

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of : CFTC Docket No. 07-08

Merrill Lynch Investment Managers, LLC, and : ORDER INSTITUTING PROCEEDINGS
: PURSUANT TO SECTIONS 6(c) AND 6(d)
: OF THE COMMODITY EXCHANGE ACT
: AS AMENDED, MAKING FINDINGS AND
Merrill Lynch Alternative Investments, LLC : IMPOSING REMEDIAL SANCTIONS

Respondents. :

RECEIVED
C.F.T.C.
JUL 31 A 10:30
PROCEDINGS CLERK

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Merrill Lynch Investment Managers, LLC ("MLIM") and Merrill Lynch Alternative Investments, LLC ("MLAI") have violated Commission Regulation ("Regulation") 4.22(c), 17 C.F.R. § 4.22(c) (2007). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether MLIM and MLAI have engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, MLIM and MLAI have submitted an *Offer of Settlement* ("*Offer*"), which the Commission has determined to accept. Without admitting or denying any of the findings herein, MLIM and MLAI acknowledge service of this *Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, as amended, Making Findings and Imposing Remedial Sanctions* ("*Order*").¹

¹ MLIM and MLAI consent to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that MLIM and MLAI do not consent to the use of the *Offer*, or the findings consented to in the *Offer* or this *Order*, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this *Order*. Nor do MLIM and MLAI consent to the use of the *Offer* or this *Order*, or the findings consented to in the *Offer* or this *Order*, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

Regulation 4.22(c) requires commodity pool operators (“CPOs”) to distribute to pool participants and file with the National Futures Association (“NFA”) their commodity pools’ annual reports within 90 days of the end of the pools’ fiscal year. Pursuant to Regulation 4.22(f)(2), 17 C.F.R. § 4.22(f)(2), a CPO for a fund-of-funds may claim an extension of an additional 60 days. For the years ending December 31, 2001 through, at least, December 31, 2005, MLIM and MLAI, two registered commodity pool operators (“CPOs”), on at least a number of separate occasions, failed to distribute to pool participants and file with the NFA their commodity pools’ annual reports in a timely manner, in violation of Regulation 4.22(c).

B. RESPONDENTS

Merrill Lynch Investment Managers, LLC is located at 800 Scudders Mill Road, Plainsboro, NJ 08536. MLIM has been registered with the Commission as a CPO and a commodity trading advisor since November 3, 1999.

Merrill Lynch Alternative Investments, LLC is located at 800 Scudders Mill Road, Plainsboro, NJ 08536. MLAI has been registered with the Commission as a CPO since October 10, 1986, and as a commodity trading advisor since April 24, 1990.

C. FACTS

For the years ending December 31, 2001, through at least December 31, 2005, MLIM and MLAI have been repeatedly late in distributing to pool participants and filing with the NFA their commodity pools’ annual reports. For the years 2001 through and including 2005, MLIM’s and MLAI’s commodity pools’ fiscal years ended December 31st. Thus, for the reporting years 2001 through 2005, MLIM and MLAI were required to distribute to pool participants and file with the NFA their commodity pools’ annual reports no later than May 31st, of the following year. For the reporting years 2001-2005, however, both MLIM and MLAI distributed to pool participants and filed with the NFA a number of annual reports significantly beyond the May 31st deadline.

D. LEGAL DISCUSSION

Regulation 4.22(c), in relevant part, requires that each CPO registered or required to be registered under the Commodity Exchange Act must distribute an annual report to each participant in each pool that it operates, and must electronically submit a copy of the annual report and key financial balances from the annual report to the NFA within 90 calendar days after the end of the pool's fiscal year.

Regulation 4.22(f)(2), in relevant part, provides that in the event a CPO finds that it cannot obtain the information necessary to prepare certified financial statements for a pool that it operates within the time specified in Regulation 4.22(c) as a result of the pool investing in

another collective investment vehicle (*i.e.* a fund-of-funds), it may claim an additional 60-day extension of time.

As described above, on a number of distinct occasions, over a period of five years, MLIM and MLAI filed their annual reports significantly after the applicable deadline. MLIM and MLAI, therefore, violated Regulation 4.22(c).

The furnishing of the annual report was designed to “provide [pool] participants with the information necessary to assess the overall trading performance and financial condition of the pool.” *Commodity Pool Operators and Commodity Trading Advisors; Final Rules*, 44 Fed. Reg. 1918 (CFTC Jan. 8, 1979) (announcing the adoption of Rule 4.22). Without timely reporting, the Commission’s goal of providing pool participants with complete and necessary data is hampered.

IV.

FINDING OF VIOLATIONS

Based on the foregoing, the Commission finds that MLIM and MLAI violated Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2007).

V.

OFFER OF SETTLEMENT

MLIM and MLAI have submitted the *Offer* in which they, without admitting or denying the findings herein:

- A. Acknowledge receipt of service of the *Order*;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in the *Order*;
- C. Waive: the filing and service of a complaint and notice of hearing; a hearing; all post-hearing procedures; judicial review by any court; any and all objections to the participation by any member of the Commission’s staff in consideration of the *Offer*; any and all claims that they may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000) and Part 148 of the Regulations, 17 C.F.R. §§ 148.1, *et seq.*, (2007), relating to, or arising from, this proceeding; and any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief.
- D. Stipulate that the record upon which this *Order* is entered shall consist solely of the findings contained in this *Order* to which the Respondents have consented; and
- E. Consent, solely on the basis of the *Offer*, to entry of this *Order* that:

1. makes findings by the Commission that MLIM and MLAI violated Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2007);
2. orders MLIM and MLAI and their successors and assigns to cease and desist from violating Regulation 4.22(c);
3. orders MLIM and MLAI to pay a civil monetary penalty in the amount of five hundred thousand dollars (\$500,000) within ten (10) days of the date of the entry of this *Order*.
4. orders MLIM and MLAI and their successors and assigns to each comply with their undertaking consented to in their *Offer* and set forth below in Part VI of this *Order*.

Upon consideration, the Commission has determined to accept the Respondents' *Offer*.

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. MLIM and MLAI and their successors and assigns shall cease and desist from violating Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2007);

B. MLIM and MLAI shall pay a civil monetary penalty in the amount of five hundred thousand dollars (\$500,000) within ten (10) days of the date of the entry of this *Order*. MLIM and MLAI shall pay their civil monetary penalty by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, the payments shall be made payable to the Commodity Futures Trading Commission, and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-6569

If payment by electronic transfer is chosen, the Respondents shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. MLIM and MLAI shall accompany payment of the penalty with a cover letter that identifies MLIM and MLAI, and the name and docket number of this proceeding. The Respondents shall simultaneously transmit copies of the cover letter and the form of payment to 1) the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, N.W., Washington, D.C. 20581, and 2) the Chief, Office of

Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2)(2001), if this amount is not paid in full within fifteen (15) days of the due date, MLIM and MLAI shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until they have shown to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of the payment has been made; and

C. MLIM and MLAI and their successors and assigns shall comply with the following undertaking set forth in their *Offer*:

Public Statements: Neither MLIM and MLAI nor any of their successors, assigns, employees, agents, or representatives shall take any action or make any public statement denying, directly or indirectly, any finding in the *Order*, or creating, or tending to create, the impression that the *Order* is without a factual basis; provided, however, that nothing in this provision affects MLIM's or MLAI's: (i) testimonial obligations; or (ii) right to take appropriate legal positions in other proceedings to which the Commission is not a party.

The provisions of this Order shall be effective as of this date.

By the Commission.



Eileen Donovan
Acting Secretary to the Commission
Commodity Futures Trading Commission

Dated: _____ July 31, 2007