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August 2011



## Court Order Permits Discovery Regarding BofA \$8.5 Billion RMBS Settlement

Investors that are considering objecting to the proposed \$8.5 billion Bank of America (BofA) residential mortgage-backed securitization (RMBS) settlement may now do so by filing -- no later than August 30th -- a short form objection seeking further information related to the proposed deal.

On August 5, 2011, New York State Supreme Court Justice Barbara Kapnick, the judge who has been asked to approve the proposed \$8.5 billion BofA RMBS settlement, entered an order amending the process for interested parties to register their concerns about the settlement. Under the terms of that order, an investor need only "state the grounds for [its] objection, one of which may be that such [investor] does not have enough information to evaluate the Settlement."

Each objector that has filed an objection by the August 30th deadline will be entitled:

- To have their counsel, during the week of September 5th, negotiate with counsel to Bank of New York Mellon (BNYM), BofA and other objectors regarding the scope of, and schedule for, the production of documents related to the settlement; and
- To appear before Justice Kapnick on September 16th to address, among other things, the scope of, and schedule for, the production of such documents.

This client alert supplements our [July 2011 client alert](#) on the proposed BofA settlement. As we noted then, if approved, the settlement would resolve nearly all of BofA's exposure to investor repurchase- and servicing-related claims for 530 Countrywide-issued RMBS trusts for which BNYM acts as trustee.

For more information, or if you wish to discuss the timing and mechanics of the BofA settlement – or your investments in other RMBS deals – please contact:

Zachary Rosenbaum, Donald Corbett, Jonathan Wishnia or Scott Walker.

For more information about Lowenstein Sandler, its Capital Markets Litigation team, and recent developments in structured finance litigation, please visit <http://www.lowenstein.com/structuredfinancelitigation/>.

The settlement agreement can be found at <http://www.lowenstein.com/sflupdates/#BOA>.

Further information regarding the BofA settlement court proceedings can be found at: [http://www.lowenstein.com/structuredfinancelitigation/investmentbanks\\_dealsponsors/](http://www.lowenstein.com/structuredfinancelitigation/investmentbanks_dealsponsors/)

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[CDO Fraud Litigation and Enforcement - 2011 Survey](#)  
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[Residential Mortgage-Backed Securities Litigation: 2010 Survey](#)  
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