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LOWENSTEIN SANDLER PC
1251 Avenue of the Americas, 18th Floor
New York, New York 10020
(212) 262-6700 (Telephone)
(212) 262-7402 (Facsimile)
Michael S. Etkin, Esq. (ME 0570)
Ira M. Levee, Esq. (IL 9958)
Andrew Behlmann, Esq. (AB 1174)
and
65 Livingston Avenue
Roseland, New Jersey 07068
(973) 597-2500 (Telephone)
(973) 597-2481 (Facsimile)

Bankruptcy Counsel for Cambridge Place Investment Management Inc.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

	Chapter 11 Case No. 12-12020 (MG) Jointly Administered
RESIDENTIAL CAPITAL, LLC; *et al.*, Plaintiffs, v. ALLSTATE INSURANCE CO., THE OTHER PARTIES LISTED ON EXHIBIT A TO THE COMPLAINT, JOHN DOES 1-1000, Defendants.	Case No. 12-AP-01671 (MG) Bankruptcy Case No. 12-02020 (MG) Jointly Administered **JOINDER OF CAMBRIDGE PLACE INVESTMENT MANAGEMENT INC. TO OBJECTION OF NEW JERSEY CARPENTERS HEALTH FUND TO DEBTORS' MOTION TO EXTEND AUTOMATIC STAY OR, IN THE ALTERNATIVE, FOR INJUNCTIVE RELIEF ENJOINING PROSECUTION OF CERTAIN PENDING LITIGATION AGAINST DEBTORS' DIRECTORS AND OFFICERS AND NON-DEBTOR CORPORATE AFFILIATES**

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Cambridge Place Investment Management Inc. ("CPIM"), plaintiff in the civil actions styled as *Cambridge Place Investment Management Inc. v. Morgan Stanley & Co., Inc., et al.*, pending in the Superior Court of Massachusetts, Case Nos. 10-2741-BLS1 ("CPIM I") and 11-0555-BLS1 ("CPIM II" and collectively with CPIM I, the "CPIM Actions") hereby joins (the "Joinder") in the *Objection of New Jersey Carpenters Health Fund to Debtors' Motion To Extend Automatic Stay or, in the Alternative, for Injunctive Relief Enjoining Prosecution of Certain Pending Litigation Against Debtors' Directors and Officers and Non-Debtor Corporate Affiliates* (the "Lead Plaintiff Objection")[1] filed by New Jersey Carpenters Health Fund (the "Lead Plaintiff") on behalf of itself and the Putative Class (as defined in the Lead Plaintiff Objection) in opposition to the *Debtors' Motion To Extend Automatic Stay or, in the Alternative, for Injunctive Relief Enjoining Prosecution of Certain Pending Litigation Against Debtors' Directors and Officers and Non-Debtor Corporate Affiliates* (the "Motion") [AP Docket No. 4][2] filed by the debtors and debtors-in-possession (the "Debtors") in the above-captioned chapter 11 bankruptcy cases (the "Bankruptcy Cases"), in their capacity as plaintiffs in the above-captioned adversary proceeding (the "Adversary Proceeding"), on May 25, 2012. In support of this Joinder, CPIM also relies upon the *Declaration of Michael S. Etkin* dated June 28, 2012 (the "Etkin Declaration") and the relevant documents annexed as exhibits thereto, submitted contemporaneously herewith, and respectfully states as follows:

[1] Capitalized terms used but not defined herein shall have the definitions ascribed thereto in the Lead Plaintiff Objection.

[2] References to the docket in the Bankruptcy Cases are denoted herein as [BK Docket No. __]. References to the docket in the Adversary Proceeding are denoted herein as [AP Docket No. __].

THE CPIM ACTIONS

CPIM filed the CPIM Actions in the Superior Court of Massachusetts, Suffolk County (the "Massachusetts Court"), on July 9, 2010 and February 11, 2011.[3] The CPIM Actions named as defendants, among other entities not affiliated with AFI or the Debtors, (a) Debtors Residential Accredit Loans, Inc. ("RALI"), Residential Asset Mortgage Products, Inc. ("RAMP"), and Residential Asset Securities Corporation ("RASC") and (b) non-Debtor Ally Securities (collectively, all of the defendants in the CPIM Actions are the "CPIM Defendants"). Copies of each *Complaint and Jury Demand* filed in CPIM I and CPIM II are annexed to the Haims Declaration as Exhibit 2 (the "CPIM I Complaint") and Exhibit 3 (the "CPIM II Complaint" and collectively with the CPIM I Complaint, the "CPIM Complaints"), respectively.

Subsequent to the commencement of the Bankruptcy Cases, CPIM dismissed RALI, RASC, and RAMP as defendants in the CPIM Actions, without prejudice. As a result, neither of the CPIM Actions is presently pending against any Debtor. None of the Debtors' current or former directors or officers is or was named as a defendant in the CPIM Actions. The only Non-Debtor Defendant currently named as a defendant in the CPIM Actions is Ally Securities.[4] The remaining CPIM Defendants are not affiliated with the Debtors or the Non-Debtor Defendants.

A. The CPIM Actions Assert Direct Claims Against Ally Securities.

The CPIM Actions assert causes of action arising under sections 410(a)(2) and 410(b) of the Massachusetts Uniform Securities Act (the "MUSA"), MASS. GEN. LAWS ch. 110A (2012). Ally Securities is identified as a "Wall Street Bank Defendant" in the CPIM Complaints. (CPIM Complaints at § b, ¶ 29.) Each of the CPIM Actions alleges direct conduct by Ally Securities in

[3] CPIM filed the two separate, but nearly identical, amended complaints in the CPIM Actions pursuant to a *Stipulation and Proposed Order* dated October 7, 2011.

[4] The CPIM Complaints use the defined term "GMAC" to refer to Residential Funding Securities, LLC d/b/a GMAC RFC Securities, the entity that is now Ally Securities.

violation of the MUSA (CPIM I Complaint at ¶¶ 468–80; CPIM II Complaint at ¶¶ 457–70), and asserts causes of action against all of the Wall Street Bank Defendants, including Ally Securities, under sections 410(a)(2) and 410(b) of the MUSA. (CPIM I Complaint at ¶¶ 517–24, 533–40; CPIM II Complaint at ¶¶ 492–99, 508–15.)

Section 410(a)(2) of the MUSA provides for direct civil liability in the event of any offer or sale of securities by means of an untrue statement or omission of a material fact:

> Any person who . . . (2) offers or sells a security by means of any untrue statement of a material fact or any omission 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, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six per cent per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at six per cent per year from the date of disposition.

MASS. GEN. LAWS ch. 110A § 410(a)(2). By the terms of the statute, liability under section 410(a)(2) is direct and does not rely upon the establishment of liability of any other person. To the extent that Ally Securities is found liable to CPIM under section 410(a)(2), such liability is a direct liability of Ally Securities based upon its own actions (or inactions), and does not rely upon the liability of the Debtors or any other party.

A plaintiff asserting a claim under section 410(a)(2) need not plead or prove scienter, reliance, or causation, and the plaintiff's financial sophistication is irrelevant so long as it demonstrates that it did not know of the untruth or omission. See Venture Inv. Partners, LLC v.

JT Venture Partners, LLC, 2007 WL 4098850, at *2 (Mass. Super. Ct. Oct. 25, 2007). Section 410(a)(2) provides defendants with a "reasonable care" defense, enabling each defendant—individually—to avoid liability by demonstrating that it "did not know, and in the exercise of reasonable care could not have known" of the offending misstatement or omission. Accordingly, a finding of liability against Ally Securities in the CPIM Actions will not prejudice the Debtors' ability to assert their own defenses in any future proceeding.

Section 410(b), in turn, establishes liability for certain parties, based upon violations by others of section 410(a), providing in pertinent part that:

> every broker-dealer or agent who materially aids in the sale [of securities by a seller liable under section 410(a)] are also liable jointly and severally with and to the same extent as the seller, unless the non-seller who is so liable sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

Id. § 410(b). Thus, only liability under section 410(b) relates to liability of another person. Ally Securities' liability under section 410(b) is not predicated on primary liability of any of the Debtors or their current or former officers or directors under section 410(a). Rather, Ally Securities is liable under section 410(b) with respect to securities underwritten by Ally Securities in its initial public offerings and then sold to CPIM in the secondary market by other Wall Street Bank Defendants that have primary liability for those sales under section 410(a). Thus, CPIM's section 410(b) claims, like its section 410(a) claims, are not based on any liability of the Debtors or their current or former officers or directors. Similar to section 410(a), section 410(b) provides defendants with a reasonable care defense, enabling a defendant to avoid liability by proving that it "did not know, and in exercise of reasonable care could not have known, of the facts by reason of which the liability is alleged to exist."

Therefore, as discussed at length in the Lead Plaintiff Objection, the Debtors would not be bound by any judgment against Ally Securities in the CPIM Actions under either section 410(a)(2) or section 410(b).

B. Procedural Status of the CPIM Actions

The Massachusetts Court held an initial case management conference on November 10, 2011.[5] At the status conference, Judge Fabricant granted the CPIM Defendants' request for two stages of motions to dismiss and a temporary stay of discovery until the hearing on the first motion to dismiss. The CPIM Defendants' first motion to dismiss (the "First MTD") challenged the assignment of claims from CPIM's advisory clients to CPIM, as well as CPIM's standing. The Massachusetts Court denied the First MTD on March 12, 2012. The CPIM Defendants petitioned to vacate or appeal the order denying the First MTD, which petition was denied.

The CPIM Defendants' second motion to dismiss the CPIM Actions (the "Second MTD") will be fully briefed and submitted to the Court on July 2, 2012. The hearing on the Second MTD is currently scheduled for July 16, 2012 at 3:00 PM.

C. Status of Discovery in the CPIM Actions

Ally Securities and the additional Wall Street Bank Defendants received substantial one-way discovery from CPIM in connection with the defendants' unsuccessful attempt to establish federal jurisdiction over the CPIM Actions. To date, CPIM has received no discovery in the CPIM Actions. In its *Initial Case Management Order* entered on November 22, 2011 (the "First CMO"), a copy of which is annexed to the Etkin Declaration as Exhibit 3, the Massachusetts Court imposed a discovery stay in the CPIM Actions pending the hearing on the First MTD. At the conclusion of such hearing on January 10, 2012, the Massachusetts Court instructed CPIM to

[5] In the interest of brevity, this discussion omits the procedural history of removal and remand of the CPIM Actions not relevant here.

propose preliminary discovery to the CPIM Defendants and attempt to agree on such discovery. In response, CPIM proposed service of ten preliminary document requests to obtain disclosure of certain basic and core information that should be helpful to streamline the discovery process going forward and that were not directed to the Debtors.

At a case management conference before the Massachusetts Court on May 17, 2012, CPIM sought leave to serve its ten preliminary document requests, and the CPIM Defendants sought to continue the discovery stay.

On May 18, 2012, the discovery stay was partially lifted by the Massachusetts Court in *Case Management Order No. 2* (the "Second CMO"), a copy of which is annexed to the Etkin Declaration as Exhibit 4. Pursuant to the Second CMO, CPIM was permitted to serve each of the Wall Street Bank Defendants, including Ally Securities, with CPIM's preliminary requests for production of documents, a copy of which is annexed to the Etkin Declaration as Exhibit 8 (the "Preliminary Document Request").

The Preliminary Document Request contains ten (10) requests, with no subparts, requesting basic and discrete categories of documents from Ally Securities. Ally Securities served responses to the Preliminary Document Request (the "Response"), a copy of which is annexed to the Etkin Declaration as Exhibit 9, upon counsel for CPIM on June 21, 2012, but has not yet produced any documents. Significantly, although the Response sets forth objections and responses to certain categories of the Preliminary Document Request, nowhere in the Response does Ally Securities state that the potentially responsive documents are in the exclusive possession of the Debtors or otherwise outside of Ally Securities' possession or control.

While Ally Securities and the additional Wall Street Bank Defendants deposed a representative of CPIM pursuant to Fed. R. Civ. P. 30(b)(6), CPIM has taken no depositions to

date in the CPIM Actions, and based upon the language of the Second CMO (stating that the discovery stay "is lifted or vacated to the following extent"), the discovery stay remains in place other than with respect to the Preliminary Document Request.

WHEREFORE, based upon the actual status of the CPIM Actions, the fact that only Ally Securities is a Non-Debtor Defendant in the CPIM Actions, the fact that the claims asserted against Ally Securities in the CPIM Actions are direct and not derivative of any claims against the Debtors, and the other facts and circumstances set forth in the Lead Plaintiff Objection, CPIM joins in the Lead Plaintiff Objection to the extent set forth herein and respectfully requests that the Court deny the Motion and grant CPIM such other and further relief as the Court deems just and appropriate.

Dated: June 28, 2012
New York, New York

/s/ Michael S. Etkin

LOWENSTEIN SANDLER PC
Michael S. Etkin (ME 0570)
Ira M. Levee (IL 9958)
Andrew Behlmann (AB 1174)
1251 Avenue of the Americas, 18th Floor
New York, New York 10020
(212) 262-6700 (Telephone)
(212) 262-7402 (Facsimile)

and

65 Livingston Avenue
Roseland, New Jersey 07068
(973) 597-2500 (Telephone)
(973) 597-2400 (Facsimile)

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