COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108

IN THE MATTER OF:	)	
STATE STREET GLOBAL ADVISORS (CARINA CDO, LTD.),	)	Docket No: 2011-0023
RESPONDENT.	)	

CONSENT ORDER

I. OFFER OF SETTLEMENT

This Consent Order ("Order") is entered into by the Massachusetts Securities Division ("Division") and State Street Global Advisors, a division of State Street Bank and Trust Company ("State Street" or "SSgA"), in connection to the Division's investigation into SSgA in its role as the Investment Manager of a $1.56 billion hybrid collateralized debt obligation named Carina CDO, Ltd.

On February 27, 2012, SSgA submitted an Offer of Settlement ("Offer") to the Division for the purpose of disposing the allegations set forth in the Offer of Settlement. SSgA, admitting the Statement of Facts as set out herein in Section VII, but neither admitting nor denying the summary, findings and conclusions contained herein, and consents, solely for the purpose of these proceedings, to the entry of this Order by the Division, consistent with the language and terms of the Offer, settling the claims thereby with prejudice.

II. SUMMARY

The Division initiated its investigation into SSgA based on its role as the Investment Manager of a $1.56 billion hybrid collateralized debt obligation ("CDO") named Carina CDO, Ltd. ("Carina"). As the Investment Manager of Carina, SSgA was responsible for the selection, acquisition and sale of collateral assets for the CDO. SSgA also assumed a active role in marketing the CDO to investors, preparing portions of termsheets, flipbooks, offering circulars and other marketing materials, which SSgA used in meetings with CDO investors. In addition, Magnetar Capital, LLC ("Magnetar"), a large hedge fund, took part in the discussions with Deutsche Bank that led to the creation of Carina; committed to purchasing the so-called "equity" tranche of Carina notes at the inception of the transaction; and recommended certain assets for inclusion in Carina in discussions with SSgA and Deutsche Bank concerning asset selection during the ramp-up process[1] for the CDO. During the ramp-up process, SSgA also became aware that Magnetar attempted to take a short position in certain collateral assets selected for Carina by SSgA. The marketing materials[2] used in marketing the CDO did not disclose these facts.

The Division asserts that without disclosure of this material information, investors were unaware of a potential conflict of interest between Magnetar and other Carina investors and thus were unable to make a fully informed investment decision with respect to Carina. In just over sixteen (16) months, Carina would become the largest CDO of its kind at the time to default and be forced into liquidation, resulting in approximately $450

[1] The "ramp-up process" or "ramping process" of a CDO transaction is the phase in which an Investment Manager selects assets for the CDO's initial collateral portfolio prior to the issuance of the CDO's notes to investors at closing. During this phase, the CDO's structuring bank finances the asset purchases and bears the risk of loss on those assets.

[2] For purposes of this Offer of Settlement, the term "marketing materials" refers to Carina's termsheets, flipbooks, offering circulars and other investor presentations used in the sale or marketing of Carina notes.

million in losses to these investors. Magnetar, however, was able to reap a windfall as a result of Carina's default, which can be gleaned through its decision to short a substantial portion of the collateral in the CDO through its purchase of approximately $142 million worth of Credit Default Swaps referencing Carina notes.

In 2006, during the height of the "CDO machine[3]," Deutsche Bank, as the structuring bank, approached SSgA to inquire whether SSgA would be interested in acting as the Investment Manager of the Carina CDO. During their initial discussions, Deutsche Bank revealed to SSgA that Magnetar had requested that Deutsche Bank structure a CDO transaction in which Magnetar would commit to a "blind pool" of assets as the equity investor. Magnetar has been linked to approximately twenty-six (26) separate CDO transactions in which it executed large correlation trades—trades in which Magnetar purchased the equity tranche of a CDO while also shorting other tranches in the same CDO. SSgA was aware of Magnetar's involvement in Carina when it agreed to act as the Investment Manager of Carina in exchange for a management fee, which amounted to $3.54 million over the life of the CDO. In describing an "ENORMOUS mezzanine CDO opportunity" presented by Carina, the Managing Director of the Core Bond Group/Head of Active U.S. Fixed Income for SSgA ("Head of U.S. Fixed Income") gushed to colleagues: "Smells like a lay – up to me but we need to respond very quickly . ."

As the Investment Manager of Carina, SSgA represented that it would manage the selection, acquisition and surveillance of all collateral assets in the CDO. In portions of the Carina offering circular ("Offering Circular") that SSgA prepared, SSgA promoted its

[3] As described by the Financial Crisis Inquiry Commission ("FCIC") in its 2011 Financial Crisis Inquiry Report ("FCIC Report").

investment strategy and asset management style to investors. SSgA described its investment strategy as one "designed to produce consistent returns." SSgA further described its asset management style as "an asset management style that is disciplined and seeks to control risk." Moreover, in meetings with investors, SSgA used investor presentations to promote SSgA's CDO management experience in other large CDO transactions. However, the marketing materials used with investors failed to disclose Magnetar's early and critical involvement in discussions with Deutsche Bank concerning the creation of the CDO; Magnetar's approximately $75 million equity investment in the CDO; its recommendation of certain assets for inclusion in Carina in discussions with SSgA and Deutsche Bank during the ramp-up process for the CDO; or its attempts to take a short position in certain assets selected for Carina by SSgA.

As the equity investor, Magnetar discussed the proposed collateral holdings with SSgA and Deutsche Bank, gained an understanding of the potential holdings and risk characteristics of the CDO and recommended collateral assets for inclusion in the CDO. Magnetar's purpose in investing in the equity tranche of Carina is apparent from its decision to take a short position against Carina by entering into approximately $142 million worth of Credit Default Swaps ("CDS") referencing Carina notes. Magnetar took on those short positions sometime after the Carina CDO transaction closed in November 2006, but SSgA did become aware during the ramp-up period prior to November 2006 that Magnetar attempted to take a short position against some of the collateral assets selected by SSgA for Carina. Although SSgA knew that Magnetar attempted to take a short against certain Carina assets, that information was not disclosed in the marketing materials used with actual and potential investors.

Throughout the relevant time period, there were numerous e-mails sent among employees of the Respondent, Deutsche Bank and Magnetar that reveal Magnetar's role in the development of Carina. For instance, on June 27, 2006, the former Head of Structured Products/Senior Portfolio Manager at SSgA ("SSgA Head of Structured Products") sent an e-mail to the former Director of Global Markets/CDO Group for Deutsche Bank ("Deutsche Bank CDO Director"), stating: "let's talk first thing about carina...if i'm going to put a cds list out for Wednesday execution, i want to do it this morning." In response, the Deutsche Bank CDO Director replied, "please go ahead, as far as Magnetar and we are concerned, we are ready to go and really would appreciate getting started today. please let me know if you need to discuss anything before you put the list out. thanks. "

In another e-mail dated July 7, 2006, the SSgA Head of Structured Products received an e-mail from the current Head of Structured Products at Magnetar ("Magnetar Head"), asking: "what's [the] plan of action looking like?" In response, the SSgA Head of Structured Products provided the Magnetar Head with an update on the ramping phase of Carina and closed with, "I'll keep you posted on my progress." On July 14, 2006, the Magnetar Head sent an e-mail to the SSgA Head of Structured Products stating: "Seems like you're making good progress. If it's not too much trouble, I'd like to establish a bit more of a dialogue between us. Discuss ramping strategy, talk about each list as it goes out, plan for non-sub/mid-prime sectors, market conditions, that sort of thing. Just talk briefly a few times a week. Would be much appreciated." The SSgA Head of Structured Products responded to the Magnetar Head's request with, in part: "Absolutely."

On August 22, 2006—less than three months after Carina was created—high level personnel of SSgA, Deutsche Bank and Magnetar entered into discussions about a possible Carina II CDO transaction. In one of many e-mails sent from the Magnetar Head to the SSgA Head of Structured Products, the Magnetar Head states: **"As we did last time, I would like to strategize and discuss names for the CDO bucket before we execute any trades. Thought that worked out well for Carina 1. I will be taking the other side of this first trade as approved such that I am effectively pairing off the risk . . . ."** (Emphasis added). Instead of rebuffing the Magnetar Head's assertion that SSgA allowed Magnetar "to strategize and discuss names" prior to execution in Carina I—or that SSgA should allow Magnetar to do the same in Carina II—the SSgA Head of Structured Products opened his e-mail in response with, in part: "[Magnetar Head], I'm happy to discuss the CDO bucket with you. As we've talked about in the past, we do quite a bit of analysis on CDO managers and transactions and it's often hard to find deals we like, so our universe of available deals to go long is somewhat limited. "

By engaging in the conduct described herein, the Division is alleging that SSgA violated Section 101(2) of the Massachusetts Uniform Securities Act ("Act") because SSgA made materially misleading omissions in connection with the offer, sale or purchase of securities. The Division further alleges that SSgA's actions resulted in a violation of Section 101(3) of the Act because SSgA engaged in acts, practices or courses of business, which operated as a fraud or deceit in connection with the offer or sale of securities.

III. JURISDICTION AND AUTHORITY

1. The Massachusetts Securities Division is a Division of the Office of the Secretary of the Commonwealth with jurisdiction over matters relating to securities as provided for by the Massachusetts Uniform Securities Act, MASS. GEN. LAWS ch. 110A ("Act") and 950 MASS. CODE REGS. 10.00 *et seq.* ("Regulations"). The Act authorizes the Division to regulate: (1) the offer, sale or purchase of securities; (2) those individuals offering and/or selling securities within the Commonwealth; and (3) those individuals transacting business as broker-dealer agents or acting as investment advisors within the Commonwealth.

2. The Division brings this action pursuant to the enforcement authority conferred upon it by Section 407A of the Act and Mass. Gen. Laws ch. 30A, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and all related rules and regulations promulgated thereunder.

3. This proceeding is brought in accordance with Sections 101 and 407A of the Act and its related Regulations. Specifically, those acts and practices constituting violations of the Act occurred in the Commonwealth of Massachusetts.

IV. RELEVANT TIME PERIOD

4. Except as otherwise expressly stated, the conduct described herein occurred during the approximate period of time between January 1, 2006 and November 30, 2007.

V. RESPONDENT

5. "State Street" and "SSgA" refer to State Street Global Advisors, a division of State Street Bank and Trust Company, with a principal place of business at State Street Financial Center, One Lincoln Plaza, Boston, Massachusetts 02111. State Street Bank

and Trust Company is a Massachusetts state chartered bank, which is wholly owned by State Street Corporation, a bank holding company registered with the Federal Reserve.

VI. RELATED PARTIES

6. "Deutsche Bank" refers to Deutsche Bank Securities, Inc., a division of Deutsche Bank Aktiengesellschaft, with an Organization CRD No. of 2525, and a principal place of business at 60 Wall Street, NYC60-3710, New York, New York 10005. "Deutsche Bank" further includes any of its present or former parents, subsidiaries, directors, officers, partners, employees, agents, representatives, attorneys or other persons acting on behalf of Deutsche Bank Securities, Inc., their respective predecessors or successors or any of the affiliates of the foregoing.

7. "Magnetar" and "Magnetar Capital" refer to Magnetar Capital LLC, with an Organization CRD No. of 135513, and a principal place of business at 1603 Orrington Avenue, Suite 990, Evanston, Illinois 60201. "Magnetar" and "Magnetar Capital" further include any of its present or former parents, subsidiaries, directors, officers, partners, employees, agents, representatives, attorneys or other persons acting on behalf of Magnetar Capital LLC, their respective predecessors or successors or any of the affiliates of the foregoing.

VII. STATEMENT OF FACTS

1. *OVERVIEW OF A CDO TRANSACTION*

A. Description of a CDO

8. A CDO is a type of structured finance product that purchases and pools various debt instruments[4] into a single fund in an attempt to reduce investor exposure to any one asset through diversification.

9. Some common examples of debt instruments that are pooled and securitized into CDOs include residential mortgage-backed securities ("RMBS"), commercial mortgage-backed securities ("CMBS"), automobile loans, credit card debt and student loan debt.

10. A single pool of debt instruments collateralizes a CDO. Investors in the CDO receive periodic principal and interest payments generated from the repayment of the underlying debt instruments comprising the CDO's collateral pool.

11. The CDO issues hierarchical tranches of notes to investors. Each tranche of notes entitles the purchaser to a different level of priority in the sequence of payments generated by the CDO's collateral pool, and thus each tranche carries a different level of risk and return.

12. Carina is an example of a CDO, a portion of whose pool of assets consisted of, or synthetically[5] referenced, subprime and midprime RMBS, credit card debt and student loan debt.

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[4] For ease of reference, the term "debt instrument" will be used throughout this Offer of Settlement interchangeably with the terms "collateral," "assets," or "collateral assets."

[5] "Synthetic" CDOs are CDOs that consist entirely of Credit Default Swaps ("CDS") or other non-cash assets in order to gain exposure to other portfolios of fixed income assets. A CDS is a type of credit derivative that allows a purchaser of the swap to transfer the loan default risk of a particular "reference" asset to the seller of the swap. In effect, the buyer of a CDS is buying credit protection, whereas the seller of a CDS is guaranteeing the credit worthiness of the product.

B. Structure of a CDO

13. CDOs are structured in a hierarchical fashion based on the distinct tranches of notes issued to investors.

14. Investors in the top "senior" tranche are the first in line to receive principal and interest payments and therefore theoretically assume the least amount of risk as well as the lowest rates of return. Investing in the "senior" tranche can also be thought of as investing in the tranche with the highest level of credit protection in the CDO.

15. Investors in the middle "mezzanine" tranches are next in line to receive principal and interest payments and therefore theoretically assume more risk than senior investors, which is reflected in the receipt of higher interest payments.

16. Investors in the bottom "equity" tranche are last in line to receive payments and therefore theoretically assume greater risk than both the senior and mezzanine investors, which again, is reflected in their receipt of the highest levels of interest payments for their investment. Investing in the "equity" tranche can also be thought of as investing in the tranche with the lowest levels of credit protection in the CDO.

17. The implication of this organizational structure is that in the event of a default ("Event of Default"), the lower-rated tranches are designed to absorb payment defaults before the higher-rated tranches experience any payment defaults.

C. Composition of a CDO

18. Similar to other structured finance products, CDOs can be composed in numerous forms based on the specific preferences or the overall objectives of interested parties.

19. "Cash" CDOs are CDOs that consist entirely of individual debt instruments and issue notes to investors that are collateralized by those same underlying debts instruments.

20. "Synthetic" CDOs are CDOs that consist entirely of Credit Default Swaps ("CDS") or other non-cash assets in order to gain exposure to other portfolios of fixed income assets.

21. "Hybrid" CDOs are more sophisticated types of CDOs that blend cash assets and synthetic assets together into one CDO.

22. Carina is an example of a hybrid CDO, whose pool of assets were composed of both cash and synthetic assets.

D. Role of an Investment Manager of a CDO

23. The Investment Manager of a CDO is responsible for the selection, acquisition, management and disposition of collateral assets. Its services are governed by an Investment Management Agreement signed by the manager and the CDO. The Investment Manager's selection, acquisition and management of collateral assets is required to conform with certain eligibility criteria (addressing asset type, credit ratings and risk profile) set forth in documents setting the terms of the CDO investment, such as the Trust Indenture.

24. In terms of the selection process, the Investment Manager must conduct appropriate due diligence on each asset before it is recommended for inclusion into the collateral pool. The significance of the Investment Manager's front-end analysis cannot be overstated since it is the Investment Manager's duty to ensure that each asset selected

for inclusion in the collateral pool comports with the predefined standards of quality and risk established by the eligibility criteria.

25. In terms of the acquisition and retention of collateral assets, the Investment Manager is also responsible for monitoring the performance of each asset once it is included in the CDO in order to ensure that the asset's performance remains within an acceptable range.

26. Moreover, an Investment Manager often creates or contributes to the sales and marketing materials (*e.g.*, termsheets, flipbooks and offering circular) and participates in meetings with actual or potential investors.

2. *DISCUSSION OF THE CARINA CDO TRANSACTION*

A. Introduction to the Carina CDO

27. In 2006, Magnetar approached Deutsche Bank regarding the creation of a $1.5 to 2 billion hybrid mezzanine CDO. Magnetar is a large U.S. hedge fund based in Evanston, Illinois.

28. Based on Magnetar's request, Deutsche Bank agreed to act as the structuring bank for Magnetar's proposed $1.5 to 2 billion hybrid mezzanine CDO.

29. On or around June 7, 2006, after Deutsche Bank agreed to act as the structuring bank for Magnetar's proposed $1.5 to 2 billion hybrid mezzanine CDO, Deutsche Bank approached SSgA to inquire if SSgA would act as the Investment Manager of the CDO. SSgA agreed to act as the Investment Manager of the CDO, which was later named Carina CDO, Ltd.

30. On June 7, 2006, the Head of U.S. Fixed Income for SSgA distributed an e-mail to senior personnel within SSgA's Fixed Income Unit stating, in part:

> [Deutsche Bank has] approached us on [a] reverse inquiry with an ENORMOUS mezzanine CDO opportunity. It seems a large U.S. hedge fund has asked DB to structure a deal around a $70 million equity order and Deutsche has proposed that SSGA manage it. An equity order of that size makes the trade $1.5 - $2 billion in size. This would be the largest mezzanine CDO ever done. Proposed fees are 20 basis points running, or $3 million dollars per year at $1.5 billion. Smells like a lay – up to me but we need to respond very quickly. Thoughts or questions?

31. As the June 7, 2006 e-mail suggests, Magnetar acted as the catalyst behind the creation of Carina through its commitment to invest approximately $75 million in the "pre-placed" equity tranche of the CDO.

32. At the time, it was imperative for structuring banks to secure Investment Managers that were independent and experienced CDO managers in order to attract the interest of investors.

33. On June 27, 2006, Deutsche Bank and SSgA signed an engagement letter ("Engagement Letter") confirming SSgA's role as the Investment Manager of Carina.

34. Based on an internal Carina document, dated June 27, 2006 and sent from Deutsche Bank to SSgA ("Carina Proposal"), SSgA was scheduled to receive a Senior Management Fee of twenty (20) basis points per year for acting as the Investment Manager of Carina.

35. SSgA ultimately received a Senior Management Fee of $3,543,826 million over the life of the CDO in exchange for acting as the Investment Manager of Carina.

36. Neither the Engagement Letter nor the subsequent Carina marketing materials disclosed that Magnetar took part in the discussions with Deutsche Bank that led to the creation of Carina; committed to purchasing the so-called "equity" tranche of Carina notes at the inception of the transaction; recommended certain assets for inclusion in

Carina in discussions with SSgA and Deutsche Bank during the ramp-up process for the CDO; and attempted to take a short position in certain assets selected for Carina by SSgA.

B. Structure and Composition of the Carina CDO

37. Carina is an example of a hybrid mezzanine CDO, whose pool of assets consisted entirely of lower-rated cash assets and synthetic assets tied primarily to the U.S. residential housing market.

38. Based on the Carina Proposal, the anticipated structure of Carina called for 46% of the collateral assets to be RMBS/Subprime; 40% of the collateral assets to be RMBS midprime; 10% of the collateral assets to be ABS CDOs; and 4% of the collateral assets to be securitized student loan or credit card debt obligations. Of these collateral assets, Deutsche Bank also proposed that 15% of all collateral assets would consist of cash assets and 85% would consist of synthetic assets.

39. Carina's collateral pool had the following credit rating profile: 56.7% of its collateral assets were rated Baa3; 32% were rated Baa2; and 8% were rated Baa1 or Ba1.

C. SSgA's Role as the Investment Manager of the Carina CDO

40. As the Investment Manager of Carina, SSgA managed the selection, acquisition and sale of collateral assets for the CDO.

41. The Carina Offering Circular, which was provided to investors, states that SSgA: "will manage the selection, acquisition and Sale/Termination of the Synthetic Transactions and the Asset-Backed Securities . . . in accordance with the Restrictions set forth in the Indenture . . . [and] will also monitor and exercise the rights of the Issuer, as its agent . . . ."

42. In addition, SSgA prepared a section in the Offering Circular promoting SSgA's asset management experience and business background. SSgA also prepared a section highlighting the professional CDO experience of some of its key personnel involved in the management of Carina.

43. SSgA further prepared a section in the Offering Circular promoting its investment strategy and asset management style. SSgA described its investment strategy in the Offering Circular as one "designed to produce consistent returns." SSgA described its asset management style as "an asset management style that is disciplined and seeks to control risk."

44. However, the Offering Circular failed to disclose that Magnetar took part in the discussions with Deutsche Bank that led to the creation of Carina; committed to purchasing the so-called "equity" tranche of Carina notes at the inception of the transaction; recommended certain assets for inclusion in Carina in discussions with SSgA and Deutsche Bank during the ramp-up process for the CDO; and attempted to take a short position in certain assets selected for Carina by SSgA.

45. Carina notes were offered pursuant to Rule 144A of the Securities Act of 1933. Carina raised approximately $450 million from qualified institutional buyers at closing, including from institutions that had served as collateral managers on other CDO transactions.

D. SSgA's Role in Marketing the Carina CDO to Investors

46. SSgA also assumed a role in marketing Carina to investors, using termsheets, flipbooks, offering circulars and other marketing materials that it either created or contributed to in meetings with investors.

47. The former SSgA Head of Structured Products at the time of Carina testified under oath that SSgA met and spoke with Carina investors on multiple occasions during the ramping phase of Carina.

48. In an investor presentation ("Carina Flipbook"), a portion of which was created by SSgA and used in meetings with Carina investors, SSgA highlights its prior CDO investment experience in four other CDO transactions: Descartes CDO Ltd., Pascal CDO Ltd., Diogenes CDO I Ltd. and Diogenes CDO II Ltd.[6]

49. In the same Carina Flipbook, SSgA outlines a four step "Structured Products Investment Process" designed by SSgA to guide its CDO asset selection process.

50. Step One of SSgA's "Structured Products Investment Process" focused on developing a macroeconomic view of various assets through a combination of fundamental and technical analysis.

51. Step Two of SSgA's "Structured Products Investment Process" focused on identifying specific assets through the creation of risk profile and sector allocation guidelines.

52. Step Three of SSgA's "Structured Products Investment Process" combined the use of qualitative (*e.g.*, underwriting standards, creditworthiness, etc.) and quantitative (*e.g.*, regression analyses, cash flow scenarios, etc.) stress tests in selecting specific assets.

[6] Descartes CDO Ltd. was a $2 billion high grade ABS CDO. Pascal CDO Ltd. was a $1 billion high grade ABS CDO. Diogenes CDO I Ltd. was a $400 million mezzanine ABS CDO. Diogenes CDO II Ltd. was a $600 million mezzanine ABS CDO. Deutsche Bank is believed to have acted as the structuring bank in the Descartes and Diogenes I and II CDO transactions.

53. Step Four of SSgA's "Structured Products Investment Process" emphasized the use of surveillance programs to ensure that the selected assets continued to perform within an acceptable range for the fund.

54. A Carina termsheet ("Carina Termsheet") dated September 15, 2006, also states that SSgA would be the Investment Manager of Carina and promotes, among other things, SSgA's "dedicated and experienced portfolio management and credit research team: [which consisted of] five portfolio managers and five analysts/traders dedicated to MBS/ABS/CMBS[.]"

55. However, neither the Carina Flipbook or Termsheet disclosed that Magnetar took part in the discussions with Deutsche Bank that led to the creation of Carina; committed to purchasing the so-called "equity" tranche of Carina notes at the inception of the transaction; recommended certain assets for inclusion in Carina in discussions with SSgA and Deutsche Bank during the ramp-up process for the CDO; and attempted to take a short position in certain assets selected for Carina by SSgA.

E. SSgA's Meeting with Deutsche Bank and Magnetar Concerning the Carina CDO

56. The former SSgA Head of Structured Products also testified that on at least three separate occasions, representatives of SSgA, Magnetar and possibly Deutsche Bank met in SSgA's Boston office to discuss various aspects of Carina.

57. Among those taking part in discussions involving SSgA, Deutsche Bank and Magnetar, were the Head of U.S. Fixed Income for SSgA, the SSgA Head of Structured Products, the Magnetar Head and various representatives of Deutsche Bank.

58. According to the former SSgA Head of Structured Products, during these discussions, it was explained to SSgA that Magnetar approached Deutsche Bank with a

request to structure a CDO transaction in which Magnetar would commit to a "blind pool" of subprime assets as the equity investor.

59. SSgA was aware of Magnetar's involvement in Carina when it agreed to act as the Investment Manager of Carina in exchange for a senior management fee. SSgA ultimately received a total fee of $3.54 million in connection with Carina.

F. Magnetar's Undisclosed Involvement in the Carina CDO

60. On June 12, 2006, the Magnetar Head sent an e-mail to the SSgA Head of Structured Products thanking him for having the Magnetar Head in earlier that day. The Magnetar Head's e-mail also contained an attachment with a list of proposed constellation names for the new $1.56 billion CDO. Carina is among the list of constellation names included in the attachment.

61. Also on June 12, 2006, the SSgA Head of Structured Products sent an e-mail to the Chief Investment Officer of the Americas ("CIO") and the Head of U.S. Fixed Income for SSgA, stating: "[w]e asked [the Magnetar Head] if he had a preference for the name of the CDO. The owner of the firm is an astronomy buff and likes constellations so [the Magnetar Head] would like to see the deal named after a constellation . . . ."

62. On June 19, 2006, the SSgA Head of Structured Products sent an e-mail to the Deutsche Bank CDO Director, reiterating that: "[the Magnetar Head] would prefer to name [the CDO] after a constellation. [The Magnetar Head] sent us a list of constellations and we're still going through it . . . ."

63. On June 26, 2006, the Deutsche Bank CDO Director sent an e-mail to the SSgA Head of Structured Products saying: "We have credit approval for the 200m – we should probably run the names by Magnetar – do you have something ready to go?"

64. On June 26, 2006, the SSgA Head of Structured Products responded to the Deutsche Bank CDO Director, stating: "Let's chat for a second when you can. I want to make sure that we understand what our relationship with Magnetar is going to be going forward. I do not plan on getting approval from Magnetar for every trade . . I want to be very clear about that. We are engaged with DB and as such are required to get warehouse approval from DB only."

65. On June 27, 2006, Deutsche Bank and SSgA signed an Engagement Letter confirming SSgA's role as Investment Manager of Carina.

66. Also on June 27, 2006, the SSgA Head of Structured Products sent an e-mail to the Deutsche Bank CDO Director, stating: "let's talk first thing about carina...if i'm going to put a cds list out for Wednesday execution, i want to do it this morning." In response, the Deutsche Bank CDO Director replied, "please go ahead, as far as Magnetar and we are concerned, we are ready to go and really would appreciate getting started today. please let me know if you need to discuss anything before you put the list out. thanks. "

67. On July 7, 2006, the SSgA Head of Structured Products received an e-mail from the Magnetar Head, asking: "what's [the] plan of action looking like?" In response, the SSgA Head of Structured Products provided the Magnetar Head with an update on the ramping phase of Carina and closed with, "I'll keep you posted on my progress."

68. On July 11, 2006, a Co-Head of the Credit Structuring Group for Deutsche Bank sent an e-mail to the SSgA Head of Structured Products, stating: "It appears that we have a good bit of competition in the creation of these mega – synthetic transactions with 'pre placed' equity. Including ours I now count three trades with three different

dealers/managers ($4.5 bill!!). Any idea how big this is going to get and whether the market for debt risks cannibalizing itself with these gigantic 'no IC/OC'[7] tranches? Just curious what your thoughts were . . . ."

69. On July 14, 2006, the Magnetar Head sent an e-mail to the SSgA Head of Structured Products, stating: "Seems like you're making good progress. If it's not too much trouble, I'd like to establish a bit more of a dialogue between us. Discuss ramping strategy, talk about each list as it goes out, plan for non-sub/mid-prime sectors, market conditions, that sort of thing. Just talk briefly a few times a week. Would be much appreciated." The SSgA Head of Structured Products responded to the Magnetar Head's request with, in part: "Absolutely."

70. On August 3, 2006, the SSgA Head of Structured Products e-mailed Deutsche Bank, copying Magnetar, identifying 10 ABS CDO tranches SSgA proposed to sell protection on to establish a portion of Carina's synthetic exposure. The Magnetar Head replied in an e-mail dated August 3, 2006, saying: "I will buy protection on the four 06 deals at best bid+50bp."

71. The SSgA Head of Structured Products replied by forwarding the e-mail to the Deutsche Bank CDO Director, saying: "Please call me this morning to discuss. We are not comfortable with [Magnetar] shorting into the deal . . ."

[7] The term "IC/OC" in this quote refers to two separate tests commonly used to conduct credit risk analysis in CDOs. "IC" is an abbreviation for the "interest coverage" test, which is used to measure the total interest earned over the total interest cost of a specific tranche and all tranches senior to that specific tranche. "OC" is an abbreviation for the "overcollateralization coverage" test, which is used to measure the principal value of a portfolio of assets over the outstanding amount of assets of a specific tranche and all tranches senior to that specific tranche. In short, the "IC" and "OC" tests are used to establish parameters and trigger points for the distribution of credit risk/protection among the various tranches of a CDO.

72. On August 22, 2006—less than three months after Carina was created—SSgA, Deutsche Bank and Magnetar entered into discussions about a possible Carina II CDO transaction.[8]

73. On December 7, 2006, the Magnetar Head initiated another discussion with the SSgA Head of Structured Products concerning Carina II.

74. In a December 7, 2006 e-mail from the Magnetar Head to the SSgA Head of Structured Products, the Magnetar Head stated: **"As we did last time, I would like to strategize and discuss names for the CDO bucket before we execute any trades. Thought that worked out well for Carina 1. I will be taking the other side of this first trade as approved such that I am effectively pairing off the risk . . . ."** (Emphasis added).

75. The SSgA Head of Structured Products opened his e-mail in response with: "[Magnetar Head], I'm happy to discuss the CDO bucket with you. As we've talked about in the past, we do quite a bit of analysis on CDO managers and transactions and it's often hard to find deals we like, so our universe of available deals to go long is somewhat limited."

76. Carina had raised approximately $450 million from investors when the transaction closed in November 2006. In November of 2007, Carina experienced an Event of Default and was forced into liquidation, resulting in a loss of a substantial portion of that investment.

[8] Despite discussions among SSgA, Deutsche Bank and Magnetar about a possible Carina II CDO transaction, the ramp-up phase for the proposed CDO was never completed and the transaction never closed.

VIII. LEGAL CONCLUSIONS

77. As the Investment Manager of Carina, SSgA managed the selection, acquisition, management and disposition of collateral assets for the CDO. State Street also participated in marketing the CDO, taking part in investor meetings and relying on Carina's marketing materials, which included termsheets, flipbooks, offering circulars and other investor presentations.

78. By failing to disclose material information relating to Magnetar's involvement in the Carina CDO transaction, the marketing materials omitted information that rendered them materially false or misleading.

79. Specifically, SSgA violated Section 101 of the Act because the marketing materials failed to disclose to actual and potential investors that:

A. Magnetar initiated discussions with Deutsche Bank about the creation of Carina;

B. Magnetar was committed to being the equity investor in Carina from the inception of planning for the CDO;

C. Magnetar recommended certain assets for inclusion in Carina in discussions with SSgA and Deutsche Bank during the ramp-up process for the CDO;

D. During the ramping process, SSgA had become aware that Magnetar attempted to take a short position in certain assets selected for Carina by SSgA;

E. Because this information was not conveyed in the marketing materials, investors were unaware of a potential conflict of interest arising from Magnetar's involvement in the CDO.

IX. VIOLATIONS OF THE SECURITIES LAWS

A. Count 1: Violation of Section 101(2)

80. Section 101(2) of the Act provides, in pertinent part:

> It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly . . . (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading . . . .

MASS. GEN. LAWS ch. 110A, § 101(2).

81. The Division herein restates and re-alleges the facts and allegations set forth in paragraphs 1 through 79 above.

82. The conduct of the Respondent, as described above, constitutes a violation of Mass. Gen. Laws ch. 110A, § 101(2).

B. Count 2: Violation of Section 101(3)

83. Section 101(3) of the Act provides, in pertinent part:

> It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly . . . (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

MASS. GEN. LAWS ch. 110A, § 101(3).

84. The Division herein restates and re-alleges the facts and allegations set forth in paragraphs 1 through 79 above.

85. The conduct of the Respondent, as described above, constitutes a violation of Mass. Gen. Laws ch. 110A, § 101(3).

X. ORDER

State Street, in full settlement of these matters, admits the Division's Statement of Facts set out herein in Section VII, and makes the following representations and agrees to the undertakings herein as part of the Order:

A. State Street agrees to permanently cease and desist from violations of the Act;

B. State Street agrees to be censured by the Division;

C. Within fourteen (14) business days of the entry of this signed Consent Order, State Street shall pay a civil administrative penalty in the amount of $1,456,174 million to the Commonwealth of Massachusetts. Payment shall be: (1) made by United States postal money order, certified check, bank cashiers check, bank money order, or wire transfer; (2) made payable to the Commonwealth of Massachusetts; and (3) either hand-delivered or mailed to One Ashburton Place, Room 1701, Boston, MA 02108, or wired per Division instructions; and (4) submitted under cover letter or other documentation that identifies State Street making the payment and the docket number of the proceedings;

D. Within fourteen (14) business days of the entry of this signed Consent Order, State Street shall disgorge to the Commonwealth of Massachusetts $3,543,826 million, which comprises all fees, profits, commissions and other forms of remuneration associated with its role as the Investment Manager of Carina.

E. For good cause shown, the Division's staff may extend any of the procedural dates set forth above;

F. State Street agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including but not limited to, any payments

made pursuant to any insurance policy, with regard to all amounts that State Street shall pay to the Division as a civil administrative penalty pursuant to the Division's Consent Order;

G. State Street further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any amounts that State Street shall pay to the Division as a civil administrative penalty pursuant to the Division's Consent Order;

H. State Street agrees that, upon issuance of a Consent Order by the Division that contains the terms as set forth above, if it fails to comply with any of the terms set forth in the Division's Consent Order, the Enforcement Section may institute an action to have this agreement declared null and void. Upon issuance of an appropriate order, after a fair hearing, the Enforcement Section may re-institute the actions and investigations that had been brought against State Street.

Dated: February 28, 2012