

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3404 / May 10, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30062 / May 10, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14873

In the Matter of

Martin Currie Inc. and
Martin Currie Investment Management Ltd.,

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 203(e)
AND 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940 AND
SECTIONS 9(b) AND 9(f) OF THE
INVESTMENT COMPANY ACT OF
1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL
SANCTIONS AND CEASE-AND-
DESIST ORDERS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Martin Currie Inc. (“MCI”) and Martin Currie Investment Management Ltd. (“MCIM”) (collectively, “Martin Currie” or “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings

herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that:

Summary

This case involves improper preferential client treatment by the UK-based Martin Currie group of institutional investment managers. In April 2009, in the midst of the financial crisis, Martin Currie fraudulently used its U.S. registered investment company client, The China Fund Inc. (the “China Fund”) to rescue another client, a hedge fund called the Martin Currie China Hedge Fund L.P. (the “Hedge Fund”). The Hedge Fund had acquired significant – and largely illiquid – exposure to a single Chinese company and required liquidity to satisfy mounting redemption requests from its investors. Martin Currie caused the China Fund to enter into a transaction that alleviated the Hedge Fund’s liquidity concerns by redeeming a substantial portion of this exposure.

Through its registered subsidiaries MCI and MCIM, Martin Currie managed the China Fund side-by-side with the Hedge Fund and other accounts. The China Fund, the Hedge Fund, and other accounts made similar investments in public and private Chinese companies under the direction of a single portfolio management team based in Shanghai, China.

During the 2000s, the Hedge Fund made significant debt and equity investments in a Chinese printer cartridge recycling company called Jackin International Holdings (“Jackin”). By November 2008, the Hedge Fund’s overall investment in Jackin totaled \$17 million, which approached the fund’s limit on portfolio exposure to a single issuer. As the global financial crisis deepened, the Hedge Fund also developed liquidity issues as asset values declined and investors began making redemption requests. At the same time, Jackin needed cash to fund operations and make interest payments to its bondholders, including the Hedge Fund.

In response to these overlapping problems, MCI and MCIM caused the China Fund to make a hasty, ill-advised \$22.8 million convertible bond investment in a Jackin subsidiary, Ugent Holdings Ltd. (“Ugent”). As part of the transaction, Jackin/Ugent used the China Fund’s proceeds to redeem \$10 million of the Hedge Fund’s bonds at face value, thereby relieving the Hedge Fund’s crisis. The remaining \$12.8 million in proceeds kept Jackin afloat and enabled it to make debt service payments, further benefiting the Hedge Fund and another affiliated client that

¹ The findings herein are made pursuant to Respondents’ Offers and are not binding on any other person or entity in this or any other proceeding.

remained Jackin investors. For the China Fund, however, the Ugent convertible bonds were a poor investment. In April 2011, the China Fund sold the bonds for approximately 50% of their face value.

MCI and MCIM acted deceptively in (i) structuring this improper unlisted bond transaction by the China Fund to benefit the Hedge Fund and preserve Jackin, and (ii) failing to make full and fair disclosure of material facts to the China Fund's board of directors. In addition, after the investment was made, MCI deviated from the China Fund's valuation procedures by failing to provide the China Fund's board with evidence of negative events relevant to the value of the convertible bonds. As a result, the China Fund held the bonds at an inadequately supported cost valuation for several months.

The problems began in June 2007, when MCIM caused the Hedge Fund to purchase a large quantity of illiquid Jackin bonds that deviated from the fund's normal equities-trading strategy. As the deal was about to close, MCIM realized that the investment would cause the Hedge Fund to breach its 5% limit on the portion of its portfolio that could be invested in unlisted securities. In response, MCIM sought and obtained approval from the Hedge Fund's board of directors to modify the 5% limit. However, MCIM failed to present all material issues and risks for the board's consideration, and thus weakened the Hedge Fund's main liquidity safeguard. Later, after the deal closed, MCIM improperly classified the high-yield Jackin bonds as cash in the firm's risk-management system. Because of this misclassification, the liquidity and credit risks from the Hedge Fund's exposure to Jackin were not appreciated at Martin Currie headquarters until November 2008, after the fund had purchased additional Jackin bonds. By that time, the Hedge Fund's portfolio was highly illiquid and exposed to Jackin – a crisis that ultimately led to the China Fund's unlawful involvement. MCIM's misclassification of the bonds was also reflected in certain inaccurate monthly reports to the Hedge Fund's investors.

By their actions, MCI and MCIM violated certain antifraud, affiliated transaction, and reporting provisions of the Advisers Act and Investment Company Act. MCI also failed to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and Investment Company Act, particularly in the identification and management of conflicts of interest.

Respondents

Martin Currie Inc. ("MCI") is a corporation organized under the laws of New York and headquartered in Edinburgh, Scotland. MCI is an investment adviser registered with the Commission, and serves as adviser to the China Fund. MCI is wholly owned by Martin Currie Ltd. ("MCL"), which owns other advisory subsidiaries. During the relevant period, MCI managed approximately \$6.3 billion in assets.

Martin Currie Investment Management Ltd. ("MCIM") is a limited liability company organized under the laws of Scotland and headquartered in Edinburgh, Scotland. MCIM is an investment adviser registered with the Commission, and serves as adviser to the Hedge Fund and other institutional clients. Along with MCI, MCIM is a wholly-owned subsidiary of MCL. MCIM

and MCI operate from the same offices and share common employees. During the relevant period, MCIM managed approximately \$11.4 billion in assets.

Other Relevant Entities

The China Fund, Inc. (“China Fund”) is a corporation organized under the laws of Maryland and is a closed-end investment company registered with the Commission. The China Fund’s shares are listed on the NYSE under the symbol CHN. MCI has been the investment manager to the China Fund’s portfolio of listed securities since 2001 and its portfolio of unlisted securities since 2007.

Martin Currie China Hedge Fund L.P. (“Hedge Fund”) is a limited partnership organized under the laws of Bermuda and is a private fund managed by MCIM. U.S. investors invest in the Hedge Fund through, among other things, a U.S. private feeder fund known as MC Absolute Return China Fund LLC, a Delaware limited liability company.

Jackin International Holdings (“Jackin”) is a company organized under the laws of Bermuda and located in Hong Kong, China. Jackin’s stock is listed on the Hong Kong Stock Exchange (“HKSE”) under the code 630. Jackin changed its name to Guojin Resources Holdings Ltd. in November 2010.

Facts

A. Martin Currie’s China Operations

The China Fund, Hedge Fund, and other Martin Currie clients made similar investments in China under the direction of two portfolio managers, PM-1 and PM-2. PM-1 and PM-2 headed the firm’s China operations from Shanghai.

PM-1 was considered a star investment manager. In 2006, Martin Currie gave PM-1 a lucrative profit-sharing arrangement to retain his services. Under this arrangement, PM-1 and PM-2 formed their own company, which entered into a joint venture with MCI and MCIM. The joint venture enabled PM-1 and PM-2 to receive a portion of the fee revenues on investments they managed. Through an employee-sharing or “secondment” arrangement, PM-1 and PM-2 were engaged by MCI and MCIM to serve as portfolio managers for the China Fund and Hedge Fund, respectively, along with other accounts. At all relevant times, PM-1 and PM-2 were associated persons of MCI and MCIM and were subject to MCI and MCIM policies and procedures.

Despite overseeing one third of the Martin Currie’s total assets under management, PM-1 operated with very little supervision. PM-1 reported directly to the firm’s chief executive officer in Edinburgh, bypassing the normal chain of command that applied to other investment managers.

Compounding these structural flaws, MCI and MCIM had weak controls governing certain aspects of their compliance with the Advisers Act and Investment Company Act. MCI and MCIM were particularly deficient in their identification and management of client conflicts of interest. For example, the investment mandates of the China Fund, the Hedge Fund, and other affiliated

clients permitted them to make direct investments in the debt and equity of unlisted or microcap companies in China. MCI and MCIM, through PM-1 and PM-2, had authority to make such investments on behalf of their managed funds and separate accounts.² As a result, multiple funds and separate accounts had the ability to – and did in fact – invest in different parts of the capital structure of the same company, presenting potential conflicts of interest. Nevertheless, MCI and MCIM lacked sufficient policies and procedures to ensure that they were meeting their fiduciary obligations to each of their clients in these types of situations. Moreover, MCI and MCIM did not employ any compliance staff in Shanghai until mid-2011, in response to the discovery of the improper conduct described below.

B. Summary of Relevant Investments in Jackin

This case arises from a series of investments by Martin Currie clients in Jackin, a Chinese company engaged primarily in the printer cartridge recycling business. Jackin held this business through a chain of wholly-owned subsidiaries including Ugent and Afex International (HK) Ltd. (“Afex”). Over many years, PM-1 had developed a close relationship with Jackin’s management, particularly its chairman/managing director.

During the 2000s, certain client accounts managed by MCIM and PM-1 made investments in various parts of Jackin’s capital structure, as follows:

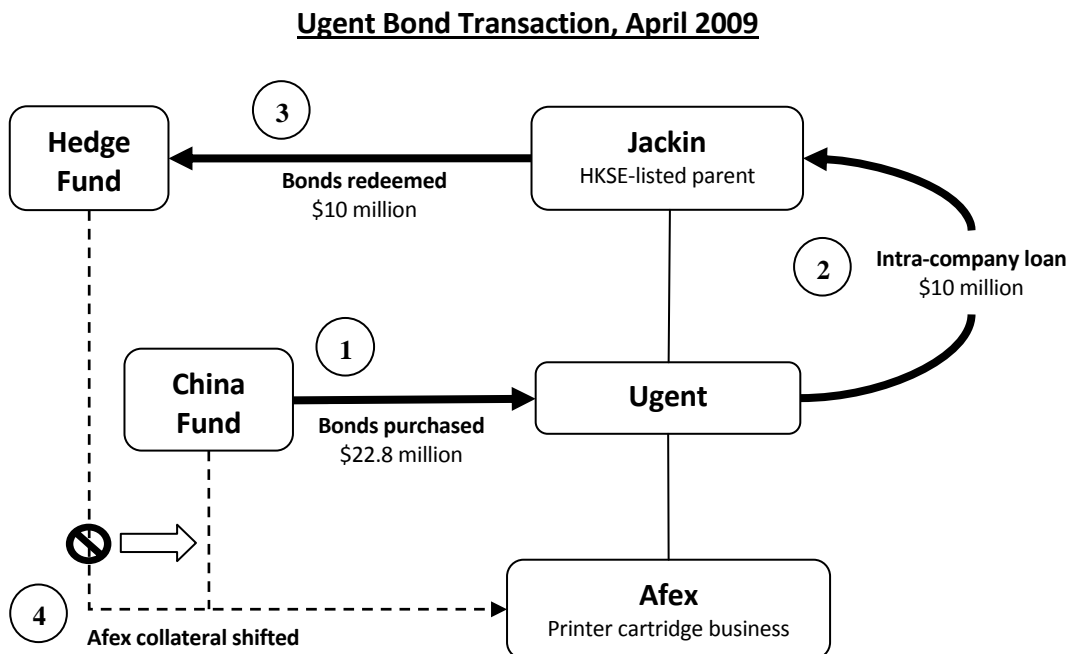
- The Hedge Fund purchased equity shares of Jackin in 2003 and remained a shareholder until mid-2010.
- Another client account, which generally mirrored the Hedge Fund, also acquired an equity stake in Jackin and remained a shareholder until mid-2009.
- In June 2007, MCIM and PM-1 caused the Hedge Fund to purchase bonds from Jackin for a principal amount of HK\$78 million (\$10 million) that bore a coupon rate of 10% and matured in 2010 (the “Jackin 10% Bond(s)”). These bonds were secured by equity shares of Afex, the operations subsidiary of Jackin, and also included detachable warrants that were convertible into Jackin stock.
- In October 2008, MCIM and PM-1 caused the Hedge Fund to purchase additional bonds from Jackin for a principal amount of HK\$31.2 million (\$4 million) that bore a coupon rate of 15% and matured in 2010 (the “Jackin 15% Bond(s)”). These bonds were secured by a personal guarantee from Jackin’s chairman/managing director, who also held over 20% of Jackin’s equity.³

In April 2009, at MCI and PM-1’s direction, the China Fund purchased convertible bonds from Jackin – through its Ugent subsidiary – for a principal amount of HK\$177 million (\$22.8 million) (the “Ugent Bond(s)”). The Ugent Bonds bore a coupon rate of 12%, matured in 2012,

² Unless otherwise indicated, MCI and MCIM had full discretion and authority to make and manage investments on behalf of their respective managed funds and separate accounts.

³ This additional Jackin bond acquisition put the Hedge Fund at significant risk and ultimately led MCI and MCIM to involve the China Fund, as described in more detail later.

and were convertible into common shares representing approximately 30% of Ugent. As part of the transaction, as provided under the subscription agreement, Jackin/Ugent used the proceeds to redeem, at face value, the Jackin 10% Bonds that were held by the Hedge Fund. In effect, this was a structured crossing transaction in which the China Fund transferred \$10 million in cash to the Hedge Fund, an affiliated client, through Jackin. The transaction is illustrated below, beginning with Step 1 in the center.⁴



Jackin/Ugent’s financial condition deteriorated rapidly in 2009. In October 2010, at the recommendation of MCI, the China Fund’s board determined to write down the value of the Ugent Bonds by 50% of their face value. In November 2010, the China Fund’s board wrote down the value of the Ugent Bonds to zero. Ultimately, in April 2011, the China Fund sold the Ugent Bonds for approximately 50% of their face value.

C. The Ugent Bond Transaction – Preferential Client Treatment and Deceptive Disclosures to the China Fund Board

The Ugent Bond transaction pictured above was the result of a deceptive breach of fiduciary duty owed to the China Fund. At the height of the financial crisis, MCI and MCIM caused the China Fund to make an investment that rescued the Hedge Fund from its significant

⁴ In Step 1 of the diagram, the China Fund purchased the Ugent Bonds. In Step 2, as provided by the subscription agreement, Ugent instantaneously transferred to Jackin, via an intra-company loan, \$10 million of the China Fund’s investment proceeds. As Step 3 illustrates, Jackin immediately used the \$10 million to redeem the Hedge Fund’s Jackin 10% Bonds. Jackin redeemed the 10% Jackin Bonds at par and more than a year before their maturity date. Step 4 shows the movement of collateral. The Hedge Fund’s bonds had been secured by equity shares of Afex, Jackin’s operations subsidiary. Upon redemption of the Jackin 10% Bonds, the Afex collateral was transferred to serve as security for the Ugent Bonds held by the China Fund.

(and mostly illiquid) exposure to a single issuer, and provided the Hedge Fund with much-needed liquidity to pay investor redemptions.

The Hedge Fund in Crisis

The Hedge Fund's offering materials prohibited the fund from investing more than 20% of its net assets in the securities of any one issuer, including the issuer's subsidiaries or affiliates (the "20% Limit"). At the end of July 2008, the Hedge Fund's net assets were approximately \$100 million. Accordingly, the 20% Limit precluded the fund from investing more than \$20 million in the securities of a single issuer.

As the global financial crisis deepened in 2008, the Hedge Fund faced a significant increase in redemption requests by investors, including U.S. investors. To meet these requests, MCIM and PM-1 began selling down the liquid portion of the fund's portfolio. These sales impacted the Hedge Fund's relative exposure to the illiquid securities that remained in its portfolio. At the end of August 2008, the fund's exposure to Jackin stood at about 14% of its net assets.

In October 2008, MCIM and PM-1 caused the Hedge Fund to purchase the Jackin 15% Bonds. This increased the fund's total investment in Jackin to \$17 million. At the same time, the Hedge Fund's net assets had fallen to about \$92 million. As a result, the fund's exposure to Jackin reached about 18.5% of its portfolio, as the table below shows.

Hedge Fund Investments in Jackin, Oct. 2008

Jackin 15% Bonds (Oct. 2008)	\$4 million
Jackin 10% Bonds (June 2007)	\$10 million
Jackin equity (May 2003)	\$3 million
	<hr/>
	\$17 million
Fund Net Assets	\$92 million
Jackin % of Net Assets	18.5%

By causing the Hedge Fund to purchase the Jackin 15% Bonds, MCIM came close to breaching the fund's 20% Limit.

The Hedge Fund also faced severe liquidity issues in October 2008. The financial markets were in turmoil and MCIM continued to receive investor redemption requests. Although the fund's redemption policy provided 90 days in which to make redemption payments, MCIM was forced to continue selling the fund's other holdings, such as exchange-traded securities, to generate liquidity. This left the Hedge Fund with an increasingly illiquid portfolio that was even further weighted toward Jackin. Had the fund sold down its remaining liquid securities, its exposure to Jackin would have stood at nearly 30% of net assets. At the same time, Jackin's financial condition had significantly weakened by the latter half of 2008, and it desperately needed cash to fund operations and make debt service payments to its various lenders and bondholders, including the Hedge Fund.

In November 2008, MCIM employees in Edinburgh became alarmed about the Hedge Fund's situation. Several senior-level officials began to openly question the wisdom of the second Jackin bond transaction, the fund's exposure and liquidity problems, Jackin's poor financial condition, and potential impairment to the value of bonds – all against the backdrop of global market turmoil. One senior MCIM official, in a November 2008 email to other senior colleagues, described MCIM's actions with regard to Jackin as “reckless in the extreme.” Martin Currie's head of risk escalated those concerns to the firm's chief executive officer.

In late November 2008, MCIM informed the Hedge Fund's board of directors about the fund's exposure to Jackin. The board gave an urgent direction to MCIM to reduce the Hedge Fund's exposure to Jackin by mid-February 2009.

The China Fund Becomes a Rescue Option

By early December 2008, an internal working group (the “Working Group”) was formed in Edinburgh to explore options for reducing the Hedge Fund's exposure to Jackin. The Working Group included several senior MCIM and MCI officials who oversaw the firm's China operations and its risk, legal, and compliance functions. PM-1 was not a part of the group. Rather, the director of China operations in Edinburgh was responsible for liaising with PM-1 and the Shanghai office.

On a separate track, PM-1 was already negotiating a transaction in which an independent private equity fund would lead a group of investors in purchasing 100% of the equity of Jackin's subsidiary, Ugent. As contemplated, the China Fund would be a minority participant in the buyout group. This proposed transaction, named “Project Ink,” called for the repayment of the Jackin 10% Bonds held by the Hedge Fund. Because the Project Ink transaction would have used the China Fund to benefit the Hedge Fund by reducing its exposure to Jackin, the deal posed a direct conflict of interest between those two clients. The deal also would have been a prohibited joint arrangement absent an exemptive order from the Commission.

While PM-1 continued negotiating Project Ink in Shanghai, the Working Group in Edinburgh discussed options for selling off the largest slice of the Hedge Fund's Jackin exposure, the Jackin 10% Bonds. The group initially focused on whether the bonds could be traded to another client, including the China Fund. There was no outside market for the Jackin 10% Bonds in December 2008, nor did the Working Group consider soliciting external bids for these assets.⁵

The Working Group then turned its attention to Project Ink, which involved the China Fund and other investment partners acquiring Ugent. Project Ink initially was attractive to the group because, under its terms, the proceeds would be used to redeem the Jackin 10% Bonds held by the Hedge Fund. However, on December 2, 2008, the Working Group concluded that Project Ink was likely prohibited by the Investment Company Act, and was otherwise improper because of the conflict of interest between the two funds. In that same meeting, two officials of

⁵ The group also considered creating a “side pocket” for the illiquid securities and/or gating the fund to limit redemptions, but rejected those options.

the Working Group remarked that the China Fund's involvement would not "pass the smell test" because of that conflict. Other members openly agreed that the China Fund should be excluded from the transaction and no one disagreed. The Working Group then decided to focus on another client as a more suitable purchaser, but only if the investment's rationale and valuation were sound.

After conferring with PM-1, however, the Working Group reversed course and decided to press forward with Project Ink and the China Fund, having concluded that the China Fund could participate as long as its board of directors gave approval through a conflict waiver. By coincidence, on December 4, 2008, the China Fund's board was holding a routine meeting in North Carolina. MCI and MCIM decided to brief the board on Project Ink as part of that meeting.

An Improper Conflict Waiver

The China Fund board briefing on December 4, 2008, was flawed in design and execution. Despite the importance of the conflict waiver and MCI's fiduciary obligation to make full disclosure, MCI and MCIM failed to send any employees with adequate knowledge of the facts and circumstances. The only Martin Currie employees at the meeting were PM-2 and a client service director, neither of whom had a full grasp of the Hedge Fund's problems, Jackin's problems, and the conflicts presented by the Project Ink transaction. Neither PM-1 nor any members of the Working Group participated in the board briefing, even by telephone.

Prior to the board meeting, PM-1 emailed instructions to PM-2 concerning which facts to disclose to the board about Project Ink. PM-1 directed PM-2 to disclose that two MCIM clients held equity stakes in Jackin, omitting the most important fact: that proceeds of China Fund's investment would be redeeming the Hedge Fund's Jackin 10% Bonds.

At the December 4 meeting, PM-2 and the client service director presented the transaction to the board as PM-1 had instructed. PM-2 never mentioned the Hedge Fund's redemption through the proposed transaction – the real reason MCI and MCIM were purportedly seeking a conflict waiver. The board also reviewed a short memorandum describing Project Ink and other proposed deals. This report, drafted by PM-1, stated that Jackin would be using the investment proceeds for "working capital for business expansion," but again failed to disclose the redemption of bonds held by the Hedge Fund. Based on these incomplete and misleading representations, the board approved Project Ink – contingent on the approval of the China Fund's outside lawyer ("Lawyer A"). Lawyer A was present at the board meeting but wanted to evaluate the issue further and review the relevant deal documents.

The next day, December 5, MCI and MCIM employees omitted material facts in obtaining Lawyer A's approval for the transaction. Once again, PM-1 guided the disclosure remotely by email, instructing PM-2 and MCIM's director of China operations to provide Lawyer A with selective and incomplete information. Lawyer A received and reviewed certain documents for Project Ink, but none of them mentioned the Hedge Fund's bond redemption. PM-2 had breakfast with Lawyer A the next morning, but did not raise the core conflict at issue.

A few days later, Lawyer A wrote an email explaining his understanding of the proposed Project Ink transaction and concluding that the proposed transaction was acceptable. The email was sent to PM-1, PM-2, and two other senior MCI/MCIM employees, including a key member of the Working Group who knew about the conflict of interest. Lawyer A's recitation of the facts clearly reflected his lack of awareness of the Hedge Fund's involvement, much less that the Hedge Fund was a chief beneficiary. Erring on the side of caution, however, Lawyer A closed with the following condition:

This conclusion is based on my understanding of the transaction. . . . Please let me know if I have misunderstood any of the facts or mischaracterized any of the factors.

No one corrected Lawyer A's misunderstanding or forwarded his email to others in the Working Group. As a result, many senior Martin Currie officials incorrectly assumed that a valid conflict waiver was obtained, but took no affirmative steps to ascertain whether this was true.

In fact, MCI and MCIM never made a bona fide effort to seek a conflict waiver from the China Fund's board. From that point forward, even after Project Ink transformed into the Ugent Bond transaction (in which the China Fund invested alone), MCI and MCIM continued to rely on the improperly-obtained approval of Project Ink from December 2008.

Project Ink Transforms into the Ugent Bond Transaction

In January 2009, the Project Ink transaction collapsed because the lead private equity investor decided to withdraw. At this point, PM-1 negotiated a new transaction. Rather than a group of buyers purchasing 100% of Ugent's equity, the China Fund would invest alone and purchase \$22.8 million in Ugent bonds that were convertible to common shares representing approximately 30% of Ugent. This was the form of the Ugent Bond transaction that ultimately closed in April 2009.

As with Project Ink, the proposed Ugent Bond transaction promised to solve numerous problems at once for MCIM and PM-1. The Hedge Fund's Jackin 10% Bonds would be redeemed in full, instantly relieving the Hedge Fund's exposure and liquidity crisis. By redeeming the bonds at face value, the Hedge Fund would realize no loss on the otherwise illiquid Jackin 10% Bonds. As a continued bond and equity holder, the Hedge Fund would also benefit from Jackin's ability to use the remaining \$12.8 million in China Fund proceeds for debt service payments and working capital.

The Working Group in Edinburgh examined the new transaction and again raised issues about client conflicts. The group understood that the conflict was even more pronounced now that the China Fund was investing alone in a transaction to redeem the Hedge Fund's bonds. Nevertheless, in the weeks that followed, PM-1 and other MCI and MCIM employees knowingly or recklessly avoided addressing the conflict issue while hurriedly moving forward with the Ugent Bond transaction.

Dubious Investment Rationale and Pricing

Prior to the Ugent Bond transaction closing, PM-1 and others at MCI failed to give sufficient consideration to whether the Ugent Bond investment was in the China Fund's best interests. During the period prior to the April 2009 closing, PM-1 did not conduct any new financial due diligence or credit risk analysis.⁶ Instead, he relied solely on verbal assurances from Jackin's management team. In pricing the bonds and the equity conversion feature, PM-1 decided to rely on the Ugent valuation that had been conducted for Project Ink in July 2008, eight months earlier. Others at MCI deferred to PM-1's approach.

PM-1 and others at MCI also disregarded several factors that should have raised doubts about the investment's rationale and pricing. By late March 2009, the global financial crisis had reached a nadir, and Chinese securities markets were not immune.⁷ Jackin/Ugent's financial condition had worsened significantly, especially in contrast to the forecasts used for Project Ink. In March 2009, PM-1 and others learned that Ugent's year-end earnings for 2008 were 25% lower than the earnings estimates used for Project Ink. Moreover, in January 2009, Jackin failed to make its semi-annual coupon payment owed to the Hedge Fund for the Jackin 10% Bonds. PM-1 responded by placing Jackin on a payment plan in order to avoid seizure of its operations. Jackin eventually paid the coupon, but told PM-1 that its ability to survive depended on the Ugent Bond transaction closing. PM-1 and others were also fully aware that there was no market for the Jackin bonds that were held by the Hedge Fund; those bonds were illiquid. Despite such troubling information, PM-1 and other MCI employees pushed forward without adequately considering whether the Ugent Bonds were suitable for the China Fund.

Final Misleading Disclosures to the China Fund Board

MCI and MCIM did not seek a new conflict waiver from the China Fund's board, even though the transaction had changed fundamentally from Project Ink. Nor did any MCI/MCIM employees ask Lawyer A for an opinion on the new transaction. Rather, PM-1 and others continued their pattern of disclosing selected information to facilitate the closing of the transaction without raising questions.

On March 26, 2009, the China Fund's board held another regularly-scheduled meeting. At the meeting, among other routine items, PM-1 planned to brief the China Fund's board about the status of the Ugent Bond transaction and seek approval to escrow approximately \$22.8 million in funds required to complete the investment. The Ugent Bond transaction was scheduled to close the following week. This was a final opportunity to ensure that the board and Lawyer A, who was in attendance, fully understood that the transaction would redeem bonds held by the Hedge Fund. PM-1 and an MCI client service director attended the meeting. PM-1, in particular, knew or was

⁶ PM-1 supervised the negotiations with Jackin and the preparation of the Ugent Bond transaction documentation by the funds' outside law firm in China.

⁷ The Hang Seng Index, which tracks the top companies listed on the HKSE, had fallen by over 40% between July 2008 and March 2009.

extremely reckless in not knowing that the board and Lawyer A were unaware of the Hedge Fund's interest in the deal. But instead of correcting their misunderstanding, PM-1 continued to deceive them.

PM-1 provided the board and Lawyer A with another misleading memorandum, which PM-1 drafted, describing the proposed investment. The report stated that the China Fund "will buy a convertible bond [from Ugent], to provide working capital for business expansion," but omitted the fact that almost half of the proceeds would be used to redeem the Jackin 10% Bonds held by the Hedge Fund. The document also gave a false reason for the collapse of Project Ink: that Jackin/Ugent's largest customer had also wished to acquire the business and thus opposed Project Ink. This was untrue. In fact, Project Ink had collapsed solely because the lead investor backed out. By its language and tone, the report downplayed Project Ink's failure while creating the misimpression that Jackin's largest customer was a willing investor in Ugent and a potential exit strategy for the China Fund's proposed investment. PM-1's memorandum was the only substantive communication with the board concerning the deal.

Based on the false and misleading information provided by PM-1 at the March 26 meeting, the China Fund board agreed to escrow the funds and authorized MCI to proceed with the Ugent Bond transaction.⁸ As a final step, MCIM arranged for the Hedge Fund to release the collateral securing the Jackin 10% Bonds so that it could be used as security for the new Ugent Bond transaction.⁹

The Ugent Bond transaction closed on April 6, 2009. The China Fund purchased the Ugent Bonds for \$22.8 million. Pursuant to the subscription agreement, Ugent loaned \$10 million to its parent, Jackin, which then redeemed at par the Jackin 10% Bonds held by the Hedge Fund. The Hedge Fund's exposure and liquidity crisis was resolved. Moreover, the remaining \$12.8 million in China Fund proceeds enabled Jackin to remain in business and make debt service payments, to the benefit of the Hedge Fund and the other MCIM-managed account that continued to hold Jackin bonds and stock. The China Fund, however, now owned \$22.8 million in illiquid convertible bonds of questionable value.

D. The Ugent Bond Transaction – Failure to Follow Valuation Procedures

After the Ugent Bond investment closed, MCI and PM-1 failed to follow the China Fund's procedures for valuing the convertible bonds. Between April 2009 and October 2010, MCI

⁸ The only genuine disclosure of the Hedge Fund's role in the Ugent Bond transaction came from Jackin in the form of two routine announcements that it was required to make to the HKSE. In January 2009, Jackin announced the China Fund's execution of a memorandum of understanding to purchase the Ugent Bonds, and in March 2009, Jackin announced the execution of the subscription agreement. Both of Jackin's HKSE announcements attached legal documents that, upon a close reading, revealed the use of proceeds to redeem bonds held by the Hedge Fund. An MCI client service director emailed Jackin's HKSE announcements to the China Fund's chairman merely as a courtesy – because the China Fund was mentioned – and in an offhand way that failed to draw the chairman's attention. In the second instance, the chairman was asked merely to approve the description of the China Fund on a specific page of a lengthy document.

⁹ The collateral was equity shares of Afex, Jackin's operations subsidiary.

advised the China Fund to value the Ugent Bonds at cost (\$22.8 million) while failing to disclose to the board certain evidence relevant to the fair valuation of the bonds.

The China Fund's valuation policies tracked Section 2(a)(41)(B) of Investment Company Act and Rule 2a-4 thereunder,¹⁰ and were provided in the fund's annual, semi-annual, and quarterly reports filed with the Commission on Forms N-CSR and N-Q. The fund's direct investments that were not traded on an exchange ("Direct Investments"), such as the Ugent Bonds, were to be priced at "fair value" as determined in good faith by the board based on financial and other information supplied by MCI. "Fair value" was defined as the price that the fund would reasonably expect to receive in a current sale to an independent buyer. This policy was in accord with FAS 157, which the China Fund implemented in November 2008.¹¹

The China Fund also maintained internal written procedures with additional guidance for valuing Direct Investments. The fund's procedures provided that "any fair valuation of a direct investment held by the Fund will be based primarily on the recommendation of [MCI], which will consider such factors as it believes appropriate in making its recommendation." MCI formed a valuation committee in early 2008 to conduct fair valuation of all securities for which market quotations were not readily available.

Prior to October 2009, Direct Investments were to be valued at cost unless the board, based on MCI's advice, concluded that there was a material change in value. In October 2009, the fund amended its procedures to require Direct Investments to be valued at fair value at all times, rather than presumptively at cost in the absence of a material change.¹² In either case, the board relied on MCI's expertise, judgment, and obligation to disclose all factors, events, and other circumstances that were material to the fair valuation of Direct Investments such as the Ugent convertible bonds.

MCI and PM-1 improperly withheld certain information from the board that was material to its fair valuation of the Ugent Bonds. PM-1 and others already knew about serious financial problems at Jackin/Ugent and the overall market decline in the weeks and months before the investment closed in April 2009. However, PM-1 and others disregarded these red flags in causing the China Fund to invest without any new financial due diligence, credit analysis, or independent valuation to substantiate the transaction.

¹⁰ The China Fund, a closed-end fund, tracked the language of Section 2(a)(41)(B) and Rule 2a-4, but Rule 2a-4 pertains only to registered open-end funds.

¹¹ Statement of Financial Accounting Standards No. 157, *Fair Value Measurements* (Sept. 2006) ("FAS 157," now known as Accounting Standards Codification ("ASC") Topic 820. See also Accounting Series Release No. 118, Investment Company Act Release No. 6295 (Dec. 23, 1970) ("ASR 118") (providing guidance for registered investment company valuation of securities for which market quotations are not readily available).

¹² The China Fund, prompted by its independent auditor, amended its valuation procedures for Direct Investments to conform to Commission interpretive guidance on the valuation of restricted securities. See Accounting Series Release No. 113, Investment Company Act Release No. 5487 (Oct. 21, 1969) ("ASR 113") (questioning valuation at cost when changes in issuer's operations or general market conditions suggest that cost no longer represents fair value).

This pattern of incomplete disclosure continued after the transaction closed, despite mounting evidence of further deterioration in Jackin/Ugent's business and creditworthiness. For example, in May 2009, PM-1 and others at MCI learned that Ugent's independent auditor, a Big Four accounting firm, issued a going concern warning in connection with its audit of the company's 2008 annual financial statements. In its qualified opinion letter, the auditor raised concerns about the possible overstatement of Ugent's sales and inventory, among other issues. Shortly thereafter, the auditor resigned and was replaced by a small local accounting firm. Although these events were material to the fair valuation of the Ugent Bonds, PM-1 and others failed to bring them to the attention of the China Fund's board at subsequent valuation meetings. Based on MCI's recommendation, the China Fund continued to value the Ugent Bonds at cost, \$22.8 million.

In June 2009, PM-1 and other MCI employees became aware that Jackin wanted to recast itself as a gold mining venture and that Ugent, whose printer cartridge business was failing because of competition and lack of working capital, faced an uncertain future. PM-1 and others failed to bring these changing circumstances to MCI's valuation committee until October 2009. As a result, there was no disclosure to the China Fund board until that time.

In September 2009, PM-1 caused two other clients – the Hedge Fund and a separately-managed account that mirrored the Hedge Fund – to sell all of their existing Jackin stock holdings. PM-1 also caused the Hedge Fund to begin exercising certain Jackin warrants that the fund had acquired in 2007 as part of its Jackin 10% Bond investment. This hastened the Hedge Fund's exit from Jackin, and Jackin was able to use the proceeds of the warrant exercise to make its first semi-annual coupon payment to the China Fund on the Ugent Bonds. The Hedge Fund sold the equity shares from its warrant exercise between late-2009 and mid-2010. PM-1 did not inform the China Fund board that his other clients were selling all of their Jackin stock holdings, and the China Fund continued to value the Ugent Bonds at cost.

In October 2010, 19 months after the investment closed, MCI recommended that the China Fund board mark down the value of the Ugent Bonds by 50% due to Ugent's deteriorating financial condition. The China Fund accepted that recommendation. The following month, on MCI's recommendation, the board wrote down the investment to \$0.¹³

By its actions, MCI deviated from the China Fund's valuation procedures and misled the board, which had valuation responsibilities. As a consequence, the China Fund held the Ugent bonds for many months at an insufficiently supported cost valuation of \$22.8 million, which, between April 2009 and October 2010, comprised about 25% of the fund's direct investment portfolio net asset value ("NAV") and approximately 5% of the fund's total NAV. MCI's actions also resulted in material misstatements in the China Fund's annual, semi-annual, and quarterly reports filed with the Commission on Forms N-CSR and N-Q. Those reports, which were prepared by MCI, described valuation policies for direct investments that MCI was not following and contained Ugent Bond valuations that were not fully substantiated.

¹³ On April 18, 2011, the China Fund sold the Ugent Bonds for \$11.5 million, which was about 50% of their face value.

E. The Original Jackin 10% Bond Investment – Deceptive Disclosures to the Hedge Fund and Its Investors

The Hedge Fund's crisis in November 2008, which culminated in its improper rescue by the China Fund through the Ugent Bond transaction, was directly traceable to MCIM's actions in causing the Hedge Fund to purchase Jackin 10% Bonds in the first place.

Modification of the 5% Limit on Unlisted Holdings

Among other investment restrictions in the Hedge Fund's offering materials, the Hedge Fund was precluded from investing more than 5% of its net assets in "unlisted" securities, or securities not traded on an exchange (the "5% Unlisted Limit"). By capping exposure to such securities, this 5% Unlisted Limit helped ensure that the Hedge Fund had sufficient liquid assets to satisfy investor redemptions.

On June 14, 2007, at PM-1's direction, MCIM caused the Hedge Fund to enter into a binding subscription agreement to purchase the Jackin 10% Bonds, which included detachable warrants that were convertible into Jackin stock, for \$10 million. Although Jackin's common stock was listed on the HKSE, the bonds and warrants in question were privately-negotiated, unlisted securities. As a result, the proposed \$10 million investment breached the Hedge Fund's 5% Unlisted Limit, and would have constituted 9.4% of the fund's net assets.

Although PM-1 and other MCIM officials had been working on the bond investment for several months, no one identified the problem until the firm's order-management system flagged the breach on June 25, 2007, just a few days before settlement was to occur. Jackin had already announced the investment publicly, and the Hedge Fund lacked cause to terminate the subscription agreement without penalty.

With a fast-approaching deadline, MCIM sought approval from the Hedge Fund's board to modify the 5% Unlisted Limit. In presenting the matter to the board, however, MCIM officials were focused on the short-term objective of permitting PM-1 to complete the Jackin bond investment. These MCIM officials portrayed the restriction as ambiguous and unclear, and asserted that the 5% Unlisted Limit should not apply to all "unlisted securities" but only to "securities issued by unlisted companies" (*i.e.*, companies whose stock was not publicly traded). Under this reasoning, because Jackin's stock was listed on the HKSE, the Jackin 10% Bonds should not breach the restriction. In addition, the MCIM officials who briefed the board avoided raising the most important issues, including: (i) the risks of illiquid investments in general and Jackin in particular; (ii) the purpose of the original restriction; (iii) whether allowing greater exposure to illiquid investments was in the fund's best interests; and (iv) whether the proposed modification was appropriate for the fund and legally permissible.

Although several Hedge Fund board members raised concerns and complained about having to make this decision in a rushed way, the board approved the transaction and agreed to revise the 5% Unlisted Limit. The investment closed on June 28, 2007. As of that date, the Jackin 10% Bonds represented 8.8% of the Hedge Fund's net assets. Because Jackin's stock was listed,

the investment no longer counted against the Hedge Fund's new 5% Unlisted Limit. The same was true for the fund's second Jackin bond investment in October 2008.

The modification of the 5% Unlisted Limit had serious consequences, as the revised restriction was no longer as effective as a liquidity safeguard. The Hedge Fund was established as an equities-trading vehicle whose interests were easily redeemable because its portfolio was mostly liquid. Instead, over a 15-month period that coincided with the onset of the global financial crisis, MCIM caused the fund to make two Jackin bond investments comprising nearly 15% of the fund's net assets. These investments were highly illiquid, even though Jackin's common stock was listed. As a result, the Hedge Fund was unable to sell these securities in the fall of 2008 when it needed to make redemption payments.

Improper Classification and Reporting of Bonds

After the Jackin 10% Bond investment closed in June 2007, PM-1 and MCIM improperly classified the bonds as cash in MCIM's risk management system and reported them inaccurately to the fund's investors in certain reports.

PM-1 executed the Hedge Fund's subscription agreement for the Jackin 10% Bonds on June 14. On June 16, PM-1 suggested to MCIM back office and legal officials that the investment should be recorded as cash in the fund's risk management system. PM-1's reasoning was that MCIM's systems offered limited classifications, and he believed that cash best matched his investment rationale. MCIM's back office accepted PM-1's view without significant discussion. The bonds were booked as cash in the firm's risk management system, even though they were high-yield fixed income securities (with detachable warrants) that did not remotely qualify as cash or cash-equivalent for risk and reporting purposes.

As a result of the bonds' misclassification, the liquidity and credit risks caused by Hedge Fund's exposure to Jackin did not surface until November 2008, after the Hedge Fund made the second Jackin bond investment. By that time, the Hedge Fund was in a full-fledged crisis that was caused in large part by MCIM's effort to modify the 5% Unlisted Limit and its failure to classify the bonds properly from the start.

In addition, the improper classification of the Jackin bonds was reflected in inaccurate monthly portfolio reports that MCIM sent to the Hedge Fund's investors, including U.S. investors. The July 2007 monthly report provided an accurate summary of the Jackin 10% Bond transaction, and from July through September 2007, the bonds were properly included in the monthly reports as part of the "Top 10 long holdings" and "net market exposure" for the fund. But in October 2007, PM-1 again expressed the view that the bonds should be reported to investors as cash, in order to be consistent with cash classification in the firm's risk management systems. Once more, MCIM's back office deferred to PM-1 and changed the monthly reports.

In the new reports, because the Jackin 10% Bonds were deemed cash and not securities, MCIM excluded them from the fund's "Top 10 long holdings" and calculation of "net market exposure." This was misleading to the fund's investors. The bonds represented over 8% of the

fund's portfolio, easily satisfying the criteria for these reported categories, and had been reported that way before. Nevertheless, MCIM did not sufficiently disclose its rationale for altering the monthly portfolio reports, or why it was reporting high-yield corporate bonds as cash in the first place. MCIM's misreporting of the bonds to investors lasted from November 2007 through December 2008.¹⁴

Violations

A. Advisers Act Antifraud Provisions – Sections 206(1) and 206(2)

Section 206(1) of the Advisers Act makes it unlawful for an investment adviser to employ any device, scheme or artifice to defraud any client or prospective client. Section 206(2) makes it unlawful for an investment adviser to engage in any transaction, practice or course of business that operates as a fraud or deceit upon any client or prospective client. Pursuant to Section 206, investment advisers have a fiduciary duty that requires them to act in each client's best interests, and to make full and fair disclosure of all material facts.

MCI willfully violated Sections 206(1) and 206(2) of the Advisers Act by knowingly or recklessly advising the China Fund to make, and advising the China Fund's board of directors to approve, the Ugent Bond investment on the basis of material misrepresentations and omissions concerning, among other things, the Hedge Fund's involvement, the investment rationale, and the initial pricing of the convertible bonds.

MCI also willfully violated Sections 206(1) and 206(2) of the Advisers Act by knowingly or recklessly deviating from the China Fund's fair valuation policies and procedures in recommending that the China Fund directors value the Ugent Bonds at cost while failing to disclose certain information that was material to the fair valuation of those bonds.

B. Investment Company Act Affiliated Transaction Provision – Section 17(d) and Rule 17d-1

Section 17(d) of the Investment Company Act prohibits any affiliated person of a registered investment company or any affiliated person of such affiliated person (or each, an "affiliate"), acting as principal, from effecting any transaction in which such registered investment company is a joint or a joint and several participant with such affiliate in contravention of such rules and regulations as the Commission may prescribe. Section 17(d) is intended to limit or prevent participation by such registered company on a basis different from or less advantageous than that of another participant. Rule 17d-1 under the Investment Company Act prohibits any such affiliate from participating in any joint enterprise, other joint arrangement, or profit-sharing plan (a "joint arrangement") unless it obtains an order from the Commission regarding the joint arrangement.

¹⁴ During this time period, MCIM did prepare one annual and two semi-annual reports for the Hedge Fund that categorized the Jackin 10% bonds as non-cash financial holdings.

MCI and MCIM willfully aided, abetted, and caused violations of Section 17(d) of the Investment Company Act and Rule 17d-1 by causing the Hedge Fund, an affiliate of the China Fund, to participate in a joint arrangement with the China Fund without a Commission order.

C. Investment Company Act Reporting Provision – Section 34(b)

Section 34(b) of the Investment Company Act prohibits untrue statements or omissions of material fact by any person in, among other things, reports filed with the Commission pursuant to the Investment Company Act or the keeping of which is required pursuant to Section 31(a) of the Investment Company Act.

MCI willfully violated Section 34(b) of the Investment Company Act by preparing the China Fund's annual, semi-annual, and quarterly reports filed with the Commission on Forms N-CSR and N-Q that described valuation policies for direct investments, such as the Ugent Bonds, that MCI was not following and that reported valuations for the Ugent Bonds that were not fully substantiated.

D. Advisers Act Antifraud Provision – Section 206(4) and Rule 206(4)-8

Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder prohibit investment advisers from making materially false or misleading statements to investors or prospective investors in a pooled investment vehicle.

MCIM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 by misrepresenting the Jackin 10% Bonds in monthly portfolio reports provided to the Hedge Fund's investors.

E. Advisers Act Compliance Provision – Section 206(4) and Rule 206(4)-7

Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require registered investment advisers to adopt and implement written procedures reasonably designed to prevent violations of the Advisers Act.

MCI willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 by failing to adopt and implement policies and procedures reasonably designed to address: (i) the proper identification and full and fair disclosure of advisory and client conflicts of interest; (ii) the timeliness, accuracy, and completeness of its disclosures to the China Fund's boards of directors; and (iii) accurate disclosure and valuation of portfolio securities.

Cooperation and Remedial Efforts

In determining to accept the Offer, the Commission considered the cooperation afforded the Commission staff and certain remedial measures undertaken by Martin Currie. MCI and MCIM: (i) compensated the China Fund for net losses arising from the Ugent Bond transaction, plus associated legal, accounting and other expenses; (ii) refunded management fees incurred as a

result of the Ugent Bond transaction; (iii) severed relations with PM-1; (iv) terminated, replaced, or disciplined certain other senior employees; (v) ceased new unlisted bond and private equity investments; (vi) undertook an investigation of the facts; and (vii) made enhancements to their policies, procedures, and controls governing compliance with the Advisers Act and Investment Company Act.

Undertakings

Respondents shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Respondents shall: (i) produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by the Commission staff subject to any restrictions under the law of any foreign jurisdiction; (ii) use their best efforts to cause their officers, employees, and directors to be interviewed by the Commission staff at such time as the staff reasonably may direct; and (iii) use their best efforts to cause their officers, employees, and directors to appear and testify without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent MCI cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, and Sections 17(d) and 34(b) of the Investment Company Act and Rule 17d-1 thereunder.

B. Respondent MCIM cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder and Sections 17(d) of the Investment Company Act and Rule 17d-1 thereunder.

C. Respondents are censured.

D. Respondents MCI and MCIM shall, jointly and severally, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$8,300,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (i) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (ii) made payable to the Securities and Exchange Commission; (iii) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F Street, NE, Mail Stop 6042, Washington, DC 20549; and (iv) submitted under cover letter that identifies MCI and MCIM as Respondents in

these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Scott Weisman, Assistant Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Mail Stop 5010, Washington, DC 20549.

E. Respondents MCI and MCIM acknowledge that the Commission is not imposing a civil penalty in excess of \$8,300,000 based upon their cooperation in the Commission investigation. If at any time following the entry of the Order, the Division of Enforcement (“Division”) obtains information indicating that Respondents knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and without prior notice to the Respondents, petition the Commission to reopen this matter and seek an order directing that Respondents pay an additional civil penalty. Respondents may not, by way of defense to any resulting administrative proceeding: (i) contest the findings in the Order; or (ii) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy
Secretary