

## The Clock is Ticking on Claims for Residential Mortgage-Backed Securities (RMBS).

There is a growing wave of recent lawsuits and investigations involving Residential Mortgage-Backed Securities (“RMBS”). It’s not too late for you to recover your losses in these investments, but your window is beginning to close.

For those who don’t know, an RMBS is a type of asset-backed security that consists of large numbers of residential debt instruments such as mortgages, home-equity loans, and subprime mortgages. The original idea was to amalgamate a bunch of residential loans with dependable cash flows into one pooled investment vehicle: the RMBS. The RMBS issuer would collect all of the individual loan revenues and pay investors periodic distributions of the principal and interest generated by the underlying loan portfolio.

When the housing market hit the stratosphere, lenders found it profitable to originate mortgages that previously would have been deemed too risky. Mortgage lenders began to overlook even basic income and down payment requirements, assuming that with real estate prices rising so fast, almost any mortgage would stay above water. Meanwhile, the demand for RMBS was so great that issuers began stuffing their underlying portfolios with lousy mortgage loans. Once the subprime mortgage lenders had a way to sell their risky debt, they began to market even more aggressively to high risk borrowers. Wall Street would sweep up these subprime loans, package them with other loans of varying quality, and sell pieces of them to investors. And the most insidious aspect of this process was that these bundles of risky loans were labeled investment grade (‘A’ rated or higher) by the rating agencies, who in turn were earning big fees from the issuers.

Most people know the rest of the story. By the middle of 2006, the housing market had begun to stall out. As things deteriorated and sales and prices dropped, the number of defaults in residential loans increased. In the end, RMBS halted or reduced payments and essentially became unmarketable.

Regulators are now taking renewed action. Here are some of the latest instances:

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### **WELLS FARGO**

The Securities and Exchange Commission is investigating possible fraud in connection with Wells Fargo’s sale of nearly \$60 billion in residential mortgage-backed securities to investors. The Commission’s issued a Wells Notice (an alert from the SEC that it may bring an enforcement action in the future) related to its investigation into whether Wells Fargo made material misrepresentations or omitted material facts in a series of RMBS offerings between September 2006 and early 2008.

The Commission is investigating, among other things, whether Wells Fargo misrepresented to investors that the loans being securitized complied with the bank's loan underwriting standards.

### **GOLDMAN SACHS**

Goldman Sachs has been hit with a Wells Notice. The SEC is looking at disclosures contained in the offering documents used in connection with a late 2006 offering of subprime residential mortgage-backed securities.

### **JP MORGAN**

JP Morgan recently received a Wells Notice concerning an investigation into RMBS fraud committed by Bear Stearns. After purchasing Bear Stearns, JP Morgan then allegedly tried to hide the massive fraud upon learning of it back in 2008. Sources estimate that JP Morgan's potential liability could exceed \$100 million.

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Wells Fargo, Goldman Sachs, and JP Morgan may represent just the tip of a gigantic iceberg heading toward Wall Street. Citigroup, Bank of America, and other firms have received Wells Notices, with many more likely to join them.

Why are we writing about this now? As you might have noticed above, many investors began purchasing RMBS investments in 2006. [FINRA arbitration claims](#) against broker-dealers must be brought within six years of the occurrence or event giving rise to a cause of action. While we don't consider the date of purchase to be the "occurrence or event" that would trigger a claim, brokerage firms that sold RMBS would contend otherwise, and there is nothing to prevent an arbitration panel from using the date of purchase as the triggering event. Thus, claims for purchases in late 2006 now are in danger of being wiped out. Moreover, while we strongly believe that state statutes of limitation don't apply in arbitration, some panels might nonetheless find claims to be time-barred under such statutes.