Broadway
New York, NY 10011

YOU ARE HEREBY SUMMONED and required to serve an answer to the Complaint upon Plaintiff's counsel within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to appear, judgment will be taken against you on default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial. The basis of the venue designated is that both parties are located in New York County and many of the wrongful acts alleged in the Complaint occurred in this County.

FILED
JUN 12 2009
NEW YORK
COUNTY CLERK'S OFFICE

Dated: June 12, 2009
New York, New York

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By: ______________________

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK CITY

COÖPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK, B.A., Plaintiff, -against- MERRILL LYNCH & CO., Defendant.	Index No. **COMPLAINT**

09601832

Plaintiff Coöperatieve Central Raiffeisen-Boerenleenbank, B.A. ("Rabobank"), by its attorneys, Quinn Emanuel Urquhart Oliver & Hedges LLP, for its Complaint against Merrill Lynch & Co. ("Merrill Lynch") alleges as follows:

NATURE OF ACTION

1. This action arises out of the wrongful conduct of defendant Merrill Lynch in inducing the plaintiff, Rabobank, to provide an almost $60 million senior secured loan to a Merrill Lynch collateralized debt obligation ("CDO") that, unbeknownst to Rabobank, Merrill Lynch had loaded with distressed mortgage collateral and structured in a manner that left Rabobank's loan secured by only a small fraction of the CDO's already impaired assets. Rabobank seeks to recoup from Merrill Lynch the approximately $45 million that was left unpaid on its loan after the default and liquidation of the CDO.

2. In the years leading up to the collapse of the mortgage securitization market in late 2007, Merrill Lynch led the world in underwriting CDOs. Merrill Lynch's CDO assembly line garnered hundreds of millions of dollars in fees for the investment bank, and churned out a seemingly endless supply of CDOs that Merrill Lynch marketed as carefully managed and secure

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investments. One of those CDOs is at issue here — a structure called "Norma" that was backed by subprime and nonprime mortgage-related securities with a $1.5 billion par value.

3. Rabobank first learned of Norma in early 2007 when Merrill Lynch began marketing investment opportunities in Norma. Based on Rabobank's highly conservative risk appetite, Merrill Lynch proposed that Rabobank provide a $57.7 million upfront loan to Norma, secured by Norma's nominal $1.5 billion in portfolio assets, that would be senior in repayment priority to all of Norma's noteholders, including even the senior-most tranche of notes that Merrill Lynch itself had committed to initially purchase. Rabobank agreed to this proposal, relying upon Merrill Lynch's representations that Norma was a carefully structured and managed investment vehicle and that Rabobank's loan was virtually assured of repayment given the high level of security and repayment priority that Rabobank would be accorded.

4. The truth about Norma and Rabobank's upfront loan was vastly different than Merrill Lynch had represented, however. In fact, Norma was never intended by Merrill Lynch to be a secure investment vehicle for Rabobank or anyone else. Rather, Merrill Lynch created Norma as a dumping ground for many millions of dollars of subprime securities (including tens of millions of dollars of other Merrill Lynch-structured CDOs backed by subprime mortgage securities) that Merrill Lynch knew were already impaired and wanted to get off its own books. Through this scheme — which Merrill Lynch internally referred to as "de-risking" — Merrill Lynch sought to obscure its own colossal liabilities while shifting the expected losses on these devalued assets to Rabobank and Norma's other unsuspecting investors.

5. To carry out this scheme, Merrill Lynch teamed up with one of its most prized hedge fund clients — an infamous short seller that had helped Merrill Lynch create four other CDOs — to create Norma as a tailor-made way to bet ***against*** the mortgage-backed securities

market. And, to facilitate the selection of assets that would allow Norma to operate as a hedging instrument rather than an investment vehicle, Merrill Lynch hand-picked a beholden collateral manager that was willing to ignore its fiduciary duties to Norma's investors by selecting Norma's collateral pool at Merrill Lynch's behest rather than on the basis of the rigorous independent analysis that Merrill Lynch represented the collateral manager would apply.

6. To further obscure the true risks associated with Norma, Merrill Lynch also withheld information from the credit ratings agencies responsible for rating the notes issued by Norma regarding the actual deterioration of the assets in Norma's portfolio. By doing so, Merrill Lynch procured credit ratings for Norma's notes that misrepresented their actual credit quality and falsely presented Norma as a legitimate and conservative investment vehicle. And, to ensure the availability of a market for Norma's subordinated notes that would neither test nor challenge Merrill Lynch's representations concerning the fundamental soundness of Norma as an investment, Merrill Lynch sold virtually all of those notes to a stable of captive collateral managers that were managed tens of billions of dollars of other Merrill Lynch-structured CDOs.

7. Further, expecting that Norma would generate large losses, Merrill Lynch sought to ensure that Rabobank would bear those losses before they ever impacted Merrill Lynch itself. By creating opaque and improper structural preferences for its own retained positions in Norma, Merrill Lynch effectively inverted the senior payment priority that Rabobank had been promised and for which it had negotiated. In fact, Merrill Lynch's machinations left Rabobank's $57.7 million loan essentially secured at the end of the day by less than 10% of Norma's asset portfolio, and even that small subset included a disproportionate amount of the most toxic assets that Merrill Lynch sought to get off its own books. Consequently, Rabobank was left with almost no security at all. Meanwhile, Merrill Lynch accorded its own positions in Norma first

priority against the far larger remainder of Norma's collateral, which included less impaired and more diversified assets.

8. As a result of Merrill Lynch's wrongful conduct, upon Norma's default and liquidation, Rabobank was left with more than $45 million of its loan to Norma unpaid. Rabobank therefore brings this action against Merrill Lynch alleging claims for fraud, negligent misrepresentation, fraudulent conveyance, unjust enrichment, and conversion, and seeks recompense for its injuries.

PARTIES

9. Plaintiff Rabobank is a cooperative banking organization chartered under the laws of The Netherlands with its principal place of business in Utrecht, The Netherlands.

10. Defendant Merrill Lynch is organized under the laws of Delaware with its principal place of business located in New York.

JURISDICTION AND VENUE

11. This Court has jurisdiction over defendant Merrill Lynch pursuant to New York's general jurisdiction statute, CPLR § 301, because Merrill Lynch's principal place of business is in New York.

12. Venue is proper under CPLR § 503 because Rabobank and Merrill Lynch are located in this County and many of the wrongful acts alleged in this complaint occurred in this County.

BACKGROUND

Merrill Lynch and Norma

13. Merrill Lynch (prior to being acquired by Bank of America) was one of the largest financial institutions in the world and, in recent years, was the world's leading underwriter of CDOs. Between 2004 and 2007, Merrill Lynch generated hundreds of millions of

dollars in fees from assembling and marketing CDOs backed predominantly by residential mortgage-backed securities. During the height of the subprime boom in 2006 and 2007, when the events discussed herein occurred, Merrill Lynch was the lead underwriter on 136 CDOs with a dollar value of approximately $93 billion.

14. This case concerns Norma, a CDO created by Merrill Lynch in early 2007. CDOs are special purpose vehicles created by banks to facilitate investments through the issuance of multiple classes of notes secured by pools of collateral. CDO collateral can include a variety of assets — such as securities (*e.g.*, residential mortgage-backed securities or "RMBS"), notes issued by other CDOs, or contractual rights — that generate a stream of cash flows that the CDO uses to make interest and principal payments to its noteholders and to pay fees to the various non-investor parties that manage the CDO or enabled its establishment. Any leftover cash flows go to equity investors in the CDO. To the extent that particular assets in a CDO's collateral portfolio fail to perform as expected, the CDO's cash flows may be diminished, leaving fewer funds available to pay the CDO's noteholders, non-investor parties and equity holders.

15. Norma was a "hybrid" CDO, which means that its portfolio included both "cash" and "synthetic" investments. Approximately 6% (or $90 million par value) of Norma's portfolio was comprised of "cash" assets, which were the investments that the collateral manager for Norma actually purchased. The remaining approximately 94% (or $1.41 billion par value) of Norma's portfolio was comprised of "synthetic" assets, which included derivative contracts called credit default swaps that referenced particular asset-backed securities, the performance of which would determine the returns (or losses) to Norma under the contracts. Under these credit default swaps, which were executed between Norma and a Merrill Lynch affiliate (referred to as the "CDS Counterparty" in the transactional documents), Norma agreed to assume certain risks

in regard to the securities referenced in the credit default swaps in exchange for a stream of premium payments from the Merrill Lynch affiliate. To the extent that the referenced securities performed well, Norma would be entitled to the premium payments from the Merrill Lynch affiliate without having any payment obligations in return. However, in the event that the referenced securities defaulted on their principal or interest obligations or were written down, then Norma would owe any loss to the Merrill Lynch affiliate, requiring payments potentially up to the full notional amount of the referenced securities if the securities were written down completely. Through these contracts, Norma and Merrill Lynch thus took offsetting positions with regard to the referenced obligations, with Norma's position being "long" the referenced securities and Merrill Lynch being "short" the same securities.

16. By entering into these credit default swaps with the Merrill Lynch affiliate, Norma was able to generate an income stream that mimicked the interest rate "spread" that it would have received from owning the referenced securities without having to front cash to pay for the securities themselves. As a result, the initial amount of cash required to constitute the CDO and bring it to market was significantly lower than the total $1.5 billion notional value of the CDO's collateral pool (although Norma could require access to cash up to that full notional amount to fund potential payments to the Merrill Lynch affiliate under the credit default swaps).

17. The notes issued by Norma, as in most CDOs, were structured in layers — or "tranches" — that corresponded to the noteholders' respective rights to receive payment from the CDO's cash flows or, in the case of a liquidation of the CDO's collateral, from the proceeds of the liquidation. Norma was authorized under the terms of its indenture to issue the following tranches of notes and preference shares:

- $975 million of Class A-1 First Priority Senior Secured Floating Rate Notes Due 2049 (the "Class A-1 Notes");

- $150 million of Class A-2 Second Priority Senior Secured Floating Rate Notes Due 2049 (the "Class A-2 Notes");
- $86 million of Class B Third Priority Senior Secured Floating Rate Notes Due 2049 (the "Class B Notes");
- $50 million of Class C Fourth Priority Senior Secured Floating Rate Notes Due 2049 (the "Class C Notes");
- $74 million of Class D Fifth Priority Mezzanine Secured Deferrable Floating Rate Notes Due 2049 (the "Class D Notes");
- $65 million of Class E Sixth Priority Mezzanine Secured Deferrable Floating Rate Notes Due 2049 (the "Class E Notes");
- $12 million of Class F Seventh Priority Mezzanine Secured Deferrable Floating Rate Notes Due 2049 (the "Class F Notes");
- $15 million of Class G Eighth Priority Junior Secured Deferrable Floating Rate Notes Due 2049 (the "Class G Notes");
- 50,000 Preference Shares with a $50 million Aggregate Liquidation Preference (the "Preference Shares")

The Class A-1 Notes were not issued by Norma at its closing but rather represented a $975 million funding facility that was available to Norma in case it needed cash in excess of the amounts raised through the sale of the other notes. The Class A-1 Notes were able to remain unfunded at the outset because of the limited initial cash requirements for the synthetic portion of Norma's collateral pool. Merrill Lynch, through an affiliate, agreed that it would fund up to the $975 million if those amounts were ever needed by Norma in exchange for which Merrill Lynch would receive Class A-1 Notes representing the funded amount.

18. Through the many roles that Merrill Lynch assumed in connection with the Norma structure — including as the underwriter, CDS Counterparty, and committed purchaser of the Class A-1 Notes — Merrill Lynch stood to earn tens of millions of dollars in fees and trading income.

Rabobank Agrees to the Proceeds Swap

19. In early 2007, Merrill Lynch approached Rabobank, proposing that Rabobank enter into an arrangement under which it would provide Norma with $57.7 million through a purportedly "super-senior" lending facility memorialized under a derivative agreement called a "Proceeds Swap." The purpose of the upfront loan was to fund certain of Norma's start-up costs, with a significant portion of the loan going to pay for Merrill Lynch's own fees as the underwriter of the deal. In evaluating — and ultimately agreeing to enter into — the Proceeds Swap, Rabobank relied upon a number of representations by Merrill Lynch with regard to Norma and the protections that Rabobank would have securing the repayment of the upfront loan that Merrill Lynch was requesting.

20. The representations that Rabobank relied upon were contained in numerous documents and communications that Merrill Lynch provided to Rabobank with the understanding and expectation that Rabobank would rely upon for them for the purpose of evaluating whether to enter into the Proceeds Swap. For example, these documents included an 80-page detailed marketing book (the "Norma Pitchbook") provided by Merrill Lynch to Rabobank on February 5, 2007, that described, among other things, the structure of the Norma transaction, the types of assets that would be selected for inclusion in Norma's portfolio, and the process that was being employed by Norma's collateral manager to identify the assets that would be acquired for Norma's portfolio. Merrill Lynch also provided Rabobank with: a preliminary offering memorandum (the "Preliminary Offering Memorandum") on February 5, 2007, describing, among other things, the eligibility criteria for any assets purchased by Norma and the required credit ratings for Norma's notes; a final offering memorandum (the "Offering Memorandum") that was first provided to Rabobank in draft on February 15, 2007; and an

indenture (the "Indenture") among Norma, Norma CDO I LLC, and Wells Fargo Bank N.A., as trustee, that was first provided to Rabobank in draft on February 15, 2007 and provided the terms governing Norma's issuance of notes. Rabobank reasonably relied upon statements contained in these and other communications from Merrill Lynch in the following ways.

21. First, Rabobank reasonably relied upon Merrill Lynch's representations that Norma had been carefully structured as a traditional, legitimate and secure investment vehicle for investors who were intending to take "long" positions in the asset-backed securities market. For example, in the Norma Pitchbook, Merrill Lynch described the seven classes of notes that Norma was expected to issue to investors and touted the numerous characteristics of Norma that would purportedly render it a secure investment. Merrill Lynch further espoused that the RMBS that would predominate Norma's collateral pool "have historically exhibited lower default rates, higher recovery upon default, and better rating stability than comparably rated corporate bonds." Merrill Lynch also provided numerous pages of analysis and charts that purported to illustrate the high stability and low volatility of the types of securities that were to be included in Norma's collateral. The Norma Pitchbook described all of the primary classes of securities in Norma's collateral pool as having 1-year weighted average default rates of less that 1%.

22. Second, Rabobank reasonably relied upon Merrill Lynch's representations as to the selection of the assets that would comprise Norma's collateral pool, including with regard to the competence and integrity of Norma's collateral manager, NIR Capital Management, LLC ("NIR"). Collateral managers are independent entities hired to choose and manage the assets that are acquired by a CDO for its asset portfolio. Given the critical role that NIR would have in making investment decisions for Norma, it was of paramount importance to Rabobank that it be assured of NIR's experience, independence and rigorous investment procedures. Merrill

Lynch's representations regarding NIR included almost 20 pages of the Norma Pitchbook dedicated to describing NIR's experience and its investment selection process. The Pitchbook extolled NIR's principals as having a "depth of investment expertise [that] spans all major sectors of structured finance" and a "strong record of portfolio management … built through multiple credit cycles." It further promised that NIR would select assets for Norma's portfolio based upon an independent and rigorous evaluation that sought to identify "products that offer superior risk adjusted returns" and would apply a "long term return on equity approach … to the investment selection process" through the use of "proprietary CDO modeling" that "forecasted collateral performance … from a base of historical loan/bond level data." Merrill Lynch further assured that NIR would combine "macro-level market strategy" and "micro-level investment selection" in a multi-step process that included a "bottom-up analysis" that would involve an evaluation of "collateral profiles," "performance statistics," and the "latest performance trends" for each of the potential individual portfolio assets that NIR selected for Norma's portfolio. Rabobank reasonably relied upon these representations as demonstrating the careful and diligent process that would be employed to identify and select each piece of collateral that went into Norma's portfolio.

23. Third, Rabobank reasonably relied upon representations by Merrill Lynch that the overall secure nature of Norma as an investment vehicle would be confirmed by independent credit ratings that Norma's notes were required to receive from Standard & Poor's Ratings Services ("S&P"), Moody's Investor Services ("Moody's") and Fitch Ratings Inc. ("Fitch") as a condition of Norma ever coming to market. Specifically, Merrill Lynch represented in the Norma Pitchbook, the Preliminary Offering Circular, the Offering Circular, and the Indenture

that Norma's issuance of notes would be conditioned upon Norma's nine tranches of notes receiving the following investment-grade ratings:

Notes	Notional Amount	S&P	Moody's	Fitch
Class A-1 Notes	$975 million	AAA	Aaa	AAA
Class A-2 Notes	$150 million	AAA	Aaa	AAA
Class B Notes	$86 million	AA	Aa2	AA
Class C Notes	$50 million	AA-	Aa3	AA-
Class D Notes	$74 million	A	A2	A
Class E Notes	$65 million	BBB	Baa2	BBB
Class F Notes	$12 million	BBB-	Baa3	BBB-
Class G Notes	$15 million	BBB-	Baa3	BBB-
Class H Notes	$23 million	BBB-	Ba1	BBB-

Rabobank relied upon the fact that Norma would be required to obtain these independent credit ratings — which would represent about 97% of the entire $1.5 billion capital structure receiving investment-grade ratings and the top 75% of the structure receiving the highest credit ratings reserved for obligations that have an "extremely strong" likelihood of repayment — as providing a further demonstration that Merrill Lynch had structured Norma as a secure and conservative investment vehicle.

24. Fourth, Rabobank reasonably relied upon representations by Merrill Lynch with regard to certain structural protections that would ensure that the upfront loan being provided by Rabobank under the Proceeds Swap would be a "super-senior" obligation of Norma — meaning that it would have even less credit risk than obligations of Norma that had obtained a AAA credit rating. Specifically, Merrill Lynch represented to Rabobank that, under the terms of the Proceeds Swap, Rabobank's upfront loan to Norma would be senior to ***all*** of the noteholders in the payment structure. This was reflected in, among other documents, the Norma Pitchbook which included among the "Transaction Highlights" a chart showing that payments to Rabobank

(identified as the "Senior Hedge Counterparty" in the chart) would be senior to payments made to any of Norma's noteholders, including the AAA-rated Class A1 Notes and Class A-2 Notes.

25. During the negotiation of the Proceeds Swap, Rabobank also reaffirmed its understanding that its security in Norma's collateral and cash flows would be senior to all of Norma's noteholders. For example, in a series of e-mail communications on February 15, 2007, the Rabobank associate responsible for managing Rabobank's relationship with Merrill Lynch on the Norma deal wrote to his Merrill Lynch counterpart, insisting that Rabobank's position "would need to be senior to the notes" in respect of all payment streams derived from Norma's collateral. In response to this e-mail exchange, Merrill Lynch made specific revisions to the Indenture's "Priority of Payments" — the provision setting forth the order in which parties were to receive payments from the cash flows generated by Norma's collateral, sometimes also referred to as the "waterfall" — placing Rabobank in a position that was above all of Norma's noteholders and, indeed, even above Merrill Lynch itself in its role as the CDS Counterparty.

26. Rabobank's seniority over Norma's noteholders was also embodied in the Norma Indenture's "subordination" provision. That section — which refers to Rabobank in its defined role as one of the "Hedge Counterparties" — provided:

> [a]nything in this Indenture or the Notes to the contrary notwithstanding...***the Notes...shall be subordinate and junior to the rights of the Hedge Counterparties...with respect to payments to be made to the Hedge Counterparties***...to the extent and in the manner set forth in [the Priority of Payments] and hereinafter provided.

(emphasis added).

27. Merrill Lynch further confirmed the fact that Rabobank was not in line to bear losses before any of Norma's noteholders in Norma's Preliminary Offering Memorandum and Offering Memorandum, which both provided that:

> [Norma's] losses will be borne, first, by the holders of the Preference Shares, Second by the holders of the Class H Notes, third by the holders of the Class G Notes, fourth by the

> holders of the Class F Notes, fifth by the holders of the Class E Notes, sixth by the holders of the Class D Notes, seventh by the holders of the Class C Notes, eighth by the holders of the Class B Notes, ninth by the holders of the Class B Notes, and tenth, by the holders of the Class A-1 Notes.

Notably, Rabobank, as a "Hedge Counterparty," was not included on that list of the first ten potential parties to bear losses. Consequently, Rabobank understood from its conversations with Merrill Lynch, from the two key provisions in the Indenture that governed payment priorities, and from the Norma Pitchbook, the Preliminary Offering Memorandum and the Offering Memorandum that Norma's noteholders would absorb any losses suffered by the CDO before the returns on Rabobank's loan could be affected.

28. Finally, the extremely low level of credit risk that Rabobank understood itself to be assuming as a result of this structural protection was also reflected in the pricing for the Proceeds Swap. Under the Proceeds Swap, Rabobank was to receive an effective interest rate on its upfront loan that was lower than the interest rate reflected in the coupon that was to be paid on any of the notes Norma was to issue — including the senior-most Class A-1 Notes that Merrill Lynch had committed to purchase.

29. Based upon these representations by Merrill Lynch regarding the legitimate and conservative manner in which Norma was structured, the rigorous asset selection process that would be employed by Norma's collateral manager, the independent credit ratings that would be required as a condition of Norma's notes being issued, and the structural protections that would secure Rabobank's repayment rights, Rabobank agreed to provide Norma with the $57.7 million upfront loan that Merrill Lynch had requested.

30. On March 1, 2007, Rabobank and Norma executed the agreements memorializing the Proceeds Swap transaction that Rabobank and Merrill Lynch had agreed. The Proceeds Swap was documented through a master agreement, a schedule and a confirmation reflecting the

financial terms of the upfront loan. That same day, Rabobank transferred to Norma a payment of $57.7 million per the terms of the agreement.

Merrill Lynch's False Statements and Omissions

31. As Rabobank would only later learn, the truth about Norma was vastly different than Merrill Lynch had represented it to be. In fact, as described below, contrary to Merrill Lynch's representations, Norma was not a legitimate and secure investment vehicle issuing AAA-worthy securities on the basis of careful asset selection by an experienced and independent collateral manager. Rather, Norma was actually part of a scheme employed by Merrill Lynch to maximize its own revenues and mask its losses during the last gasp of the subprime mortgage boom. In addition, Norma did not provide the substantial structural protections securing repayment of Rabobank's upfront loan that Merrill Lynch had claimed. Norma was thus destined — if not *designed* — by Merrill Lynch to be a spectacular failure for Rabobank and Norma's investors, which is precisely what it turned out to be.

Norma Was Not a Legitimate and Secure Investment Vehicle

Norma Was Structured as a "De-Risking" Strategy for Merrill Lynch

32. Contrary to Merrill Lynch's representations, Norma was not a legitimate and secure investment vehicle. In fact, Norma was a debacle in virtually every respect. In late December 2007, less than nine months after the CDO closed, a front-page Wall Street Journal article declared Norma the poster child for the subprime recklessness that has resulted in billions of dollars in losses to unwitting market participants and U.S. taxpayers. In that article, headlined, "How the credit wizards failed," the Journal identified Norma as prime evidence of Merrill Lynch's efforts to fuel a wildly speculative market, propping up CDOs based on dubious assessments of the value of the subprime mortgages on which they were based:

> In recent years, as U.S. home prices and mortgage lending boomed, bankers found ever-more-clever ways to repackage trillions of dollars in loans, selling them off in slivers to investors around the world. Financiers and regulators figured all the activity would disperse risk, and maybe even make markets safer and stronger.
>
> ***Then along came Norma.***
>
> Norma CDO I Ltd., as its full name goes, is one of a new breed of mortgage investments created in the waning days of the U.S. housing boom. Instead of spreading the risk of a global home-finance boom, the instruments have magnified and concentrated the effects of the subprime-mortgage bust. They are behind tens of billions of dollars of write-downs at some of the world's largest banks....
>
> In its use of newfangled derivatives, Norma contributed to a speculative market that dwarfed the value of the subprime mortgages on which it was based. It was also part of a chain of mortgage-linked investments that took stakes in one another. The practice generated fees for a handful of big banks. But, critics say, it created little value for investors or the broader economy.

As suggested by the Wall Street Journal's exposé, the truth was that Merrill Lynch had not simply been reckless in not foreseeing Norma's downfall, but rather that Norma was an instrumental part of Merrill Lynch's efforts to maximize its own returns while creating nothing but losses for investors.

33. Indeed, not content with the millions it would earn underwriting Norma, Merrill Lynch also utilized Norma as a means of transferring millions of dollars in underperforming assets from Merrill Lynch's own books at inflated prices. By late 2006, Merrill Lynch had accumulated an inventory of over $30 billion of the mortgage-backed securities that served as the building blocks for its CDO production business. By early 2007, as Merrill Lynch began to see the market for these assets flagging, it looked to its CDO production business as a way of reducing or hedging its inventory risk. As former Merrill Lynch Chairman and CEO Stanley O'Neal has admitted: "As the market for [CDO] securities began to deteriorate in the first quarter [of 2007], [Merrill Lynch] began substantially reducing [its] warehouse risk by constructing CDOs." Norma is one of the CDOs to which Mr. O'Neal was referring.

34. The Wall Street Journal also exposed this practice — referred to internally at Merrill Lynch as "de-risking" — in a front-page article in April 2008:

> [In early 2007,] Merrill set out to reduce its exposure, in an effort referred to as "de-risking." It could have sold off billions of dollars' worth of mortgage-backed bonds that it had stockpiled with the intention of packaging them into more CDOs. ***But with the market for such bonds slipping, Merrill would have had to record losses of $1.5 to $3 billion on the bonds .... Instead, Merrill Lynch tried a different strategy: quickly turn the bonds into more CDOs*** .... [E]xecutives believed that so long as all they retained on their books were super-senior tranches, they would be shielded from falls in the prices of mortgage securities. And they wouldn't have to sell off their mortgage bonds at a loss.

In the case of Norma, Merrill Lynch employed this "de-risking" strategy as a means of avoiding millions of dollars in losses in deteriorating assets it held on its own books by foisting these underperforming assets on Norma's investors and Rabobank.

35. Merrill Lynch's use of Norma as part of its undisclosed "de-risking" strategy is reflected in both the substantial deterioration of Norma's individual assets at the time the deal was formed as well as in unexplained and undisclosed variations between different subsets of Norma's asset portfolio. For example, Norma's pool of synthetic assets, created contractually through credit default swaps, included a diversified portfolio of mortgage-backed securities underwritten by a variety of banks. At the time of its closing, Norma's synthetic pool of assets had experienced undisclosed substantial impairment of, on average, approximately 15%, meaning that that the synthetic assets were worth only 85% of their par value at the time that Norma closed. As Merrill Lynch was a regular market participant in transactions involving these types of securities, it knew precisely how impaired the assets were. However, Merrill Lynch concealed this information from Rabobank by failing to disclose during the negotiation of the Proceeds Swaps any of the individual securities that would be included in the synthetic pool of assets, or that those assets were already substantially impaired. The fact of this impairment was furthermore inconsistent with, and rendered false, Merrill Lynch's representations to Rabobank

that Norma's assets had been carefully selected based upon the return they would provide to Norma's investors.

36. Even more telling was Norma's $90 million pool of cash assets, acquired physically through cash purchases, which Rabobank would later learn were the only assets securing the repayment of its upfront loan upon Norma's liquidation. As Rabobank only later discovered, these cash assets exhibited significantly different and even more troubling attributes as compared to the synthetic portfolio. For example, the cash portfolio was comprised of a disproportionately high percentage of CDO securities underwritten by Merrill Lynch, with almost half of the CDO securities in the cash portfolio having been structured by Merrill Lynch. Moreover, notwithstanding the substantial impairment of Norma's synthetic portfolio, the impairment of Norma's cash assets was even higher, having already deteriorated in value, on average, by 27% by the time Norma acquired them. Again, Merrill Lynch concealed this information from Rabobank by failing to disclose during the negotiation of the Proceeds Swap the identity of any of the individual securities that would be included in Norma's cash portfolio, the fact that there was a disproportionate percentage of Merrill Lynch's own CDO securities being included in the cash portfolio, or the fact that the assets in Norma's cash portfolio had already dropped more than a quarter of their value. The undisclosed significant variations in collateral composition and deterioration between Norma's synthetic portfolio and cash portfolio was also inconsistent with, and rendered false, Merrill Lynch's representations regarding Norma's asset selection process, since Merrill Lynch claimed no difference between the procedures for the selection of synthetic and cash assets for Norma's portfolio.

37. Moreover, despite the undisclosed fact that the cash assets that were selected for Norma's cash portfolio were only worth about 73% of their par value, Merrill Lynch nonetheless

arranged to have Norma pay Merrill Lynch at or very near the par value for all of those securities. In doing so, Merrill Lynch was able to implement its "de-risking" strategy by dumping substantially impaired assets on Norma in exchange for prices that did not reflect that impairment. Furthermore, by transferring impaired securities to Norma at prices that were substantially above what that they were actually worth, Merrill Lynch rendered Norma insolvent on day one since Norma was left with liabilities to Rabobank and its noteholders that exceeded the actual value of its assets. As many of the assets that ended up in Norma's cash portfolio had come from Merrill Lynch's own trading desks or were assets that were similar to those regularly traded by Merrill Lynch's trading desk, Merrill Lynch was extremely knowledgeable as to the market value of those assets and the fact that Norma had vastly overpaid Merrill Lynch for them. This fact also was not disclosed to Rabobank, which was not even informed of which individual securities were in Norma's cash portfolio, and it was inconsistent with Merrill Lynch's representations as to the rigorous care taken to ensure Norma would be a secure investment vehicle.

38. That Merrill Lynch created Norma as a vehicle for shorting or hedging the asset-back securities market is further demonstrated by the fact that more than ***half*** of the subprime and midprime mortgage-backed securities in Norma's collateral pool were constituents in the ABX, an asset-backed security market index commonly used as a means of hedging against overall market movements. This high correlation with the ABX index was inconsistent with a CDO portfolio purportedly selected based upon the credit quality and expected returns of each selected security; most CDO portfolios of Norma's era exhibited a correlation to the ABX index of 10% or less. Merrill Lynch further concealed this information from Rabobank by failing to disclose the identities of the mortgage-backed securities that were in Norma's portfolio or that

there was a correlation between those securities and the ABX index that was more than ***5 times*** higher than the average of other CDOs being brought to market around the same time. Furthermore, this undisclosed and very troubling correlation between Norma's collateral pool and a well-known hedging index was inconsistent with, and rendered false, Merrill Lynch's statements regarding the purported careful and rigorous asset-by-asset selection process that would be used to choose Norma's collateral pool.

<u>Norma's Equity and Notes Sold By Merrill Lynch To Short Sellers and Captive Managers</u>

39. The fact that Norma was not intended by Merrill Lynch as a legitimate investment vehicle was further evidenced by information that Merrill Lynch failed to disclose to Rabobank, but which Rabobank would later learn, regarding the investors to which Merrill Lynch sold Norma's equity and notes.

40. In the CDO structure, the purchaser of the equity is often the most important investor since that is the critical investor that is agreeing to suffer the first losses and provide a financial buffer for the noteholders in the event that the CDO's collateral underperforms. In fact, without a willing equity investor, most CDOs would never be created.

41. In the case of Norma — a CDO stuffed with impaired collateral — locating a linchpin equity investor was an especially difficult task since most equity investors will insist on being able to carefully examine the collateral pool to evaluate whether it has any deteriorated assets that could generate losses and wipe out the equity investor's "first loss" position. Merrill Lynch was nonetheless able to identify an equity investor for Norma in the form of Magnetar Capital LLC, which was one of Merrill Lynch's most prized CDO investors. In fact, Magnetar had become a prodigious source of CDO generation for Merrill Lynch, having purchased the equity positions that facilitated Merrill Lynch's creation of three other CDOs worth over $4.5

billion in the preceding six months: Octans CDO I, Auriga CDO I and Scorpius CDO I. These CDOs, each of which, like Norma, had a roughly $1.5 billion notional capital structure, had generated hundreds of millions of dollars in fees for Merrill Lynch and had furthermore provided Merrill Lynch with knowledge of Magnetar's investment appetites and strategies.

42. Merrill Lynch knew that Magnetar was the perfect partner for the creation of a CDO destined to fail since, like Merrill Lynch itself, Magnetar was focused on using Norma as a profitable hedging — *i.e.,* shorting — strategy rather than making Norma profitable for Norma's noteholder investors. In fact, Magnetar would later become famous for its strategy of profiting from short positions on the CDOs that it helped create while leaving other investors in those CDOs to bear losses. For example, a January 2008 Wall Street Journal article branded Magnetar as the "fund behind astronomical losses," revealing that, at the same time that Merrill Lynch and Magnetar were creating Norma and marketing it to Rabobank as a sound investment vehicle, Magnetar was simultaneously betting on the downfall of CDOs such as Norma. "Even as it helped to spawn CDOs that would later wrack Wall Street," the Wall Street Journal reported in early 2008, "Magnetar, which [had] $9 billion in assets, itself made a tidy profit. Its funds returned 25% across a range of stock and debt strategies [in 2007], thanks largely to the way it hedged these trades." As the Wall Street Journal explained, Magnetar "hedged its holdings by betting against the less-risky slices of some of these same securities [it invested in] .... ***While it lost money on many of the risky slices it bought, it made far more when its hedges paid off as the market collapsed in the second half of [2007].***"

43. Like Magnetar, the composition of the investors to which Merrill Lynch sold Norma's subordinated notes (*i.e.,* the notes junior to the Class A-1 Notes) also reflected the fact that Norma was set up for failure. In fact, unlike traditional CDOs whose subordinated notes

were generally marketed and sold to a varied range of investors, Norma's notes were sold almost exclusively to a single type of investor: collateral managers for other Merrill Lynch CDOs. These entities — beholden to Merrill Lynch for the substantial fees they received for managing Merrill Lynch's other CDOs — amounted to a stable of effectively captive investors to which Merrill Lynch could pawn off securities without its representations concerning the economic soundness of those securities being substantially tested or challenged.

44. Merrill Lynch's undisclosed reliance on these captive investors as purchasers of Norma's notes was striking. For example, the biggest investor in Norma — purchasing over $100 million of notes — was Cohen & Co., whose CEO, Christopher Ricciardi, had formerly run Merrill Lynch's CDO origination and structuring division. Prior to investing in Norma, Cohen had been fed a steady stream of lucrative collateral management positions by Merrill Lynch, and managed over $14 billion in assets across 18 Merrill Lynch deals. Similarly, Norma's second biggest investor, who purchased $55 million of its notes, was Harding Advisory, a firm earning substantial fees from the more than $5 billion of assets it managed across five Merrill Lynch deals. Harding would later hire Kenneth Margolis, Merrill Lynch's co-head of global cash CDOs, after he left Merrill Lynch. Another significant investor was Maxim Advisory which had started its CDO management business based on the relationship between its principal portfolio manager, Wing Chau, and Mr. Margolis, while Mr. Margolis was still head of Merrill Lynch's CDO structuring business. At the time of its investment in Norma, Maxim was earning fees on the more than $8 billion it managed across seven Merrill Lynch deals.

45. Indeed, only $79 million of Norma's notes — representing a mere ***5%*** of the entire $1.5 billion notional value of Norma's portfolio (or 18% of Norma's subordinated notes) — was purchased by independent investors that did ***not*** manage other Merrill Lynch deals.

Overall, nine of the twelve purchasers of Norma's subordinated notes managed a combined 46 Merrill Lynch deals, with six serving as collateral managers for at least three other Merrill Lynch deals and three managing seven or more Merrill Lynch deals. In total, these investors, who had various and intimate ties to Merrill Lynch, were responsible for managing — and earned fees on — over ***$42 billion*** of assets, all thanks to Merrill Lynch.

46. The undisclosed degree to which Merrill Lynch foisted Norma's subordinated notes on these captive collateral managers is even more striking in comparison to other Merrill Lynch deals that were brought to market by Merrill Lynch around the same time. For example, as the following chart illustrates, Norma was radically different from the next five repackaging deals that Merrill Lynch closed after Norma, in each of which Merrill Lynch sold up to ***5 times*** the amount of subordinated notes to independent investors as it sold in the case of Norma, with the average being more than 3 times higher than Norma.

Merrill Lynch Deal	Closing Date	% of Subordinated Notes Sold to Independent Investors
Norma CDO I	**3/1/07**	**18%**
Newbury Street CDO I	3/8/07	71%
South Coast Funding IX	3/9/07	90%
Gale Force III	3/15/07	48%
Golden Knight CLO II	3/21/07	95%
Euler ABS CDO I	3/27/07	39%
Average		**60%**

This demonstrates that Merrill Lynch's overwhelming reliance upon captive investors to purchase Norma's notes was not business as usual for Merrill Lynch but rather marked a significant departure from its customary marketing practices.

47. The facts that Merrill Lynch had teamed up with Magnetar, a soon-to-be-infamous CDO short seller, and placed a wildly disproportionate amount of Norma's notes with captive investors are further reflections of the falsity of Merrill Lynch's characterization of

Norma as a carefully structured, managed and secure investment. This was also material information that Merrill Lynch failed to disclose to Rabobank, and that would have raised numerous red flags regarding Norma's viability and the security it provided for Rabobank's upfront loan.

Norma Failed to Satisfy the Credit Ratings Requirements

48. Merrill Lynch's representations to Rabobank with respect to the credit ratings that Norma's notes would receive as a condition to Norma being brought to market were also false and/or misleading. As Merrill Lynch knew, the deteriorated assets that it had arranged to have dumped into Norma's collateral portfolio impaired Norma's credit profile to a degree that its notes were not worthy of the ratings that it had represented to Rabobank would be required as a condition to the issuance of its notes. For example, as Merrill Lynch was aware, the fact that Norma's collateral had already suffered overall deterioration of more than 15% of its par value at closing equated to reasonably expected losses on the overall collateral pool of more than $225 million. Losses of that magnitude would result in a total loss of principal for the holders of the Class D Notes, Class E Notes, Class F Notes, Class G Notes and Class H Notes and a partial loss of principal for holders of the Class C Notes, all of which had to receive investment grade ratings in order for Norma to come to market. A security backed by collateral for which there are such *expected* losses to principal cannot properly be rated investment grade, and had this impairment been disclosed by Merrill Lynch to S&P, Moody's and Fitch, the Class C Notes, Class D Notes, Class E Notes, Class F Notes, Class G Notes and Class H Notes could not have received the requisite investment grade ratings. In addition, even the Class A-1 Notes, Class A-2 Notes, and Class B Notes, for which losses were perhaps not yet reasonably expected based upon the then-existing levels of deterioration, nonetheless benefited from substantially less structural

subordination in the capital structure as a result of the existing deterioration. This similarly impacted the notes' credit risk, and had Merrill Lynch fully disclosed the significant impairment of the assets in Norma's portfolio, those more senior tranches of notes would not have received their requisite AAA/Aaa and AA/Aa2 ratings from S&P, Moody's and Fitch.

49. Nonetheless, to ensure that Norma would come to market, Merrill Lynch either intentionally provided the ratings agencies with false information or withheld information that it knew was necessary in order for the ratings agencies to provide ratings that accurately reflected the true credit quality of the notes that Norma was issuing. Further, fully aware of the true information regarding the deterioration in Norma's collateral, Merrill Lynch knew that the credit ratings it procured from the ratings agencies for Norma's Notes were inaccurate since the degraded quality of the collateral underlying the notes made the likelihood of default much greater, and the likelihood of recovery far lower, than the ratings actually reflected. This rendered false and/or misleading Merrill Lynch's representations to Rabobank that the issuance of Norma's notes would be conditioned upon those notes receiving the requisite investment-grade and higher credit ratings claimed by Merrill Lynch.

NIR Did Not Have the Experience, Independence or Integrity Touted by Merrill Lynch

50. Merrill Lynch's representations to Rabobank with regard to the independence of Norma's collateral manager, NIR, and the rigorous asset selection process that NIR would employ were also false and misleading. In fact, NIR's business practices were neither as rigorous nor independent as the Norma Pitchbook had represented. Indeed, as Merrill Lynch knew but failed to disclose to Rabobank, NIR did not engage in the touted "detailed bottom-up analysis," "collateral evaluation," or "performance review" to select each of the assets in Norma's portfolio. This is evidenced by, among other things, the fact that over half of the

subprime and midprime securities NIR selected for the portfolio simply mirrored the ABX index in order to make Norma an effective hedging vehicle.

51. Moreover, as Merrill Lynch was further aware, its relationship with NIR fell far short of the arm's length business relationship that Merrill Lynch had suggested. In fact, NIR's entire collateral management business had arisen from efforts by Merrill Lynch to assemble a stable of captive small firms to manage its CDOs that would be beholden to Merrill Lynch on account of the business it funneled to them. NIR's collateral management business was hatched as part of that strategy when a Merrill Lynch executive connected NIR co-founder Corey Ribotsky with former bankers from Wachovia Corporation following a round of golf at an exclusive Long Island country club. Over the next year, NIR was awarded the role of managing five Merrill Lynch's CDOs worth over $7 billion — West Trade I, West Trade II, Norma, Fourth Street Funding I, and West Trade III.

52. In addition, while Merrill Lynch touted NIR in the Norma Pitchbook as a reputable collateral manager with a "strong record" and significant experience in the area, Mr. Ribotsky's background reveals quite a different picture. Ribotsky, a former trader of penny-stocks, ran a number of hedge funds that made private investments in public companies. Those investments preceded, on average, a 54% drop in the company's stock price a year after the deal. Such drops were disastrous to the companies in which Mr. Ribotsky was investing but were alleged to have benefited Ribotsky himself handsomely, and he was widely accused of short-selling the companies to which his hedge funds lent. Indeed, Ribotsky's NIR affiliates have been sued in state and federal courts across the country for fraud, misrepresentation, insider trading and price manipulation. For example, in five lawsuits filed in federal and state courts in New York and Texas, NIR affiliates have been accused by the companies in which it invested —

including EMTA Holdings, Inc., Cyberlux Corporation, AirTech International Group, Inc. and RG Global Lifestyles — of systematically and illegally short selling stock in those companies in order to depress prices and gain more shares as prices declined.

53. Merrill Lynch was either aware of this information regarding Mr. Ribotsky or was negligent in failing to discover this information when making its representations to Rabobank regarding NIR's collateral management expertise and integrity. Further, this information was material to any evaluation of NIR's suitability for the role of collateral manager and its omission from Merrill Lynch's description of NIR in the Norma Pitchbook rendered Merrill Lynch's statements regarding NIR's experience and integrity false and misleading. This information also rendered false Merrill Lynch's representations regarding the rigorous selection process that NIR was expected to employ in selecting each asset for Norma's portfolio. The reality was the exact opposite — NIR had been selected as the collateral manager for Norma precisely because it owed the existence of its CDO collateral management business entirely to Merrill Lynch, was captive to Merrill Lynch's agenda, and would be willing to forego an asset-by-asset selection process to facilitate Merrill Lynch's efforts to "de-risk" its own portfolio.

Merrill Lynch Created Opaque Structural Preferences For Its Own Positions

54. Finally, Merrill Lynch's representations regarding the structural protections that would secure the repayment of Rabobank's loan under the Proceeds Swap were also false and misleading. Not only did Merrill Lynch deceptively arrange to have its own bad investments unloaded into Norma's portfolio, it also constructed — and then failed to disclose — opaque structural preferences that ensured that its own positions as the committed purchaser of $975 million of the Class A-1 Notes and the CDS Counterparty would remain buffered from Norma's losses, while leaving Rabobank subordinated and exposed. This rendered false Merrill Lynch's

representations that Rabobank would be "senior" to all of Norma's noteholders and Merrill Lynch itself as the CDS Counterparty.

55. Contrary to the structural repayment protections that Rabobank had been led by Merrill Lynch to believe would secure repayment of Rabobank's upfront loan, Merrill Lynch in fact structured Norma's complex system of payments and fundings in order to protect its own interests and substantially diminish the likelihood of Rabobank being repaid. By inserting obfuscatory cross-references into Norma's 334-page Indenture, Merrill Lynch created improper structural preferences for itself that it knew flew in the face of Rabobank's understanding, expectations, and the benefits for which it had bargained. These features meant that, from the outset, the $975 million in Class A-1 Notes was never available to secure Rabobank's Proceeds Swap and, in fact, Rabobank's $57.7 million loan was effectively secured at the time of liquidation by Norma's cash portfolio alone, which, at face value, was worth only 6% — or $90 million — of Norma's entire $1.5 billion portfolio and, in fact, was actually worth substantially less on account of the degraded assets that Merrill Lynch had dumped in the cash portfolio to get off its own books.

56. Specifically:

a. Notwithstanding that Rabobank was listed *above* the CDS Counterparty in the order of preferences in the Indenture's Priority of Payments (*i.e.*, the "waterfall") — thus demonstrating Rabobank's entitlement to receive payments before the CDS Counterparty — Merrill Lynch inserted provisions in other places in the Indenture that inverted this mandate and required that any monies owed to Merrill Lynch as the CDS Counterparty would be paid from funds otherwise owed to Rabobank ***before*** Rabobank ever got repaid. To further hide these protections from Rabobank, Merrill Lynch purported to make specific concessions within the

Priority of Payments in Rabobank's favor during the negotiation of the Proceeds Swap. However, these concessions were, in reality, merely cosmetic since Merrill Lynch had already skewed the structure of the deal in its favor such that that the changes to the Priority of Payments would have no negative impact on its own recoveries.

b. Merrill Lynch similarly preferenced itself as the committed purchaser of the Class A-1 Notes by requiring Norma to deplete almost all sources of cash available to the CDO before making any requests for fundings from the $975 million Class A-1 Note facility. Consequently, despite the fact that Rabobank had specifically negotiated to be senior to the holders of the Class A-1 Notes, Merrill Lynch ensured that it would not have to absorb any losses on its commitment to purchase Class A-1 Notes until after the funds otherwise available to Rabobank had been depleted. This effectively left Rabobank subordinated to the Class A-1 Notes in direct contravention of Merrill Lynch's representations to the contrary.

c. Finally, by engineering Norma such that proceeds from its Class A-1 Note fundings could ***only*** be used to pay debts owed by Norma back to Merrill Lynch as CDS Counterparty, Merrill Lynch ensured that it would be the beneficiary of all cash available to the CDO but would be the source of none. Further, by documenting numerous agreements — including the swap agreement under which it committed to purchase the Class A-1 Notes, the credit default swap agreements under which it created the synthetic collateral, and a third swap agreement under which it provided certain returns on the cash that had been collected from Norma's noteholders (called a "Total Return Swap") — under one "Master Agreement" and permitting amounts owed by Merrill Lynch to Norma to be netted against amounts that Norma owed back to Merrill Lynch under any of those agreements, Merrill Lynch reduced its exposure even further by relegating Rabobank's liquidation recovery to the sliver of degraded assets in Norma's cash portfolio.

57. Given that it had rigged Norma in this way, Merrill Lynch's representations to Rabobank regarding Rabobank's seniority were false, and the changes that Merrill Lynch made to Norma's Indenture in consideration for Rabobank's participation were purely ephemeral maneuvers, designed to mislead and induce Rabobank into entering into the Proceeds Swap rather than provide the bargained for protections.

Norma's Default and Rabobank's Limited Recovery from Norma's Liquidation

58. On March 11, 2008 — barely a year after Norma closed — Norma's trustee issued a notice that an event of default had occurred under Norma's Indenture. On August 4, 2008, Norma's trustee issued a notice stating that Merrill Lynch had ordered the trustee to commence liquidation of Norma's collateral.

59. On September 8, 2008, in light of the trustee's termination of Merrill Lynch's CDS agreement with Norma, Rabobank sent a letter to Norma's trustee, declaring that same date to be an Early Termination Date under the Proceeds Swap. Rabobank notified the Trustee that a final Termination Payment of $52,545,000 was thereby due under the terms of the Proceeds Swap, which essentially reflected the remaining amounts due on Rabobank's $57.7 million upfront loan.

60. Following the conclusion of Norma's liquidation, Rabobank received a total payment of $7,465,571, leaving a total of $45,079,429 remaining unpaid under its loan to Norma.

61. On November 3, 2008, Rabobank wrote to Merrill Lynch, expressing its concern regarding certain of the false and misleading representations that Merrill Lynch had made to induce Rabobank to enter into the Proceeds Swap.

62. On December 3, 2008, counsel for Merrill Lynch responded to Rabobank's letter, disputing that it had "engaged in any impropriety with respect to the Proceeds Swap."

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Fraud)

63. Rabobank repeats and realleges the foregoing allegations as fully set forth herein.

64. Merrill Lynch made material misleading and incomplete statements in order to induce Rabobank to loan $57,700,000 to Norma through the Proceeds Swap. Merrill Lynch's material misrepresentations included that:

a. Merrill Lynch had structured Norma as a traditional, legitimate and secure investment vehicle for investors who were intending to take "long" positions in the asset-backed securities market;

b. Norma was actively managed by a collateral manager, NIR, through the selection of assets that were intended to maximize the financial returns to investors;

c. NIR selected assets for Norma's portfolio based upon an independent and rigorous evaluation that sought to identify "products that offered superior risk adjusted returns" and would apply a "long term return on equity approach … to the investment selection process.";

d. NIR combined "macro-level market strategy" and "micro-level investment selection" in a multi-step process that included a "bottom-up analysis" involving an evaluation of "collateral profiles," "performance statistics," and the "latest performance trends" for each of the potential individual portfolio assets that NIR selected for Norma's portfolio;

e. Norma's issuance of notes would be conditioned upon all of the notes issued by Norma receiving legitimate and specific investment-grade or higher credit ratings from S&P, Moody's and Fitch;

f. The Proceeds Swap into which Rabobank agreed to enter would receive certain structural repayment protections that rendered it a very low risk and secure investment position; and

g. Rabobank's right to have its Proceeds Swap loan repaid was senior to the interests of the CDS Counterparty and the Class A-1 Notes such that, if an Event of Default occurred and the CDO collateral was liquidated, the committed funder of the Class A-1 Notes and CDS Counterparty would absorb losses before Rabobank's loan repayment would be impaired.

65. Merrill Lynch also failed to disclose material facts that it was obligated to disclose in order to induce Rabobank to enter into the Proceeds Swap with Norma. Merrill Lynch failed to disclose, among other things:

a. Norma was created as part of Merrill Lynch's internal "de-risking" strategy through which Merrill Lynch sold millions of dollars of its own impaired securities to Norma at inflated prices, resulting in Norma's entire portfolio being worth significantly less than the par value of its assets;

b. Merrill Lynch never intended Norma to be a legitimate, long-term investment vehicle, but rather structured Norma as a hedging vehicle to take short positions on the asset-backed securities market;

c. Norma's synthetic asset portfolio had deteriorated from its par value by approximately 15% at the time of Norma's closing, and Norma's cash asset portfolio had deteriorate from its par value by approximately 27% at the time of Norma's closing;

d. Norma's cash asset portfolio had been structured with a disproportionately high percentage of Merrill Lynch's own CDO securities in relation its synthetic asset portfolio;

e. More than half of the subprime and midprime mortgage backed securities in Norma's collateral pool were constituents in the ABX index, which was commonly used for hedging;

f. Merrill Lynch sold Norma's equity tranches to a prized hedge fund investor, Magnetar, which cooperated with Merrill Lynch in structuring Norma as a vehicle to short the asset-backed securities market;

g. Merrill Lynch sold only 5% of the $1.5 billion notional value of Norma's portfolio — or 18% of Norma's total subordinated notes — to independent investors who did not manage other Merrill Lynch CDOs. Of the 12 total purchasers of Norma's subordinated notes, nine managed a combined 46 Merrill Lynch deals involving $42 billion of assets;

h. Norma's notes could not legitimately support the level of credit ratings that Merrill Lynch had procured for them from S&P, Moody's and Fitch;

i. NIR did not engage in an independent and rigorous asset-by-asset "detailed bottom up analysis," "collateral evaluation," or "performance review" to select assets for Norma's portfolio;

j. Merrill Lynch structured Norma so as to create opaque preferences for itself as the CDS Counterparty and the committed funder of the Class A-1 Notes that were contrary to Rabobank's bargained-for understanding, the language of the Norma Indenture's Priority of Payments and subordination provisions, and the pricing of the Proceeds Swap;

k. The preferences Merrill Lynch created for itself meant that Rabobank's $57.7 million Proceeds Swap was secured upon liquidation by only the impaired collateral that Merrill Lynch had unloaded into Norma's cash portfolio, which represented at par value a mere 6% — or $90 million — of the entire $1.5 billion portfolio.

66. At the time it made these materially false, misleading and incomplete statements and omissions, Merrill Lynch knew or recklessly disregarded the fact that they were false, misleading or contained material omissions. Merrill Lynch made these false, misleading and incomplete statements and omissions with the intent that Rabobank would rely on them, and with the knowledge that Rabobank could not reasonably verify their completeness or accuracy.

67. To any extent that Merrill Lynch did not know about the materially false, misleading and incomplete nature of its statements and omissions, Merrill Lynch had an obligation, based on its unique and special expertise, to disclose the facts described above because either the disclosures were required in order to not make other statements misleading or on account of the substantial disparity of information between Merrill Lynch and Rabobank.

68. Rabobank was induced to enter into the $57,700,000 Proceeds Swap transaction in reasonable reliance on the truthfulness, completeness and accuracy of Merrill Lynch's statements.

69. Rabobank would not have entered into the Proceeds Swap with Norma had Merrill Lynch made truthful, complete and accurate statements to Rabobank.

70. As a result of Merrill Lynch's fraudulent representations and omissions, Rabobank has been harmed in an amount to be proven at trial.

SECOND CAUSE OF ACTION

(Negligent Misrepresentation)

71. Rabobank repeats and realleges the foregoing allegations as fully set forth herein.

72. Merrill Lynch negligently misrepresented key facts about Norma to Rabobank knowing that Rabobank would rely on Merrill Lynch's representations in deciding to loan $57,700,000 to Norma through the Proceeds Swap.

73. Merrill Lynch, which was one of the largest financial institutions in the world and the world's leading underwriter of CDOs, possessed unique and special expertise in matters of CDO construction and risk assessment, and through its representations specifically induced Rabobank to rely on that expertise when entering into the Proceeds Swap.

74. Merrill Lynch made material misrepresentations, as set forth in paragraph 64 above, which it knew, or was negligent in not knowing, at the time to be false, in order to secure Rabobank's participation in the Proceeds Swap.

75. Merrill Lynch also failed to disclose material facts, as set forth in paragraph 65 above, in order to induce Rabobank's participation in the Proceeds Swap.

76. As Norma's structurer, Merrill Lynch was uniquely situated to understand the purpose for which Norma had been created, the impaired value of Norma's collateral portfolio, the nature of Norma's investors, the asset selection process employed by Norma's collateral manager, the accuracy of the credit ratings for Norma's notes, and the details, attributes and conditions of the Proceeds Swap.

77. Based on its unique and special expertise, as well as its specific knowledge of the details surrounding Norma, Merrill Lynch owed a duty to Rabobank to disclose material facts about Norma, including the purpose for which it had been created, the deterioration of its collateral portfolio, the unique composition and nature of its noteholders and equity investors,

the experience and integrity of its collateral manager, the collateral selection process employed by its collateral manager, and the repayment priority of the Proceeds Swap.

78. Merrill Lynch knew, or reasonably should have known, that Rabobank did not, through its reasonable due diligence efforts, know the true facts that were the subject of misleading or incomplete disclosures by Merrill Lynch.

79. Merrill Lynch knew and intended that Rabobank would rely on these representations and omissions in deciding to enter into the Proceeds Swap.

80. Rabobank was induced to enter into the $57.7 million Proceeds Swap transaction in reasonable reliance on the truthfulness, completeness and accuracy of Merrill Lynch's statements.

81. Rabobank would not have entered into the Proceeds Swap with Norma had Merrill Lynch made truthful, complete and accurate statements to Rabobank.

82. As a result of Merrill Lynch's negligent misrepresentation, Rabobank has been injured in an amount to be proven at trial.

THIRD CAUSE OF ACTION

(Fraudulent Conveyance)

83. Rabobank repeats and realleges the foregoing allegations as fully set forth herein.

84. Rabobank is a creditor of Norma pursuant to the terms of the Proceeds Swap.

85. On or about March 1, 2007, Merrill Lynch conveyed asset-backed securities to Norma that equated to less than fair consideration for the prices that Norma paid Merrill Lynch for those securities. Merrill Lynch made this conveyance with an intent to hinder, delay or defraud Norma's creditors, including Rabobank.

86. At the time of the conveyance, (i) Norma was either insolvent or was rendered insolvent thereby, (ii) was left with unreasonably small capital, and/or (iii) Merrill Lynch intended or believed that Norma would incur debts beyond its ability to pay as they matured.

87. As a result, the sales of asset-backed securities from Merrill Lynch to Norma were fraudulent conveyances pursuant to N.Y. Debt & Credit Law §§ 270-281.

FOURTH CAUSE OF ACTION

(Unjust Enrichment and Constructive Trust)

88. Rabobank repeats and realleges the foregoing allegations as fully set forth herein.

89. Merrill Lynch has been enriched at the expense of Rabobank through:

a. Earning fees from the structuring of Norma on the basis of misrepresentations that Norma had been created as a legitimate investment vehicle;

b. Structuring Norma as part of its "de-risking" strategy to rid itself of impaired collateral and take short positions on the asset-backed securities market;

c. Selling Norma's equity position to Magnetar so that Magnetar could take short positions in the asset-backed securities market;

d. Selling the vast majority of Norma's subordinated notes to captive investors;

e. Obtaining credit ratings for Norma's notes which Merrill Lynch knew those notes could not support;

f. Colluding with NIR to mask Merrill Lynch's losses by moving impaired collateral from Merrill Lynch to Norma at inflated prices; and

g. Creating opaque structural preferences that benefited Merrill Lynch's positions in Norma while undermining the security and senior position for which Rabobank had bargained.

90. Merrill Lynch unjustly retained these ill-gotten gains at Rabobank's expense.

91. Because Merrill Lynch received and unjustly retained at Rabobank's expense such monetary benefits, the parties should be returned to their original position prior to Merrill Lynch's misconduct.

FIFTH CAUSE OF ACTION

(Conversion)

92. Rabobank repeats and realleges the foregoing allegations as fully set forth herein.

93. At all relevant times, Rabobank entrusted funds, through its Proceeds Swap, to Norma for specific purposes, and with specific expectations of repayment.

94. By the actions alleged herein, Merrill Lynch wrongfully converted funds that had been entrusted to Norma for specific, limited purposes, and with specific expectations of repayment.

95. As a result of the conversion, Rabobank has been damaged in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Rabobank demands judgment against defendants as follows:

(a) rescission of the Proceeds Swap;

(b) rescission of all sales of cash securities between Merrill Lynch and Norma;

(b) compensatory and punitive damages in amounts to be determined at trial, together with pre-judgment interest at the maximum rate allowable by law;

(c) reasonable costs and expenses incurred in this action, including to the extent applicable, counsel fees; and

(d) such other relief as the Court deems just and proper.

DATED: June 12, 2009
New York, New York

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

By: ______________________
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Index No.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

COÖPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK, B.A.,

Plaintiffs,

-against-

MERRILL LYNCH & CO.,

Defendants.

SUMMONS & COMPLAINT

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