SUPPLEMENTAL INFORMATION PURSUANT TO RULE 3(a)
OF THE RULES OF THE COURT OF CHANCERY

The information contained herein is for the use by the Court for statistical and administrative purposes only. Nothing stated herein shall be deemed an admission by or binding upon any party.

1. Caption of Case:

   SLM CORPORATION, Plaintiff,
   v.
   J.C. FLOWERS II L.P., JPMORGAN CHASE BANK, N.A., BANK OF AMERICA, N.A., MUSTANG HOLDING COMPANY INC., and MUSTANG MERGER SUB, INC., Defendants

2. Date filed: October 8, 2007

3. Name and address of counsel for plaintiff:

   BOUCHARD MARGULES & FRIEDLANDER, P.A.
   Joel Friedlander (Bar No. 3163)
   Evan O. Williford (Bar No. 4162)
   Sean M. Brennecke (Bar No. 4686)
   222 Delaware Avenue, Suite 1400
   Wilmington, DE 19801

4. Short statement and nature of claim asserted:

   Enforcement of the terms of, and a declaratory judgment regarding, a merger agreement.

5. Substantive field of law involved (check one):

____	Administrative law	____	Trade secrets/trademark/or other intellectual law
____	Commercial law	____	Trusts
____	Constitutional law	____	Wills and estates
_X_	Corporation law	____	Zoning
____	Guardianships	____	Other
____	Labor law		
____	Real property		

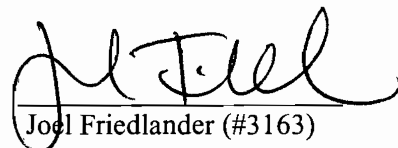
6. Related case(s): None

7. Basis of court's jurisdiction (including the citation of any statute conferring jurisdiction):

   8 *Del. C.* § 111

8. If the complaint seeks preliminary equitable relief, state the specific preliminary relief sought: N/A

9. If the complaint seeks summary or expedited proceedings, check here ___.



Joel Friedlander (#3163)

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SLM CORPORATION, Plaintiff, v. J.C. FLOWERS II L.P., JPMORGAN CHASE BANK, N.A., BANK OF AMERICA, N.A., MUSTANG HOLDING COMPANY INC., and MUSTANG MERGER SUB, INC., Defendants.	))))))))))))	C.A. No. ________

VERIFIED COMPLAINT

Plaintiff SLM Corporation ("Sallie Mae" or the "Company"), by and through its attorneys, for its complaint against the Defendants, alleges as follows:

NATURE OF THE ACTION

1. Sallie Mae brings this action to enforce the terms of its April 15, 2007 Merger Agreement (the "Agreement") in which defendants J.C. Flowers II L.P. ("Flowers"), JPMorgan Chase Bank, N.A. ("JPMC"), and Bank of America, N.A. ("BofA"), through defendant Mustang Holding Company Inc. ("Buyer") and its subsidiary defendant Mustang Merger Sub, Inc. ("Subsidiary"), committed to purchase Sallie Mae for $60 in cash per share, in a merger transaction valued at approximately $26 billion (the "Transaction"). The Agreement contains provisions requiring the Defendants to pay Sallie Mae a termination fee of $900,000,000 if they fail to consummate the Transaction pursuant to the Agreement (the "Termination Fee").

2. After the parties signed the Agreement, there was a liquidity crunch in the credit markets. As a consequence, the Defendants – and in particular JPMC and BofA – realized that it would become substantially more expensive for them to finance the debt side of the Transaction than

they had expected. That liquidity crunch created no basis for the Defendants to terminate the Agreement. Nonetheless, on September 26, 2007, a representative of the Defendants stated to Sallie Mae's financial advisor that the Defendants did not intend to consummate the Transaction at $60 in cash per share. Later that same day, the Defendants released a statement that "the conditions to closing under the Merger Agreement, if the closing were to occur today, would not be satisfied as a result of changes in the legislative and economic environment."

3. On October 2, 2007, the Defendants issued a press release stating that they wished "to buy [Sallie Mae] at a price that appropriately and fairly reflects the new economic and legislative environment that faces [Sallie Mae]." The Defendants offered only $50 in cash per share, plus warrants of uncertain value. Attached to the press release was a four-page exhibit arguing "that Sallie Mae has suffered an MAE as defined in the contract" due to the combined impact of a "credit crunch" and passage of "the College Cost Reduction and Access Act."

4. The Defendants have unequivocally repudiated the Agreement. No changes in the "legislative and economic environment" have triggered the Material Adverse Effect ("MAE") clause in the Agreement. First, the "credit crunch," like all changes in "general economic, business, regulatory, political or market conditions or in national or global financial markets" that do not disproportionately affect Sallie Mae, is specifically excluded from consideration under the MAE clause. Second, the enactment of the College Cost Reduction and Access Act of 2007 (the "Act"), which was signed into law on September 27, 2007, does not trigger the MAE clause. The MAE clause was drafted to preclude the Defendants from claiming that legislation was an MAE unless the adverse effect of the legislation was material to Sallie Mae as compared to the projected adverse effect of legislation that had been publicly proposed – and disclosed by Sallie Mae – prior to the execution of the Agreement. The projected incremental effect of the Act, as compared to the

projected effect of the publicly disclosed legislation, is not remotely material to Sallie Mae's business. Accordingly, the Defendants' refusal to consummate the Transaction according to the Agreement is an unlawful repudiation and breach, and Sallie Mae is entitled to terminate the Agreement and collect the Termination Fee of $900,000,000.

THE PARTIES

5. Plaintiff SLM Corporation, commonly known as Sallie Mae, is a Delaware Corporation. Sallie Mae is the largest originator and holder of student loans in the United States. Sallie Mae issues private loans as well as government-guaranteed student loans as a participant in the Federal Family Education Loan Program ("FFELP").

6. Defendant Flowers, a Cayman Islands Limited Partnership, signed a $451,800,000 Limited Guarantee dated April 15, 2007, in favor of Sallie Mae, to secure the Termination Fee under the terms of the Agreement.

7. Defendant JPMC, a national bank with a principal place of business in Columbus, Ohio, signed a $224,100,000 Limited Guarantee dated April 15, 2007, in favor of Sallie Mae, to secure the Termination Fee under the terms of the Agreement.

8. Defendant BofA, a national bank headquartered in Charlotte, North Carolina, signed a $224,100,000 Limited Guarantee dated April 15, 2007, in favor of Sallie Mae, to secure the Termination Fee under the terms of the Agreement.

9. Defendant Buyer is a Delaware corporation owned by Flowers, JPMC, and BofA and created to effect a purchase of Sallie Mae. The Buyer is a party to the Agreement with Sallie Mae.

10. Defendant Subsidiary is a Delaware corporation and a wholly-owned subsidiary of the Buyer, created as a vehicle to merge with and into Sallie Mae under Delaware law. The Subsidiary is a party to the Agreement with Sallie Mae.

BACKGROUND OF THE TRANSACTION

11. In or about November 2006, Sallie Mae began to discuss a potential acquisition of Sallie Mae by Defendant Flowers. Intermittent conversations were held throughout the end of 2006 and the early part of 2007. In or about February 2007, Sallie Mae met with Defendants Flowers, JPMC and BofA (the "Investor Group") to discuss Sallie Mae's business, including the legislative environment for the student loan industry. Both JPMC and BofA already had extensive experience with and knowledge of the student loan industry: Each of them operates an independent student lending business, both of which are among the largest in the country.

12. Because the student loan industry is highly regulated by the federal government, and because much of Sallie Mae's business is in the FFELP, a significant risk faced by Sallie Mae before and during these negotiations was the potential of federal legislation that would be adverse to FFELP lenders. This risk was recognized by the Defendants as well as by analysts and other observers of Sallie Mae and the student loan industry.

13. By early 2007, the parties to the merger negotiations were already aware of several significant pieces of proposed federal legislation, each of which potentially could have had an adverse impact on Sallie Mae's business. Three of the more significant potentially adverse components of the proposed legislation were: (a) a reduction in direct federal subsidies of FFELP loans, which would result in a smaller return on every FFELP loan issued after the effective date of the legislation; (b) a reduction in the federal guarantee of FFELP loans, creating a greater default risk on those loans; and (c) an increase in lender origination fees in the FFELP.

14. Sallie Mae was an attractive investment notwithstanding the potential enactment of new legislation. It was generally recognized that because of Sallie Mae's prominent place in the student loan industry, many of the proposed changes would hurt Sallie Mae's competitors more than

they would hurt Sallie Mae, and the potential effect on the industry as a whole could work to Sallie Mae's benefit. Moreover, the student loan industry is expanding, as education costs continue to increase, and Sallie Mae is expected to remain a dominant player in this growing industry.

THE DISCLOSURES IN THE 10-K

15. On March 1, 2007, Sallie Mae filed a Form 10-K with the SEC ("the 10-K") that specifically addressed the potential for federal legislation that might adversely affect Sallie Mae. The 10-K contained a section called "Recent Developments" describing certain proposals for federal legislation that could have a negative impact on Sallie Mae's student loan business by, among other things, cutting subsidies, reducing federal guarantees, and restricting certain industry practices such as exclusive lending agreements.

16. Specifically, the 10-K described a number of details of proposed legislation including the "Student Aid Reward Act of 2007"; the "President's 2008 Budget Proposal" (the "Bush Budget Proposal"); the "Student Loan Sunshine Act"; the "Student Debt Relief Act of 2007"; and the "College Student Relief Act of 2007" (collectively, the "Disclosed Proposals").

17. Most significant among these pieces of proposed legislation was the Bush Budget Proposal, which the 10-K disclosed as follows:

> On February 5, 2007, President Bush transmitted his fiscal 2008 budget proposals to Congress. The budget included several proposals that would reduce or alter payments to both lenders and guarantors in the FFELP. The specific proposals include: (1) reducing special allowance payments on new loans by 0.50 percentage points; (2) reducing the default guaranty from 97 percent to 95 percent; (3) reducing payments to Exceptional Performers by two percentage points; (4) doubling lender origination fee for FFELP Consolidation Loans, from 0.5 percent to 1.0 percent; (5) reducing collections retention to 16 percent beginning in fiscal 2008; (6) reducing administrative cost allowance payments to guaranty agencies, changing the formula from a percent of original principal to a unit cost basis; and (7) eliminating the Perkins loan program.

> If enacted in their current form, and the Company takes no remedial action, the FFELP program cuts proposed in the President's budget proposal detailed above, which are to be implemented prospectively, could over time have a materially adverse affect [sic] on our financial condition and results of operations, as new loans originated under the new proposal become a higher percentage of the portfolio.

18. Accordingly, the Bush Budget Proposal was potentially capable of having a significant adverse effect on Sallie Mae, including decreased interest rate subsidies received by Sallie Mae from the federal government and increased fees and credit risk for Sallie Mae on its FFELP loans.

THE BIDDING PROCESS

19. Following the disclosures in the 10-K, in or about March 2007, Sallie Mae initiated discussions with another potential bidder to acquire Sallie Mae (the "Other Bidder"), and invited the Other Bidder to submit an indication of interest in a potential transaction. On or about March 26, 2007, Sallie Mae received a proposal from the Other Bidder. The Other Bidder proposed to acquire 100% of the common stock in Sallie Mae for between $56 and $57.50 per share.

20. On or about April 11, 2007, the Investor Group submitted a definitive bid to acquire Sallie Mae for $58.25 per share. As part of this bid, the Investor Group proposed a form of limited guarantees from Defendants Flowers, JPMC, and BofA by which these Defendants would guarantee payment of a termination fee if the transaction were not consummated. On or about April 12, 2007, the Other Bidder submitted a definitive bid to acquire Sallie Mae for $58.00 per share.

21. On or about April 13, 2007, as discussions with both the Investor Group and the Other Bidder were still ongoing, Sallie Mae engaged in negotiations with both bidders regarding potential issues in any merger agreement, in particular including the definition of "Material Adverse

Effect," described in more detail below. That same day, Sallie Mae requested "best and final" offers by April 14, 2007.

22. On or about April 14, 2007, the Other Bidder made an offer at $58.50 per share. The Investor Group indicated a willingness to increase its bid to $60 per share, and Sallie Mae indicated to the Investor Group that it would be willing to move forward and sign an agreement at $60 in cash per share if the agreement could be completed before the markets opened on April 16, 2007.

THE MERGER AGREEMENT

23. On April 15, 2007, Sallie Mae, Buyer and Subsidiary signed the Agreement. Pursuant to the Agreement, Subsidiary would merge with and into Sallie Mae, which would survive as a subsidiary of Buyer, owned by Defendants Flowers, JPMC and BofA. Holders of Sallie Mae stock would receive $60 in cash per share. The Agreement provides that the Transaction would be consummated following a thirty-day debt marketing period and prior to February 15, 2008.

24. Article 4 of the Agreement contains certain representations and warranties from Sallie Mae to Buyer. Among them is a representation and warranty in Section 4.10 regarding the "Absence of Certain Changes," including that "there has not been any event, occurrence, development or state of circumstances or facts that has had or would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect."

25. Significantly, all of Sallie Mae's representations and warranties – including the representation regarding a Material Adverse Effect ("MAE") – were expressly limited by the very preamble to Article 4, whose very first sentence excluded facts or developments disclosed in the 10-K (including the Disclosed Proposals). Given the parties' keen awareness of the likelihood of the passage of some form of adverse federal student loan legislation, the Agreement was not drafted so as to break apart automatically upon an event that all parties knew was likely to occur.

26. Accordingly, the Agreement contains the following definition of MAE (with emphasis added), which excludes any adverse effect from the potential enactment of the Disclosed Proposals:

> "**Material Adverse Effect**" means ***a material adverse effect*** on the financial condition, business, or results of operations of the Company and its Subsidiaries, taken as a whole, ***except to the extent any such effect results from***: (a) changes in GAAP or changes in regulatory accounting requirements applicable to any industry in which the Company or any of its Subsidiaries operate; (b) ***changes in Applicable Law (provided that, for purposes of this definition, "changes in Applicable Law" shall not include any changes in Applicable Law relating specifically to the education finance industry that are in the aggregate more adverse to the Company and its Subsidiaries, taken as a whole, than the legislative and budget proposals described under the heading "Recent Developments" in the Company 10-K***, in each case in the form proposed publicly as of the date of the Company 10-K) or interpretations thereof by any Governmental Authority; (c) ***changes in*** global, national or regional political conditions (including the outbreak of war or acts of terrorism) or in ***general economic, business, regulatory, political or market conditions or in national or global financial markets; provided that such changes do not disproportionately affect the Company*** relative to similarly sized financial services companies and *provided* that this exception shall not include changes excluded from clause (b) of this definition pursuant to the proviso contained therein; (d) any proposed law, rule or regulation, or any proposed amendment to any existing law, rule or regulation, in each case affecting the Company or any of its Subsidiaries and not enacted into law prior to the Closing Date; (e) changes affecting the financial services industry generally; *provided* that such changes do not disproportionately affect the Company relative to similarly sized financial services companies and *provided* that this exception shall not include changes excluded from clause (b) of this definition pursuant to the proviso contained therein; (f) public disclosure of this Agreement or the transactions contemplated hereby, including the initiation of litigation by any Person with respect to this Agreement; (g) any change in the debt ratings of the Company or any debt securities of the Company or any of its Subsidiaries in and of itself (it being agreed that this exception does not cover the underlying reason for such change, except to the extent such reason is within the scope of any other exception within this definition); (h) any actions taken (or omitted to be taken) at the written request of Parent; or (i) any action taken by the Company, or

which the Company causes to be taken by any of its Subsidiaries, in each case which is required pursuant to this Agreement.

27. The introductory clause emphasized above reveals the parties' agreement to exclude broad categories of potential events from consideration under the MAE clause. Two exclusions are particularly pertinent to this case:

(a) First, the effects of adverse changes in "general economic, business, regulatory, political or market conditions" – such as the "credit crunch" cited by the Defendants – are excluded from consideration under the MAE clause so long as they do not disproportionately affect Sallie Mae "relative to similarly sized financial services companies."

(b) Second, the definition excludes changes to Applicable Law, which was defined to include federal law. However, the Agreement contains an exception to this exception; specifically, the Agreement states that if legislation is enacted that is "in the aggregate more adverse" to Sallie Mae than the Disclosed Proposals, that legislation could be considered in determining whether an MAE had transpired.

28. Reading the definition of MAE in light of the language limiting Sallie Mae's MAE representation to events not disclosed in the 10-K, the following is clear:

(a) enacted legislation is entirely excluded from consideration as an MAE unless it is <u>more</u> adverse to Sallie Mae than the Disclosed Proposals;

(b) more adverse enacted legislation must be considered in comparison with the Disclosed Proposals; specifically, the relevant question is not whether the enacted legislation has a material adverse effect on Sallie Mae, but whether the <u>differential impact</u> on Sallie Mae between (1) the enacted legislation, and (2) the Disclosed Proposals, is itself an MAE; and

(c) any difference between the potential impact of the Disclosed Proposals and the potential impact of enacted legislation can only be an MAE if the difference is a material adverse effect with respect to the <u>totality</u> of the "financial condition, business, or results of operations" of Sallie Mae and its subsidiaries.

29. The Agreement therefore assigns to the Defendants the risk of the passage of more adverse legislation to Sallie Mae than the Disclosed Proposals – unless the adverse effect of that legislation over and above the adverse effects of the Disclosed Proposals was itself an MAE. This is only logical. The parties already knew about the Disclosed Proposals (with their potentially significant adverse consequences for Sallie Mae). The bedrock premise of any MAE clause is that there cannot be an MAE unless the change from what is already known at the time an agreement is signed is itself material from the perspective of the company as a whole. As a matter of logic and clear contractual language, legislation that is only marginally worse for Sallie Mae than the Disclosed Proposals cannot be an MAE. The differential effect of enacted legislation as compared to the Disclosed Proposals must itself be material to Sallie Mae's financial condition, business, or results of operations.

30. The negotiation history of the MAE clause supports this interpretation, and reveals the parties' focus on this particular issue. Initial drafts simply excluded any "changes in Applicable Law" from consideration as an MAE. A subsequent draft proposed by the Defendants suggested an exception for any law "relating specifically to the education finance industry other than changes in Applicable Law that are within the scope of the" Disclosed Proposals (emphasis added) – thus reflecting a recognition by the Defendants that anything disclosed in the 10-K (and its potential effects on Sallie Mae) was excluded from consideration as an MAE. The final version, containing the "more adverse" language, simply reflected a decision to exclude entirely from consideration any legislation unless it was worse for Sallie Mae than the Disclosed Proposals – and plainly not an agreement that only minimally more adverse enacted legislation could ever be an MAE.

31. The Defendants' own statements following the execution of the Agreement indicate an understanding of this fundamental structure of the MAE clause. On or about May 31, 2007,

Flowers made a presentation to potential co-investors stating that "[l]egislation enacted by Congress that would be <u>materially</u> adverse to Sallie Mae <u>as compared to the proposed legislation</u> disclosed in the SLM 2006 10-K is one of the developments that could trigger a Material Adverse Effect" (emphasis added). This statement correctly describes the MAE clause: enacted legislation can only be an MAE if the <u>difference</u> between the adverse impact on Sallie Mae of the enacted legislation and the adverse impact on Sallie Mae of the Disclosed Proposals is, <u>by itself</u>, an MAE. The adverse effects must be material with respect to Sallie Mae <u>not including</u> what was disclosed in the 10-K.

32. Other provisions of the Agreement require the Defendants not to attempt to prevent consummation of the Transaction. Section 7.01 of the Agreement contains a covenant that Buyer and Subsidiary "shall not take any action or fail to take any action required hereunder that is intended to, or would reasonably be expected to . . . prevent, materially delay or materially impede the ability of [Buyer] and [Subsidiary] to consummate the Merger or the other transactions contemplated by this Agreement." Moreover, Section 7.02 requires the Buyer to "take all action necessary to cause [Subsidiary] to . . . consummate the Merger on the terms and conditions set forth in this Agreement."

33. In addition, in Section 8.01 of the Agreement, both Sallie Mae and the Buyer covenanted to "use their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things proper or advisable under Applicable Law to consummate the transactions contemplated by this Agreement."

34. Finally, Section 11.05(c) of the Agreement requires Buyer to pay to Sallie Mae a termination fee of $900,000,000 (the "Termination Fee") under certain conditions, including: (a) termination of the Agreement by Sallie Mae because the Buyer or Subsidiary breached any representation or warranty or failed to perform any covenant or agreement in the Agreement in a

manner that would give rise to the failure of certain conditions to closing; and (b) termination of the Agreement by Sallie Mae if the Transaction is not completed by the second business day after the final day of the marketing period for the Transaction.

35. The $900,000,000 Termination Fee is supported by three Limited Guarantees: a $451,800,000 Limited Guarantee, dated April 15, 2007, executed by Flowers; a $224,100,000 Limited Guarantee, dated April 15, 2007, executed by JPMC; and a $224,100,000 Limited Guarantee, dated April 15, 2007, executed by BofA.

THE BUYERS ATTEMPT TO FORCE RE-NEGOTIATION

36. After the parties signed the Agreement, there was a substantial deterioration in the credit market. As a consequence, the Defendants – and in particular JPMC and BofA – realized that it would become substantially more expensive for them to finance the debt side of the Transaction. However, unlike some merger and acquisition contracts, the Agreement contains no financing condition; the Defendants were simply faced with the prospect of making somewhat less money than they had initially expected under the terms of the Agreement.

37. Rather than accept this change in market conditions as an undesirable result of a bargained-for risk, the Defendants almost immediately began taking steps to attempt to shift the burden of this economic change to Sallie Mae. On or about July 10, 2007, a representative of the Defendants communicated to Sallie Mae that if certain proposed legislation pending in the Senate and House of Representatives were enacted into law, it could result in a failure of the conditions to the closing of the Transaction to be satisfied, implying that the legislation would constitute an MAE under the terms of the Agreement and thus free the Defendants of their obligation to close the Transaction.

38. Defendants' statement, which Defendants knew had to be publicly disclosed by Sallie Mae, was a transparent attempt to re-bid the Transaction. The effect on Sallie Mae's share price was as predictable as it was dramatic: a 10% decline in a single day.

39. Not satisfied with the impact of this specious declaration, the Defendants and their representatives conducted a systematic campaign to drive down Sallie Mae's share price even further, through a combination of off-the-record statements to the media, discussions with industry analysts, and communications to shareholders. The Defendants hoped that a lower share price would place increased pressure on Sallie Mae to renegotiate the Agreement.

40. In addition, the Defendants took other steps to delay the Transaction. For example, as part of the Transaction the Defendants were to acquire the Sallie Mae Bank, a bank in Utah that originates loans for Sallie Mae. The transfer of this bank from Sallie Mae to the Defendants required FDIC approval, but the Agreement provided that the Buyer would agree to the "prompt divestiture, liquidation, sale, or other disposition" of the Sallie Mae Bank if the Buyer was "unable to obtain the requisite regulatory approvals relating to [Sallie Mae Bank] in a reasonably timely manner customary for other transactions of a similar nature." The FDIC has yet to approve the transfer of the Sallie Mae Bank. Yet despite the clear language in the Agreement, the Defendants have delayed consummation of the Transaction by refusing to comply with their obligation to agree to divest or liquidate the Sallie Mae Bank.

41. As another delay tactic, the Defendants kept up a steady stream of unreasonable requests for information to Sallie Mae. Despite the provision by Sallie Mae of all information required under the Agreement, the Defendants have consistently taken the position that Sallie Mae has not provided sufficient information for the Defendants to secure debt financing for the Transaction, including information relating to the impact of legislation on Sallie Mae.

42. All of these actions – the deliberate attempts to depress Sallie Mae's share price, the delays in response to the failure to obtain FDIC approval, and the repeated requests for additional information relating to Sallie Mae's business – were taken not in good faith by parties attempting to use all "best efforts" to consummate the Transaction, but rather as transparent attempts by the Defendants to derail the Transaction and induce Sallie Mae to return to the negotiating table.

THE SIGNED LEGISLATION

43. On September 27, 2007, President Bush signed into law the College Cost Reduction and Access Act of 2007 (the "Act"). As expected, the Act contained many of the provisions contained in the Disclosed Proposals, including a reduction in direct subsidies to FFELP lenders, a reduction in the federal guarantee of FFELP loans, and an increase in FFELP lender origination fees.

44. Compared to the Disclosed Proposals (including the Bush Budget Proposal), the marginal impact of the Act is not remotely material. The potential adverse impact of the Act as compared to the potential adverse impact of the Bush Budget Proposal, standing alone, is likely to result only in an additional decrease in Sallie Mae's annual net income of between 1.8 percent and 2.1 percent over the next five years. This does not remotely approach the levels of materially adverse effects that could be deemed an MAE under the terms of the Agreement.

THE DEFENDANTS RENEGE ON THE AGREEMENT

45. Despite the fact that the Act largely resembled proposed legislation that was known, disclosed and discussed at the time that the Agreement was executed, the Defendants immediately seized on the Act in a further attempt to coerce Sallie Mae into re-pricing the deal. On September 26, 2007, a representative of the Defendants approached Sallie Mae's financial advisor and stated that the Defendants would not consummate the Transaction under the terms of the Agreement. Later that day, the Defendants released the following statement:

> Earlier today, J.C. Flowers, on behalf of itself, and its partners J.P. Morgan Chase, Bank of America and Friedman Fleischer & Lowe, informed representatives of Sallie Mae that the consortium believes that the conditions to closing under the Merger Agreement, if the closing were to occur today, would not be satisfied as a result of changes in the legislative and economic environment. We have told representatives of the Sallie Mae Board that we are open to discussing a revision of the transaction that reflects this new environment.

46. After this effort to force Sallie Mae to renegotiate the Transaction was unsuccessful, the following week, on October 2, 2007, the Defendants publicly released an alternative proposal to the terms they contracted to in the Agreement. Instead of $60 in cash per share, the Defendants offered only $50 in cash per share, plus warrants that were exercisable in five years, capped in value, and subordinated to a 15% return on the Defendants' own equity investment in Sallie Mae.

47. The Defendants also publicly released a statement arguing that "Sallie Mae has suffered an MAE" as defined in the Agreement, based on the Act and "compounded by the dramatic changes in credit markets, changes that have a disproportionate impact on Sallie Mae."

48. On October 3, 2007, Sallie Mae sent a letter to the Defendants seeking to commence the marketing period and set a closing date of November 5, 2007 for the Transaction. By letter dated October 8, 2007, the Defendants refused to agree to start the marketing period or schedule a closing date. The Defendants argued that Sallie Mae "has suffered a Material Adverse Effect within the meaning of the Merger Agreement" and that Sallie Mae therefore could not satisfy the conditions to Defendants' obligation to consummate the Transaction.

49. No MAE has occurred to Sallie Mae as that term is defined in the Agreement.

50. First, the changes in the credit markets affect *all* financial institutions, not just Sallie Mae. Second, the impact of the Act is not materially more adverse to Sallie Mae as compared to the expected impact on Sallie Mae of the Disclosed Proposals. Because both of these events were

excluded from consideration under the MAE clause, their combined impact on Sallie Mae is similarly excluded.

51. The Defendants are attempting to force Sallie Mae to assume all or part of the risk for the financing of the Transaction, a risk that the Agreement assigns wholly to the Defendants. Sallie Mae refuses to be bullied into re-cutting a deal that the parties entered after full and fair negotiations.

COUNT I
REPUDIATION

52. Sallie Mae repeats and realleges each allegation set forth herein.

53. The Agreement is a valid contract. The Defendants executed it and are bound by its terms. Sallie Mae has substantially performed under the Agreement and remains willing and able to perform any remaining obligations. The Defendants are able to perform their remaining obligations under the Agreement.

54. The Defendants have clearly, distinctly and unequivocally repudiated and breached the Agreement by, among other things, stating on September 26, 2007 that they are unwilling to consummate the Transaction under the terms of the Agreement; by releasing a statement that same day that "the conditions to closing under the Merger Agreement, if the closing were to occur today, would not be satisfied as a result of changes in the legislative and economic environment"; by releasing a statement on October 2, 2007 that "Sallie Mae has suffered an MAE" and offering terms contrary to the terms of the Agreement; by refusing to commence the marketing period; and by failing to take other actions required by the Agreement to consummate the Transaction.

55. Sallie Mae is entitled to a declaration that no MAE has occurred.

56. Sallie Mae is entitled to a declaration that the Defendants have repudiated the Agreement.

57. Sallie Mae is entitled to a declaration that Sallie Mae may terminate the Agreement.

58. Sallie Mae seeks damages in the amount not less than $900,000,000.

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Declaring that no MAE has occurred;

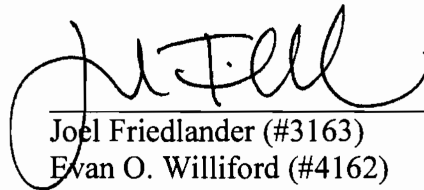
B. Declaring that Defendants have repudiated the Agreement;

C. Declaring that Sallie Mae may terminate the Agreement pursuant to Section 11.05 of the Agreement;

D. Awarding Sallie Mae money damages in an amount not less than $900,000,000, pursuant to the terms of the Agreement;

E. Awarding Sallie Mae the costs of this action, including reasonable allowance for Sallie Mae's attorneys' and experts' fees; and

F. Granting such other and further relief as this Court may deem just and proper.



Joel Friedlander (#3163)
Evan O. Williford (#4162)
Sean M. Brennecke (#4686)
BOUCHARD MARGULES & FRIEDLANDER, P.A.
222 Delaware Avenue, Suite 1400
Wilmington, DE 19801
(302) 573-3500
Attorneys for Plaintiff

OF COUNSEL:

Stephen D. Susman
Jacob W. Buchdahl
SUSMAN GODFREY LLP
654 Madison Avenue, 5th Floor
New York, NY 10065
(212) 336-8330

DATED: October 8, 2007

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

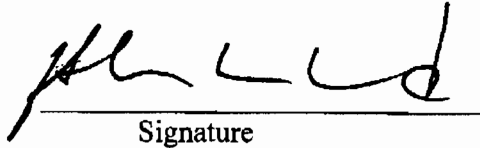
IN AND FOR NEW CASTLE COUNTY

SLM CORPORATION, Plaintiff, v. J.C. FLOWERS II L.P., JPMORGAN CHASE BANK, N.A., BANK OF AMERICA, N.A., MUSTANG HOLDING COMPANY INC., AND MUSTANG MERGER SUB, INC., Defendants.	))))))))))))	C.A. No.

VERIFICATION

STATE OF VIRGINIA)
) ss.
COUNTY OF FAIRFAX)

I, Albert L. Lord, Executive Chairman of SLM Corporation ("Sallie Mae" or the "Company"), being duly sworn, depose and say that I am authorized to make this verification on behalf of the Company, that I have read the foregoing Verified Complaint, and that the statements contained therein are true to the best of my knowledge, information and belief.



Signature

Sworn to and subscribed before me
this 8th day of October, 2007

Notary Public **My Commission Expires 6/30/09**