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RMBS LITIGATION: THE 2011 YEAR IN REVIEW

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In 2011, the number of Residential Mortgage-Backed Securities-related litigations grew at a frenzied pace, as the fallout from the financial crisis and the collapse of the U.S. housing market continued to have an impact on investors, insurers and banks.

By some estimates, the number of litigations related to mortgage-backed securities rose fivefold between Q3 2010 and Q3 2011. The Lowenstein Sandler 2011 RMBS litigation survey that follows provides a brief overview of several themes that dominated the RMBS-litigation landscape in 2011 and more detailed summaries of cases that illustrate those themes.

Notable RMBS Settlements

A number of high-profile RMBS litigations – both securities class actions and contract/put-back actions – settled in 2011. In securities class actions, plaintiffs are generally purchasers of RMBS securities and base their claims on federal securities laws, alleging that the issuers of the securities misrepresented the quality of the loans underlying the securities. One of the largest securities settlements was Merrill Lynch's settlement in December 2011, for $315 million, of a class action brought by various public retirement funds. That settlement is pending before Judge Jed S. Rakoff of the Southern District of New York. Earlier, in the summer, Wells Fargo settled, for $125 million, a similar class action brought by public pension and retirement funds.

The largest and most significant settlement, however, occurred in the put-back context, with Bank of America's proposed $8.5 billion RMBS settlement with Bank of New York Mellon. That settlement attempted to resolve nearly all of Bank of America's legacy Countrywide-issued first-lien RMBS repurchase exposure. The settlement approval process, which is far from over, has taken many twists and turns that are discussed in more detail below.

Rise in Put-Back Claims

Bank of America's settlement with Bank of New York Mellon represented just a fraction of Bank of America's put-back exposure. According to Bank of America's own estimates, it has reserved approximately $18 billion in connection with put-back exposure, including the following: $8.5 billion to settle its Countrywide RMBS exposure; $3 billion to settle with Fannie Mae and Freddie Mac over deficient mortgages that Fannie and Freddie bought directly from Countrywide; and an estimated $2 billion that Bank of America has agreed to pay the bond insurer Assured Guaranty.

In addition, U.S. Bank National Association ("U.S. Bank"), in its capacity as trustee, filed several put-back claims for breaches of reps and warranties. In August, U.S. Bank sued Bank of America, alleging that Countrywide misrepresented the quality of its underwriting and loan documentation in its sale of mortgage loans backing a $1.75 billion mortgage-backed securities trust for which U.S. Bank acted as trustee. Then in September, U.S. bank, again in its capacity as securitization trustee, sued Bank of America once more, this time demanding the repurchase of deficient loans underlying Greenwich Capital MBS offerings. Also in September, U.S. Bank, in its role as trustee, sued mortgage originators WMC Mortgage and EquiFirst Corporation in connection with a pool of more than $550 million in UBS-issued securities backed by allegedly defective mortgage loans. This last case is discussed in more detail below.

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Securities Class Actions More Amenable to Class Certification

2011 witnessed an apparent shift in courts' willingness to certify class actions in RMBS litigations. The year began with Judge Harold Baer of the Southern District of New York denying class certification in a pair of securities class actions filed against Residential Capital and the Royal Bank of Scotland. Judge Baer found that individual questions concerning the plaintiffs' knowledge predominated and that a class action was therefore not the best way to move forward with the case.

By the end of the year, however, two of Judge Baer's colleagues on the SDNY bench – Judge Rakoff and Judge Paul A. Crotty – came to different conclusions in similar cases. In the aforementioned Merrill Lynch case that is currently pending settlement approval, Judge Rakoff certified the class, finding that lawsuits brought pursuant to Sections 11 and 12(a)(2) of the federal securities laws are especially amenable to class-action resolution. Judge Crotty came to a similar conclusion in a class action brought against Credit Suisse, rejecting Credit Suisse's argument that the sophistication and size of the investors and the potential conflicts among proposed class members precluded class certification.

Important Causation Ruling in Bond Insurer Cases

Actions brought by bond insurers against RMBS underwriters continued to make news in 2011. Assured Guaranty sued Credit Suisse and affiliates for approximately $1.8 billion in October 2011, alleging that the securities underwriters misrepresented the quality of the loans in securities that Assured insured. Similarly, Financial Guaranty Insurance Co. (FGIC) filed three lawsuits against Ally Financial mortgage units related to the sale of $3.8 billion in RMBS.

One of the most notable decisions concerning causation came in cases, discussed in detail below, brought by MBIA and Syncora against Countrywide. In those cases, New York state court Judge Eileen Bransten ruled – in a January 3, 2012, opinion deciding motions argued in October 2011 – that MBIA and Syncora did not need to establish direct causal links between alleged misrepresentations made by Countrywide and payments made by MBIA and Syncora pursuant to insurance guarantees.

Rating Agencies Not Necessarily Immune From Liability

In last year's RMBS litigation survey, we reported that claims against rating agencies were not faring well in the RMBS context. Courts typically held that ratings were opinions and therefore actionable only if the rating agencies did not believe the opinions when issued. This trend continued to hold in 2011, until a federal judge in New Mexico denied a motion by S&P, Moody's, and Fitch to dismiss claims that they made false statements in connection with the sale of RMBS. In that case, which is discussed in more detail below, the court ruled that – even though public ratings are protected – private ratings given to just a few people are not.

Federal Regulators Step Up Activity

While many people have complained about a shortage of criminal prosecutions related to the mortgage crisis, federal regulators were busy targeting banks in civil lawsuits in 2011. Particularly noteworthy were the 17 lawsuits that the Federal Housing Finance Agency (FHFA) – the U.S. regulator for Fannie Mae and Freddie Mac – filed in early September against banks that sold nearly $200 billion in allegedly toxic mortgage bonds to the giant home-finance companies during the housing boom. On a somewhat smaller scale, the National Credit Union Association (NCUA) – the agency of the executive branch of the United States government that, among other things, charters and regulates federal credit unions – filed four lawsuits seeking more than $2 billion in damages against major banks, alleging that they misrepresented to failed credit unions the quality of loans underlying those RMBS deals. In addition, the NCUA reached a pair of settlements with Citigroup and Deutsche Bank for approximately $165.5 million.

BANK OF AMERICA SETTLEMENT

On June 29, 2011, Bank of America announced that it reached an agreement to resolve nearly all its legacy Countrywide-issued first-lien RMBS repurchase exposure. The proposed agreement included a cash payment of $8.5 billion to the covered trusts to be made after final court approval of the settlement.

Bank of America entered into a settlement agreement with Bank of New York Mellon (BNY Mellon), trustee for the RMBS trusts covered by the settlement. A group of 22 major institutional investors – including BlackRock, Goldman Sachs Asset Management, ING, Invesco, MetLife, Nationwide, New York Life,

PIMCO, Landesbank and Prudential – helped negotiate, and continue to support, the settlement agreement. The proposed settlement covers 525 legacy Countrywide first-lien RMBS trusts and five legacy Countrywide second-lien RMBS trusts with an original principal balance of $424 billion secured by mortgage loans principally originated between 2004 and 2008. The settlement agreement is designed to resolve representation and warranty claims, as well as substantially all historical servicing-related claims, including claims related to foreclosure delays and alleged mortgage documentation issues.

Just a week after Bank of America announced the settlement, investors affected by the deal began to raise objections. First, a coalition of investors under the name Walnut Place LLC objected to the settlement raising questions about BNY Mellon's motivation to agree to the settlement, and criticizing BNY Mellon for negotiating the settlement in secret. A day later, a group of public pension funds objected to the proposed settlement on the grounds that the settlement favored investors who purchased heavily discounted Countrywide securities on the secondary market while short-changing long-standing investors. Shortly thereafter, six Federal Home Loan Banks filed objections to the settlement, seeking more information about the potential liabilities, defenses, and damages under the proposed agreement. By the end of August 2011, dozens of investors had objected to the settlement – or had made court filings seeking further information about the settlement to determine whether or not to object.

The settlement also drew the attention of state prosecutors. Ultimately, the attorneys general of New York and Delaware moved to intervene in the settlement, alleging that the settlement was unfair because it advanced BNY Mellon's own financial interests but represented only a fraction of the losses that investors suffered.

At the end of August, Walnut Place LLC removed the settlement approval proceeding to New York federal court. Walnut Place asserted that the proceeding, originally assigned to Judge Barbara Kapnick in New York Supreme Court, qualified as a "mass action" under the Class Action Fairness Act of 2005 and therefore qualified as a class action for purposes of asserting federal jurisdiction. On October 19, 2011, U.S. District Judge William H. Pauley III of the Southern District of New York denied a motion by BNY Mellon to remand the proceedings to state court. Judge Pauley concluded that the "settlement agreement at issue here implicates core federal interests in the integrity of nationally chartered banks and the vitality of the national securities markets" and a "controversy touching on these paramount federal interests should proceed in federal court." Judge Pauley also granted the attorneys general of Delaware and New York the right to intervene in the proposed settlement on the basis that the settlement "concerns are more than the financial interests of a few sophisticated investors." Judge Pauley reasoned that intervention by the attorneys general would help protect the "interests of absent investors."

On November 30, 2011, the Second Circuit Court of Appeals agreed to expedite its review of Judge Pauley's decision denying BNY Mellon's motion to remand the settlement negotiations to New York state court. On December 27, 2011, the Second Circuit ordered the Clerk's Office to enter an expedited briefing schedule that will permit decision on the appeal within the 60-day period required by 28 U.S.C. § 1453(c)(2).

PUT-BACK CLAIMS

On September 2, 2011, U.S. Bank filed a lawsuit in Minnesota federal court against two defunct subprime mortgage lenders, WMC Mortgage Corporation ("WMC") and EquiFirst Corporation ("EquiFirst"). MASTR Asset Backed Securities Trust 2006 HE3 v. WMC Mortgage Corp. et al., case no. 0:11-cv-02542 (D. Minn.). US Bank alleged that WMC and EquiFirst misrepresented the quality of their underwriting and loan documentation in their sale of "defective" mortgage loans backing a $550 million MBS trust for which US Bank acted as trustee.

According to the complaint, the allegedly defective loans were securitized in August 2006, pursuant to a series of agreements in which defendants — the former loan originating operations for General Electric and Barclays, respectively — allegedly made various representations and warranties regarding their underwriting standards, their origination practices, and the completeness and accuracy of their loan documentation for the 3,067 loans sold to the trust. US Bank alleges that the loans subsequently began to deteriorate rapidly.

In April 2010, Recovco Mortgage Management, LLC ("Recovco") was retained on behalf of the trust to investigate the underlying mortgages. According to the complaint, Recovco's review of 200 sample loan files revealed that 150 loans breached the

representations and warranties that defendants made in the securitization documents, "amounting to a stunning 75 percent failure rate." UBS alleges that, upon learning the results of the investigation in August 2010, it demanded that defendants either cure or repurchase the defective loans pursuant to their alleged contractual obligations, but defendants failed to repurchase a single loan and gave no reason for their refusal to do so. US Bank claims it is entitled to specific performance of defendants' alleged contractual obligations to repurchase the defective loans, and seeks a declaratory order requiring defendants to do so. US Bank also seeks a minimum of $200 million for damages it claims the trust suffered as a result of defendants' alleged breaches.

With respect to put-back claims, US Bank appears to have begun 2012 the same way it ended 2011. In the first week of 2012, US Bank, as trustee in some Bear Stearns MBS trusts, filed a $95 million lawsuit in New York state court against JPMorgan Chase, which acquired Bear Stearns in 2008. US Bank alleged Bear Stearns misrepresented the quality of mortgage loans underlying securities that Bear Stearns marketed in 2005. US Bank further alleged that JPMorgan Chase refused to provide the underlying loan files, as the trust documents required, thus preventing the trustee from investigating the extent of the alleged breaches. US Bank is seeking to have JPMorgan buy back the mortgage loans due to alleged breaches of representations and warranties. Bear Stearns Asset Backed Securities Trust 2005-4 v. EMC Mortgage Corp., et al, New York State Supreme Court, New York County, No. 650003/2012.

CLASS CERTIFICATION CASES

In the first half of 2011, courts appeared reluctant to certify RMBS class actions. In January 2011, Judge Harold Baer of the Southern District of New York denied class certification in a pair of securities class actions filed by public pension funds against Residential Capital and the Royal Bank of Scotland. Judge Baer found that individual questions concerning the plaintiffs' knowledge predominated and that a class action was therefore not the best way to move forward with the case. *New Jersey Carpenters Health Fund v. Residential Capital, LLC,* No. 08-cv-8781 (S.D.N.Y.), and *New Jersey Carpenters Vacation Fund v. The Royal Bank of Scotland Group,* No. 08-cv-5093 (S.D.N.Y.).

Shortly thereafter, in May, Judge Mariana Pfaelzer of the Central District of California limited the size of a class by ruling that a class action against Countrywide could proceed only with claims related to securities purchased by the named plaintiffs. *Maine State Retirement System et al. v. Countrywide Financial Corp. et al.,* No. 10-cv-00302 (C.D. Cal.).

But, to borrow a line from Mark Twain, reports of the death of class certification in RMBS class actions were greatly exaggerated. In the summer of 2011, two judges in the Southern District of New York issued decisions certifying classes of RMBS investors. First, in June 2011, Judge Jed S. Rakoff of the Southern District of New York issued an order certifying a class of approximately 1,600 RMBS investors suing Merrill Lynch (the full decision was issued in August). *Public Employees' Retirement System of Mississippi et al. v. Merrill Lynch & Co. Inc. et al,* No. 1:08-cv-10841 (S.D.N.Y.). Judge Rakoff rejected Merrill's assertions that the sophistication of the investors weighed against certification and that class claims should be limited to specific tranches in which named plaintiffs invested. Instead, Judge Rakoff found that all the Merrill class members relied on the same allegedly false offering statements.

Later, in August, Judge Paul Crotty certified a class of 103 institutional investors that had purchased notes issued by Credit Suisse's affiliate DLJ Mortgage Capital. *New Jersey Carpenters Health Fund v. DLJ Mortgage Capital, Inc.,* No. 08-cv-5653 (S.D.N.Y.). In that decision, the court rejected Credit Suisse's argument that the sophistication and size of the investors, and the potential conflicts among proposed class members, precluded class certification. The court also rejected Credit Suisse's assertion that individual inquiries predominated over common proof of Credit Suisse's alleged liability. The court found that publicly available information regarding one of the mortgage originator's financial and accounting irregularities – together with rising delinquency and default rates – did not provide explicit evidence that any of the potential plaintiffs had individualized knowledge of the bank's alleged misrepresentations, and thus did not establish a need for individual inquiries on the issue.

BOND INSURER CASES: IMPORTANT RULINGS ON CAUSATION AND PUT-BACK LIABILITY

On January 3, 2012, New York state court Judge Eileen Bransten ruled that bond insurers MBIA and Syncora need not establish direct causal links between alleged misrepresentations

made by Countrywide and payments made by MBIA and Syncora pursuant to insurance guarantees. The summary judgment decisions came in two separate lawsuits – one brought by MBIA Insurance Corporation, and a second brought by Syncora Guarantee Inc. – against Countrywide Financial, a mortgage originator, and Bank of America, which acquired Countrywide in 2008. Relying on New York insurance and common law, Judge Bransten found that fraud or breach of warranty occurs upon "the misrepresentation that induces action resulting in damages." Judge Bransten held that, at the summary judgment stage, MBIA and Syncora did not have to show "a direct causal link between the misrepresentations allegedly made by Countrywide and claims made under the policy." Judge Bransten further ruled that, nevertheless, to ultimately prevail on their fraud claims, the insurers would have to prove that they were damaged as a result of Countrywide's misrepresentations. *MBIA Insurance Corp. v. Countrywide Home Loans Inc. et al.,* No. 602825/2008, in the Supreme Court of the State of New York, County of New York; *Syncora Guarantee Inc. v. Countrywide Home Loans Inc., et al.,* No. 650042/2009, in the Supreme Court of the State of New York, County of New York.

With respect to put-back liability, Judge Bransten found that the issue was unripe for summary judgment. In their summary judgment motions, MBIA and Syncora asserted that loans could be put back even for RMBS deals not in default, because whether or not a loan materially and adversely affected the insurers' interest could be determined without reference to a loan default or a breach of a representation or warranty. In its opposition, Countrywide asserted that until a default or breach occurred, repurchase of the loans could not be required. Judge Bransten found the relevant contractual provisions were ambiguous and not susceptible to summary judgment. Syncora appealed that portion of Judge Bransten's decision on January 5, 2011.

RATING AGENCY LIABILITY

Credit rating agencies – most notably Standard & Poor's (S&P), Moody's, and Fitch – have generally avoided liability for their ratings of mortgage-backed securities, on the basis that ratings are opinions and are afforded protection under the First Amendment. This trend continued in 2011, most notably in a pair of decisions issued by the Second Circuit and the Southern District of Ohio. However, a federal court in New Mexico rejected the ratings agencies' First Amendment defense because the agencies distributed their ratings to a small group of investors.

RATINGS HELD TO BE PREDICTIONS, NOT STATEMENTS OF FACT

Ohio Police & Fire Pension Fund v. Standard & Poor's Fin. Services, LLC, No. 2:09-cv-1054, 2011 WL 4481974 (S.D. Ohio Sept. 26, 2011)

In this action, five investment funds sued rating agencies, alleging that the agencies' ratings of particular RMBS were false or misleading and that the funds relied on the ratings in purchasing the RMBS. According to their complaint, the Ohio pension funds made 308 investments in mortgage debt between January 1, 2005, and July 8, 2008, relying on agency ratings that were "unfounded and unjustified." The complaint further alleged that the agencies conspired with issuers to obtain inflated ratings, used outdated risk models, and failed to downgrade their original ratings in a timely fashion.

In an opinion dismissing plaintiffs' complaint, the court concluded that credit ratings are merely predictions of possible loss or opinions on the potential need for credit enhancement, and not statements of fact. As a result, the court held that credit ratings are not actionable absent allegations that the agencies knew the ratings were false. The court found no specific allegations that the agencies knew from the outset that they were assigning false ratings to the securities in question.

The court further found that the rating agencies had no "special relationship" with the funds and therefore owed no duty to the funds. The court also determined that the ratings at issue were distributed publicly, and – although the agencies allegedly knew that the plaintiff funds would be interested in the ratings – such knowledge was insufficient as a matter of law to create a duty.

RATING AGENCY 'PARTICIPATION' IN A SECURITIZATION NOT ENOUGH FOR UNDERWRITER LIABILITY

In re Lehman Bros. Mortgage-Backed Sec. Litig., 650 F.3d 167 (2d Cir. 2011)

The Second Circuit affirmed the dismissal of rating agency defendants Moody's, S&P, and Fitch in this securities class-action litigation involving RBMS issued by Lehman Brothers, IndyMac, and the Residential Asset Securitization Trust (RAST). Plaintiffs purchased RMBS and alleged that the originators of the loans underlying the securities failed to comply with the loan underwriting

guidelines described in the offering documents. Plaintiffs claimed that Moody's, S&P, and Fitch were liable as "underwriters" within the meaning of the 1933 Securities Act because they had structured the securities at issue to achieve the desired AAA ratings.

The Second Circuit concluded that a credit rating is simply an opinion, or a prediction, on the future creditworthiness of that security. This finding, according to the court, made rating agencies analogous to "experts" rather than underwriters. The court found that the agencies did not market, distribute, or sell the securities and therefore lacked the hallmarks of underwriter liability. The Second Circuit held that under the Securities Act of 1933, defendants are liable only if they were involved in distributing the securities, not if they merely facilitated the transactions.

RATING AGENCIES MAY BE LIABLE IF RATINGS NOT WIDELY DISTRIBUTED

Genesee County Employees' Ret. Sys. v. Thornburg Mortg. Sec. Trust 2006-3, No. 09-cv-0300, 2011 WL 5840482 (D.N.M. Nov. 12, 2011)

In an apparent setback for credit rating agencies, a judge in the District of New Mexico held that credit ratings are not always protected as opinions under the First Amendment.

Plaintiffs, a group of pension funds that invested $5 billion in RMBS issued by Thornburg Mortgage Inc., sued Thornburg, along with several investment banks involved with the issuance, underwriting and distribution of the securities. Plaintiffs also sued the rating agencies that had provided ratings of the securities in connection with the offerings.

The rating agencies moved to dismiss on a number of grounds, including that their ratings were not "actionable statements" but rather merely opinions protected by the First Amendment. The court rejected the rating agencies' defense, finding that the ratings did not address a matter of public concern, because they were communicated to only a select group of investors. Explaining that the "general public's interest in the free flow of advertising" is "distinguishable" from "providing credit ratings in offering documents given to a select group rather than the public at large," the court held that First Amendment protection should not apply to the rating agencies with respect to the RMBS deals involved in that case.

REGULATORS GET MORE INVOLVED

Federal regulators, specifically the FHFA and the NCUA filed numerous lawsuits in 2011 against financial institutions, underwriters and executives related to mortgage-backed securities. The FHFA is the conservator for Fannie Mae and Freddie Mac. The NCUA is the liquidating agent for five now-defunct credit unions. Fannie, Freddie and the credit unions all purchased significant amounts of MBS prior to the financial crisis.

FHFA FILES NUMEROUS LAWSUITS AGAINST MAJOR BANKS

The FHFA filed numerous complaints this year alleging that major financial institutions, their officers, and various underwriters committed fraud and violated the federal securities laws by misrepresenting the quality and underwriting standards for loans underlying billions in RMBS that Fannie Mae and Freddie Mac purchased during the housing boom. The FHFA sued UBS in July and then filed 17 lawsuits in September against a series of defendants including Bank of America, Barclay's, Credit Suisse, Goldman Sachs, JPMorgan Chase, Morgan Stanley, and numerous other banks.

The FHFA lawsuits seek tens of billions of dollars in damages for losses incurred by Fannie and Freddie on purchases of approximately $200 billion in RMBS. The allegations in the 18 separate lawsuits are that, in connection with the RMBS sold to Fannie and Freddie, defendants filed registration statements with the Securities and Exchange Commission (SEC) that contained material misrepresentations about the characteristics and credit quality of the underlying loans, the creditworthiness of the borrowers, and the origination and underwriting practices used to make and approve the loans. The FHFA further alleges that the registration statements included false statistics based on "widespread falsification of borrowers' income and debt, inflated property values, and misrepresentations of other key characteristics" of the loans.

The case against UBS is *Federal Housing Finance Agency et al. v. UBS Americas Inc. et al.*, 11-cv-05201 2011 WL 3117873 (S.D.N.Y.). The other 17 lawsuits were filed in various courts, including New York state court, the Southern District of New York, and the District of Connecticut.

In one of the FHFA lawsuits, defendants General Electric, Credit Suisse, and Morgan Stanley removed the case to federal court on the grounds that (i) the United States was a plaintiff, (ii) Freddie Mac was involved, and (iii) the case involved a federal question. *Federal*

Housing Finance Agency v. General Electric Co. et al., No. 1:11-cv-07048, (S.D.N.Y). In November, the FHFA moved to remand the action to state court, asserting that the defendants relied on authority that related only to class actions and that defendants had no statutory basis for removal. The FHFA also attacked the defendants' reliance on Freddie Mac's charter as a basis for removal, arguing that the charter was not an independent basis for removal but rather a predicate for removal under the general removal statute and that the standards for the general removal statute were not fulfilled.

UBS moved to dismiss FHFA's lawsuit on statute-of-limitations grounds. The FHFA filed an amended complaint, and the court set a new schedule requiring any motion to dismiss be filed by January 20, 2012. The defendants in the cases before the Southern District of New York agreed to await court action on UBS's motion to dismiss before proceeding with motions to dismiss regarding any nonduplicative issues not covered by the UBS motion.

NCUA SUES ON BEHALF OF DEFUNCT CREDIT UNIONS

Throughout the latter half of 2011, the NCUA filed a series of lawsuits against large financial institutions in connection with the sale of RMBS to various credit unions.

Between June and November, the NCUA sued JP Morgan, RBS Securities, Goldman Sachs, and Wachovia, alleging that the defendants made material misrepresentations about the quality of loans underlying, collectively, over $4 billion in RMBS deals. The complaints also allege that the defendants ignored underwriting guidelines. The cases are *National Credit Union Administration Board v. J.P. Morgan Securities LLC et al.,* 11-cv-02341 (D. Kan.); *National Credit Union Administration Board v. RBS Securities Inc.,* 11-cv-02340 (D. Kan.); *National Credit Union Administration Board v. RBS Securities Inc.,* 11-cv-5887 (C.D. Cal.); *National Credit Union Administration Board v. Goldman Sachs & Co.,* No. 11-06521 (C.D. Cal.); *National Credit Union Administration Board v. Wachovia Capital Markets,* 11-cv-02649 (D. Kan.).

Defendants in the NCUA cases have filed motions to dismiss the cases. J.P. Morgan filed a motion to dismiss in October, opposed in December, with the court yet to rule. Goldman Sachs filed a motion to dismiss in January; the motion is yet to be opposed. RBS filed a motion to dismiss the California case in September, opposed in November, with the court yet to rule. RBS filed a motion to dismiss the Kansas case in December; the motion is yet to be opposed.

In addition, the NCUA settled cases in 2011 against Citigroup and Deutsche Bank Securities regarding potential MBS claims. The $165.5 million settlement – $20.5 million from Citigroup and $145 million from Deutsche Bank – represented the first payment the NCUA received in connection with its MBS lawsuits. The NCUA has indicated it will continue to file more lawsuits related to credit unions' purchases of MBS.

STATE GOVERNMENT INVESTIGATIONS

In 2011, the attorneys general of the states of New York and Delaware continued with their probes into the mortgage practices of various banks. In May, New York Attorney General Eric Schneiderman requested information and documents from Bank of America, Morgan Stanley, and Goldman Sachs as part of an investigation into the banks' securitization of mortgage loans and other mortgage practices. In June, the attorneys general of New York and Delaware requested information from Bank of New York Mellon and Deutsche Bank in connection with the banks' role in securitizing mortgages.

In addition, the New York attorney general announced in December that it reached an agreement to cooperate with a federal investigation by the FHFA into the same mortgage practices.

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