Docket #0048 Date Filed: 6/28/2012

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: RESIDENTIAL CAPITAL, LLC, *et al.*, Debtors.	Case No. 12-12020 (MG) Chapter 11 Jointly Administered
RESIDENTIAL CAPITAL, LLC, *et al.*, Plaintiffs, v. ALLSTATE INS. CO., THE OTHER PARTIES LISTED ON EXHIBIT A TO THE COMPLAINT, JOHN DOES 1-1000, Defendants.	Adv. Case No. 12-01671 (MG)

DECLARATION OF KANCHANA WANGKEO LEUNG IN SUPPORT OF DEFENDANT FEDERAL HOUSING FINANCE AGENCY'S (A) MEMORANDUM OF LAW IN SUPPORT OF MOTION TO WITHDRAW THE REFERENCE AS TO DEFENDANT FEDERAL HOUSING FINANCE AGENCY AND (B) MEMORANDUM OF LAW (I) IN SUPPORT OF FHFA'S MOTION TO DISMISS THE COMPLAINT FOR LACK OF JURISDICTION AND (II) IN OPPOSITION TO DEBTORS' MOTION TO EXTEND AUTOMATIC STAY AND TO ENJOIN LITIGATION AGAINST NON-DEBTORS

I, Kanchana Wangkeo Leung, hereby declare, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge, information and belief:

1. I am a member of the law firm of Kasowitz, Benson, Torres & Friedman LLP, counsel for Defendant Federal Housing Finance Agency ("FHFA"), as Conservator for the Federal Home Loan Mortgage Corporation ("Freddie Mac"), in the above-referenced bankruptcy case. I make this declaration in support of the following pleadings filed contemporaneously herewith: (A) *Memorandum Of Law In Support Of Motion To Withdraw The Reference As To*

Defendant Federal Housing Finance Agency and (B) *Defendant Federal Housing Finance Agency's Memorandum Of Law (I) In Support Of FHFA's Motion To Dismiss The Complaint For Lack Of Jurisdiction And (II) In Opposition To Debtors' Motion To Extend Automatic Stay And To Enjoin Litigation Against Non-Debtors* (the "Memo of Law")[1].

2. Annexed hereto as **Exhibit A** is a true and correct copy (without exhibits) of the amended complaint, dated June 13, 2012, filed by the Federal Housing Finance Agency, as Conservator for the Federal Home Loan Mortgage Corporation against Ally Financial Inc. f/k/a GMAC, LLC *et al.*, in *Federal Housing Finance Agency, as Conservator for the Federal Home Loan Mortgage Corporation v. Ally Financial Inc. f/k/a GMAC, LLC et al.*, Case No. 11 Civ. 7010 (S.D.N.Y.) [Docket No. 114].

3. Annexed hereto as **Exhibit B** is a true and correct copy of relevant excerpts of the hearing transcript before the Honorable Denise L. Cote in *Federal Housing Finance Agency, as Conservator for the Federal Home Loan Mortgage Corporation v. Ally Financial Inc. f/k/a GMAC, LLC et al.*, Case No. 11 Civ. 7010 (S.D.N.Y. May 14, 2012).

4. Annexed hereto as **Exhibit C** is a true and correct copy of an Order, dated November 16, 2011, of the Honorable Denise L. Cote in *Federal Housing Finance Agency, etc. v. UBS Americas, Inc., et al.*, Case No. 11 Civ. 5201 (S.D.N.Y. November 16, 2011) [Docket No. 20].

5. Annexed hereto as **Exhibit D** is a true and correct copy of relevant excerpts of the hearing transcript before the Honorable Denise L. Cote in *In re Federal Housing Finance Agency*, Case No. 11 Civ. 05201 (S.D.N.Y. December 2, 2011).

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[1] Capitalized terms not defined herein shall have the same meanings ascribed to them in the Memo of Law or the FHFA Amended Complaint.

6. Annexed hereto as **Exhibit E** is a true and correct copy of an Order, dated February 6, 2012, of the Honorable Denise L. Cote in *Federal Housing Finance Agency, etc. v. UBS Americas, Inc., et al.*, Case No. 11 Civ. 5201 (S.D.N.Y. February 6, 2012) [Docket No. 55].

7. Annexed hereto as **Exhibit F** is a true and correct copy of an Opinion & Order, dated May 4, 2012, of the Honorable Denise L. Cote in *Federal Housing Finance Agency, etc. v. UBS Americas, Inc., et al.*, Case No. 11 Civ. 5201 (S.D.N.Y. May 4, 2012) [Docket No. 66].

8. Annexed hereto as **Exhibit G** is a true and correct copy of an Order, dated May 15, 2012, of the Honorable Denise L. Cote in *Federal Housing Finance Agency, as Conservator for the Federal Home Loan Mortgage Corporation v. Ally Financial Inc. f/k/a GMAC, LLC et al.*, Case No. 11- Civ. 7010 (S.D.N.Y. May 15, 2012) [Docket No. 99].

9. Annexed hereto as **Exhibit H** is a copy of the Pretrial Scheduling Order, dated June 14, 2012, of the Honorable Denise L. Cote in *Federal Housing Finance Agency, as Conservator for the Federal Home Loan Mortgage Corporation v. Ally Financial Inc. f/k/a GMAC, LLC et al.*, Case No. 11- Civ. 7010 (S.D.N.Y. June 14, 2012) [Docket No. 116].

10. Annexed hereto as **Exhibit I** is a true and correct copy of the Statement of FHFA Director James B. Lockhart, dated September 7, 2008.

11. Annexed hereto as **Exhibit J** is a true and correct copy of relevant excerpts of the November 15, 2011 U.S. Dept. of Treasury Agency Financial Report, Fiscal Year 2011.

12. Annexed hereto as **Exhibit K** is a true and correct copy of relevant excerpts of Freddie Mac's Form 10-Q for the quarter ended March 31, 2012.

13. Excerpts from the deposition testimony of James M. Whitlinger, dated June 8, 2012 will be filed under separate cover.

A. The FHFA Amended Complaint[2]

14. On September 2, 2011, FHFA, in its capacity as conservator for Freddie Mac, commenced the action styled *Federal Housing Finance Agency, as Conservator for the Federal Home Loan Mortgage Corporation v. Ally Financial Inc. f/k/a GMAC, LLC et al.* in the Supreme Court of the State of New York, County of New York. The action was then removed to the United States District Court for the Southern District of New York (the "District Court") where it is pending before Judge Cote as Case No. 11 Civ. 7010 (the "FHFA Case").

15. FHFA's amended complaint in the FHFA Case (the "FHFA Amended Complaint") filed on June 13, 2012, names 10 defendants (collectively, the "FHFA Litigation Defendants"), consisting of: (1) Ally Financial, Inc. f/k/a GMAC, LLC ("AFI"), GMAC Mortgage Group, Inc. ("GMACM") and Ally Securities, LLC f/k/a Residential Funding Securities, LLC d/b/a GMAC RFC Securities ("Ally Securities" and collectively with AFI and GMACM, the "Affiliate Defendants") and (2) seven underwriters that are neither Debtors nor affiliates of the Debtors (collectively, the "Non-Affiliate Defendants"). The Debtors are not named as defendants in the FHFA Amended Complaint. *See* Exhibit A at ¶¶ 14-28.

16. The FHFA Amended Complaint contains seven claims against the FHFA Litigation Defendants arising from false and misleading statements and omissions in the registrations statements, prospectuses and other offering materials relating to $6 billion of residential mortgage-backed securities ("RMBS" or "Certificates") purchased by Freddie Mac from 21 securitization trusts between September 23, 2005 and May 30, 2007. The FHFA Amended Complaint alleges, among other things, that the documents related to the Certificates misrepresented that the underlying mortgage loans complied with certain underwriting guidelines

[2] Nothing herein is intended to, nor does, amend, modify, alter or supersede the allegations or claims in the FHFA Amended Complaint. The following is a summary of the allegations and claims. FHFA respectfully directs the Court to the FHFA Amended Complaint for a full recitation of the facts and claims.

and standards and presented a false picture of the characteristics and riskiness of those loans. *See* Exhibit A at ¶¶ 1 - 11.

17. The FHFA Amended Complaint seeks as against all FHFA Litigation Defendants, jointly and severally, an award of (1) rescission and recovery of the consideration paid for the Certificates, with interest, (2) Freddie Mac's monetary losses, (3) punitive damages, (4) attorney's fees and costs and (5) prejudgment interest. *See* Exhibit A at Prayer for Relief.

18. The FHFA Amended Complaint asserts five claims against Ally Securities for violations of section 11 and section 12(a)(2) of the Securities Act of 1933, two violations of the Virginia Securities Act, and common law fraud (collectively the "A/S Claims"). Ally Securities is an SEC-registered broker-dealer that acted as an underwriter for 11 of the securitizations underlying the FHFA Amended Complaint; for five securitizations it was also the co-lead and selling underwriter. *See* Exhibit A at ¶¶ 277 - 359.

19. The A/S Claims are asserted against Ally Securities because of its independent role as an underwriter for the Certificates. *See e.g.* Exhibit A at ¶ 280 (First Claim For Relief) ("The Underwriter Defendants[3] acted as underwriters in connection with the sale of the Certificates for each of the 21 Securitizations . . ."); *Id.* at ¶ 290 (Second Claim for Relief) ("The Underwriter Defendants offered, promoted, and/or sold the Certificates publicly, including selling to Freddie Mac their Certificates . . ."); *Id.* at ¶ 317 (Fourth Claim For Relief) ("The Underwriter Defendants offered the Certificates publicly, including selling to Freddie Mac the Certificates . . ."); *Id.* at ¶ 344 (Sixth Claim For Relief) ("[T]he Fraud Defendants'[4]

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[3] The FHFA Amended Complaint provides that "Defendants Barclays, Citi, Credit Suisse, Goldman, JPMSI, RBS, and UBS are referred to together herein as the 'Non-Ally Defendants,' and together with Ally Securities as the 'Underwriter Defendants." (¶ 28.)

[4] The FHFA Amended Complaint defines "Fraud Defendants" as "Ally Securities, JPMSI and Goldman." (¶ 178.)

representations falsely and misleadingly misrepresented and omitted material statements of fact.").

20. The FHFA Amended Complaint contains three claims against GMACM and Ally Financial. Two claims allege control person liability against GMACM and Ally Financial under section 15 of the Securities Act of 1933 and the Virginia Securities Act (the "Control Person Causes of Action"). As to GMACM, those claims allege control person liability for the culpable conduct of the Debtors. As to Ally Financial, however, the control person claims also allege secondary liability for the culpable conduct of non-debtor Ally Securities. *See* Exhibit A at ¶¶ 309, 337. The third claim against GMACM and Ally Financial is for aiding and abetting fraud committed by Ally Securities, JPMSI and Goldman Sachs. (*See Id.* ¶ 352).

B. The District Court Proceedings

21. The FHFA Case is one of 18 similar securities actions brought by FHFA, 16 cases are in New York. The 16 cases have been assigned to Judge Cote. In November 2011, to help coordinate the various cases and avoid unnecessary duplication, Judge Cote issued an Order staying all cases, but permitted the defendants in one focus case, *FHFA v. UBS Americas, Inc.*, to move for dismissal. *See* Exhibit C. Judge Cote indicated that once the UBS motion to dismiss was decided, the Court would lift the stay of discovery in all cases. *See* Exhibit D at 40:9-15. However, Judge Cote permitted the defendants to make applications to the Court to maintain the stay in their particular cases. *See* Exhibit E at 5. On May 4, 2012, Judge Cote granted in part and denied in part the motion to dismiss, leaving intact most of the claims against the UBS defendants. *See* Exhibit F. Judge Cote held a scheduling conference on May 14, 2012, at which the Court discussed coordinating litigation schedules for all of the cases. The Debtors filed their Chapter 11 petition on the same day. During the May 14, 2012 conference, Judge Cote

addressed the Debtors' bankruptcy filing, stating as follows:

> unless I hear a good reason otherwise, that obviously the automatic bankruptcy stay affects [the FHFA Case] insofar as it affects the parties *who have filed* for bankruptcy court protection, but that *the remainder of the case go forward*, including against the underwriter defendants.

(Ex. B at 14 (emphasis added).) Nobody in attendance – including counsel to the Debtors and Ally Financial – objected or voiced any concerns with this approach. *See id.*

22. On May 15, 2012, Judge Cote entered a scheduling order applicable to all 16 actions specifically providing that the FHFA Case was stayed as to "any defendant that is subject to the 'automatic stay' codified in section 362 of the Bankruptcy Code, 11 U.S.C. § 362(a)." *See* Exhibit C, at 4. The scheduling order also provided a timeline for discovery in all actions, including the FHFA Case.

23. In a Pretrial Scheduling Order, dated June 14, 2012, which was entered following a conference held on June 13, 2012, Judge Cote further specified additional dates and deadlines for the 16 actions. *See* Exhibit H.

I declare that the following is true and correct to the best of my knowledge, information and belief.

Dated: New York, New York
June 28, 2012

Kanchana Wangkeo Leung

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL HOUSING FINANCE AGENCY, AS CONSERVATOR FOR THE FEDERAL HOME LOAN MORTGAGE CORPORATION,

Plaintiff,

-against-

ALLY FINANCIAL INC., GMAC MORTGAGE GROUP, INC., ALLY SECURITIES, LLC, J.P. MORGAN SECURITIES LLC f/k/a J.P. MORGAN SECURITIES, INC. and as successor-in-interest to BEAR, STEARNS & CO. INC., CREDIT SUISSE SECURITIES (USA) LLC f/k/a CREDIT SUISSE FIRST BOSTON LLC, RBS SECURITIES, INC. f/k/a GREENWICH CAPITAL MARKETS, INC., CITIGROUP GLOBAL MARKETS INC., BARCLAYS CAPITAL INC., UBS SECURITIES LLC, and GOLDMAN, SACHS & CO.,

Defendants.

11 Civ. 7010 (DLC)

AMENDED COMPLAINT

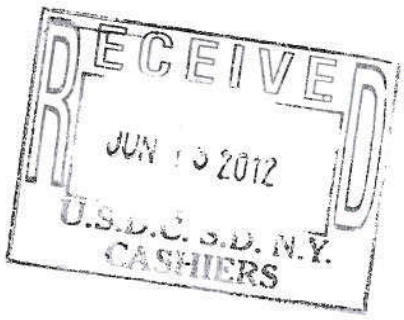


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Plaintiff Federal Housing Finance Agency ("Plaintiff" or "FHFA"), as Conservator of the Federal Home Loan Mortgage Corporation ("Freddie Mac"), by its attorneys Kasowitz, Benson, Torres & Friedman LLP, for its Complaint against the defendants named herein ("Defendants"), alleges as follows:

NATURE OF ACTION

1. This action arises from false and misleading statements and omissions in registration statements, prospectuses, and other offering materials, pursuant to which certain residential mortgage-backed securities ("RMBS") were purchased by Freddie Mac. Among other things, these documents falsely represented that the mortgage loans underlying the RMBS complied with certain underwriting guidelines and standards, and presented a false picture of the characteristics and riskiness of those loans. These representations were material to Freddie Mac, as they would have been to any reasonable investor, and their falsity violates Sections 11, 12(a)(2), and 15 of the Securities Act of 1933, 15 U.S.C. § 77a *et seq.*, as well as Sections 13.1-522(A)(ii) and 13.1-522(C) of the Virginia Code (the "Virginia Securities Act"). Freddie Mac justifiably relied on Defendants' misrepresentations and omissions of material fact to its detriment. In addition to its strict statutory liability under federal securities law and liability under state law, Defendants' statements and omissions give rise to liability under state common law.

2. Between September 23, 2005 and May 30, 2007, Freddie Mac purchased over $6 billion in Certificates issued in connection with 21 securitizations that were virtually all underwritten by Defendants.[1]

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[1] For purposes of this Amended Complaint, the securities issued under the Registration Statements (defined in note 2 and paragraph 3, *infra*) are referred to as "Certificates." Holders of Certificates are referred to as "Certificateholders."

3. The Certificates were offered for sale pursuant to one of six shelf registration statements (the "Shelf Registration Statements") filed with the Securities and Exchange Commission (the "SEC"). For each of the 21 securitizations sold to Freddie Mac (the "Securitizations"), a prospectus ("Prospectus") and prospectus supplement ("Prospectus Supplement," together with the Shelf Registration Statements and Prospectus Supplements, the "Registration Statements") were filed with the SEC as part of the Registration Statement for that Securitization.[2] The Certificates were marketed and sold to Freddie Mac pursuant to the Registration Statements and other offering materials ("Offering Materials").

4. The Offering Materials contained representations concerning, among other things, the characteristics and credit quality of the mortgage loans underlying the Securitizations, the creditworthiness of the borrowers on those underlying mortgage loans, and the origination and underwriting practices used to make and approve the loans. Such representations were material to a reasonable investor's decision to invest in the Certificates, and they were material to Freddie Mac. Unbeknownst to Freddie Mac, those representations were materially false because, among other reasons, many of the underlying mortgage loans were not originated in accordance with the represented underwriting standards and origination practices, and did not have the credit quality and other characteristics set forth in the Offering Materials.

5. Among other things, the Offering Materials presented the loan origination guidelines of the mortgage loan originators who originated the loans that underlie the Certificates. The Offering Materials falsely represented that those guidelines were adhered to

[2] The term "Registration Statement" as used herein, and in Appendix A attached hereto, incorporates the Shelf Registration Statement, the Prospectus, and the Prospectus Supplement for each referenced Securitization, except where otherwise indicated.

except in specified circumstances, when in fact the guidelines systematically were disregarded in that the loans were not originated in accordance with those guidelines.

6. An initial forensic review of loan origination files has revealed that the vast majority of loans reviewed did not adhere to the originator's underwriting guidelines as represented in the Offering Materials. A material discrepancy from underwriting guidelines is very serious, and means that the loan should never have been included in the Securitizations. For example, the loan application may: (i) lack key documentation necessary to properly underwrite the loan; (ii) include an invalid, incomplete, or unsupported appraisal; (iii) evidence the underwriter's failure to confirm the reasonableness of the borrower's stated income; or (iv) reflect that the borrower's income, FICO score, debt, debt-to-income ratio ("DTI"), or loan-to-value ratio ("LTV") are outside of the range permitted under the guidelines. Adherence to underwriting guidelines, particularly on such key criteria bearing on loan eligibility, is a material consideration to reasonable investors.

7. The Offering Materials also set forth for each Securitization statistical summaries of the characteristics of the underlying mortgage loans, such as the percentage of loans secured by owner-occupied properties and the percentage of the loan group's aggregate principal balance with loan-to-value ratios within specified ranges. This information was material to reasonable investors, and it was material to Freddie Mac. However, a loan-level analysis of a sample of loans for each Securitization -- a review that encompassed in the aggregate thousands of mortgages across all of the Securitizations -- has revealed that for each Securitization these statistical summaries were false and misleading. The statistics reflected or were based upon misrepresentations of other key characteristics of the mortgage loans and inflated property values.

8. For example, the percentage of owner-occupied properties in the loan pool underlying a RMBS is a material risk factor to the purchasers of certificates, such as Freddie Mac, because a borrower who actually lives in a mortgaged property is generally less likely to stop paying the mortgage and more likely to take care of the property. The loan-level review revealed that the true percentage of owner-occupied properties for the loans supporting the Certificates was materially lower than that represented in the Offering Materials. Likewise, the Offering Materials misrepresented such material information as loan-to-value ratios -- that is, the relationship between the principal amount of the loans and the true value of the mortgaged properties securing those loans -- and the ability of the individual mortgage holders to satisfy their debts.

9. The Offering Materials also set forth ratings for each of the Securitizations. Those AAA ratings were material to a reasonable investor's decision to purchase the Certificates, and they were material to Freddie Mac. The ratings for the Securitizations were based upon false information supplied by Defendants and were materially misleading with respect to the credit quality of the Certificates. Upon information and belief, neither the Defendants nor the rating agencies that issued the ratings believed or had any sound basis to believe in their truthfulness.

10. Defendants, who are underwriters and/or controlled the issuers and sponsors of the Certificates purchased by Freddie Mac are liable for the misstatements and omissions of material fact contained in the Registration Statements and other Offering Materials because they prepared, filed, and/or used these documents to market and sell the Certificates to Freddie Mac, or because they directed and controlled the entities that did so.[3]

[3] The Certificates purchased by Freddie Mac are identified below in paragraph 46 and are listed *infra* in Table 10.

11. Defendants' misstatements and omissions of material facts have caused loss and injury to Freddie Mac. Freddie Mac purchased the highest rated tranches of Certificates offered for sale by Defendants. Freddie Mac would not have purchased these Certificates but for Defendants' material misrepresentations and omissions concerning the mortgage loans underlying the RMBS. As the truth concerning the misrepresented and omitted facts has come to light, and as the hidden risks have materialized, the market value of the Certificates purchased by Freddie Mac has declined. Freddie Mac has suffered enormous financial losses as a result of Defendants' misrepresentations and omissions. FHFA, as Conservator for Freddie Mac, now seeks rescission and damages for those losses.

PARTIES

Plaintiff and Freddie Mac

12. Plaintiff, the Federal Housing Finance Agency, is a federal agency located at 400 7th Street, S.W. in Washington, D.C. FHFA was created on July 30, 2008, pursuant to the Housing and Economic Recovery Act of 2008, Pub L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4617 *et seq.* ("HERA"), to oversee the Federal National Mortgage Association ("Fannie Mae"), Freddie Mac and the Federal Home Loan Banks. On September 6, 2008, the Director of FHFA, also pursuant to HERA, placed Freddie Mac into conservatorship and appointed FHFA as Conservator. In that capacity, FHFA has the authority to exercise all rights and remedies of Freddie Mac, including, but not limited to, the authority to bring suits on behalf of and/or for the benefit of Freddie Mac. 12 U.S.C. § 4617(b)(2).

13. Freddie Mac is a government-sponsored enterprise chartered by Congress with a mission to provide liquidity, stability and affordability to the United States housing and mortgage markets. As part of this mission, Freddie Mac invested in RMBS. Freddie Mac is located at 8200 Jones Branch Drive in McLean, Virginia.

Defendants

Ally Defendants

14. Defendant Ally Financial Inc. ("Ally Financial"), a leading, multi-national financial services firm with a corporate center in New York, has approximately $179 billion of assets and operations in approximately 25 countries. Ally is the parent and sole owner of Defendants GMAC Mortgage Group, Inc. and Ally Securities, LLC (formerly known as Residential Funding Securities, LLC). Prior to 2010, Ally Financial was known as GMAC, LLC.

15. Defendant GMAC Mortgage Group, Inc. ("GMACM") is a wholly-owned subsidiary and the mortgage arm of Ally. GMACM is a Delaware corporation with its principal place of business at 1100 Virginia Drive, Fort Washington, Pennsylvania 19034. GMACM transacted business in New York.

16. Defendant Ally Securities, LLC is an SEC-registered broker-dealer and is registered to do business in New York. Prior to August 1, 2011, Ally Securities, LLC was known as Residential Funding Securities, LLC, which was doing business as GMAC RFC Securities, and prior to 2007, Residential Funding Securities, LLC was known as Residential Funding Securities Corporation (collectively, "Ally Securities"). Ally Securities is a wholly-owned subsidiary of Ally Financial, and was registered to do business in New York. Ally Securities was the co-lead underwriter for five of the Securitizations and was an underwriter for an additional six of the Securitizations. Freddie Mac purchased Certificates from five of the Securitizations from Ally Securities in its capacity as co-lead underwriter of those Securitizations.

17. Defendants Ally Financial, GMACM and Ally Securities are referred to together herein as "Ally."

Non-Ally Defendants

18. Defendant Barclays Capital Inc. ("Barclays") is a Connecticut corporation with its principal place of business located at 200 Park Avenue, New York, New York 10166. Barclays is an SEC-registered broker-dealer and served as underwriter or co-underwriter for one Securitization.

19. Defendant Citigroup Global Markets Inc. ("Citi") is an SEC-registered broker-dealer. Citi is a corporation organized and existing under the laws of the State of New York with its principal place of business located at 388 Greenwich Street, New York, New York 10013. Citi served as underwriter or co-underwriter for one Securitization.

20. Defendant Credit Suisse Securities (USA) LLC ("Credit Suisse") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 11 Madison Avenue, New York, New York 10010. Prior to January 16, 2006, Credit Suisse was known as Credit Suisse First Boston LLC. Credit Suisse is an SEC-registered broker-dealer, and was the co-lead underwriter for four of the Securitizations. Credit Suisse was co-underwriter for three of the Securitizations.

21. Defendant Goldman, Sachs & Co. ("Goldman") is a corporation organized and existing under the laws of the State of New York with its principal place of business located at 200 West Street, New York, New York 10282. Goldman is an SEC-registered broker-dealer and served as underwriter or co-underwriter for one Securitization.

22. Defendant J.P. Morgan Securities, LLC, formerly known as J.P. Morgan Securities, Inc. ("JPMSI"), is a limited liability company organized and existing under the laws of Delaware with its principal place of business located at 277 Park Avenue, New York, New York 10172. JPMSI is an SEC-registered broker-dealer and was underwriter or co-lead underwriter for four of the Securitizations.

23. JPMSI is also the successor-in-interest to Bear, Stearns & Co., Inc. ("Bear Stearns") because on March 16, 2008, Bear Stearns' parent company, Bear Stearns Companies, Inc. ("BSCI"), entered into an Agreement and Plan of Merger (the "Merger") with Bear Stearns Merger Corporation, a wholly-owned subsidiary of JPMorgan Chase & Co. ("JPMorgan Chase"), making Bear Stearns a wholly-owned, indirect subsidiary of JPMorgan Chase. Following the Merger, on or about October 1, 2008, Bear Stearns merged with J.P. Morgan Securities Inc., a subsidiary of JPMorgan Chase, which subsequently changed its name to J.P. Morgan Securities LLC. Thus, BSCI is now doing business as Defendant JPMSI.

24. In a June 30, 2008 press release describing internal restructuring to be undertaken pursuant to the Merger, JPMorgan Chase stated its intent to assume Bear Stearns and its debts, liabilities, and obligations as follows:

> Following completion of this transaction, Bear Stearns plans to transfer its broker-dealer subsidiary Bear, Stearns & Co. Inc. to JPMorgan Chase, resulting in a transfer of substantially all of Bear Stearns' assets to JPMorgan Chase. In connection with such transfer, JPMorgan Chase will assume (1) all of Bear Stearns' then-outstanding registered U.S. debt securities; (2) Bear Stearns' obligations relating to trust preferred securities; (3) Bear Stearns' then-outstanding foreign debt securities; and (4) Bear Stearns' guarantees of then-outstanding foreign debt securities issued by subsidiaries of Bear Stearns, in each case, in accordance with the agreements and indentures governing these securities.

(Press Release, JPMorgan Chase & Co., JPMorgan Chase Announces Internal Restructuring Transactions and Guarantees Related to Bear Stearns Acquisition (June 30, 2008), *available at* http://www.sec.gov/Archives/edgar/data/19617/000089882208000717/pressrelease.htm.) Further, the former Bear Stearns website, www.bearstearns.com, redirects Bear Stearns visitors to JPMSI's website.

25. JPMSI was fully aware of the pending and potential claims against Bear Stearns when it consummated the merger. JPMSI has further evinced its intent to assume Bear Stearns'

liabilities by paying to defend and settle lawsuits against Bear Stearns. JPMSI announced its intention to "convert to a limited liability company, effective September 1, 2010," as part of which it changed its name to J.P. Morgan Securities LLC. As a result of the Merger, Defendant JPMSI is the successor-in-interest to Bear Stearns and is jointly and severally liable for the misstatements and omissions of material fact alleged herein of Bear Stearns. This action is brought against JPMSI as successor-in-interest to Bear Stearns. Prior to acquisition, Bear Stearns was an SEC-registered broker-dealer and served as an underwriter for one Securitization.

26. Defendant RBS Securities, Inc., doing business as RBS Greenwich Capital ("RBS"), is an SEC-registered broker-dealer incorporated in the State of Delaware with offices located at 101 Park Avenue, New York, New York 10178. Prior to April 2009, RBS was known as Greenwich Capital Markets, Inc. RBS served as underwriter or co-underwriter for two of the Securitizations.

27. Defendant UBS Securities LLC ("UBS") is a Delaware limited liability company with its principal place of business located at 677 Washington Boulevard, Stamford, Connecticut 06901. UBS transacts business in New York. UBS is an SEC-registered broker-dealer and served as underwriter or co-underwriter for one Securitization.

28. Defendants Barclays, Citi, Credit Suisse, Goldman, JPMSI, RBS, and UBS are referred to together herein as the "Non-Ally Defendants," and together with Ally Securities as the "Underwriter Defendants."

Non-Party Ally Debtors[4]

29. Residential Capital LLC ("ResCap") is a wholly-owned subsidiary of GMACM and originated, serviced, and securitized mortgage loans. Prior to 2007, ResCap was known as Residential Capital Corporation.

30. GMAC-RFC Holding Company, LLC, doing business as GMAC Residential Funding Corporation ("GMAC-RFC"), is a wholly-owned subsidiary of ResCap and acquired residential mortgage loans, which it then pooled and securitized as mortgage-backed securities sold to investors.

31. Residential Funding Company, LLC ("RFC") is a wholly-owned subsidiary of GMAC-RFC. Prior to October 2006, RFC was known as Residential Funding Corporation. RFC was the sponsor of all 21 of the Securitizations. RFC is the parent and sole owner of Homecomings Financials, LLC ("HFN"), and the originator of loans underlying the Certificates for 13 of the 21 Securitizations. Prior to 2006, HFN was known as Homecomings Financials Network, Inc.

32. Residential Asset Mortgage Products, Inc. ("RAMP") is a wholly-owned subsidiary of GMAC-RFC. RAMP was the depositor for five of the Securitizations.

33. Residential Asset Securities Corporation ("RASC") is a wholly-owned subsidiary of GMAC-RFC. RASC was the depositor for 10 of the Securitizations.

34. Residential Accredit Loans, Inc. ("RALI") is a wholly-owned subsidiary of GMAC-RFC. RALI was the depositor for six of the Securitizations and transacted business in New York. RALI, as depositor, was also responsible for registering the Certificates with the

[4] The non-party Ally Debtors have filed for Chapter 11 bankruptcy protection and are subject to an automatic stay. But for the automatic stay, plaintiff would have reasserted its claims against each of the Ally Debtors.

SEC and preparing and filing reports required under the Securities Exchange Act of 1934. ResCap, GMAC-RFC, RFC, RAMP, RASC, RALI are referred to together herein as the "Ally Debtors."

Non-Party Originators

35. The loans underlying the Certificates were acquired by the sponsor RFC for each Securitization from the following mortgage originators: HFN; Aegis Mortgage Corporation ("Aegis"); Decision One Mortgage Company, LLC ("Decision One"); EFC Holdings Corporation ("EFC Holdings") and its subsidiary EquiFirst Corporation ("EquiFirst"); Finance America, LLC ("Finance America"); First National Bank of Nevada ("FNB Nevada"); Home123 Corporation ("Home123"); Homefield Financial Inc. ("Homefield Financial"); Mortgage Lenders Network USA, Inc. ("MLN"); New Century Mortgage Corporation ("New Century"); Ownit Mortgage Solutions Inc. ("Ownit"); People's Choice Home Loan, Inc. ("People's Choice"); Pinnacle Financial Corporation ("Pinnacle"); and SCME Mortgage Bankers, Inc ("SCME"). HFN -- a subsidiary of Defendant Ally and an affiliate of Defendant RFC -- originated loans underlying the Certificates for 13 of the 21 Securitizations. Together, the entities identified in this paragraph are referred to as the "Non-Party Originators."

JURISDICTION AND VENUE

36. Jurisdiction of this Court is founded upon 28 U.S.C. § 1345, which gives federal courts original jurisdiction over claims brought by FHFA in its capacity as conservator of Freddie Mac.

37. Jurisdiction of this Court is also founded upon 28 U.S.C. § 1331 because the Securities Act claims asserted herein arise under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933, 15 U.S.C. §§ 77k, 77l(a)(2), 77(o). This Court further has jurisdiction over the Securities Act claims pursuant to Section 22 of the Securities Act of 1933, 15 U.S.C. § 77v.

38. This Court has jurisdiction over Plaintiff's common law claims and claims of violations of Sections 13.1-522(A)(ii) and 13.1-522(C) of the Virginia Code, pursuant to this Court's supplemental jurisdiction under 28 U.S.C. §1367(a).

39. Venue is proper in this district pursuant to Section 22 of the Securities Act of 1933, 15 U.S.C. § 77v, and 28 U.S.C. §1391(b). Defendants are principally located in this district, and many of the acts and transactions alleged herein, including the preparation and dissemination of the Registration Statements, occurred in substantial part within this district. Additionally, the Certificates were actively marketed and sold from this district. Defendants also are subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

I. FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

40. The factual allegations set forth in paragraphs 41 through 176 below are made with respect to all causes of action against Defendants and are sufficient to establish Defendants' strict statutory liability under the federal Securities Act of 1933 and the Virginia Securities Act. With respect to such liability, no allegations are made or intended, and none are necessary, concerning Defendants' state of mind. Defendants are strictly liable, without regard to intent on their part or reliance on Freddie Mac's part, for the misstatements in, and material omissions from, the Registration Statements under Sections 11 and 12 and, for control person defendants, under Section 15, of the Securities Act of 1933, and Sections 13.1-522(A)(ii) and 13.1-522(C) of the Virginia Code.

A. The Securitizations

1. Residential Mortgage-Backed Securitizations Generally

41. Asset-backed securitization involves pooling cash-producing financial assets and issuing securities backed by those pools of assets. In residential mortgage-backed securitizations, the cash-producing financial assets are residential mortgage loans.

42. In the most common form of securitization of mortgage loans, a sponsor -- the entity that acquires or originates the mortgage loans and initiates the securitization -- directly or indirectly transfers a portfolio of mortgage loans to a trust. In many instances, the transfer of assets to the trust is a two-step process in which the sponsor first transfers the financial assets to an intermediate entity, typically referred to as a "depositor," and then the depositor transfers the assets to a trust. The trust is established pursuant to a pooling and servicing agreement or trust indenture entered into by, among others, the depositor for that securitization.

43. RMBS are the securities backed by the underlying mortgage loans in the trust. Some residential mortgage-backed securitizations are created from more than one cohort of loans, called collateral groups, in which case the trust issues different tranches of securities backed by different groups of loans. For example, a securitization may involve two groups of mortgages, with some securities backed primarily by the first group, and others primarily by the second group. Purchasers of the securities (in the form of certificates) acquire an ownership interest in the assets of the trust, which in turn owns the loans. These purchasers are thus primarily dependent for repayment of principal and payment of interest upon the cash flows from the designated group of mortgage loans -- primarily mortgagors' payments of principal and interest on the mortgage loans held by the related trust.

44. RMBS are generally issued and sold pursuant to registration statements filed with the SEC. These registration statements include prospectuses, which describe the general

structure of the investment, and prospectus supplements, which set forth detailed descriptions of, among other things, the mortgage groups underlying the certificates. Certificates are issued by the trust and sold pursuant to the registration statement, the prospectus and prospectus supplement. Underwriters purchase the certificates from the trust and then offer, sell or distribute the certificates to investors.

45. A mortgage servicer manages the collection of proceeds from the mortgage loans. The servicer is responsible for collecting homeowners' mortgage loan payments, which the servicer remits to the trustee after deducting a monthly servicing fee. The servicer's duties include making collection efforts on delinquent loans, initiating foreclosure proceedings, and determining when to charge off a loan by writing down its balance. The servicer is required to report key information about the loans to the trustee. The trustee (or trust administrator) administers the trust funds and delivers payments due each month on the certificates to the investors.

2. Securitizations at Issue in this Case

46. This case involves the following 21 Securitizations:

i. RASC Series 2005-EMX3 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2005-EMX3 ("RASC 2005-EMX3");

ii. RASC Series 2005-KS10 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2005-KS10 ("RASC 2005-KS10");

iii. RASC Series 2005-KS11 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2005-KS11 ("RASC 2005-KS11");

iv. RASC Series 2006-EMX8 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2006-EMX8 ("RASC 2006-EMX8");

v. RASC Series 2006-EMX9 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2006-EMX9 ("RASC 2006-EMX9");

vi. RASC Series 2006-KS3 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2006-KS3 ("RASC 2006-KS3");

vii. RASC Series 2006-KS9 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2006-KS9 ("RASC 2006-KS9");

viii. RASC Series 2007-EMX1 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2007-EMX1 ("RASC 2007-EMX1");

ix. RASC Series 2007-KS2 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2007-KS2 ("RASC 2007-KS2");

x. RASC Series 2007-KS3 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2007-KS3 ("RASC 2007-KS3");

xi. RAMP Series 2005-EFC6 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2005-EFC6 ("RAMP 2005-EFC6");

xii. RAMP Series 2005-EFC7 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2005-EFC7 ("RAMP 2005-EFC7");

xiii. RAMP Series 2005-NC1 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2005-NC1 ("RAMP 2005-NC1");

xiv. RAMP Series 2005-RS9 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2005-RS9 ("RAMP 2005-RS9");

xv. RAMP Series 2006-RS1 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2006-RS1 ("RAMP 2006-RS1");

xvi. RALI Series 2005-QO4 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2005-QO4 ("RALI 2005-QO4");

xvii. RALI Series 2006-QO4 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO4 ("RALI 2006-QO4");

xviii. RALI Series 2006-QO5 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO5 ("RALI 2006-QO5");

xix. RALI Series 2006-QO8 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO8 ("RALI 2006-QO8");

xx. RALI Series 2007-QO9 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO9 ("RALI 2007-QO9"); and

xxi. RALI Series 2007-QH5 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QH5 ("RALI 2007-QH5").

47. For each of the 21 Securitizations, Table 1 identifies the: (1) sponsor; (2) depositor; (3) underwriter(s); (4) principal amount issued for the tranches[5] purchased by Freddie Mac; (5) date of issuance; and (6) the loan group or groups backing the Certificate for that Securitization (referred to as the "Supporting Loan Groups").

Table 1

Transaction	Tranche	Sponsor	Depositor	Underwriters	Principal Amount Issued ($)	Date of Issuance	Supporting Loan Groups
RALI 2005-QO4	IA1	RFC	RALI	RBS	143,428,800.00	11/29/05	Group I
RALI 2006-QO4	IA1	RFC	RALI	RBS	327,356,000.00	04/27/06	Group I
RALI 2006-QO4	IA2	RFC	RALI	RBS	81,838,000.00	04/27/06	Group I
RALI 2006-QO5	IA1	RFC	RALI	UBS	179,443,000.00	05/30/06	Group I
RALI 2006-QO8	IIA	RFC	RALI	Lehman Brothers	409,198,000.00	10/30/06	Group II
RALI 2006-QO9	IIA	RFC	RALI	Lehman Brothers	284,637,000.00	11/29/06	Group II
RALI 2007-QH5	AII	RFC	RALI	Goldman Ally Securities	143,007,000.00	05/30/07	Group II
RAMP 2005-EFC6	AII	RFC	RAMP	JPMSI Ally Securities	163,581,000.00	11/22/05	Group II
RAMP 2005-EFC7	AII	RFC	RAMP	Ally Securities Barclays	199,376,000.00	12/28/05	Group II
RAMP 2005-NC1	AII	RFC	RAMP	Ally Securities Credit Suisse	405,004,000.00	12/28/05	Group II
RAMP 2005-RS9	AII	RFC	RAMP	Bear Credit Suisse Ally Securities RBS	494,922,000.00	11/29/05	Group II

[5] A tranche is one of the classes of debt securities issued as part of a single bond or instrument. Securities are often issued in tranches to meet different investor objectives for portfolio diversification. Freddie Mac purchased two tranches of Certificates from the RALI 2006-Q04 Securitization, which is why the tables herein have 22 entries for 21 Securitizations.

Transaction	Tranche	Sponsor	Depositor	Underwriters	Principal Amount Issued ($)	Date of Issuance	Supporting Loan Groups
RAMP 2006-RS1	AII	RFC	RAMP	Ally Securities Credit Suisse RBS BOA	409,790,000.00	01/25/06	Group II
RASC 2005-EMX3	AII	RFC	RASC	Ally Securities Credit Suisse	267,481,000.00	09/23/05	Group II
RASC 2005-KS10	AII	RFC	RASC	JPMSI Ally Securities BOA	495,741,000.00	10/28/05	Group II
RASC 2005-KS11	AII	RFC	RASC	Credit Suisse Ally Securities RBS	547,641,000.00	11/29/05	Group II
RASC 2006-EMX8	AII	RFC	RASC	Ally Securities Barclays	236,806,000.00	09/28/06	Group II
RASC 2006-EMX9	AII	RFC	RASC	Barclays Ally Securities	197,896,000.00	10/27/06	Group II
RASC 2006-KS3	AII	RFC	RASC	Citi	232,006,000.00	03/29/06	Group II
RASC 2006-KS9	AII	RFC	RASC	Barclays	153,311,000.00	10/27/06	Group II
RASC 2007-EMX1	AII	RFC	RASC	Ally Securities Credit Suisse	326,812,000.00	03/12/07	Group II
RASC 2007-KS2	AII	RFC	RASC	JPMSI	164,400,000.00	02/23/07	Group II
RASC 2007-KS3	AII	RFC	RASC	JPMSI BOA Ally Securities	167,618,000.00	03/29/07	Group II

3. Securitization Process

a. The Sponsors Grouped Mortgage Loans in Special-Purpose Trusts

48. In each case, the sponsor purchased the mortgage loans underlying the Certificates either directly from the originators or through affiliates of the originators. RFC sponsored all 21 Securitizations at issue here.

49. RFC (the "Ally Sponsor"), as sponsor, then sold the acquired mortgage loans to one of three depositors, all of which are RFC-affiliated entities: RALI, RAMP and RASC (the "Ally Depositors").

50. The Ally Depositors were wholly-owned, limited-purpose financial subsidiaries of GMAC-RFC and affiliates of RFC. The sole purpose of the Ally Depositors as depositors was to act as a conduit through which loans acquired by the sponsor could be securitized and sold to investors.

51. As depositors for all 21 of the Securitizations, the Ally Depositors ostensibly transferred the relevant mortgage loans to the respective trusts for each of those Securitizations.

52. As part of each Securitization, the trustee for that Securitization, on behalf of the Certificateholders, executed a Pooling and Servicing Agreement ("PSA") with the relevant depositor and the relevant servicer. In each case, the trust, administered by the trustee, was required to hold the mortgage loans, pursuant to the related PSA, and issued certificates, including the Certificates. The Certificates were purchased, directly or indirectly, by the Underwriter Defendants. Freddie Mac purchased from the Underwriter Defendants the Certificates, through which it obtained an ownership interest in the assets of the trust, including the mortgage loans.

b. The Trusts Issued Securities Backed by the Loans

53. Once the mortgage loans were transferred to the trusts in accordance with the PSAs, each trust issued Certificates backed by the underlying mortgage loans. The Certificates were then sold to investors, including Freddie Mac. Each Certificate entitles its holder to a specified portion of the cash flows from the underlying mortgages in the supporting loan group for that Certificate. Therefore, the value of the Certificates, derived in part from the likelihood of payment of principal and interest on the Securitizations, depends upon the credit quality of the underlying mortgages, *i.e.*, the risk of default by borrowers and the recovery value upon default of foreclosed-upon properties.

54. The Certificates purchased by Freddie Mac were issued and sold pursuant to Shelf Registration Statements filed with the SEC on a Form S-3.[6] The Shelf Registration Statements ("S-3") were amended by one or more Form S-3/A (the "Amendments" or "S-3/A") filed with the SEC. Corporate officers and/or directors signed the six Shelf Registration Statements (and amendments thereto) that were filed, in each case, by RALI, RAMP or RASC. The SEC filing number, registrants, signatories, and filing dates for all six Shelf Registration Statements with Amendments, as well as the Certificates purchased by Freddie Mac covered by each Shelf Registration Statement, are reflected in Table 2 below.

Table 2

SEC File No.	Date S-3 Filed	Date(s) S-3/A(s) Filed	Registrants	Covered Certificates	Signatories of S-3	Signatories of S-3/A(s)[7]
333-125485	06/03/05	07/07/05	RAMP	RAMP 2005-EFC6 RAMP 2005-EFC7 RAMP 2005-NC1 RAMP 2005-RS9 RAMP 2006-RS1	Bruce Paradis Kenneth Duncan Ralph Flees David Walker	Bruce Paradis Kenneth Duncan Ralph Flees David Walker Diane Wold
333-122688	02/10/05	04/19/05	RASC	RASC 2005-EMX3 RASC 2005-KS10 RASC 2005-KS11 RASC 2006-KS3	Bruce Paradis Davee Olson Ralph Flees David Walker	Bruce Paradis Davee Olson Jack Katzmark David Walker Lisa Lundsten
333-126732	07/20/05	08/09/05	RALI	RALI 2005-QO4	Bruce Paradis Kenneth Duncan Ralph Flees David Walker	Bruce Paradis Kenneth Duncan Ralph Flees David Walker Lisa Lundsten

[6] Defendant RALI filed three Shelf Registration Statements that were used to market six of the Securitizations; Defendant RAMP filed one Shelf Registration Statement that was used to market five of the Securitizations; and Defendant RASC filed two Registration Statements that were used to market 10 of the Securitizations.

[7] Some corporate officers and/or directors signed certain S-3/As through a power of attorney.

SEC File No.	Date S-3 Filed	Date(s) S-3/A(s) Filed	Registrants	Covered Certificates	Signatories of S-3	Signatories of S-3/A(s)[7]
333-131209	01/20/06	02/23/06 03/21/06 03/30/06	RASC	RASC 2006-EMX8 RASC 2006-EMX9 RASC 2006-KS9 RASC 2007-EMX1 RASC 2007-KS2 RASC 2007-KS3	Bruce Paradis Kenneth Duncan Ralph Flees Davee Olson	Bruce Paradis Kenneth Duncan Ralph Flees Davee Olson Lisa Lundsten
333-131213	01/23/06	03/03/06 03/06/06	RALI	RALI 2006-QO4 RALI 2006-QO5 RALI 2006-QO8 RALI 2006-QO9	Bruce Paradis Kenneth Duncan Ralph Flees Davee Olson	Bruce Paradis Kenneth Duncan Ralph Flees Davee Olson Lisa Lundsten
333-140610	02/12/07	04/03/07	RALI	RALI 2007-QH5	David Applegate David M. Bricker Ralph Flees James Young	James Jones David Bricker Ralph Flees James Young Lisa Lundsten

55. The Prospectus Supplement for each Securitization describes the loan underwriting guidelines that purportedly were used in connection with the origination of the underlying mortgage loans. In addition, the Prospectus Supplements purport to provide accurate statistics regarding the mortgage loans in each group, including: the ranges of and weighted average FICO credit scores of the borrowers, the ranges of and weighted average loan-to-value ("LTV") ratios of the loans, the ranges of and weighted average outstanding principal balances of the loans, the debt-to-income ratios of the borrowers, the geographic distribution of the loans, the extent to which the loans were for purchase or refinance purposes, information concerning whether the loans were secured by a property to be used as a primary residence, second home, or investment property, and information concerning whether the loans were delinquent.

56. The Prospectus Supplement for each Securitization was filed with the SEC as part of the Registration Statements. The Forms 8-K attaching the PSAs for each Securitization were also filed with the SEC. The dates on which the Prospectus Supplement and Form 8-K were

filed for each Securitization, as well as the filing number of the Shelf Registration Statement related to each, are set forth in Table 3 below.

Table 3

Transaction	Date Prospectus Supplement Filed	Date Form 8-K Attaching PSA	Filing No. of Related Shelf Registration Statement
RALI 2005-QO4	11/28/2005	12/15/2005	333-126732
RALI 2006-QO4	4/28/2006	5/15/2006	333-131213
RALI 2006-QO5	5/31/2006	6/14/2006	333-131213
RALI 2006-QO8	11/1/2006	11/14/2006	333-131213
RALI 2006-QO9	11/30/2006	12/14/2006	333-131213
RALI 2007-QH5	5/30/2007	6/14/2007	333-140610
RAMP 2005-EFC6	11/21/2005	12/7/2005	333-125485
RAMP 2005-EFC7	12/22/2005	1/13/2006	333-125485
RAMP 2005-NC1	12/27/2005	1/13/2006	333-125485
RAMP 2005-RS9	11/29/2005	12/12/2005	333-125485
RAMP 2006-RS1	1/25/2006	2/9/2006	333-125485
RASC 2005-EMX3	9/23/2005	10/14/2005	333-122688
RASC 2005-KS10	10/28/2005	11/14/2005	333-122688
RASC 2005-KS11	11/28/2005	12/14/2005	333-122688
RASC 2006-EMX8	9/27/2006	10/13/2006	333-131209
RASC 2006-EMX9	10/27/2006	11/13/2006	333-131209
RASC 2006-KS3	3/29/2006	4/13/2006	333-122688
RASC 2006-KS9	10/30/2006	11/13/2006	333-131209
RASC 2007-EMX1	3/9/2007	3/27/2007	333-131209
RASC 2007-KS2	2/23/2007	3/9/2007	333-131209
RASC 2007-KS3	3/28/2007	4/13/2007	333-131209

57. The Certificates were issued pursuant to the PSAs, and the Underwriter Defendants, along with the Ally Depositors, offered and sold the Certificates to Freddie Mac in the primary market pursuant to the Registration Statements, which, as noted previously, included the Prospectuses and Prospectus Supplements.

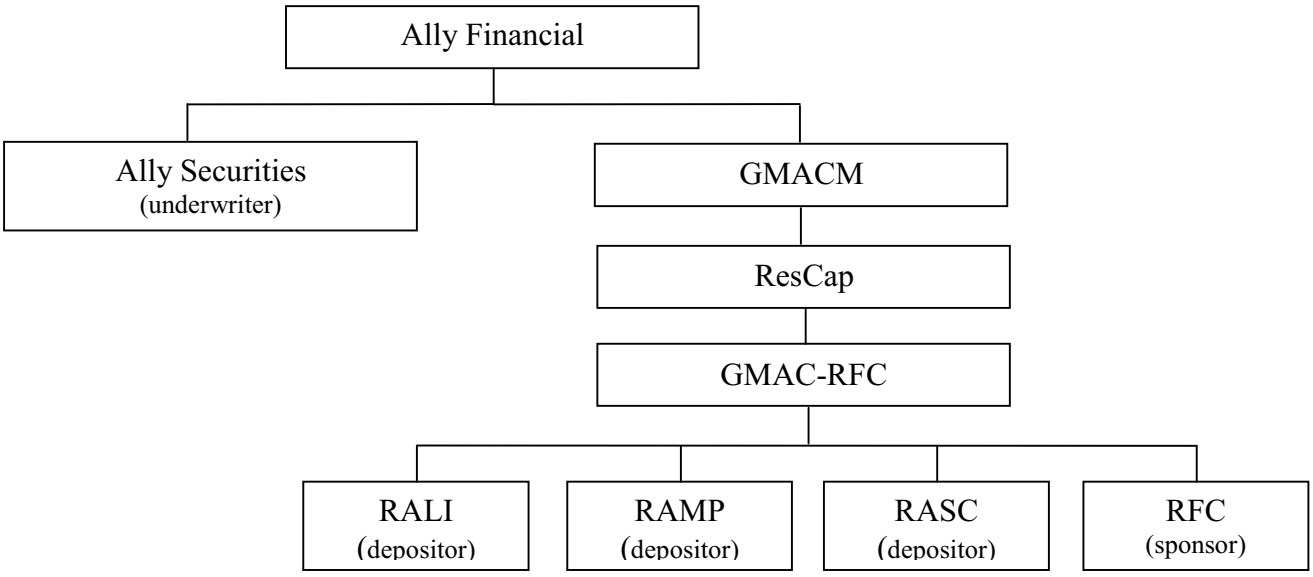
B. Defendants' and the Ally Debtors' Participation in the Securitization Process

58. Each of the Defendants and Ally Debtors played a role in the securitization process and the marketing for some or all of the Certificates purchased by Freddie Mac, which included directly or indirectly purchasing the mortgage loans from the originators, arranging the

Securitizations, selling the mortgage loans to the depositor, ostensibly transferring the mortgage loans to the trustee on behalf of the Certificateholders, underwriting the public offering of the Certificates, structuring and issuing the Certificates, and marketing and selling the Certificates to Freddie Mac.

59. The Defendants are liable, jointly and severally, as participants in the registration, issuance and offering of the Certificates purchased by Freddie Mac, including issuing, causing, or making materially misleading statements in the Registration Statements, and omitting material facts required to be stated therein or necessary to make the statements contained therein not misleading

60. Defendant Ally Financial wholly owns GMACM and Ally Securities and is also the ultimate parent of ResCap, GMAC-RFC, RFC, RALI, RASC and RAMP. The chart below indicates the corporate structure of the relevant Ally entities.



1. The Ally Sponsor: RFC

61. RFC ("Ally Sponsor") was formed in 1985 as a wholly-owned subsidiary of GMAC-RFC for the purpose of issuing mortgage-backed securities through its affiliates, the Ally

Depositors. The Ally Sponsor was a leading sponsor of mortgage-backed securities and was the sponsor of all 21 Securitizations. In that capacity, the Ally Sponsor determined the structure of the Securitizations, initiated the Securitizations, purchased the mortgage loans to be securitized, determined distribution of principal and interest, and provided data to the rating agencies to secure investment grade ratings for the Certificates sold to Freddie Mac. The Ally Sponsor also selected the Ally Depositors as the special-purpose vehicles that would be used ostensibly to transfer the mortgage loans from the Ally Sponsor to the trusts, and selected the Underwriter Defendants for the Securitizations, including its affiliate, Defendant Ally Securities. In its role as sponsor, the Ally Sponsor knew and intended that the mortgage loans it purchased would be sold in connection with the securitization process, and that certificates representing such loans would be issued by the relevant trusts.

62. For all 21 Securitizations that it sponsored, the Ally Sponsor also ostensibly conveyed the mortgage loans to the Ally Depositors, as depositor, pursuant to an Assignment and Recognition Agreement or a Mortgage Loan Purchase Agreement. In these agreements, the Non-Party Originators and Ally Sponsor made certain representations and warranties to the Ally Depositors regarding the mortgage loans collateralizing the Certificates purchased by Freddie Mac. These representations and warranties were assigned by the Ally Depositors to the trustees for the benefit of the Certificateholders, and were described in the Prospectus Supplements.

63. The Ally Sponsor had the practical ability to and in fact exercised direction and control of the Ally Depositors. The Ally Sponsor shared overlapping management with the Ally Depositors. For example, in 2005, David C. Walker served as Director of RFC and Director of RALI, RASC, and RAMP. In 2005, Bruce J. Paradis served as CEO and Director of RFC; Director, President and CEO of RALI and RASC; and President and CEO of RAMP. In 2006,

Mr. Paradis served as President of RFC; Director, President and CEO of RALI and RASC; and President and CEO of RAMP. In 2007, David. M. Bricker served as Director of RFC; Director and CFO of RALI; and CFO of RASC and RAMP. In 2005, Davee L. Olson served as Director of RFC; Director of RAMP; and Director and CFO of RASC. In 2007, James N. Young served as CFO of RFC and Director of RALI, RAMP and RASC. In 2007, James G. Jones served as President and Director of RFC and President, CEO and Director of RALI, RASC, and RAMP. In 2005, Kenneth M. Duncan served as CFO of RFC and RAMP. In 2005, Ralph T. Flees served as Controller of RFC and Controller of RASC and RAMP. In 2007, Mr. Flees served as Controller of RFC and Controller of RALI, RASC and RAMP.

2. The Ally Depositors: RALI, RASC and RAMP

64. RALI, RASC and RAMP have been engaged in the securitization of mortgage loans as depositors since their incorporation in 1995, 1994, and 1999, respectively. They are special-purpose entities formed solely for the purpose of purchasing mortgage loans, filing registration statements with the SEC, forming issuing trusts, assigning mortgage loans and all of their rights and interests in such mortgage loans to the trustee for the benefit of certificateholders, and depositing the underlying mortgage loans into the issuing trusts.

65. RALI was the depositor for six of the 21 Securitizations, RASC was the depositor for 10 Securitizations, and RAMP was the depositor for five Securitizations. In their capacity as depositors, the Ally Depositors purchased the mortgage loans from the Ally Sponsor pursuant to an Assignment and Recognition Agreement or a Mortgage Loan Purchase Agreement. The Ally Depositors then sold, transferred, or otherwise conveyed the mortgage loans to be securitized to the trusts. Together with the Defendants, the Ally Depositors were also responsible for preparing and filing the Registration Statements pursuant to which the Certificates purchased by Freddie Mac were offered for sale. The trusts, in turn, held the mortgage loans for the benefit of the

Certificateholders, and issued the Certificates in public offerings for sale to investors, including Freddie Mac.

3. The Ally Underwriter: Defendant Ally Securities

66. Defendant Ally Securities was formed in 1990 and is a wholly-owned subsidiary of Ally Financial. Defendant Ally Securities is an investment bank, solely operating as a registered broker-dealer with respect to the issuance and underwriting of residential and commercial mortgage-backed securities. At all relevant times, Ally Securities was one of the leading underwriters of mortgage and other asset-backed securities in the United States. According *to Inside Mortgage Finance* in 2004, Ally Securities underwrote over $8.9 billion of non-agency mortgage-backed securities. In 2005, the data shows that Ally Securities underwrote $14.5 billion, and in 2006 and 2007, Ally Securities underwrote $12.4 billion and $10.2 billion in non-agency mortgage-backed securities, respectively.

67. Defendant Ally Securities was the co-lead and selling underwriter for five of the 21 Securitizations and an underwriter for an additional six Securitizations. In that role, it was responsible for underwriting and managing the offer and sale of the Certificates to Freddie Mac and other investors. Ally Securities was also obligated to conduct meaningful due diligence to ensure that the Registration Statements did not contain any material misstatements or omissions, including as to the manner in which the underlying mortgage loans were originated, transferred and underwritten.

4. The Ally Control Persons: Defendants Ally Financial and GMACM

68. As the corporate parent of the underwriter Ally Securities and the ultimate parent of the Ally Sponsor and Ally Depositors, Ally Financial had the practical ability to and in fact exercised direction and control of these subsidiaries in coordinating the securitization process, determining the structure of each offering, and issuing and selling the Certificates purchased by

Freddie Mac. The Securitizations involved Ally at virtually every step in the process, and Ally Financial and GMACM profited substantially from this vertically integrated approach to mortgage-backed securitization.

69. Ally Financial wholly owns and controls GMACM, which owns 100% of ResCap's equity. As discussed *infra*, paragraph 80, GMACM had overlapping management with other Ally entities, and in fact, according to the Ally Debtors, GMACM "does not even have any employees of its own." (*In re Residential Capital, LLC*, Case No. 12-12020 (MG) (S.D.N.Y. Bankr.), 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, at 16.)

70. As stated in ResCap's Form S-4 July 15, 2005 Registration Statement:

> [Ally Financial] control[s] all fundamental matters affecting [ResCap] . . . . [Ally Financial] indirectly owns all of [ResCap's] outstanding common stock and has the power to elect and remove all of [ResCap's] directors, including the two independent directors . . . . [Ally Financial] is also able to approve or reject any action requiring approval of stockholders, including the adoption of amendments to our certificate of incorporation an approval of mergers or sales of all or substantially all of [ResCap's] interests. . . .

(Residential Capital Corp., Registration Statement (Form S-4) ("ResCap Form S-4"), at 23 (July 15, 2005).)

71. Further, Ally Financial supports its subsidiaries financially. In Ally Financial's Form 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the business and liabilities of [Ally Financial] and its subsidiaries." (Ally Fin. Inc., Current Report (Form 8-K) (June 9, 2005), Ex. 99.1, at 37.) In 2008, Ally Financial announced to the market

that it renewed a funding facility with Citibank, which provided "funding of up to $13.8 billion," a portion of which was specifically earmarked for "mortgage assets across the [Ally Financial] and [ResCap] businesses." (Ally Fin. Inc., Current Report (Form 8-K) (Sept. 19, 2008).)

72. The Ally Debtors concede that they would have defaulted on their debt obligations had they not received the financial support of Ally Financial. On March 14, 2012, the Ally Debtors filed for Chapter 11 bankruptcy protection. In support of the Ally Debtors' first day pleadings in Bankruptcy Court, ResCap's Chief Financial Officer, James Whitlinger stated: "Without capital contributions from AFI [Ally Financial], the Debtors would have breached their Consolidated Tangible Net Worth covenant on a number of occasions." (Whitlinger Aff. ¶ 82.) "Capital contributions by AFI totaled approximately $2.7 billion in 2007, $3.3 billion in 2008, and $4.0 billion in 2009." (*Id.* ¶ 82 n.32.)

73. Moreover, Ally Financial publicly reports on its own business and that of its subsidiaries on an integrated basis: "We engage in the origination, purchase, servicing, sale, and securitization of consumer (i.e., residential) mortgage loans and mortgage-related products." (Ally Fin. Inc., 2009 Annual Report (Form 10-K), at 3 (Feb. 26, 2010).) Ally Financial's Form 10-K Annual Report, for the period ending December 31, 2005, states:

- We operate directly and through our subsidiaries and affiliates in which we . . . have equity investments. . . . We originate, purchase, service, sell and securitize residential and commercial mortgage loans and mortgage related products. (*Id.*)

- [W]e utilize asset and mortgage securitizations and sales as a critical component of our diversified funding strategy. (*Id.* at 2.)

- We are a leading real estate finance company with two of our mortgage segments, GMAC Residential and GMAC-RFC, providing residential real estate products and services. Net income from the operations of GMAC Residential and GMAC-RFC together totaled $1,021 million, which accounted for approximately 43% of our net income in 2005. (*Id.* at 20.)

74. More recently, discussing its various mortgage operations as a single enterprise, Ally Financial stated that "[o]ur Origination and Servicing operations is one of the leading originators of conforming and government-insured residential mortgage loans in the United States. We are one of the largest residential mortgage loan servicers in the United States and we provide collateralized lines of credit to other mortgage originators." (Ally Fin. Inc., 2011 Annual Report (Form 10-K), at 4 (Feb. 28, 2012).)

75. Ally Financial's Form 10-K, for the period ending December 2011, states that "ResCap remains heavily dependent on Ally and its affiliates for funding and capital support . . . ." (*Id.* at 18.) Ally Financial established a "Mortgage Repurchase Reserve" to pay for potential liabilities stemming from repurchase demands made on its mortgage-related subsidiaries, and as of the fourth quarter 2011, Ally Financial's Mortgage Repurchase Reserve balance was $825 million. (Ally Fin., Inc. 4Q Earnings Review, dated February 2, 2012, at 16.)

76. In fact, Ally Financial continues to support and control the Ally Debtors in bankruptcy. The Ally Debtors have proposed an ambitious and expedited reorganization of more than 50 entities with more than $15 billion of assets to be effectuated by the end of 2012. The proposed reorganization includes several significant transactions, including transactions between the Ally Debtors and Ally Financial that purportedly are valued in excess of $2.75 billion. The transactions include (i) Ally Financial's stalking horse bid of up to $1.6 billion for a portfolio of mortgage loans and securities owned by the Ally Debtors; (ii) Ally Financial's $150 million debtor-in-possession loan to the Ally Debtors under an amendment to a pre-petition secured loan agreement; and (iii) Ally Financial's agreement to support a plan of reorganization for the Ally Debtors pursuant to which Ally Financial will contribute $750 million in cash and other consideration (that the Ally Debtors allege should be valued in excess of $1 billion) in exchange

for extensive releases including broad non-consensual third-party releases in favor of Ally Financial.

77. In addition, the Ally Debtors recently disclosed that Ally Financial provides various services to the Ally Debtors, which demonstrate the integrated nature of the Ally Debtors' and Ally Financial's businesses. In the bankruptcy proceedings, the Ally Debtors filed a motion for entry of an order authorizing the Ally Debtors to enter into a shared services agreement with Ally Financial for the "*continued* receipt and provision of shared services necessary for the continued operation of the Debtors' businesses," which services include, among other things, financial services, accounting, tax advisory services, risk management, collateral management, facilities management, information technology support, and legal services. (Debtors' Motion for Interim and Final Order Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Residential Capital, LLC to Enter into a Share Services Agreement with Ally Financial Inc. *Nunc Pro Tunc* to the Petition Date for the Continued Receipt and Provision of Shared Services Necessary for the Operation of the Debtors' Business, *In re Residential Capital, LLC, et al.*, 12-12020-mg (S.D.N.Y. Bankr.) (Docket #41) (emphasis added).) With respect to shared legal services, Ally Financial "provides legal advice and counseling, including regarding changes in laws and regulations applicable to ResCap's business" to the Ally Debtors. The Ally Debtors, "[w]here requested by [Ally Financial], provide legal analysis and support as may be necessary or required by [Ally Financial] from time to time, including without limitation, support for the mortgage correspondent, warehouse, and wholesale lending lines." (*Id.*, Ex. B.) Moreover, the Ally Debtors assert: "Given the integrated nature of the Debtor's and [Ally Financial's] businesses, the continuation of these services pursuant to the Agreement is both

warranted and absolutely necessary to avoid any disruption to the Debtors' day-to-day operations." (*Id.* ¶ 7.)

78. ResCap, as the sole corporate parent of GMAC-RFC, had the practical ability to, and in fact, exercised direction and control over the activities of GMAC-RFC and GMAC-RFC's subsidiaries, the Ally Sponsor and Ally Depositors, in connection with the issuance and sale of the Certificates to Freddie Mac. Indeed, ResCap has no operations separate from its investment in its subsidiaries. (ResCap Form S-4 at 29.)

79. As discussed *supra*, GMAC-RFC employed its wholly-owned subsidiaries, the Ally Sponsor and Ally Depositors, in the key steps of the securitization process. Unlike typical arm's length securitizations, the Securitizations involved various Ally subsidiaries and affiliates at virtually each step in the chain.

80. Furthermore, Ally Financial, GMACM, ResCap, and GMAC-RFC shared overlapping management with each other and/or the Ally Depositors. For example, in 2005 Eric A. Feldstein served as Chairman of the Board of Ally Financial, GMACM and ResCap. In 2005, Linda K. Zukauckas served as Vice President and Corporate Comptroller of Ally Financial and Director of ResCap. In 2005, Sanjiv Khattri served as Executive Vice President and CFO of Ally Financial and Director of GMACM and ResCap. In 2005, Bruce Paradis served as Co-CEO and Director for ResCap; CEO and Director for GMAC-RFC; Director, President, and CEO of RALI and RASC; and President and CEO of RAMP. In 2006, Mr. Paradis served as CEO and Director for ResCap; President for GMAC-RFC; Director, President and CEO for RALI and RASC; and President and CEO of RAMP. In 2005, Davee L. Olson served as CFO and Director for ResCap; Director of GMAC-RFC; CFO and Director for RASC; and Director for RAMP. In 2006, Mr. Olson served as CFO and Director for ResCap and as Director for RALI, RAMP, and

RASC. In 2005, Ralph T. Flees served as Controller of GMAC-RFC, RASC and RAMP. In 2007, Mr. Flees served as Controller of GMAC-RFC, RALI, RASC and RAMP. In 2007, James N. Young served as Chief Accounting Officer and Controller for ResCap; and Director for RALI, RASC, and RAMP. In 2007, James G. Jones served as President, CEO and Director for ResCap, Director of GMAC-RFC, and President, CEO and Director for RALI, RASC, and RAMP.

81. Furthermore, from the inception of this case on September 2, 2011 until March 12, 2012 -- a period of over six months -- Ally Financial, GMACM, Ally Securities, and the Ally Debtors were represented by the same counsel, indicating an identity of interest.

5. Non-Ally Defendants

82. The Non-Ally Defendants were among the nation's largest non-agency mortgage-backed securities underwriters between 2004 through 2007. The Non-Ally Defendants were the co-lead underwriters for 12 Securitizations and underwriters for an additional seven Securitizations. In those roles, the Non-Ally Defendants were responsible for underwriting and managing the offer and sale of Certificates to Freddie Mac. The Non-Ally Defendants also were obligated to conduct meaningful due diligence to ensure that the Registration Statements did not contain any material misstatements or omissions, including as to the manner in which the underlying mortgage loans were originated, transferred and underwritten.

C. Statements in the Registration Statements

83. Plaintiff relies for its claims, in part, upon the Registration Statements in their entirety. Specific representations and warranties in the Registration Statements that form the basis for the claims herein are set forth for each Securitization in Appendix A hereto.

1. Compliance with Underwriting Guidelines

84. The Prospectus and Prospectus Supplement for each of the Securitizations contained detailed descriptions of the underwriting guidelines used to originate the mortgage loans included in the Securitizations. These guidelines were intended to assess the creditworthiness of the borrower, the ability of the borrower to repay the loan, and the adequacy of the mortgaged property as security for the loan. Because payment on, and the value of, the Certificates is based on the cash flows from the underlying mortgage pool, representations concerning compliance with the stated underwriting guidelines were material to reasonable investors. Investors, including Freddie Mac, did not have access to information concerning the collateral pool, and were required to rely on the representations in the Prospectus Supplements concerning that collateral. As explained below, a reasonable investor would not have understood, in light of the representations regarding supposed adherence to underwriting guidelines, that there were pervasive and systemic breaches of those guidelines with respect to the securitized loans.

85. Among other consequences, the failure to originate mortgage loans in accordance with stated guidelines diminished the value of the Certificates by increasing the significant risk that an investor will not be paid its principal and interest. Misrepresentations concerning, or failing accurately to disclose, borrower, loan, and property characteristics bearing on the risk of default by the borrower, as well as the severity of losses given default, can artificially inflate the perceived value of the securities. Without accurate information regarding the collateral pool, reasonable investors, including Freddie Mac, are unable accurately and independently to assess whether the price of an RMBS adequately accounts for the risks they are assuming when they purchase the security.

86. The Prospectus Supplements for each of the Securitizations contained several key statements with respect to the loan purchasing and underwriting standards of the Non-Party Originators that originated the loans in the Securitizations. For example, with respect to the RAMP 2005-EFC7 Securitization, for which EquiFirst was originator, Ally Securities was a co-underwriter, and RASC was the depositor, the Prospectus Supplement states:

> *All of the mortgage loans included in the trust were originated by EquiFirst, generally in accordance with [EquiFirst's] underwriting criteria* [and that] EquiFirst's underwriting standards are primarily intended to assess the ability and willingness of the borrower to repay the debt, and to evaluate the adequacy of the mortgaged property as collateral for the mortgage loan.

(RAMP 2005-EFC7, Prospectus Supplement (Form 424b5), at S-37 (Dec. 20, 2005) ("RAMP 2005-EFC7 Prospectus Supplement") (emphasis added).)

87. Similarly, with respect to the RALI 2006-QO8 Securitization, for which the Ally originator, HFN, was the primary originator and RALI was the depositor, the Prospectus Supplement states:

> All of the mortgage loans in the mortgage pool were originated in accordance with the underwriting criteria of Residential Funding … Residential Funding will review each mortgage loan for compliance with its underwriting standards prior to purchase . . . .

(RALI 2006-QO8, Prospectus Supplement (Form 424b5), at S-60-61 (Nov. 11, 2006) ("RALI 2006-QO8 Prospectus Supplement").)

88. With respect to the information evaluated by the originator (EquiFirst), the RAMP 2005-EFC7 Prospectus Supplement stated that:

> *EquiFirst considers, among other things, a mortgagor's credit history, repayment ability and debt service-to-income ratio ('Debt Ratio'), as well as the value, type and use of the mortgaged property*" (emphasis added) and that the borrower's "Credit Bureau Risk Score is used along with, but not limited to, mortgage payment history, seasoning on bankruptcy and/or foreclosure, and

> is not a substitute for the underwriter's judgment. EquiFirst's underwriting staff fully reviews each loan to determine whether EquiFirst's guidelines for income, assets, employment and collateral are met.

(RAMP 2005-EFC7 Prospectus Supplement at S-38.)

89. Similarly, with respect to the information evaluated by the originators (including HFN) the RALI 2006-QO8 Prospectus Supplement stated that:

> In accordance with the Seller Guide, the Expanded Criteria Program Seller is required to review an application designed to provide to the original lender pertinent credit information concerning the mortgagor. As part of the description of the mortgagor's financial condition, each mortgagor is required to furnish information . . . regarding its assets, liabilities, income . . . credit history and employment history, and to furnish an authorization to apply for a credit report which summarizes the borrower's credit history with local merchants and lenders and any record of bankruptcy. The mortgagor may also be required to authorize verifications of deposits at financial institutions where the mortgagor had demand or savings accounts.

(RALI 2006-QO8 Prospectus Supplement at S-59.)

90. The Prospectus Supplement for the RAMP 2005-EFC7 securitization further states:

> EquiFirst's guidelines comply with applicable federal and state laws and regulations and generally require an appraisal of the mortgaged property which conforms to Freddie Mac and/or Fannie Mae standards. All loans are subject to EquiFirst's appraisal review process. Appraisals are provided by qualified independent appraisers licensed in their respective states.

(RAMP 2005-EFC7 Prospectus Supplement at S-39.) The Prospectus Supplement for RALI 2006-QO8 states:

> The appraisal procedure guidelines [described in the Seller Guide] generally require the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property is in good condition and that construction, if new, has been substantially completed. The appraiser is required to consider a market data analysis of recent sales of comparable properties and,

> when deemed applicable, an analysis based on income generated from the property, or replacement cost analysis based on the current cost of constructing or purchasing a similar property. In certain instances, the LTV ratio is based on the appraised value as indicated on a review appraisal conducted by the mortgage collateral seller or originator.

(RALI 2006-QO8 Prospectus Supplement at S-60.)

91. The Prospectus Supplements for each of the Securitizations made similar representations with respect to the underwriting guidelines employed by each of the Non-Party Originators in the Securitizations, which included: Aegis, Decision One, EFC Holdings and its subsidiary EquiFirst, Finance America, FNB Nevada, Home123, Homefield Financial, MLN, New Century, Ownit, People's Choice, Pinnacle, and SCME. *See* Appendix A.

92. Contrary to those representations, however, these originators routinely and egregiously departed from, or abandoned completely, their stated underwriting guidelines, as discussed in Section I.D.2, *infra*. As a result, the representations concerning compliance with underwriting guidelines and the inclusion and descriptions of those guidelines in the Prospectus Supplements were false and misleading, and the actual mortgages underlying each Securitization exposed the purchasers, including Freddie Mac, to a materially greater risk than that represented in the Prospectus Supplements.

93. As reflected more fully in Appendix A, for the vast majority of the Securitizations, the Prospectus Supplements included representations that: (i) the mortgage loans were underwritten in accordance with each originator's underwriting guidelines in effect at the time of origination, subject only to limited exceptions; and (ii) the origination and collection practices used by the originator with respect to each mortgage note and mortgage were in all respects legal, proper and customary in the mortgage origination and servicing business.

94. The inclusion of these representations in the Prospectus Supplements had the purpose and effect of providing assurances to investors regarding the quality of the mortgage collateral underlying the Securitizations. These representations were material to a reasonable investor's decision to purchase the Certificates, and they were material to Freddie Mac. As alleged more fully below, Defendants' representations were materially false.

2. Occupancy Status of Borrower

95. The Prospectus Supplements for each Securitization set forth information about the occupancy status of the borrowers of the loans underlying the Securitization; that is, whether the property securing a mortgage is (i) the borrower's primary residence; (ii) a second home; or (iii) an investment property. This information was presented in tables, typically titled "Occupancy Status of the Mortgage Loans," that assigned all the properties in the collateral group to one of the following categories: (i) "Primary" or "Owner-Occupied"; (ii) "Second Home" or "Secondary"; and (iii) "Investor" or "Non-Owner." For each category, the table stated the number of loans purportedly in that category. Occupancy statistics for the Supporting Loan Groups for each Securitization were reported in the Prospectus Supplements as follows:[8]

Table 4

Transaction	Tranche	Supporting Loan Group	Primary or Owner-Occupied	Second Home / Secondary	Investor
RALI 2005-QO4	IA1	Group I	81.68%	1.71%	16.61%
RALI 2006-QO4	IA1	Group I	79.14%	5.53%	15.33%
RALI 2006-QO4	IA2	Group I	79.14%	5.53%	15.33%
RALI 2006-QO5	IA1	Group I	81.13%	4.10%	14.76%
RALI 2006-QO8	IIA	Group II	81.78%	3.41%	14.81%
RALI 2006-QO9	IIA	Group II	80.99%	4.05%	14.97%
RALI 2007-QH5	AII	Group II	77.36%	5.74%	16.90%

[8] Each Prospectus Supplement provides the total number of loans and the number of loans in the following categories: owner-occupied, investor, and second home. These numbers have been converted to percentages for ease of comparison.

Transaction	Tranche	Supporting Loan Group	Primary or Owner-Occupied	Second Home / Secondary	Investor
RAMP 2005-EFC6	AII	Group II	98.15%	0.37%	1.48%
RAMP 2005-EFC7	AII	Group II	100.00%	0.00%	0.00%
RAMP 2005-NC1	AII	Group II	83.96%	5.56%	10.48%
RAMP 2005-RS9	AII	Group II	65.80%	1.35%	32.85%
RAMP 2006-RS1	AII	Group II	78.45%	2.11%	19.44%
RASC 2005-EMX3	AII	Group II	93.92%	2.29%	3.79%
RASC 2005-KS10	AII	Group II	94.42%	0.85%	4.72%
RASC 2005-KS11	AII	Group II	89.88%	2.53%	7.59%
RASC 2006-EMX8	AII	Group II	100.00%	0.00%	0.00%
RASC 2006-EMX9	AII	Group II	100.00%	0.00%	0.00%
RASC 2006-KS3	AII	Group II	99.24%	0.76%	0.00%
RASC 2006-KS9	AII	Group II	95.82%	2.81%	1.36%
RASC 2007-EMX1	AII	Group II	93.65%	1.98%	4.37%
RASC 2007-KS2	AII	Group II	95.23%	0.71%	4.05%
RASC 2007-KS3	AII	Group II	95.56%	1.27%	3.17%

96. As Table 4 makes clear, the Prospectus Supplements reported that 17 of the 22 Supporting Loan Groups contained at least 80 percent owner-occupied loans, and 11 of the 22 Supporting Loan Groups contained at least 90 percent owner-occupied loans.

97. Because information about occupancy status is an important factor in determining the credit risk associated with a mortgage loan -- and, therefore, the Certificates that it backs -- the statements in the Prospectus Supplements concerning occupancy status were material to a reasonable investor's decision to invest in the Certificates, and they were material to Freddie Mac. These statements were material because, among other reasons, borrowers who live in mortgaged properties are substantially less likely to default and more likely to care for their primary residence than borrowers who purchase properties as second homes or investments and live elsewhere. For example, as stated in the Prospectus for the RALI 2005-QO4 Securitization: "[T]he rate of default on mortgage loans or manufactured housing contracts that are secured by investment properties . . . may be higher than on other mortgage loans or manufactured housing

contracts." (RALI 2005-QO4 Prospectus Supplement (Form 424b5), at 62 (Nov. 28, 2005) ("RALI 2005-QO4 Prospectus Supplement").) Accordingly, the percentage of loans in the collateral group of a securitization that are secured by mortgage loans on owner-occupied residences is an important measure of the risk of the certificates sold in that securitization.

98. Other things being equal, the lower the percentage of loans secured by owner-occupied residences, the greater the risk of loss to Certificateholders. Even modest differences in the percentages of primary/owner-occupied, second home/secondary, and investment properties in the collateral group of a securitization can have a significant effect on the risk of each certificate sold in that securitization, and thus, are important to the decision of a reasonable investor whether, and at what price, to purchase any such certificate. As discussed *infra* at paragraphs 111 through 116, the Prospectus Supplement for each Securitization materially overstated the percentage of loans in the Supporting Loan Groups that were owner-occupied, thereby misrepresenting the degree of risk of the Certificates purchased by Freddie Mac.

3. Loan-to-Value Ratios

99. The loan-to-value ratio of a mortgage loan, or LTV ratio, is the ratio of the balance of the mortgage loan to the value of the mortgaged property when the loan is made.

100. The denominator in the LTV ratio is the value of the mortgaged property, and is generally the lower of the purchase price or the appraised value of the property. In a refinancing or home-equity loan, there is no purchase price to use as the denominator, so the denominator is often equal to the appraised value at the time of the origination of the refinanced loan or home-equity loan. Accordingly, an accurate appraisal is essential to an accurate LTV ratio. In particular, an inflated appraisal will understate, sometimes greatly, the credit risks associated with a given loan.

101. The LTV ratio is among the most important measures of the risk of a mortgage loan for several reasons. First, the LTV ratio is a strong indicator of the likelihood of default because a higher LTV ratio makes it more likely that a decline in the value of a property will completely eliminate a borrower's equity, and will incentivize the borrower to stop making mortgage payments and abandon the property. Second, the LTV ratio is a strong predictor of the severity of loss in the event of a default because the higher the LTV ratio, the smaller the "equity cushion," and the greater the likelihood that the proceeds of foreclosure will not cover the unpaid balance of the mortgage loan.

102. Thus, LTV ratios are material to a reasonable investor's decision to invest in the Certificates, and they were material to Freddie Mac. Even small differences between the LTV ratios of the mortgage loans in the collateral group of a securitization have a significant effect on the likelihood that collateral groups will generate sufficient funds to pay certificateholders in that securitization. Such differences are important to the decision of a reasonable investor on whether to purchase any such certificate, and they affect the intrinsic value of the certificate.

103. The Prospectus Supplements for the Securitizations contain information about the LTV ratio for each Supporting Loan Group. Table 5 below reflects two categories of important information reported in the Prospectus Supplements concerning the LTV ratios for each Supporting Loan Group: (i) the percentage of loans with an LTV ratio of less than or equal to 80 percent; and (ii) the percentage of loans with an LTV ratio greater than 100 percent.[9]

[9] As used in this Amended Complaint, "LTV" refers to the loan-to-value ratio for first lien mortgages and for properties with second liens subordinate to the lien included in the securitization (*i.e.*, only the securitized lien is included in the numerator of the LTV calculation). Where the securitized lien is junior to another loan, the more senior lien has been added to the securitized one to determine the numerator in the LTV calculation (this latter calculation is sometimes referred to as the combined-loan-to-value ratio, or "CLTV").

Table 5

Transaction	Supporting Loan Group	Percentage of loans, by aggregate principal balance, with LTV less than or equal to 80%	Percentage of loans, by aggregate principal balance, with LTV greater than 100%
RALI 2005-QO4	Group I	94.77%	0.00%
RALI 2006-QO4 (IA1 & IA2)	Group I	94.37%	0.00%
RALI 2006-QO5	Group I	95.44%	0.00%
RALI 2006-QO8	Group II	95.56%	0.00%
RALI 2006-QO9	Group II	93.89%	0.00%
RALI 2007-QH5	Group II	93.70%	0.00%
RAMP 2005-EFC6	Group II	57.86%	0.00%
RAMP 2005-EFC7	Group II	71.74%	0.00%
RAMP 2005-NC1	Group II	57.07%	0.00%
RAMP 2005-RS9	Group II	53.93%	0.00%
RAMP 2006-RS1	Group II	44.73%	0.00%
RASC 2005-EMX3	Group II	47.33%	0.00%
RASC 2005-KS10	Group II	45.62%	0.00%
RASC 2005-KS11	Group II	61.19%	0.00%
RASC 2006-EMX8	Group II	53.72%	0.00%
RASC 2006-EMX9	Group II	41.34%	0.00%
RASC 2006-KS3	Group II	61.60%	0.00%
RASC 2006-KS9	Group II	45.21%	0.00%
RASC 2007-EMX1	Group II	52.14%	0.00%
RASC 2007-KS2	Group II	44.68%	0.00%
RASC 2007-KS3	Group II	43.00%	0.00%

104. Table 5 uses an LTV ratio of 80 percent as the benchmark because, as a condition for making a mortgage loan, lenders traditionally require borrowers to put down at least 20 percent of the value of the property. Accordingly, a down payment of at least 20 percent corresponds to an LTV ratio of less than or equal to 80 percent. As Table 5 makes clear, the Prospectus Supplements for most of the Securitizations reported that the majority of the mortgage loans in the Supporting Loan Groups had an LTV ratio of 80 percent or less. The Prospectus Supplements also reported that *none* of the Supporting Loan Groups contained a single loan with an LTV ratio over 100 percent.

105. As discussed *infra* at paragraphs 117 through 123, the Prospectus Supplements for the Securitizations materially *overstated* the percentage of loans in the Supporting Loan Groups

with an LTV ratio at or less than 80 percent, and materially *understated* the percentage of loans in the Supporting Loan Groups with an LTV ratio over 100 percent, thereby misrepresenting the degree of risk to Certificateholders.

4. Credit Ratings

106. Credit ratings are assigned to the tranches of mortgage-backed securities by the credit rating agencies, including Standard & Poor's, Moody's Investors Service, and Fitch Ratings. Each credit rating agency uses its own scale with letter designations to describe various levels of risk. In general, AAA or its equivalent ratings are at the top of the credit rating scale and are intended to designate the safest investments. C and D ratings are at the bottom of the scale and refer to investments that are currently in default and exhibit little or no prospect for recovery. At the time Freddie Mac purchased the Certificates, investments with AAA or its equivalent ratings historically experienced a loss rate of less than .05 percent. Investments with a BBB rating, or its equivalent, historically experienced a loss rate of less than one percent. As a result, securities with credit ratings between AAA or its equivalent through BBB- or its equivalent were generally referred to as "investment grade."

107. Rating agencies determine the credit rating for each tranche of a mortgage-backed securitization by analyzing the expected loss, factoring in "credit enhancements" such as subordination levels and excess spread, available to protect investors. Rating agencies determine, among other things, the likelihood of repayment of principal and interest based on the quality of the underlying mortgage loans by using sponsor-provided loan-level data. Credit enhancements, such as subordination, represent the amount of "cushion" or protection from loss incorporated into a given securitization.[10] This cushion is intended to improve the likelihood that

[10] "Subordination" refers to the fact that the certificates for a mortgage-backed securitization are issued in a hierarchical structure, from senior to junior. The junior certificates

holders of highly-rated certificates receive the interest and principal to which they are contractually entitled. The level of credit enhancement offered is based on the composition of the loans in the underlying collateral group and entire securitization. Riskier loans underlying the securitization necessitate higher levels of credit enhancement to ensure payment to senior certificateholders. If the collateral within the deal is of a higher quality, then rating agencies require less credit enhancement for an AAA or its equivalent rating.

108. For almost a hundred years, investors such as pension funds, municipalities, insurance companies, and university endowments have relied heavily on credit ratings to assist them in distinguishing between safe and risky investments.

109. Each tranche of the Securitizations received a credit rating before issuance, which purported to describe the riskiness of that tranche. Defendants reported the credit ratings for each tranche in the Prospectus Supplements. For each of the Certificates purchased by Freddie Mac the credit rating provided was always AAA or its equivalent. The credit quality of the Certificates endorsed by these ratings was material to a reasonable investor's decision to purchase the Certificates, and it was material to Freddie Mac. Among other things, the ratings provided additional assurance that investors in the Certificates would receive the expected interest and principal payments. As set forth in Table 8, *infra* at paragraph 168, the ratings for the majority of the Securitizations were severely downgraded after Freddie Mac's purchase of the Certificates. Upon information and belief, the initial ratings were based in substantial part upon the materially inaccurate and incomplete information in the Registration Statements and related information provided to the ratings agencies.

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are "subordinate" to the senior certificates in that, should the underlying mortgage loans become delinquent or default, the junior certificates suffer losses first. These subordinate certificates thus provide a degree of protection to the senior certificates from certain losses on the underlying loans.

D. Falsity of Statements in the Registration Statements

1. The Statistical Data Provided in the Prospectus Supplements Concerning Owner-Occupancy and Loan-to-Value Ratios Were Materially False or Misleading

110. A review of loan-level data for a sample of mortgage loans in each Securitization was conducted to assess whether the statistical information provided in the Prospectus Supplements was true and accurate. For each Securitization, the review included an analysis either of: (i) a sample of 1,000 loans randomly selected from the Supporting Loan Group; or (ii) all the loans in the Supporting Loan Group if there were fewer than 1,000 such loans. The review of sample data has confirmed, on a statistically-significant basis, that the data provided in the Prospectus Supplements concerning owner-occupancy and LTV ratios was materially false and misleading at the time the loans were originated and securitized, and that the Prospectus Supplements contained material misrepresentations with respect to the underwriting standards employed by the originators, and of certain key characteristics of the mortgage loans across the Securitizations at the time of their origination.

a. Owner-Occupancy Data Was Materially False or Misleading

111. The data review reveals that the owner-occupancy statistics reported in the Prospectus Supplements were materially false and inflated at the time of loan origination. Indeed, the Prospectus Supplements over-reported the number of underlying properties that were occupied by their owners, and underreported the number of underlying properties held as second homes or investment properties.

112. To determine whether a given borrower actually occupied the property as claimed, a number of tests were conducted, including, *inter alia*, whether the borrower's tax bill was being mailed to the mortgaged property or to a different address six months after the loan closed, whether the borrower had claimed an owner-occupied tax exemption on the mortgaged

property, and whether the mailing address of the property was reflected in the borrower's credit reports, tax records, or lien records. Failing two or more of these tests constitutes strong evidence that the borrower did not live at the mortgaged property and instead used it as a second home or an investment property, rendering it much more likely that a borrower will not repay the loan.

113. For each Securitization, a significant number of the underlying loans failed two or more of these tests, demonstrating that the owner-occupancy statistics provided to Freddie Mac were materially false and misleading. For example, the Prospectus Supplement for the RAMP 2005-EFC6 Securitization -- for which the Ally Sponsor was the sponsor and Ally Securities was a co-lead underwriter -- stated that 1.85 percent of the underlying properties by loan count in the Supporting Loan Group were not owner-occupied. But the data review revealed that the true percentage of non-owner-occupied properties was 13.67 percent,[11] approximately 700 percent greater than the percentage reported in the Prospectus Supplement because for 12.04 percent of the properties represented as owner-occupied, the owners lived elsewhere.

114. The data review revealed that, for each Securitization, the Prospectus Supplement misrepresented the percentage of non-owner-occupied properties. The true percentage of non-owner-occupied properties, as determined by the data review, versus the percentage stated in the Prospectus Supplement for each Securitization, is reflected in Table 6 below.

[11] The true percentage of non-owner-occupied properties (Table 6 Column C) is calculated by adding the percentage reported in the Prospectus Supplement (Table 6 Column A) to the product of owner-occupied properties reported in the Prospectus Supplement (100 minus Column A) and the percentage of properties reported as owner-occupied but with strong indication of non-owner-occupancy (Table 6 Column B).

Table 6

		A	B	C	D
Transaction	**Supporting Loan Group**	**Reported Percentage of Non-Owner-Occupied Properties**	**Percentage of Properties Reported As Owner-Occupied Misrepresented in the Offering Materials**	**Actual Percentage of Non-Owner-Occupied Properties**	**Understatement of Non-Owner-Occupied Properties in the Offering Materials**
RALI 2005-QO4	Group I	18.32%	14.93%	30.52%	12.19%
RALI 2006-QO4 (IA1 & IA2)	Group I	20.86%	14.86%	32.62%	11.76%
RALI 2006-QO5	Group I	18.87%	13.14%	29.53%	10.66%
RALI 2006-QO8	Group II	18.22%	13.18%	29.00%	10.78%
RALI 2006-QO9	Group II	19.01%	13.84%	30.22%	11.21%
RALI 2007-QH5	Group II	22.64%	15.76%	34.83%	12.20%
RAMP 2005-EFC6	Group II	1.85%	12.04%	13.67%	11.82%
RAMP 2005-EFC7	Group II	0.00%	11.88%	11.88%	11.88%
RAMP 2005-NC1	Group II	16.04%	10.72%	25.04%	9.00%
RAMP 2005-RS9	Group II	34.20%	13.42%	43.03%	8.83%
RAMP 2006-RS1	Group II	21.55%	11.66%	30.69%	9.15%
RASC 2005-EMX3	Group II	6.08%	9.03%	14.56%	8.48%
RASC 2005-KS10	Group II	5.58%	11.97%	16.88%	11.30%
RASC 2005-KS11	Group II	10.12%	11.41%	20.38%	10.26%
RASC 2006-EMX8	Group II	0.00%	12.38%	12.38%	12.38%
RASC 2006-EMX9	Group II	0.00%	12.52%	12.52%	12.52%
RASC 2006-KS3	Group II	0.76%	13.20%	13.86%	13.10%
RASC 2006-KS9	Group II	4.18%	9.06%	12.86%	8.68%
RASC 2007-EMX1	Group II	6.35%	9.44%	15.19%	8.84%
RASC 2007-KS2	Group II	4.77%	10.28%	14.56%	9.79%
RASC 2007-KS3	Group II	4.44%	11.10%	15.05%	10.60%

115. Table 6 demonstrates that the Prospectus Supplement for each Securitization was grossly inaccurate, understating the percentage of non-owner-occupied properties by at least eight percent, and for many Securitizations by 10 percent or more. The inclusion of inaccurate statistics in its Prospectus Supplements was misleading because the Ally Depositors', Ally Sponsor's, and Underwriter Defendants' endorsed the accuracy of such statistics through the inclusion of their names on the document and their express statements in the Prospectus Supplements, similar to that in the Prospectus Supplement for RAMP 2005-EFC7, that investors "should rely on the information provided in the prospectus and accompanying prospectus supplement, including the information incorporated by reference." (RAMP 2005-EFC7

Prospectus Supplement, at "Important Notice About Information Presented In This Prospectus And The Accompanying Prospectus Supplement".)

116. Specific examples of misrepresentations and omissions showing that the owner occupancy statistics reported in the Prospectus Supplements were materially false and inflated at the time of origination are discussed in detail below. (*See infra*, at paragraphs 136-137.) Initial forensic loan reviews reaffirm what the above statistics demonstrate: the owner occupancy data in the Prospectus Supplements was materially false at the time of origination.

b. Loan-to-Value Data Was Materially False

117. The data review has further revealed that the LTV ratios disclosed in the Prospectus Supplements were materially false and understated at the time the loans were originated and securitized, as more specifically set out below. For each of the sampled loans, an industry standard automated valuation model ("AVM") was used to calculate the value of the underlying property at the time the mortgage loan was originated. AVMs are routinely used in the industry as a way of valuing properties during prequalification, origination, portfolio review, and servicing. AVMs rely upon data similar to that upon which appraisers rely -- primarily county assessor records, tax rolls, and data on comparable properties. AVMs produce independent, statistically-derived valuation estimates by applying modeling techniques to this data. The ValuePoint4 ("VP4") AVM was used to analyze the data via appraisal emulation, repeat sales indices, and regression analysis, relying on the sales made within the last 24 months prior to the origination of the mortgage loan at issue.

118. Application of the VP4 AVM to the available data for the properties securing the sampled loans shows that the original appraised value given to such properties was significantly higher than the actual value of the properties as determined by the VP4 retroactive AVM. The result of this overstatement of property values is a material understatement of LTV. That is, if a

property's true value is significantly less than the value used in the loan underwriting, then the loan represents a significantly higher percentage of the property's value. This, of course, increases the risk a borrower will not repay the loan and the risk of greater losses in the event of a default. As stated in the Prospectus for RALI 2005-QO4: "The rate of default . . . on mortgage loans or manufactured housing contracts with higher LTV ratios may be higher than for other types of mortgage loans or manufactured housing contracts." (RALI 2005-QO4 Prospectus Supplement at 62.)

119. For example, for the RALI 2007-QH5 Securitization, for which RFC was the sponsor and Ally Securities was a co-underwriter, the Prospectus Supplement stated that no LTV ratios for the Supporting Loan Group were above 100 percent. In fact, 18.26 percent of the sample of loans included in the data review had LTV ratios above 100 percent. In addition, the Prospectus Supplement stated that 93.70 percent of the loans had LTV ratios at or below 80 percent. The data review indicated that only 45.89 percent of the loans had LTV ratios at or below 80 percent.

120. The data review revealed that, for each Securitization, the Prospectus Supplement misrepresented the percentage of loans with an LTV ratio above 100 percent, as well as the percentage of loans that had an LTV ratio at or below 80 percent at the time of their origination. Table 7 reflects (i) the true percentage of mortgages in the Supporting Loan Group at the time of origination with LTV ratios above 100 percent, versus the percentage reported in the Prospectus Supplement; and (ii) the true percentage of mortgages in the Supporting Loan Group at the time of origination with LTV ratios at or below 80 percent, versus the percentage reported in the Prospectus Supplement. The percentages listed in Table 7 were calculated by aggregate principal balance.

Table 7

		PROSPECTUS	DATA REVIEW	PROSPECTUS	DATA REVIEW
Transaction	**Supporting Loan Group**	**Percentage of Loans Reported to have LTV Ratio at or Less than 80%**	**True Percentage of Loans with LTV Ratio at or Less than 80%**	**Percentage of Loans Reported to have LTV Ratio Over 100%**	**True Percentage of Loans with LTV Ratio Over 100%**
RALI 2005-QO4	Group I	94.77%	61.17%	0.00%	8.18%
RALI 2006-QO4 (IA1 & IA2)	Group I	94.37%	57.25%	0.00%	8.43%
RALI 2006-QO5	Group I	95.44%	53.64%	0.00%	11.09%
RALI 2006-QO8	Group II	95.56%	46.48%	0.00%	11.62%
RALI 2006-QO9	Group II	93.89%	48.39%	0.00%	13.12%
RALI 2007-QH5	Group II	93.70%	45.89%	0.00%	18.26%
RAMP 2005-EFC6	Group II	57.86%	35.31%	0.00%	16.70%
RAMP 2005-EFC7	Group II	71.74%	38.91%	0.00%	13.32%
RAMP 2005-NC1	Group II	57.07%	44.83%	0.00%	13.01%
RAMP 2005-RS9	Group II	53.93%	36.91%	0.00%	17.27%
RAMP 2006-RS1	Group II	44.73%	29.46%	2.60%	22.23%
RASC 2005-EMX3	Group II	47.33%	29.10%	0.00%	19.47%
RASC 2005-KS10	Group II	45.62%	31.29%	0.00%	17.94%
RASC 2005-KS11	Group II	61.19%	44.25%	0.00%	14.41%
RASC 2006-EMX8	Group II	53.72%	30.69%	0.00%	26.94%
RASC 2006-EMX9	Group II	41.34%	21.70%	0.03%	33.84%
RASC 2006-KS3	Group II	61.60%	44.12%	0.00%	11.68%
RASC 2006-KS9	Group II	45.21%	27.87%	0.00%	26.92%
RASC 2007-EMX1	Group II	52.14%	27.06%	0.00%	26.46%
RASC 2007-KS2	Group II	44.68%	28.40%	0.00%	28.40%
RASC 2007-KS3	Group II	43.00%	27.04%	0.00%	29.22%

121. As Table 7 demonstrates, the Prospectus Supplements for all the Securitizations falsely reported that only two of the Supporting Loan Groups had mortgage loans with an LTV ratio over 100 percent. The data review revealed that at least eight percent of the mortgage loans for *every* Securitization had an LTV ratio over 100 percent, and for most Securitizations this figure was much larger. Indeed, for 19 of the 21 Securitizations, the data review revealed that more than 10 percent of the mortgages in the Supporting Loan Group had a true LTV ratio over 100 percent. For 12 Securitizations, the data review revealed that more than 15 percent of the mortgages in the Supporting Loan Group had a true LTV ratio over 100 percent and for seven

Securitizations, the data review revealed that more than 20 percent of the mortgages in the Supporting Loan Group had a true LTV ratio over 100 percent.

122. These systemic misrepresentations with respect to reported LTV ratios also demonstrate that the representations in the Registration Statements relating to appraisal practices were false, and that the appraisers routinely furnished appraisals that the appraisers understood were inaccurate and that they knew bore no reasonable relationship to the actual value of the underlying properties. One confidential witness, who was a national appraiser director at New Century, stated that he did not support the practices employed by New Century, noting that his group tried to follow the guidelines, but others at New Century overrode their decisions. According to the witness, New Century was a "very volume driven company" where the "originators did not care about the quality of the loan" because they were being paid by the number of closings. To form a long-lasting relationship with an originator, the witness stated that third-party appraisers were pressured to inflate appraisal values.

123. Indeed, independent appraisers following proper practices, and providing genuine estimates as to valuation, would not systematically generate appraisals that, as demonstrated by Table 7, deviate so significantly (and so consistently upward) from the true values of the appraised properties. These consistent errors demonstrate that, contrary to the representations in the Prospectuses and Prospectus Supplements, the appraisers did not comply with the Uniform Standards of Professional Appraisal Practice but instead generated appraisal values to justify the issuance of a mortgage loan. This conclusion is further confirmed by the findings of the Financial Crisis Inquiry Commission ("FCIC"), which identified "inflated appraisals" as a pervasive problem during the period of the Securitizations, and determined through its investigation that appraisers were often pressured by mortgage originators, among others, to

produce inflated results. (*See* Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States (2011) ("FCIC Report"), at 91.)

2. The Originators of the Underlying Mortgage Loans Systematically Disregarded Their Underwriting Guidelines

124. The Prospectus Supplements each contained material misstatements and omissions concerning the underwriting guidelines used by the Non-Party Originators of the loans included in the Securitizations. Among other things, the Prospectus Supplements stated that the Non-Party Originators underwrote all loans in compliance with their respective underwriting guidelines. *See* Appendix A, Sections I-XXI at Subsections B. These statements were materially false.

125. The Non-Party Originators -- companies such as New Century, Decision One, and others -- systematically disregarded their respective underwriting guidelines, as confirmed not only by the pervasively false owner-occupancy and LTV figures alleged *supra*, but also by: (1) an forensic review of loan files; (2) government investigations and private actions relating to their underwriting practices, which have revealed widespread abandonment of their reported underwriting guidelines during the period of the Securitizations; (3) the collapse of the credit ratings of Certificates purchased by Freddie Mac; and (4) the surge in delinquencies and defaults in the mortgages in the Securitizations.

a. A Forensic Review of Loan Files Has Revealed Pervasive Failure to Adhere to Underwriting Guidelines

126. An initial forensic review of 235 loans in the RALI 2006-QO8 and RALI 2007-QH5 Securitizations, for which Ally Sponsor served as the sponsor and an Ally Depositor, RALI, served as the depositor, has revealed that *none* of the reviewed loans had been underwritten in accordance with the applicable underwriting guidelines.

127. The forensic review consisted of an analysis of the loan origination file for each loan, including the documents submitted by the individual borrowers in support of their loan applications, as well as an analysis of information extrinsic to each loan file, such as borrowers' filings in bankruptcy proceedings, motor vehicle registration, or other documentation available at the time of the loan application with pertinent information indicating a borrower's assets or residence.

128. The mortgage loans in both the RALI 2006-QO8 Securitization and the RALI 2007-QH5 Securitization were originated by the Ally originator, HFN, among others. Both the RALI 2006-QO8 Prospectus Supplement and the RALI 2007-QH5 Prospectus Supplement stated that "[p]rior to assigning the mortgage loans to the depositor, Residential Funding Company, LLC will have reviewed the underwriting information provided by the mortgage collateral sellers for the mortgage loans and, in those cases, determined that the mortgage loans were generally originated in accordance with or in a manner generally consistent with the underwriting standards described in the Seller Guide." (RALI 2006-QO8 Prospectus Supplement at S-60; RALI 2007-QH5, Prospectus Supplement (Form 424b5), at S-54 (May 30, 2007) ("RALI 2007-QH5 Prospectus Supplement").) The Prospectus Supplements also stated that "[RFC] reviewed the underwriting standards for the mortgage loans" and "[a]ll of the mortgage loans in the mortgage pool were originated in accordance with the underwriting criteria of [RFC]." (RALI 2006-QO8 Prospectus Supplement at S-59-61; RALI 2007-QH5 Prospectus Supplement at S-54-55.)

129. The results of the forensic review demonstrate, however, the material falsity of the disclosures in the Registration Statements stating that the mortgage loans were underwritten

in accordance with the applicable underwriting guidelines described in the Prospectus Supplements.

130. The underwriting guidelines that were disregarded were designed to assess the likelihood a borrower would be able to repay the loan. The forensic review revealed abandonment of underwriting guidelines, including as follows:

- failure to test the reasonableness of the borrower's stated income, contributing to material misrepresentations of income;
- failure to investigate properly the borrower's intention to occupy the subject properties when red flags surfaced in the origination process that should have alerted the underwriter that the property was intended for investment;
- failure to calculate properly the borrower's outstanding debt, causing the debt-to-income ratio ("DTI") to exceed the maximum allowed under the applicable underwriting guidelines; and
- failure to investigate properly information on the borrower's credit reports of potential misrepresentation of outstanding or potential debt.

131. Although the Prospectus Supplements represented that exceptions would be justified by sufficient compensating factors, none of the loan files reflecting a breach of underwriting guidelines evidenced sufficient compensating factors, as set forth in the underwriting guidelines, that would justify or support such an exception. Similarly, the loan files lack any documentation reflecting whether or how the originators considered, if at all, such compensating factors. A 100 percent breach rate, in any event, could not possibly be explained by the proper application of any such exceptions.

132. The following examples from the initial forensic review of the RALI 2006-QO8 and RALI 2007-QH5 Securitizations illustrate the types of breaches discussed above that pervade the loan pools for these Securitizations.

i. Stated Income Was Not Reasonable

133. Although no verification of income was required for stated income loans, the applicable underwriting guidelines required the underwriter to verify the employment listed by the borrower on the application and to assess whether the stated income was reasonable given the applicant's line of work.

134. The following examples reveal instances where there was no evidence that the underwriter analyzed the reasonableness of the borrower's stated income for the employment listed on the loan application as required by the applicable underwriting guidelines. In fact, the forensic review verified that the borrower misrepresented his or her income on the application. This misrepresentation resulted in a miscalculation of the borrower's DTI. Had the loan underwriter performed an evaluation of the income stated on the application by the borrower, as required by the applicable underwriting guidelines, the unreasonableness of the borrower's stated income would have been evident.

- A loan that closed in April 2007 with a principal balance of $254,000 was originated under HFN's Stated Income Loan Program. The loan application stated that the borrower was employed as an engineer earning $25,833 per month. The borrower's stated income exceeded the Bureau of Labor Statistics 90th percentile salary for an engineer in the same geographic region. Moreover, in a Statement of Financial Affairs filed by the borrower as part of a 2009 Chapter 7 Bankruptcy, the borrower reported monthly income of $6,333 in 2007. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 261.98 percent, which exceeds the guideline maximum allowable DTI of 45 percent. The loan defaulted, resulting in a loss of $243,148.

- A loan that closed in August 2006 with a principal balance of $328,500 was originated under First National Bank of Arizona's Stated Income Loan Program. The loan application stated that the borrower was self-employed as an owner of a beauty salon, earning $25,000 per month. The borrower's stated income exceeded CBSalary.com's 90th percentile salary for a self-employed owner of a beauty salon in the same geographic region. Moreover, according to the borrower's 2009 bankruptcy petition, the total household income for the borrower and non-borrower spouse for 2006 was $57,141, resulting in a monthly income of

$4,761. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of DTI based on the borrower's verified income yields a DTI of 187.05 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $211,774.

- A loan that closed in August 2006 with a principal balance of $371,250 was originated under Sea Breeze Financial Services' Stated Income Loan Program. The loan application stated that the borrower was employed as a customer service representative, earning $12,700 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for a customer service representative in the same geographic region. Moreover, according to a Statement of Financial Affairs, filed by the borrower as part of a 2010 bankruptcy proceeding, the borrower's income for 2008 was $47,604, resulting in a monthly income of $3,967. From the time the subject loan closed in 2006 to 2008, the borrower was employed with the same employer in the same line of work. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of DTI based on the borrower's verified income yields a DTI of 115.31 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $221,953.

- A loan that closed in August 2006 with a principal balance of $364,000 was originated under BrooksAmerica Mortgage's Stated Income Loan Program. The loan application stated that the borrower was employed as a driver earning $7,340 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for a driver in the same geographic region. Moreover, according to a Statement of Financial Affairs, filed by the borrower as part of a 2010 bankruptcy proceeding, the borrower's income for 2008 was $1,711 per month. Between the time the loan closed in 2006 and 2008, the borrower was employed with the same employer in the same line of work. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of DTI based on the borrower's verified income yields a DTI of 210.15 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $349,723.

- A loan that closed in September 2006 with a principal balance of $240,000 was originated under Golden Empire Mortgage Inc.'s Stated Income Loan Program. The loan application stated that the borrower was employed as a teaching assistant earning $5,379 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for a teaching assistant in the same geographic region. Moreover, the forensic underwriter confirmed with the borrower's employer that the borrower's 2006 income was actually $1,283 per month. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of DTI based on the borrower's verified income yields a DTI of 341.08 percent, which exceeds the

limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $177,784.

- A loan that closed in August 2006 with a principal balance of $284,000 was originated under Flexpoint Funding Corp.'s Stated Income Loan Program. The loan application stated that the borrower was employed in quality control for a food distribution company, earning $6,500 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for employment in quality control in the same geographic region. Moreover, according to a Statement of Financial Affairs, filed by the borrower as part of a 2009 bankruptcy proceeding, the borrower's income for 2008 was $25,849, resulting in a monthly income of $2,154. From the time the subject loan closed in 2006 to 2008, the borrower was employed with the same employer in the same line of work. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of DTI based on the borrower's verified income yields a DTI of 115.39 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $234,644.

- A loan that closed in August 2006 with a principal balance of $210,000 was originated under M&T Mortgage Corp.'s Stated Income Loan Program. The loan application stated that the borrower was employed as a cardiac monitor nurse, earning $13,500 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for a cardiac monitor nurse in the same geographic region. Moreover, according to a Statement of Financial Affairs, filed by the borrower as part of a 2008 bankruptcy proceeding, the borrower's total household income, inclusive of income from a non borrowing spouse, for 2006 was $2,083 per month. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of DTI based on the borrower's verified income yields a DTI of 212.39 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $153,083.

- A loan that closed in August 2006 with a principal balance of $244,000 was originated under First National Bank of Arizona's Stated Income Loan Program. The loan application stated that the borrower was self-employed as a chemical engineer earning $17,000 per month. The borrower's stated income exceeded CBSalary.com's 90th percentile salary for a small business owner in the same geographic region. Moreover, the borrower's 2008 bankruptcy filing confirms that the borrower's total income for 2006 was negative $45,777. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of DTI based on the borrower's verified income yields a negative DTI due to the borrower's verified negative income and thus exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $127,850.

- A loan that closed in March 2007 with a principal balance of $292,500 was originated under HFN's Stated Income Loan Program. The loan application stated that the borrower was employed as a support specialist earning $6,800 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for a support specialist in the same geographic region. Moreover, in a Statement of Financial Affairs filed by the borrower as part of a 2008 Chapter 7 Bankruptcy, the borrower reported income of $1,090 per month in 2007. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of the DTI based on the borrower's verified income yields a DTI of 232.82 percent, which exceeds the guideline maximum of 45 percent. The loan defaulted, resulting in a loss of $222,977.

- A loan that closed in April 2007 with a principal balance of $194,803 was originated under First National Bank of Arizona's Stated Income Loan Program. The loan application stated that the borrower was employed as an electronic technician earning $6,200 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for an electronic technician in the same geographic region. Moreover, in a Statement of Financial Affairs filed by the borrower as part of a 2009 Chapter 7 Bankruptcy, the borrower reported income of $4,015 per month in 2009 from the same employer and in the same line of work as was stated on the subject loan application. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of the DTI based on the borrower's verified near year income and all other evidence uncovered in the forensic review yields a DTI of 87.13 percent, which exceeds the guideline maximum of 45 percent. The loan defaulted, resulting in a loss of $104,930

- A loan that closed in March 2007 with a principal balance of $296,000 was originated under HFN's Stated Income Loan Program. The loan application stated that the borrower was employed as a maintenance technician earning $6,500 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for a maintenance technician in the same geographic region. Moreover, in a Statement of Financial Affairs filed by the borrower as part of a 2009 Chapter 7 Bankruptcy, the borrower reported monthly income of $2,935 for 2007. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of the DTI based on the borrower's verified income yields a DTI of 103.63 percent, which exceeds the guideline maximum of 45 percent. The loan defaulted, resulting in a loss of $277,110.

- A loan that closed in March 2007 with a principal balance of $236,000 was originated by Statewide Bancorp, Inc. as a stated income loan. The loan application stated that the borrower was employed as an electrician earning $7,500 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for an electrician in the same geographic region. Moreover, in a Statement of Financial Affairs filed by the borrower as part of a

2009 Chapter 13 Bankruptcy, the borrower reported monthly income of $3,697 in 2007. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 98.47 percent, which exceeds the guideline maximum of 38 percent. The loan defaulted, resulting in a loss of $171,787.

- A loan that closed in April 2007 with a principal balance of $143,920 was originated under First National Bank of Arizona's Stated Income Loan Program. The loan application stated that the borrower was employed as a systems analyst earning $12,900 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for a systems analyst in the same geographic region. Moreover, in a Statement of Financial Affairs filed by the borrower as part of a 2009 Chapter 7 Bankruptcy, the borrower reported that he had no income for the two years prior to filing, which includes 2007, the year the subject loan closed. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. The DTI could not be recalculated because the borrower had no income at the time the loan was originated. The loan defaulted, resulting in a loss of $190,108.77.

135. Accordingly, the results of the forensic review demonstrate that the statements in the Registration Statements concerning the originators' verification of the reasonableness of the stated income were materially false and misleading. In particular, a significant number of mortgage loans were made on the basis of "stated incomes" that were facially unreasonable, and were not properly underwritten through efforts to verify the reasonableness of borrowers' income.

ii. Evidence of Occupancy Misrepresentations

136. The following are examples from the forensic review where the loan underwriter did not adequately question the borrower's intended occupancy of the subject property.

- A loan that closed in September 2006 with a principal balance of $208,000 was originated under LoanCity's Stated Income Loan Program. The loan was a refinance of a purported owner occupied property. The applicable guidelines required that the borrower occupy the subject property. The loan was represented as being for an owner occupied residence. However, the subject property was located 134 miles away from the borrower's employer, while the borrower's declared rental property was located only 13 miles from the borrower's employer. Further, the forensic underwriter confirmed that the borrower never filed for a homestead exemption at the subject property and that the subject property's

utilities had never been in the borrower's name. No evidence in the loan file indicates that the loan underwriter addressed or challenged the borrower's claim that he intended to reside at the new location. The loan defaulted, resulting in a loss of $193,151.

- A loan that closed in March 2007 with a principal balance of $360,000 was originated under First National Bank of Nevada's Stated Income Loan Program. The loan was a refinance of an owner occupied property. The underwriting guidelines for this loan required that the borrower occupy the subject property. The loan was represented as being for an owner occupied residence. However, the hazard policy for the subject property included in the loan file, reflected that the subject property was tenant occupied and that the borrower's address was at a property listed as a "rental" on the application. No evidence in the file indicates that the loan underwriter addressed or challenged the borrower's claim that he intended to reside at the new location. The loan defaulted, resulting in a loss of $175,988.

- A loan that closed in March 2007 with a principal balance of $374,000 was under SCME's Stated Income Loan Program. The loan was a refinance of an owner-occupied property. The underwriting guidelines for this loan required that the borrower occupy the subject property. The loan was represented as being for an owner occupied residence. However, the borrower's 2006 W-2, obtained at origination, reflected a different property as the borrower's address. Moreover, the forensic re-underwriter searched Accurint and discovered that the borrower has not occupied the subject property at any point since origination. No evidence in the file indicates that the loan underwriter addressed or challenged the borrower's claim that he intended to reside at the subject property. The loan defaulted, resulting in a loss of $280,897.

- A loan that closed in April 2007 with a principal balance of $300,000 was originated under HFN's Stated Income Loan Program. The loan was a refinance of an owner occupied property. The underwriting guidelines for this loan required that the borrower occupy the subject property. The loan was represented as being for an owner occupied residence. However, according to a Statement of Financial Affairs, filed by the borrower as part of a 2008 Chapter 7 Bankruptcy, the borrower did not reside at the subject property at any point during the previous three years. No evidence in the file indicates that the loan underwriter addressed or challenged the borrower's claim that he intended to reside at the subject property. The loan defaulted, resulting in a loss of $173,221.

- A loan that closed in March 2007 with a principal balance of $263,800 was originated SCME's Stated Income Loan Program. The loan was a refinance of an owner occupied property. The underwriting guidelines for this loan required that the borrower occupy the subject property within 60 days after the mortgage loan closed and continue to occupy the property for at least one year. The loan was represented as being for an owner occupied residence. However, according to a Statement of Financial Affairs, filed by the borrower as part of a 2009 Chapter 7

Bankruptcy, the borrower vacated the subject property in May 2007. No evidence in the file indicates that the loan underwriter addressed or challenged the borrower's claim that he intended to reside at the subject property. The loan defaulted, resulting in a loss of $40,058.

137. The results of the forensic review demonstrate that the statements in the Offering Materials concerning the borrower's occupancy status were materially false or misleading and that the loans were not originated in accordance with the underwriting guidelines as represented in the Offering Materials. In particular, the Prospectus Supplements materially understated the proportion of loans secured by non-owner occupied properties. The lack of compliance with the underwriting process in this regard materially increased the credit risk of the loans and the portfolio because investment and second home properties generally have a higher rate of default and higher loss severities than owner occupied primary residences.

iii. Debts Incorrectly Calculated; DTI Exceeded Guidelines

138. Failure to incorporate all of a borrower's monthly obligations precludes the lender from properly evaluating the borrower's ability to repay the loan. The following are some examples where the underwriting process either failed to incorporate all of the borrower's debt or the monthly debt obligations were incorrectly calculated. When properly calculated, the borrower's actual DTI exceeded the limits established by the applicable underwriting guidelines. The failure to properly calculate debt led to material misstatements regarding the credit risk of the securitized loans.

- A loan that closed in September 2006 with a principal balance of $260,000 was originated under HFN's Stated Income Loan Program. A forensic review of the loan file reveals that the borrower obtained two mortgages prior to the closing of the subject loan, which resulted in total additional monthly payments of $988. Although these loans were not listed on the application for the subject loan, there were three credit inquiries listed on the origination credit report for the previous 90 days. There is no evidence in the file that the underwriter investigated these credit inquiries or took these additional debt obligations into account in originating the loan. A recalculation of the DTI that includes the borrower's undisclosed debt results in an increase in DTI from 34.27 percent to 126.01

percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $213,284.

- A loan that closed in June 2006 with a principal balance of $280,000 was originated under HFN's Stated Income Loan Program. A forensic review of the loan file reveals that, while the underwriter calculated a monthly payment of $812 for the subject loan based on the initial interest rate, the applicable guidelines required the monthly payment for the subject loan to be calculated using the amortized rate, which yields a monthly payment of $1,724. The underwriter also excluded a monthly installment debt of $248, and there was no documentation in the loan file to support this exclusion. Although the underwriter qualified the borrower based on monthly debts of $2974.78, the borrower's actual monthly debts were $4,510.84. A recalculation of the DTI that includes the borrower's undisclosed debt results in an increase in DTI from 39 percent to 74.29 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $205,502.

- A loan that closed in September 2006 with a principal balance of $268,000 was originated under First National Bank of Arizona's Stated Income Loan Program. A forensic review of the loan file reveals that the borrower obtained a mortgage loan prior to the closing of the subject loan, which resulted in an additional monthly payment of $1,445. Although this loan was not listed on the application for the subject loan, there was a credit inquiry listed on the origination credit report for the previous 90 days. There is no evidence in the file that the underwriter investigated this credit inquiry or took this additional debt obligation into account in originating the loan. A recalculation of the DTI that includes the borrower's undisclosed debt results in an increase in DTI from 17.07 percent to 152.46 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted and is in foreclosure.

- A loan that closed in September 2006 with a principal balance of $240,000 was originated under Golden Empire Mortgage Inc.'s Stated Income Loan Program. A forensic review of the loan file reveals that the borrower obtained an auto loan prior to the closing of the subject loan, which resulted in an additional monthly payment. There is no evidence in the file that the underwriter took the additional debt obligation into account in originating the loan. A recalculation of the DTI that includes the borrower's undisclosed debt results in an increase in DTI from 40.36 percent to 341.08 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $177,784.

- A loan that closed in April 2007 with a principal balance of $154,000 was originated under HFN's Stated Income Loan Program. A forensic review of the loan file reveals that the borrower obtained a mortgage loan prior to the closing of the subject loan, which resulted in an additional monthly payment of $3,243. This loan was not listed on the application for the subject loan. There is no evidence in the file that the underwriter took this additional debt obligation into account in

originating the loan. Moreover, the underwriter failed to account for the $343 monthly payment for the subject property's second lien note, which was obtained simultaneously with the subject loan. There was no evidence in the file to support excluding the payment for the second lien note from the borrower's monthly debt obligations. A recalculation of the DTI based on all evidence uncovered in the forensic review results in an increase in DTI from 38.72 percent to 180.81 percent, which exceeds the guideline maximum of 38 percent. The loan defaulted, resulting in a loss of $142,425.

- A loan that closed in March 2007 with a principal balance of $236,000 was originated by Statewide Bancorp, Inc. as a stated income loan. A forensic review of the loan file reveals that the borrower obtained two mortgage loans prior to the closing of the subject loan, which resulted in total additional monthly payments of $1,238. These loans were not listed on the application for the subject loan. There is no evidence in the file that the underwriter took this additional debt obligation into account in originating the loan. A recalculation of the DTI that includes the borrower's undisclosed debt results in an increase in DTI from 42.64 percent to 98.47 percent, which exceeds the guideline maximum of 38 percent. The loan defaulted, resulting in a loss of $171,787.

139. Of the 94 loans reviewed in the RALI 2006-QO8 Securitization, 72.34 percent contained a DTI that exceeded the applicable underwriting guidelines for the product type. Of the 141 loans reviewed in the RALI 2007-QH5 Securitization, 70.92 percent contained a DTI that exceeded the applicable underwriting guidelines for the product type.

iv. Credit Inquiries That Indicated Misrepresentations of Debts

140. The Prospectus Supplements for the RALI 2006-QO8 and RALI 2007-QH5 Securitizations represent that the loan originator "is required to review an application designed to provide to the original lender pertinent credit information concerning the mortgagor" including the mortgagor's "credit history." (RALI 2006-QO8 Prospectus Supplement at S-59; RALI 2007-QH5 Prospectus Supplement at S-53.) The following examples are instances where the borrowers' credit reports contained numerous credit inquiries that should have put the loan underwriters on notice for potential misrepresentations of debt obligations to be included in the borrowers' DTI. In each of these instances, there was no evidence in the origination loan file

that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Failure to investigate these issues prevented the loan underwriting process from appropriately qualifying the loan and evaluating the borrower's ability to make timely payments on the mortgage loan.

- A loan that closed in August 2006 with a principal balance of $187,200 was originated under Choice Capital Funding, Inc.'s Stated Income Loan Program. A credit report included in the origination file dated prior to closing shows 18 credit inquiries within the previous 90 days, including numerous inquiries from mortgage lenders and servicers. There was no evidence in the origination file that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Moreover, in July 2006 the borrower obtained an undisclosed mortgage loan with a $1,843 monthly payment. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 78.78 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $207,729.

- A loan that closed in August 2006 with a principal balance of $342,000 was originated under Trust One Mortgage Corp.'s Stated Income Loan Program. A credit report included in the origination file dated prior to closing shows nine credit inquiries within the previous 90 days, including numerous inquiries from mortgage lenders and servicers. There was no evidence in the origination file that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Moreover, in August 2006, prior to the subject loan closing, the borrower obtained an undisclosed mortgage loan with a $2,765 monthly payment. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 105.39 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $262,622.

- A loan that closed in September 2006 with a principal balance of $193,900 was originated under LoanCity's Stated Income Loan Program. A credit report included in the origination file dated prior to closing shows five credit inquiries within the previous 90 days. There was no evidence in the origination file that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Moreover, in August 2006 the borrower obtained an undisclosed mortgage loan with a $2,783 monthly payment. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 99.03 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted and is in foreclosure.

- A loan that closed in April 2007 with a principal balance of $200,000 was originated under First Financial's Stated Income Loan Program. A credit report included in the origination file dated prior to closing shows five credit inquiries within the previous 90 days. There was no evidence in the origination file that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Moreover, the borrower obtained two undisclosed installment loans prior to the subject loan closing with total monthly payments of $682. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 77.30 percent, which exceeds the guideline maximum of 40 percent. The loan defaulted, resulting in a loss of $159,689.

- A loan that closed in March 2007 with a principal balance of $312,000 was originated under SCME's Stated Income Loan Program. A credit report included in the origination file dated prior to closing shows six credit inquiries within the previous 90 days. There was no evidence in the origination file that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Moreover, the borrower obtained an undisclosed installment loan prior to the subject loan closing with a monthly payment of $447. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 108.56 percent, which exceeds the guideline maximum of 50 percent. The loan defaulted, resulting in a loss of $245,599.

- A loan that closed in April 2007 with a principal balance of $254,000 was originated under HFN's Stated Income Loan Program. A credit report included in the origination file dated prior to closing shows 13 credit inquiries within the previous 90 days, including several inquiries from mortgage lenders and servicers. There was no evidence in the origination file that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Moreover, the borrower obtained two mortgage loans prior to the subject loan closing with total monthly payments of $3,048. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 261.98 percent. The loan defaulted, resulting in a loss of $243,148.

- A loan that closed in April 2007 with a principal balance of $143,920 was originated under First National Bank of Arizona's Stated Income Loan Program. A credit report included in the origination file dated prior to closing shows 12 credit inquiries within the previous 90 days, including several inquiries from mortgage lenders and servicers. There was no evidence in the origination file that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Moreover, the borrower obtained no less than 23 undisclosed mortgage loans prior to, or within thirty days of, the subject loan closing with total monthly payments of at least $23,746. A recalculation of the DTI based on all evidence uncovered in the forensic review was not possible because the borrower's income

for the year of subject loan closing was verified at $0. The loan defaulted, resulting in a loss of $190,109.

- A loan that closed in April 2007 with a principal balance of $340,000 was originated under M&T Bank's Full Documentation Loan Program. A credit report included in the origination file dated prior to closing shows five credit inquiries within the previous 90 days. There was no evidence in the origination file that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Moreover, the borrower obtained an undisclosed loan within 30 days of the subject loan closing with a $265 monthly payment. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 64.96 percent, which exceeds the guideline maximum of 45 percent. The loan defaulted, resulting in a loss of $282,241.

b. Both Government and Private Investigations Confirm that the Originators of the Loans in the Securitizations Systematically Failed to Adhere to Their Underwriting Guidelines

141. An extraordinary volume of publicly-available information, including government reports and investigations, confirms that the originators whose loans were included by the Defendants in the Securitizations abandoned their loan origination guidelines throughout the period of the Securitizations.

142. For example, in November 2008, the Office of the Comptroller of the Currency ("OCC"), an office within the United States Department of the Treasury, issued a report identifying the "Worst Ten" mortgage originators in the "Worst Ten" metropolitan areas. The worst originators were defined as those with the largest number of non-prime mortgage foreclosures for 2005-2007 originations. Aegis, Decision One, New Century, Ownit,[12] and People's Choice -- the companies that originated loans for the Securitizations at issue here -- were all on that list. (*See* "Worst Ten in the Worst Ten," Office of the Comptroller of the

[12] Ownit, which originated loans for one of the Securitizations, was identified by the OCC as the fifteenth worst subprime lender in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas between 2005 and 2007 with the highest rates of delinquency. (*See* "Worst Ten in the Worst Ten: Update," Office of the Comptroller of Currency Press Release, March 22, 2010.)

Currency Press Release, November 13, 2008.) Several of the Non-Party Originators -- including New Century, HFN, a wholly owned subsidiary of RFC, and MLN, which collectively originated loans for 19 of the 21 Securitizations -- have been the target of government investigations or private actions that allege a complete abandonment of their reported underwriting guidelines.

i. New Century Violated Its Underwriting Guidelines

143. New Century and its subsidiary, Home123, originated loans for at least four of the Securitizations. As stated in the Prospectus Supplement for the RAMP 2005-NC1 Securitization, "[f]or the quarter ending September 30, 2005, New Century Mortgage Corporation and Home123 Corporation originated $40.4 billion in mortgage loans." (RAMP 2005-NC1 Prospectus Supplement (Dec. 27, 2005), at S-37.) By the end of 2006, Inside Mortgage Finance reports that New Century was the second largest subprime mortgage loan originator in the United States, with a loan production volume that year of $51.6 billion. Before its collapse in the first half of 2007, New Century was one of the largest subprime lenders in the country. New Century filed for protection from its creditors under Chapter 11 of the federal Bankruptcy Code on April 2, 2007.

144. In 2010, the OCC identified New Century as *the* worst subprime lender in the country based on the delinquency rates of the mortgages it originated in the 10 metropolitan areas with the highest rates of delinquency between 2005 and 2007. (*See* "Worst Ten in the Worst Ten: Update," Office of the Comptroller of Currency Press Release, March 22, 2010, *available at* http://www.occ.gov/news-issuances/news-releases/2010/nr-occ-2010-39d.pdf.) Further, in January 2011, the FCIC Report detailed, among other things, the collapse of mortgage underwriting standards and subsequent collapse of the mortgage market and wider economy. *See* FCIC Report. The FCIC Report singled out New Century for its role:

> New Century—once the nation's second-largest subprime lender—ignored early warnings that its own loan quality was deteriorating and stripped power from two risk-control departments that had noted the evidence. In a June 2004 presentation, the Quality Assurance staff reported they had found severe underwriting errors, including evidence of predatory lending, legal [sic] and state violations, and credit issues, in 25% of the loans they audited in November and December 2003. In 2004, Chief Operating Officer and later CEO Brad Morrice recommended these results be removed from the statistical tools used to track loan performance, and in 2005, the department was dissolved and its personnel terminated. The same year, the Internal Audit department identified numerous deficiencies in loan files; out of nine reviews it conducted in 2005, it gave the company's loan production department "unsatisfactory" ratings seven times. Patrick Flanagan, president of New Century's mortgage-originating subsidiary, cut the department's budget, saying in a memo that the "group was out of control and tries to dictate business practices instead of audit."

(FCIC Report, at 157.)

145. On February 29, 2008, after an extensive document review and conducting more than 100 interviews, Michael J. Missal, the Bankruptcy Court Examiner for New Century, issued a detailed report on the various deficiencies at New Century, including lax mortgage standards and a failure to follow its own underwriting guidelines. Among his findings, the Examiner reported:

> New Century had a brazen obsession with increasing loan originations without due regard for the risks associated with that business strategy. . . . Although the primary goal of any mortgage banking company is to make more loans, New Century did so in an aggressive manner that elevated the risks to dangerous and ultimately to fatal levels.
>
> New Century also made frequent exceptions to its underwriting guidelines for borrowers who might not otherwise qualify for a particular loan. A Senior Officer of New Century warned in 2004 that the "number one issue is exceptions to the guidelines." Moreover, many of the appraisals used to value the homes that secured the mortgages had deficiencies.

> New Century . . . layered the risks of loan products upon the risks of loose underwriting standards in its loan originations to high risk borrowers.
>
> Senior Management [at New Century] turned a blind eye to the increasing risks of New Century's loan originations and did not take appropriate steps to manage those risks.

(Final Report of Michael J. Missal, Bankruptcy Examiner, *In re New Century TRS Holdings, Inc.*, No. 07-10416 (KJC) (Bankr. Del. Feb. 29, 2008).)

146. On December 9, 2009, the SEC charged three of New Century's top officers with violations of federal securities laws. The SEC's complaint details the blatant falsity of New Century's representations regarding its underwriting guidelines -- for example, its representations that it was committed to "adher[ing] to high origination standards in order to sell [its] loan products in the secondary market" and to "only approv[ing] subprime loan applications that evidence a borrower's ability to repay the loan." (Complaint at ¶¶ 19-20, *Securities and Exchange Commission v. Morrice*, No. SACV09-01426 (C.D. Cal. Dec. 7, 2009).)

147. New Century's failure to adhere to its underwriting guidelines is further reflected in allegations made in the Assurance of Discontinuance signed by Morgan Stanley and the Attorney General of Massachusetts (the "Assurance of Discontinuance"), in *In re: Morgan Stanley & Co. Inc.*, Civil Action No. 10-2538 (Suffolk Cnty. Super. Ct. June 24, 2010). The Massachusetts Attorney General alleged:

- New Century "stretch[ed] underwriting guidelines to encompass or approve loans not written in accordance with the guidelines." (*Id.* ¶¶ 17, 23.)
- "One recurring issue identified by Morgan Stanley was New Century's origination of loans that violated Massachusetts Division of Banks' borrower's best interest standard []." (*Id.* ¶ 18.)
- During the period 2006-2007, 91 percent of the loans approved for securitization that did not meet New Century's underwriting guidelines did not have "sufficient compensating factors to offset such exceptions." (*Id.* ¶ 27.)

- "The loans originated by New Century were "unfair loans to Massachusetts borrowers" and "were in violation of Massachusetts law . . . ." (*Id.* ¶¶ 43-44.)

148. As a result, on or about June 24, 2010, Morgan Stanley agreed to pay $102 million to settle the claims asserted by the Attorney General and also agreed to drastic changes in its underwriting practices. (*See id.* ¶¶ 45-52.)

149. Confidential witnesses confirmed that New Century had abandoned its underwriting guidelines. One confidential witness ("Confidential Witness 1"), an internal bureau quality assurance underwriter, reported that he doubted the quality of the loans he reviewed. A second confidential witness ("Confidential Witness 2"), a national appraisal director at New Century, stated that he did not support New Century's practices, and asserted that the originators often found ways to "massage" the loan package and override his group's decision to decline the loan. Confidential Witness 2 estimated that over 50 percent of the loans reviewed by his group lacked the proper collateral backing, but there were more senior people who approved the loans because they "liked the borrower" or claimed that the loan "came from their best broker." According to Confidential Witness 2, New Century was "a very volume driven company," and the "originators did not care about the quality of the loan" because they were paid by the number of closings. This witness stated that, to form a long-lasting relationship with an originator, third-party appraisers were pressured to inflate appraisal values.

150. Patricia Lindsay, a former Vice President of Corporate Risk at New Century, testified before the FCIC in April 2010 that, beginning in 2004, underwriting guidelines had been all but abandoned at New Century. Ms. Lindsay further testified that New Century systematically approved loans with 100 percent financing to borrowers with extremely low credit scores and no supporting proof of income. (*See* Written Testimony of Patricia Lindsay for the

FCIC Hearing, April 7, 2010 ("Lindsay Testimony"), http://fcic-static.law.stanford.edu/cdn-media/fcic.testimony/2010-0407-Lindsay.pdf, at 3.)

151. Ms. Lindsay also testified that appraisers "fear[ed]" for their "livelihoods," and therefore cherry-picked data "that would help support the needed value rather than finding the best comparables to come up with the most accurate value." (*Id.* at 5.) Indeed, on May 7, 2007, *The Washington Post* reported that a former New Century appraiser, Maggie Hardiman, recounted how she "didn't want to turn away a loan because all hell would break loose" and that, when she did reject a loan, "her bosses often overruled her and found another appraiser to sign off on it." (David Cho, *Pressure at Mortgage Firm Led to Mass Approval of Bad Loans*, WASHINGTON POST, May 7, 2007.)

ii. HFN Violated Its Underwriting Guidelines

152. HFN, which originated loans for at least 14 of the Securitizations, was under enormous pressure to extend risky loans. A former loan officer at HFN recounted that "[t]he main focus was doing Alt A because that's where the money was," and "[i]n order to keep your market share, you had to be more aggressive." (*See* Steve Law, *Shaky loans may spur new foreclosure wave*, THE PORTLAND TRIBUNE, OCT. 30, 2009.) A mortgage broker confirmed such pressure, stating: "'The V.P.s came down to the office beating the drums about Option ARMs' . . . 'I had Wachovia march through here; *I had GMAC*.'" (*Id.* (emphasis added).)

153. MBIA Insurance Corporation, which insured mortgage-backed securities issued by Ally, has filed two actions against GMACM and RFC, both parents of HFN, alleging, among other things, that GMACM and RFC made fraudulent representations regarding adherence to GMACM's loan origination underwriting guidelines. MBIA alleged that it performed an extensive a review of loan files in advance of making its allegations. Its complaint explains that it performed a review of "loan files associated with 4,104 delinquent or charged off loans" and

that its review revealed that "[a]t least 89% of the 4,104 delinquent or charged off loans . . . were not originated in material compliance with GMAC Mortgage's Underwriting Guidelines." (Complaint at ¶¶ 75, 6, *MBIA Insurance Corp. v. GMAC Mortgage, LLC (f/k/a GMAC Mortgage Corporation*), No. 600837-2010 (N.Y. Sup. Ct. Apr. 1, 2010).) MBIA's complaint further alleges that MBIA, or the experts that performed its review, found that "a significant number of mortgage loans were made on the basis of 'stated incomes' that were grossly unreasonable or were approved despite DTI or CLTV ratios in excess of the cut-offs stated in GMAC Mortgage's Underwriting Guidelines," and that, "contrary to its Underwriting Guidelines, GMAC Mortgage failed in many cases to verify the borrower's employment when required to do so or to verify prior rental or mortgage payment history, approved mortgage loans with ineligible collateral, approved mortgage loans to borrowers with ineligible credit scores, and approved loans without verifying that the borrower had sufficient funds or reserves." (*Id.* at ¶ 76.)

154. In its complaint against RFC, the direct parent of HFN, MBIA also asserted a claim for fraud, among other things, alleging that MBIA's review "[o]f the[] 1,847 defaulted mortgage loans [revealed that] . . . only 129 mortgage loans -- less than 7% of the mortgage loans reviewed -- were originated or acquired in material compliance with RFC's representations and warranties." (Complaint at ¶ 46, *MBIA Insurance Corp. v. Residential Funding Co., LLC*, No. 603552-2008 (N.Y. Sup. Ct. Dec. 4, 2008).)

155. Further, on June 2011, the SEC and the U.S. Department of Justice ("DOJ") launched investigations of, among other things, "potential fraud related to the origination and/or underwriting of mortgage loans" by Ally Financial and its subsidiaries. (Ally Fin. Inc., Amendment No. 3 to Form S-1 (Form S-1/A), at 23 (June 29, 2011).) As an originator of residential mortgage loans for the Ally entities, the scope of the SEC and the DOJ's investigation

will likely include a review of HFN's compliance with its own loan origination underwriting guidelines.

iii. MLN Violated Its Underwriting Guidelines

156. MLN, which originated the loans for four of the Securitizations, filed for bankruptcy on February 5, 2007, and on January 6, 2011, the Liquidating Trustee for MLN filed a motion seeking to destroy certain MLN records and releasing the Trustee from responding to any future requests concerning those records. The United States Attorney objected to the Trustee's motion on the basis that "federal law enforcement records indicate that [MLN's] loans are the subject of many ongoing investigations. As a result, [MLN's] records, including but not limited to the loan files and loan related information . . ., may be relevant to pending federal criminal investigations into mortgage fraud." (Objection to Debtor's Motion for the Destruction for Certain Records, *In re Mortgage Lenders Network USA, Inc.*, No. 07-10146-PJW (Bankr. Del.) (Dkt. 3281).) Accordingly, upon information and belief, government investigations into MLN's origination of loans and compliance with its own underwriting guidelines are ongoing.

157. The originators of the mortgage loans underlying the Securitizations went beyond the systematic disregard of their own underwriting guidelines. The FCIC found that mortgage loan originators throughout the industry pressured appraisers, during the period of the Securitizations, to issue inflated appraisals that met or exceeded the amounts needed for the subject loans to be approved, regardless of the accuracy of such appraisals, and especially when the originators aimed at putting the mortgages into a package of mortgages that would be sold for securitization. Upon information and belief, these inflated appraisals resulted in inaccurate LTV ratios.

iv. Ownit Violated Its Underwriting Guidelines

158. Ownit, which originated loans for at least one of the Securitizations, was a mortgage lender based in Agoura Hills, California. In September 2005, the investment bank Merrill Lynch & Co. ("Merrill Lynch") acquired a 20 percent stake in the company. According to Ownit's founder and chief executive, William D. Dallas, after Merrill Lynch acquired that stake, it instructed Ownit to loosen underwriting standards and originate more stated income loans. (*See* EDMOND L ANDREWS, BUSTED: LIFE INSIDE THE GREAT MORTGAGE MELTDOWN 158-59 (2009).) As a result, the number of stated income loans jumped from near zero to over 30 percent. (*Id*. at 155, 162.) Ownit also lowered the credit scores it required from borrowers. (*Id*. at 162.) Ownit thus abandoned its underwriting standards in order to originate more loans.

v. EquiFirst Violated Its Underwriting Guidelines

159. EquiFirst originated loans for at least two of the Securitizations. Confidential interviews with former EquiFirst employees during the relevant time period reveal that EquiFirst approved loans for borrowers for whom it believed lacked sufficient credit quality or would not otherwise be able to pay back the loan.

160. One EquiFirst underwriter ("Confidential Witness 3") rejected many loans because she did not believe the borrowers had the ability to pay. Often times, however, her supervisors "took the reins" and approved those loans anyway. For example, according to Confidential Witness 3, sometimes documentation regarding a borrower's income would be included in the loan file even if the loan was a stated income loan. In those instances, if the documentation reflected that the borrower's income was insufficient to approve the loan, Confidential Witness 3 would reject that borrower's loan application in accordance with EquiFirst's guidelines. However, those "documents [reflecting that the borrower's income was insufficient] would go away" and the loan application would come back approved by her

supervisors. Confidential Witness 3 also remembers declining loans in accordance with EquiFirst's underwriting guidelines because documents in the loan file were fraudulent or altered. Confidential Witness 3 said that the file would come back with documents reflecting the "correct" income, but she did not feel comfortable approving those loans because of the prior misrepresentation and because the integrity of the entire file was compromised. However, these loans were ultimately approved "behind the scenes."

161. Another EquiFirst underwriter ("Confidential Witness 4") stated that there was "plenty of fraud" in loan file documentation, including false pay stubs and bank statements. When suspicious documents were included in the loan application, Confidential Witness 4 would write a report and submit the file to operations, but often times these loans were still approved.

162. A third EquiFirst underwriter ("Confidential Witness 5") stated that management told the underwriters if they could not find a way to approve loans, it meant losing their jobs. Nine times out of ten she believed that a stated income borrower would not be able to repay his or her loan, yet Confidential Witness 5 received pressure from account managers, title companies, and brokers to push loans through, who would tell her, "there is always an exception to the rule."

vi. Inflated Appraisals

163. As described above, the originators of the mortgage loans underlying the Securitizations went beyond the systematic disregard of their own underwriting guidelines. Indeed, as the FCIC has confirmed, mortgage loan originators throughout the industry pressured appraisers, during the period of the Securitizations, to issue inflated appraisals that met or exceeded the amount needed for the subject loans to be approved, regardless of the accuracy of such appraisals. Appraisal pressure was especially strong when the originators intended to put the mortgages into a package of mortgages that would be sold for securitization. This resulted in

lower LTV ratios, discussed *supra*, which in turn made the loans appear to investors less risky than they were.

164. As described by Ms. Lindsay in her FCIC testimony, appraisers "fear[ed]" for their "livelihoods," and therefore cherry-picked data "that would help support the needed value rather than finding the best comparables to come up with the most accurate value." (Lindsay Testimony at 5.) Likewise, Jim Amorin, President of the Appraisal Institute, confirmed in his FCIC testimony that "[i]n many cases, appraisers are ordered or severely pressured to doctor their reports and to convey a particular, higher value for a property, or else never see work from those parties again . . . . [T]oo often state licensed and certified appraisers are forced into making a 'Hobson's Choice.'" (*See* Testimony of Jim Amorin to the FCIC, *available at* www.appraisalinstitute.org/newsadvocacy/downloads/ltrs_tstmny/2009/AI-ASA-ASFMRA-NAIFATestimonyonMortgageReform042309final.pdf.) Faced with this choice, appraisers systematically abandoned applicable guidelines and overvalued properties in order to facilitate the issuance of mortgages that could then be collateralized into mortgage-backed securitizations.

c. The Collapse of the Certificates' Credit Ratings Further Shows that the Mortgage Loans Were not Originated in Adherence to the Stated Underwriting Guidelines

165. The total collapse in the credit ratings of the Certificates invested in by Freddie Mac, typically from AAA or its equivalent to non-investment speculative grade, is further evidence of the originators' systematic disregard of underwriting guidelines, underscoring that these Certificates were impaired from the start.

166. The Certificates purchased by Freddie Mac originally were assigned credit ratings of AAA or its equivalent, which purportedly reflected the description of the mortgage loan collateral and underwriting practices set forth in the Registration Statements. Those ratings

artificially were inflated, however, upon information and belief, in part as a result of the same misrepresentations that the Defendants made to investors in the Prospectus Supplements.

167. Upon information and belief, Ally provided or caused to be provided loan-level information, including LTV ratios, owner-occupancy status, and other loan characteristics to the rating agencies. The rating agencies in turn relied on this information to assign the Certificates credit ratings. Upon information and belief, because the information that Ally provided or caused to be provided was materially false, the models used by the rating agencies under-predicted the likelihood of delinquency and loss, as well as the loss severity. As a result of the false information provided, the Securitizations lacked the level of subordination required for the Certificates to be rated AAA (or its equivalent), and investors, including Freddie Mac, were deprived of the level of protection commensurate with an AAA (or equivalent) rating. As a result, the Certificates were offered and purchased at prices suitable for AAA investment grade securities, when in fact the Certificates actually carried a severe risk of loss and inadequate credit enhancement, and thus should not have been rated AAA (or its equivalent).

168. Freddie Mac could not have discovered facts indicating Defendants' false and misleading statements and omissions prior to, at the earliest March 2008. This is the first month during which any of the Certificates at issue were downgraded below investment grade by a credit rating agency. In subsequent months and years, most of these Certificates were downgraded by the credit rating agencies from AAA (or its equivalent) to below investment grade. Prior to the initial downgrade in March 2008, Freddie Mac had insufficient reason to suspect Defendants' widespread misrepresentations and omissions of material fact in the Registration Statements relating to its Certificates. After these downgrades, it required significant investigation and fact-finding for FHFA to formulate the claims stated herein. The

downgrades beginning in March 2008 raised questions regarding the true underwriting practices used to originate the mortgage loans, and the mortgage loans' true value and credit quality. Table 8 details the extent of the downgrades.[13]

Table 8

Transaction	Tranche	Rating at Issuance (Moody's/S&P/Fitch)	Rating as of April 2012 (Moody's/S&P/Fitch)
RALI 2005-QO4	IA1	Aaa/AAA/AAA	Caa3/CCC/C
RALI 2006-QO4	IA1	Aaa/AAA/--	Ca/CC/--
RALI 2006-QO4	IA2	Aaa/AAA/--	Ca/D/--
RALI 2006-QO5	IA1	Aaa/AAA/--	Caa3/CCC/--
RALI 2006-QO8	IIA	Aaa/AAA/--	Ca/D/--
RALI 2006-QO9	IIA	Aaa/AAA/--	Ca/D/--
RALI 2007-QH5	AII	Aaa/AAA/--	Ca/CC/--
RAMP 2005-EFC6	AII	Aaa/AAA/--	A1/AAA/--
RAMP 2005-EFC7	AII	Aaa/AAA/--	Ca/D/--
RAMP 2005-NC1	AII	Aaa/AAA/--	Ca/D/--
RAMP 2005-RS9	AII	Aaa/AAA/--	Ca/D/--
RAMP 2006-RS1	AII	Aaa/AAA/--	Caa3/CCC/--
RASC 2005-EMX3	AII	Aaa/AAA/--	Aa1/AAA/--
RASC 2005-KS10	AII	Aaa/AAA/--	Baa3/AAA/--
RASC 2005-KS11	AII	Aaa/AAA/--	Ba1/AAA/--
RASC 2006-EMX8	AII	Aaa/AAA/--	Ca/CCC/--
RASC 2006-EMX9	AII	Aaa/AAA/--	Caa3/CCC/--
RASC 2006-KS3	AII	Aaa/AAA/--	Caa1/AA/--
RASC 2006-KS9	AII	Aaa/AAA/AAA	Ca/CCC/C
RASC 2007-EMX1	AII	Aaa/AAA/--	Ca/D/--
RASC 2007-KS2	AII	Aaa/AAA/AAA	Caa3/CCC/CC
RASC 2007-KS3	AII	Aaa/AAA/--	Caa3/CCC/--

d. The Surge in Mortgage Delinquency and Default Further Demonstrates that the Mortgage Loans Were Not Originated in Adherence to the Stated Underwriting Guidelines

169. Even though the Certificates were marketed as long-term, stable investments, a significant percentage of the mortgage loans backing the Certificates have defaulted, have been foreclosed upon, or are delinquent, resulting in massive losses to the Certificateholders. The

[13] Applicable ratings are shown in sequential order separated by forward slashes: Moody's/S&P/Fitch. A double-hyphen indicates that the relevant agency did not provide a rating at issuance.

overall poor performance of the mortgage loans is a direct consequence of the fact that their underlying mortgage loans were not underwritten in accordance with applicable underwriting guidelines as represented in the Prospectus Supplements.

170. Loan groups that were underwritten properly and contained loans with the characteristics represented in the Prospectus Supplements would have experienced substantially fewer payment problems and substantially lower percentages of defaults, foreclosures, and delinquencies than occurred here. Table 9 reflects the percentage of loans in the Supporting Loan Groups that are in default, have been foreclosed upon, or are delinquent as of April 2012.

Table 9

Transaction	Supporting Loan Group	Percentage of Delinquent / Defaulted / Foreclosed Loans
RALI 2005-QO4	Group I	38.00%
RALI 2006-QO4 (IA1)	Group I	38.00%
RALI 2006-QO4 (IA2)	Group I	38.00%
RALI 2006-QO5	Group I	41.90%
RALI 2006-QO8	Group II	37.00%
RALI 2006-QO9	Group II	37.50%
RALI 2007-QH5	Group II	50.00%
RAMP 2005-EFC6	Group II	34.80%
RAMP 2005-EFC7	Group II	31.90%
RAMP 2005-NC1	Group II	28.70%
RAMP 2005-RS9	Group II	27.30%
RAMP 2006-RS1	Group II	25.30%
RASC 2005-EMX3	Group II	40.70%
RASC 2005-KS10	Group II	28.10%
RASC 2005-KS11	Group II	27.80%
RASC 2006-EMX8	Group II	53.70%
RASC 2006-EMX9	Group II	64.40%
RASC 2006-KS3	Group II	28.00%
RASC 2006-KS9	Group II	35.70%
RASC 2007-EMX1	Group II	41.60%
RASC 2007-KS2	Group II	36.60%
RASC 2007-KS3	Group II	39.20%

171. The confirmed misstatements concerning owner-occupancy and LTV ratios, the confirmed systematic underwriting failures by the originators responsible for the mortgage loans

across the Securitizations, and the extraordinary drop in credit rating and rise in delinquencies across those Securitizations all indicate that the mortgage loans in the Supporting Loan Groups, contrary to the representations in the Registration Statements, were not originated in accordance with the stated underwriting guidelines.

E. Freddie Mac's Purchases of the Certificates

172. Between September 23, 2005 and May 30, 2007, Freddie Mac purchased from the Underwriter Defendants over $6 billion in Certificates issued in connection with the Securitizations. Table 10 reflects each of Freddie Mac's purchases of the Certificates.[14] To date, Freddie Mac has not sold any of the Certificates.

Table 10

Transaction	Tranche	CUSIP	Settlement Date of Purchase by Freddie Mac	Initial Unpaid Principal Balance	Purchase Price (% of Par)	Seller to Freddie Mac
RALI 2005-QO4	IA1	761118NL8	11/30/2005	143,428,800.00	100	RBS
RALI 2006-QO4	IA1	75114GAA7	4/27/2006	327,356,000.00	100	RBS
RALI 2006-QO4	IA2	75114GAB5 92911DAA4	4/27/2006	81,838,000.00	100	RBS
RALI 2006-QO5	IA1	75114HAA5	5/30/2006	179,443,000.00	100	UBS
RALI 2006-QO8	IIA	75115FAT7	10/31/2006	409,198,000.00	100	Lehman Brothers
RALI 2006-QO9	IIA	75115HAB2	11/30/2006	284,637,000.00	100	Lehman Brothers
RALI 2007-QH5	AII	75116EAD4	5/30/2007	143,007,000.00	100	Goldman
RAMP 2005-EFC6	AII	76112BL32	11/22/2005	163,581,000.00	100	JPMSI
RAMP 2005-EFC7	AII	76112BR85	12/28/2005	199,376,000.00	100	Ally Securities
RAMP 2005-NC1	AII	76112BR36	12/28/2005	405,004,000.00	100	Credit Suisse
RAMP 2005-RS9	AII	76112BL99	11/29/2005	494,922,000.00	100	Bear Stearns
RAMP 2006-RS1	AII	76112BU24	1/25/2006	409,790,000.00	100	Credit Suisse
RASC 2005-EMX3	AII	75405MAE4	9/23/2005	267,481,000.00	100	Ally Securities
RASC 2005-KS10	AII	75405WAD4	10/28/2005	495,741,000.00	100	JPMSI
RASC 2005-KS11	AII	76110W7C4	11/29/2005	547,641,000.00	100	Credit Suisse

[14] Purchases and holdings of securities in Table 10 are stated in terms of unpaid principal balance ("UPB") of the relevant Certificates. Purchase prices are stated in terms of percentage of par. To date, Freddie Mac has not sold any of the Certificates it purchased as described in this section.

Transaction	Tranche	CUSIP	Settlement Date of Purchase by Freddie Mac	Initial Unpaid Principal Balance	Purchase Price (% of Par)	Seller to Freddie Mac
RASC 2006-EMX8	AII	74924UAE1	9/28/2006	236,806,000.00	100	Ally Securities
RASC 2006-EMX9	AII	74924VAE9	10/27/2006	197,896,000.00	100	Ally Securities
RASC 2006-KS3	AII	76113ABK6	3/29/2006	232,006,000.00	100	Citi
RASC 2006-KS9	AII	75406YAE7	10/27/2006	153,311,000.00	100	Barclays
RASC 2007-EMX1	AII	74924XAE5	3/12/2007	326,812,000.00	100	Ally Securities
RASC 2007-KS2	AII	74924WAE7	2/23/2007	164,400,000.00	100	JPMSI
RASC 2007-KS3	AII	74924YAE3	4/19/2007	167,618,000.00	99.96094	JPMSI

F. Freddie Mac Was Damaged by Defendants' Violations of Sections 11, 12 and 15 of the Securities Act

173. The statements and information in the Registration Statements regarding the credit quality and characteristics of the mortgage loans underlying the Certificates, and the origination and underwriting practices pursuant to which the mortgage loans purportedly were originated, were material to a reasonable investor. Defendants were responsible for the contents of those Registration Statements. But for the misrepresentations and omissions in the Registration Statements concerning those matters, Freddie Mac would not have purchased the Certificates.

174. Based upon sales of the Certificates or similar certificates in the secondary market and other indications of value, Freddie Mac has incurred substantial losses on the Certificates due to a decline in value that is directly attributable to Defendants' material misrepresentations and omissions. Among other things, the mortgage loans underlying the Certificates experienced defaults and delinquencies at a higher rate than would have been the case had the loans underlying the Certificates actually conformed to the origination guidelines, and had the Certificates merited the credit ratings set forth in the Registration Statement.

175. Defendants' misstatements and omissions in the Registration Statement were the direct, proximate and actual cause of Freddie Mac's losses resulting from its purchase of the

Certificates. Among other things, it was foreseeable to Defendants that non-compliant loans would suffer higher incidences of delinquency and default than loans underwritten in accordance with originators' underwriting standards. The precise extent of Freddie Mac's injuries will be proven at trial.

176. At the time it purchased the Certificates, Freddie Mac was unaware of the Defendants' misrepresentations, omissions, and/or untrue statements. Plaintiff was appointed Conservator of Freddie Mac less than one year after the discovery of the untrue statements and omissions contained in the Registration Statements and within three years of the Certificates being offered for sale to the public. Despite the exercise of reasonable diligence, Freddie Mac could not reasonably have discovered the untrue statements and omissions in the Registration Statements more than one year prior to the appointment of the Plaintiff as Conservator. This action is timely pursuant to 12 U.S.C. §§ 4617(b)(12) & (13), which establishes all time periods applicable to the claims brought herein.

II. ADDITIONAL FACTUAL ALLEGATIONS

177. The allegations in paragraphs 178 through 262 below concerning Defendants' knowledge or recklessness concerning the information set forth in or omitted from the Offering Materials provided to Freddie Mac are made solely with respect to Plaintiff's common law claims, as are the allegations set forth in paragraphs 263 through 276 concerning Freddie Mac's reliance on the material misrepresentations and omissions alleged herein.

A. The Fraud Defendants Were Incentivized to Fund Risky Residential Mortgage Loans and to Securitize and Sell Them to Investors

178. Securitizing large volumes of loans was a highly lucrative and competitive business for Defendants. Ally Securities, JPMSI and Goldman (the "Fraud Defendants")[15] each engaged in the securitization business on a massive scale, each doing multiple billions of dollars worth of securitizations during the period when they sold the Certificates to Freddie Mac. Fees, which were a percentage of the balance of the loan pool being purchased, and other transaction revenues associated with the Certificates and with the RMBS securitization business more generally, accounted for a substantial portion of the Fraud Defendants' (and other Defendants') earnings in the relevant time period. The more and the larger the securitizations the Defendants arranged and participated in, the greater their earnings. This financial motive accounts for Defendants' willingness, intentionally or recklessly, to make false statements in, or to omit material facts from, the Offering Materials. In furtherance of this motive, the Fraud Defendants took measures and entered into arrangements designed to ensure that a continuous and high volume of mortgage loans would be available for securitization.

179. Thus, among other things, the Fraud Defendants (or their affiliates) provided "warehouse" funding to mortgage originators to enable these originators to make, and to continue to make, loans. These subprime mortgage originators used those funds to make large numbers of loans, which they then turned around and sold back to the banks whose funds enabled them to make the loans in the first place. The banks then securitized the loans they effectively had funded, and transferred the risk to investors like Freddie Mac through the sale of the RMBS resulting from the securitizations.

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[15] The actions of the Fraud Defendants include non-party Bear Stearns.

180. These arrangements between the Fraud Defendants and loan originators undermined the underwriting process for the Certificates because the Fraud Defendants had no incentive to identify and exclude from the Securitizations loans that did not conform to the loan originators' stated guidelines. To the contrary, the Fraud Defendants had the motive to, and did, include loans that they knew -- or were reckless in not knowing -- did not conform to those guidelines, and that lacked the characteristics or did not merit the ratings set forth in the Offering Materials.

181. Bear Stearns and Goldman -- each of whom was an underwriter of the Securitizations -- provided billions of dollars of warehouse lending to New Century. JPMSI lent their own mortgage origination subsidiaries at least $30 billion, between 2005 and 2007. (*See* The Center for Public Integrity, *The Subprime 25*, IWATCH NEWS.ORG (May 6, 2009, 12:00 AM), http://www.iwatchnews.org/2009/05/06/5554/subprime-25.)

182. Ally itself was a fully, vertically-integrated RMBS operation that was dependent on volume. An Ally affiliate, Ally Bank, provides warehouse lines of credit to mortgage originators. GMACM and HFN originated subprime and Alt A loans; the Ally Sponsor sponsored securitizations of such loans and transferred them to the Ally Depositors; and Ally Securities marketed and sold the RMBS to investors. In 2003, 2005 and 2006, ResCap was the largest warehouse lender in the country. At the end of 2005, it had lent $17.8 billion and purchased approximately 15 percent of the mortgage loans financed by warehouse lending. (Residential Capital LLC, 2005 Annual Report (Form 10-k), at 10 (March 28, 2006).) At the end of 2006, ResCap had lent $13.2 billion and purchased approximately 23 percent of the mortgage loans financed by its warehouse lending. (Residential Capital LLC, 2006 Annual Report (Form-10K), at 10 (March 13, 2007); Residential Capital Corp., Registration Statement (Form S-4), at

80 (July 15, 2005).) Finally, in 2007 it had lent mortgage originators $3.3 billion and purchased 17.1 percent of the mortgage loan financed by warehouse lending. (Residential Capital LLC, 2007 Annual Report (Form 10-k), at 12 (Feb. 27, 2008).)

183. HFN, which originated loans for at least 14 of the Securitizations here, was under enormous pressure to extend risky loans. A former loan officer at HFN recounted that "[t]he main focus was doing Alt A because that's where the money was," and "[i]n order to keep your market share, you had to be more aggressive." (*See* Steve Law, *Shaky Loans May Spur New Foreclosure Wave*, PORTLAND TRIBUNE, OCT. 30, 2009.) A mortgage broker confirmed such pressure, stating: "'The V.P.s came down to the office beating the drums about Option ARMs' . . . 'I had Wachovia march through here; I had GMAC.'" (*Id.*)

184. Defendants were motivated to churn out and securitize as many mortgage loans as possible because they earned so much in revenues on both ends of the securitization process, while transferring the ultimate risk of default to investors, such as Freddie Mac. Indeed, several of the Defendants ranked in the top ten of the nation's largest underwriters of RMBS between 2004 and 2007, according to Inside Mortgage Finance. JPMSI was especially prolific. By 2007, JPMSI ranked seventh with $43.5 billion. (*2011 Mortgage Market Statistical Annual*, Vol. II (Inside Mortgage Finance Publ'ns, Inc., 2011).)

B. The Fraud Defendants' Material Misrepresentations and Omissions in the Offering Materials

185. In connection with the sale of the Certificates, the Fraud Defendants, the Ally Depositors (RALI, RASC, and RAMP), and the Ally Sponsor (RFC) each made misrepresentations and omissions of material fact to Freddie Mac in the Offering Materials. The Offering Materials included term sheets, Registration Statements, Prospectuses, Prospectus Supplements, free writing prospectuses, other draft and final written offering documents, loan

data set forth in the applicable Pooling and Service Agreements, Mortgage Loan Purchase Agreements, and electronic files, delivered or made available in connection with the offering. These Offering Materials, which generally replicated the misstatements and omissions in the Registration Statements, described the credit quality and other characteristics of the underlying mortgage loans and were provided to investors, including Freddie Mac.

186. Through the Offering Materials, the Fraud Defendants and Ally Sponsor also furnished Freddie Mac with anticipated credit ratings on the proposed pool of mortgage loans intended for securitization. On information and belief, the Fraud Defendants and Ally Sponsor solicited the anticipated ratings from credit rating agencies based on misrepresentations as to the credit quality of the mortgage loans and the amount of the overcollateralization in the deal. All of the Securitizations had anticipated ratings of AAA or its equivalent.

187. The Offering Materials, among other things: (1) misrepresented the loans and loan originators' adherence to the stated underwriting guidelines; (2) overstated the number of loans for owner-occupied properties; (3) understated the loan pools' average LTV ratios; and (4) failed to disclose that the credit ratings of the Certificates were based on false information and that a higher level of subordination would be required for AAA (or its equivalent) rating. Each misrepresentation and omission created an additional, hidden layer of risk well beyond that known to be associated with non-agency loans or subprime loans.

188. First, the Fraud Defendants', Ally Sponsor's and Ally Depositors' statements regarding the mortgage pools' compliance with stated underwriting guidelines were false. The falsity of such representations is evident from the initial forensic review of loans, disclosures concerning the originators' systematic disregard of their stated underwriting guidelines, as well as the Certificates' high default rates and plummeting credit ratings. Indeed, of the 16 Non-Party

Originators, five were cited as among the "worst ten" in the "worst ten" metropolitan areas: Aegis, Decision One, New Century, Ownit, and People's Choice. Both government and private investigations have confirmed that these originators failed to apply any standards at all when making high-risk loans. Moreover, the high default rates and lowered credit ratings confirm that the loans were not properly underwritten in the first place. As shown in Tables 8 and 9, the average rate of default across the Securitizations is 37.46 percent, and although every tranche of Certificates purchased by Freddie Mac had been rated AAA (or its equivalent) at the time of purchase, by April 2012, 19 of 22 tranches had been downgraded to junk-bond status, with ratings of BB (or its equivalent). *See supra* Parts I.D.2.c and I.D.2.d.

189. These misstatements were material because, as discussed above, the quality of loans in the pool determined the risk of the Certificates backed by those loans. Because a reasonable underwriting process had not been followed, the entire loan pool was much riskier and more prone to default and market losses than represented. The systemic underwriting failures decreased the reliability of *all* the information provided to Freddie Mac about the loans, and thus increased the actual risk to investors. As a result of those failures, the value of the Certificates was substantially lower than the price paid by Freddie Mac for those Certificates.

190. Second, as shown in Table 6, the Fraud Defendants, Ally Sponsor, and Ally Depositors materially understated the non-owner-occupied status for each Securitization by an average of 10.73 percent. This understatement was material to Freddie Mac because it led Freddie Mac to believe that the Certificates it purchased were backed by the high owner-occupancy rates reported to Freddie Mac, which would have made the Certificates safer investments than certificates backed by second homes or investment properties.

191. Third, the Fraud Defendants, Ally Sponsor, and Ally Depositors understated the loan pools' average LTV ratios, which overstated the borrowers' equity "cushion" in the property. As Table 7 demonstrates, on average, only 38.5 percent of the loans actually had LTV ratios of less than 80 percent, as opposed to 64.2 percent as represented in the Offering Materials. Moreover, while all but two of the Certificates were represented to have no loans with an LTV over 100 percent, in reality, every deal contained at least eight percent loans with greater than 100 percent LTV, with an average of 18.5 percent. In other words, in almost all of the Securitizations, a significant percentage of the mortgage loans either were under-secured or "underwater" from the start. The material understatement of LTV ratios was materially misleading because it misrepresented the risk that a borrower would abandon a property if the value dropped below the unpaid balance of the loan, as well as the risk that proceeds from any foreclosure sale would fail to cover the unpaid balance.

192. Further, the Fraud Defendants, Ally Sponsor, and Ally Depositors failed to disclose that the Certificates' credit ratings were false and misleading because, in an attempt to manufacture predetermined ratings, Defendants provided to the ratings agencies the same misinformation contained in the Offering Materials. In testimony before the Senate Permanent Subcommittee on Investigations, Susan Barnes, the North American Practice Leader for RMBS at S&P from 2005 to 2008, confirmed that the rating agencies relied upon investment banks to provide accurate information about the loan pools:

> The securitization process relies on the quality of the data generated about the loans going into the securitizations. *S&P relies on the data produced by others and reported to both S&P and investors about those loans . . . . S&P does not receive the original loan files for the loans in the pool*. Those files are reviewed by the arranger or sponsor of the transaction, who is also responsible for reporting accurate information about the loans in the deal documents and offering documents to potential investors.

(SPSI hearing testimony, April 23, 2010) (emphasis added).) As a result, the ratings failed to reflect accurately the actual risk underlying the Certificates purchased by Freddie Mac because the ratings agencies were analyzing a mortgage pool that had no relation to the pool that actually backed the Certificates purchased by Freddie Mac.

193. Senior executives at Moody's also confirmed that they were supplied with and relied on false information that affected their ratings:

- "We're on notice that a lot of the things that we relied on before just weren't true."
- "There's a lot of fraud that's involved there, things we don't see. . . . We're sort of retooling [our methodologies and approaches] to make sure that we capture a lot of things that we relied on in the past that we can't rely on, on a going forward basis."
- "It's actually quite interesting that we're being asked to figure out how much everybody lied. . . . I mean, if all of the information was truthful and comprehensive and complete, we wouldn't have an issue here."

("Moody's Investors Service: Managing Director's Town Hall Meeting" (Sept. 10, 2007), "Hearing on Wall Street and the Financial Crisis: The Role of Credit Rating Agencies" (April 23, 2010) (Ed. 98).)

194. The AAA (or equivalent) anticipated and final credit ratings were material to Freddie Mac, because the ratings provided additional assurances that Freddie Mac would receive the expected interest and principal payments. Freddie Mac would not have purchased the Certificates without the proper ratings and would not have paid as much for them without the investment grade status.

195. The Fraud Defendants', Ally Sponsor's and Ally Depositors' statements and assurances in the Offering Materials were material to Freddie Mac, just as they were material to any other investor. Freddie Mac was similarly situated to other investors when it purchased the Certificates at issue. For instance, Freddie Mac lacked possession of and access to the

underlying loan files in order to evaluate the credit risk for the borrowers whose loans were included in the Securitizations.

196. Each of the Fraud Defendants, Ally Sponsor, and Ally Depositors is responsible for the representations made in or omitted from the Offering Materials. For its fraud claim, Plaintiff relies, in part, on the Offering Materials identified in Appendix A and Appendix B in their entirety. Specific false and misleading statements in the Offering Materials for the Certificates purchased by Freddie Mac are detailed in Parts I.C. and I.D., Appendix A, and Appendix B, which are incorporated by reference.

197. Because payment on the Certificates ultimately was funded by payments from the mortgagors, Freddie Mac faced a risk of non-payment if too many borrowers defaulted on their loans and the value of the mortgaged properties was insufficient to cover the unpaid principal balance. Accordingly, any representation bearing on the riskiness of the underlying mortgage loans was material to Freddie Mac. By misrepresenting the true risk profile of the underlying loan pools, the Fraud Defendants, Ally Sponsor, and Ally Depositors defrauded Freddie Mac.

198. As the FCIC found:

> The Commission concludes that firms securitizing mortgages failed to perform adequate due diligence on the mortgages they purchased and at times knowingly waived compliance with underwriting standards. *Potential investors were not fully informed or were misled* about the poor quality of the mortgages contained in some mortgage-related securities. *These problems appear to have been significant.*

(FCIC Report at 187 (emphasis added).)

C. The Fraud Defendants, Ally Sponsor, and Ally Depositors Knew or Were Reckless in not Knowing that Their Representations Were False and Misleading

199. The Fraud Defendants, Ally Sponsor, and Ally Depositors knew or were reckless in not knowing that their representations in the Offering Materials were false, and that the

information they omitted from those documents rendered them materially misleading. The same evidence discussed above not only shows that the representations were untrue, but also that the Fraud Defendants, Ally Sponsor, and Ally Depositors knew, or were reckless in not knowing, that they were falsely representing the underlying process and riskiness of the mortgage loans that collateralized the Certificates. Such evidence includes: (i) the consistency of the misrepresentations and omissions across the 21 Securitizations and the vast discrepancies between the information conveyed and the true characteristics of the mortgage loans; (ii) the purported due diligence performed by the Defendants and Ally Sponsor; and (iii) the undue influence exerted by the Fraud Defendants on the Non-Party Originators, appraisers, and credit rating agencies.

1. The Fraud Defendants Ignored Due Diligence Results

200. As discussed above, the credit quality and loan characteristics of the mortgage loans underlying the Certificates repeatedly and materially deviated from what was represented in the Prospectus Supplements and other Offering Materials. *See supra* Part I.D. The defects were so widespread across the Securitizations that they would have been apparent to a party that had performed due diligence on the individual mortgage loans included in the collateral pool. The pervasiveness of the defects is strong evidence that the Fraud Defendants, Ally Sponsor, and Ally Depositors did not innocently make materially false statements and omissions, but actually knew or were reckless in not knowing that (1) the loan originators systematically disregarded their own underwriting guidelines, (2) the LTV ratios presented in the Offering Materials were materially inaccurate, (3) the owner-occupancy rates presented in the Offering Materials were materially inaccurate, and (4) the credit ratings for the Certificates were based on incomplete and inaccurate information and were not believed by the ratings agencies when provided.

201. The Ally Sponsor acquired mortgage loans from the Non-Party Originators for the Securitizations that it sponsored and purportedly performed due diligence on the loans that it was purchasing and on the Non-Party Originators from whom it was purchasing those loans. The Ally Depositors were vertically integrated with the Ally Sponsor, such that it had the same knowledge or recklessly disregarded the same knowledge as the Ally Sponsor. By presenting Offering Materials to Freddie Mac, the Fraud Defendants also impliedly performed due diligence on the loans in each Securitization to determine whether such loans complied with the applicable underwriting guidelines and the other loan characteristics described in the Offering Materials.

202. The Offering Materials represented that the loans were underwritten in accordance with the Non-Party Originators' respective underwriting guidelines and contained further assurances of quality control and due diligence. For example, the Ally Sponsor represented that it conducted due diligence on third-party lenders that originated loans for the RALI 2005-QO4 Securitization:

> Residential Funding Corporation buys conventional mortgage loans under several loan purchase programs from mortgage loan originators or sellers nationwide, including affiliates, *that meet its seller/servicer eligibility requirements* and services mortgage loans for its own account and others.

(RALI 2005-QO4 Prospectus Supplement at 56 (emphasis added).) Similar assurances and representations were made in the Prospectus Supplements for the other Certificates. Thus, by virtue of its role as sponsor and its own purported due diligence, the Ally Sponsor had access to information regarding the true credit quality of the loans collateralizing the Securitizations it sponsored.

203. The Fraud Defendants knew or recklessly disregarded the fact that certain originators were not originating loans in accordance with their underwriting guidelines. Documents released by a third-party due diligence firm, Clayton Holdings, Inc. ("Clayton")

confirm that these Defendants were aware -- on a daily basis -- of the deficiencies in the loan pools and the underwriting standards of the originators they used in their RMBS. Clayton was "hired to identify, among other things, whether the loans met the originators' stated underwriting guidelines and, in some measure, to enable clients to negotiate better prices on pools of loans." (FCIC Report at 166 (footnote omitted).)

204. In January 2008, Clayton disclosed that it had entered into an agreement with the New York Attorney General ("NYAG") to provide documents and testimony regarding its due diligence reports, including copies of the actual reports provided to its clients. According to *The New York Times*, as reported on January 27, 2008, Clayton told the NYAG "that starting in 2005, it saw a significant deterioration of lending standards and a parallel jump in lending expectations."

205. For the 18 month period ending on June 31, 2007, a significant percentage of the loans sampled by Clayton at the direction of several Fraud Defendants failed to meet the various loan originator's underwriting guidelines. (*See* FCIC Report at 166.) Of the loans Clayton reviewed for certain Fraud Defendants, it rejected 13 percent for JPMorgan, 17 percent for Bear Stearns and 16 percent for Goldman. This information was provided to those Fraud Defendants, but they and Bear Stearns overruled Clayton's findings and "waived in" substantial percentages of these loans (approximately 51 percent for JPMSI, 29 percent for Bear Stearns and 29 percent for and Goldman). (*See* Clayton Trending Reports, *available at* http://fcic.law.stanford.edu/hearings/testimony/the-impact-of-the-financial-crisis-sacramento#documents; FCIC Report at 167.)

206. Upon information and belief, these Defendants waived in these loans, found by Clayton to be non-compliant with the relevant originator's origination guidelines, without taking

any adequate steps of their own to determine whether the loans met stated underwriting guidelines or were otherwise consistent with the loan characteristics represented. These loans then found their way into the RMBS that were sold to investors like Freddie Mac. (*See* Clayton Trending Reports; FCIC Report at 167.)

207. The FCIC concluded that the "waiver" or rejected loans that were not subject to any compensating factors rendered the Fraud Defendants' representations regarding the underwriting and due diligence processes misleading. The report concluded:

> [M]any prospectuses indicated that the loans in the pool either met guidelines outright or had compensating factors, even though Clayton's records show that only a portion of the loans were sampled, and that of those that were sampled, a substantial percentage of [loans that failed to meet guidelines] were waived in.
> . . . .
> [O]ne could reasonably expect [the untested loans] to have many of the same deficiencies, at the same rate, as the sampled loans. Prospectuses for the ultimate investors in the mortgage-backed securities did not contain this information, or information on how few of the loans were reviewed, raising the question of whether the disclosures were materially misleading, in violation of the securities laws.

(FCIC Report at 167, 170.)

208. Internal due diligence procedures were likewise inadequate. For instance, JPMorgan's internal policies condoned fraud by encouraging its employees to ignore and manipulate JPMorgan's automated underwriting system, called "ZiPPY." (Marc Friesen, *Chase Mortgage Memo Pushes 'Cheats & Tricks'*, OREGONIAN, MARCH 27, 2008.) Chase Home Finance LLC ("CHF"), a wholly-owned subsidiary of JPMorgan Bank, went so far as to explicitly instruct loan originators to falsify loan information in order to elicit approval from the ZiPPY automated underwriting system for stated income loans of poor quality. An internal memorandum circulated by CHF in its Portland, Oregon office titled "Cheats and Tricks" gave originators tips on how to circumvent the underwriting system, including exhortations that a

mortgage broker should '"Never Fear!!"' because ZiPPY '"can be adjusted"' to '"get the findings you need."' (*Id.*) The memorandum encouraged brokers to game the ZiPPY system because "[i]ts super easy! Give it a try!" (*Id.*) It provided the following "handy steps" in order to gain approval for an otherwise rejected Stated Income / Stated Asset loan application:

> (1) In the income section of your 1003, make sure you input all income in base income. DO NOT break it down by overtime, commissions or bonus.
>
> (2) NO GIFT FUNDS! If your borrower is getting a gift, add it to a bank account along with the rest of the assets. Be sure to remove any mention of gift funds on the rest of your 1003.
>
> (3) If you do not get Stated/Stated, try resubmitting with slightly higher income. Inch it up $500 to see if you can get the findings you want. Do the same for assets.

(*Id.*)

209. Management-level employees at JPMorgan Bank and CHF knew that mortgage origination fraud was occurring, and indeed encouraged such fraudulent practices in an effort to increase the volume of loans originated, and thus, their compensation. CHF's former Regional Vice President, James Theckston, explained to The New York Times that 60 percent of his 2006 performance review depended on him increasing the origination of high-risk loans. Mr. Theckston stated that CHF executives could earn a commission for the origination of subprime loans that was seven times higher than for prime mortgages, and that they therefore looked for less savvy borrowers—those with less education, without previous mortgage experience, or without fluent English skills—and directed them toward subprime loans. According to Mr. Theckston, these borrowers ended up paying higher mortgage rates, and were more likely to default and lose their homes. (Nicholas D. Kristof, *A Banker Speaks, With Regret*, N.Y. TIMES (Nov. 30, 2011).)

210. Mr. Theckston further revealed: '"On the application, you don't put down a job; you don't show income; you don't show assets; but you still got a nod."' '"If you had some old bag lady walking down the street and she had a decent credit score, she got a loan . . .You've got somebody making $20,000 buying a $500,000 home, thinking that she'd flip it. It was crazy, but the banks put programs together to make those kinds of loans."' (*Id.*)

211. Mr. Theckston explained that knowledge of this fraud existed at the top levels of management: '"The bigwigs of the corporations knew [about declining lending standards], but they figured we're going to make billions out of it, so who cares? . . . The government is going to bail us out. And the problem loans will be out of here, maybe even overseas."' (*Id.*)

212. Bear Stearns' management was also so eager to securitize as many mortgage loans as possible that it abandoned any adherence to underwriting or due diligence standards. On February 11, 2005, Bear Stearns Senior Managing Director Mary Haggerty e-mailed Vice President of Due Diligence John Mongelluzo with instructions to reduce the amount of due diligence conducted "in order to make us more competitive on bids with larger sub-prime sellers."

213. Bear Stearns Internal Audit Reports also described the various reductions in due diligence. According to February 28, 2006 and June 22, 2006 reports, Bear Stearns would reduce the number of loans in the loan samples that were reviewed as part of the due diligence process, conduct due diligence only after the loans were repurchased ("post-closing" due diligence), eliminate internal reports on defective loans, and conduct no due diligence if such due diligence would interfere with mortgage loan pools being securitized. *The Atlantic* confirmed this abandonment of reasonable due diligence procedures in a May 2010 article describing:

- how Bear Stearns pressured EMC analysts to perform their due diligence of the underlying mortgages in only one to three days;

- how Bear Stearns encouraged EMC analysts to falsify loan data (including FICO scores) if the loan was missing the requisite information; and
- how Bear Stearns pushed EMC analysts to avoid investigating a potentially bad loan and instead focus on making it "fit."

(Teri Buhl, *More Corruption: Bear Stearns Falsified Information as Raters Shrugged*, ATLANTIC, May 15, 2010; *See also* Teri Buhl, *E-mails Suggest Bear Stearns Cheated Clients Out of Billions*, ATLANTIC, Jan. 25, 2011.)

214. Former EMC mortgage analyst Matthew Van Leeuwen, an employee from 2004 to 2006, confirmed in a March 30, 2009 e-mail that "the pressure was pretty great for everybody to just churn the mortgages on through the system," so that if there were "outstanding data issues" analysts should just "fill in the holes." The pressure was directed from the top of Bear Stearns' corporate structure. For example, EMC's Senior Vice President of Conduit Operations, Jo-Karen Whitlock, told her staff to do "whatever is necessary" to meet Bear Stearns' objectives for desired loan production. Her April 14, 2006 e-mail further stated:

> I refuse to receive any more emails … questioning why we're not funding more loans each day. I'm holding each of you responsible for making sure we fund at least 500 each and every day…. [I]f we have 500+ loans in this office we MUST find a way to … buy them…. I expect to see 500+ each day…. I'll do whatever is necessary to make sure you're successful in meeting this objective.

215. Not only did the Fraud Defendants knowingly or recklessly permit low quality loans to pass into their securitizations in exchange for underwriting and securitization fees, they also took the fraud further, affirmatively seeking to profit from this knowledge. Rather than rejecting these loans from the loan pool, as they should have, JPMSI, Bear Stearns and Goldman, used evidence of underwriting defects to negotiate lower prices for the loans and thus boost their own profits. According to the September 2010 FCIC testimony of Clayton's former president,

D. Keith Johnson, the banks would use the exception reports to force a lower price for itself, and not to benefit investors at all:

> I don't think that we added any value to the investor, the end investor, to get down to your point. I think only our value was done in negotiating the purchase between the seller and securitizer. Perhaps the securitizer was able to negotiate a lower price, and could maximize the line. We added no value to the investor, to the rating agencies.

(FCIC Staff Int'v with D. Keith Johnson, Clayton Holdings, LLC (Sept. 2, 2010), *available at* http://fcic.law.stanford.edu/resource/interviews.) In other words, rather than exclude defective loans from collateral pools, or cease doing business with consistently failing originators, investment banks like the Fraud Defendants would instead use the Clayton data simply to insist on a lower price from the loan originators, thereby increasing their own profits while the defective loans were included in the pools for securitization. For instance, Goldman discussed proposals to charge higher warehouse fees to mortgage originators with higher early payment default and "drop out" rates, including New Century. (*See* Sen. Levin, Carl and Sen. Coburn, Tom, U.S. Senate Permanent Subcommittee on Investigations, *Wall Street and the Financial Crisis: Anatomy of a Financial Collapse* (Committee on Homeland Security and Governmental Affairs, April 13, 2011) ("SPSI Report"), 484 n.2038 (citing Goldman email, dated Feb. 2, 2007).)

216. Moreover, the quality control work of Clayton performed was rendered inadequate because, as Clayton informed the NYAG, "some investment banks directed Clayton to halve the sample of loans it evaluated in each portfolio." (Jenny Anderson, *Loan Reviewer Aiding Inquiry Into Big Banks*, N.Y. TIMES, Jan. 27, 2008.) Upon information and belief, the Fraud Defendants were included in that group of investment banks. Thus, these Defendants made a conscious decision *not* to avail themselves of comprehensive due diligence regarding the

loans they were securitizing, which alone renders their misrepresentations concerning those loans knowing or reckless.

2. Warehouse Lending and Vertical Integration Gave The Fraud Defendants Inside Knowledge of Underwriting Defects

217. The Fraud Defendants' privileged positions as sources of warehouse lending also gave them unique knowledge of the conditions under which mortgage loans were originated. These arrangements allowed several of the Fraud Defendants to control the origination practices of the lenders, which depended on them for funding and gave these Fraud Defendants an insider look into the true quality of the loans they originated. As one publication explained, "[w]arehouse lenders [like the Fraud Defendants] have detailed knowledge of the lender's operations." (Kevin Connor, *Wall Street and the Making of the Subprime Disaster*, at 11 (2007), *available at* http://northstarfund.org/blog/pdfs/wall-street-and-the-making-of-the-subprime-disaster.pdf.)

218. The FCIC found that underwriter/originator warehouse lending relationships led to an environment in which "financial institutions ineffectively sampled loans they were purchasing to package and sell to investors. The Commission's review of many prospectuses provided to investors found that this critical information was not disclosed." (FCIC Report at xii.)

219. Given the Fraud Defendants' close relationships with originators for the Certificates at issue, they had a unique window into the quality of the loans backing the Certificates and undue influence over the loan origination process.

220. Goldman, as well as Bear Stearns, provided warehouse lines of credit to New Century, whose departure from its stated underwriting guidelines has now been extensively investigated and documented. New Century's former president testified before the Bankruptcy

Examiner appointed by the Bankruptcy Court overseeing New Century's Chapter 11 proceeding that New Century often reached deals with loan purchasers to limit the percentage of loans the purchaser would "kick out" of the loan pool due to the poor quality of the loan. (*See* Final Report of Michael J. Missal Bankruptcy Court Examiner, Case No. 07-10416(KJC) (D.Del. Feb. 29, 2008) at 135.) That admission, the warehouse lending relationship between New Century and Goldman and the fact that Goldman did substantial business with this "worst of the worst" originator, all strongly suggest that these Goldman and New Century had such a deal.

221. In the case of the Ally, the Ally entities were so closely integrated and the abusive lending practices so rampant from the top down that the Ally Depositors, Ally Sponsor, and Ally Securities, knew -- or were reckless in not knowing -- that HFN -- a subsidiary of the sponsor -- systematically was disregarding prudent underwriting standards and that its loans lacked the characteristics represented in the Offering Materials. As detailed above, a sampling of GMACM loans conducted by MBIA has revealed a non-compliance rate of at least 89 percent.

222. Indeed, GMACM is currently being investigated by the U.S. Department of Justice (the "DOJ") and the SEC for, among other things, fraud related to the origination and underwriting of mortgage loans. In June 2011, GMACM was served with a subpoena by the DOJ and SEC.

> The subpoena received from the SEC includes a broad request for documentation related to certain "bulk settlements" relating to mortgage loans placed in securitization trusts, which are agreements we entered into with mortgage originators or mortgage sellers whereby we received value in lieu of such mortgage originator or mortgage seller repurchasing a loan from us, as well as a request for materials provided to investors and prospective investors in mortgage securitization transactions. The subpoena received from the U.S. Department of Justice includes a broad request for documentation and other information in connection with its investigation of potential fraud related to the origination and/or underwriting of mortgage loans. These subpoenas, or any

> other investigation or information-gathering request, may result in material adverse consequences including without limitation, adverse judgments, settlements, fines, penalties, injunctions, or other actions.

(Ally Financial, Inc. f/k/a GMAC, LLC, Amendment No. 3 to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011).)

223. Further, GMACM's abusive or reckless lending and servicing practices, including commingling funds from custodial bank accounts and questionable and unlawful foreclosure practices, have also been revealed. (*See* "Moody's downgrades $1.4 billion in GMAC subprime RMBS," *available at* http://www.housingwire.com/2011/03/25/allstates-mbs-exposure-hits-2-78-billion.)

224. The Ally Defendants also shared substantial overlapping management with HFN. For instance, in 2005, David C. Walker served as Director of HFN, RALI, RASC, RAMP, RFC and GMAC-RFC. In 2007, David M. Bricker served as CFO and Director of HFN; Director and CFO of RALI; CFO of RASC and RAMP; and Director of RFC. In 2005, Davee L. Olson served as Director of HFN; CFO and Director of ResCap and RASC; and Director of RAMP, RFC and GMAC-RFC. In 2007, James N. Young served as Controller of HFN; CAO and Controller of ResCap; CFO of RFC; and Director of RALI, RASC and RAMP. In 2007, James G. Jones served as CEO, President and Director of HFN; CEO, President and Director of ResCap, RALI, RASC and RAMP; President and Director of RFC, and Director of GMAC-RFC. In 2005, Kenneth M. Duncan served as CFO of HFN, RAMP, RFC and GMAC-RFC. In 2005, Ralph T. Flees served as Controller of HFN, RASC, RAMP, RFC and GMAC-RFC. Given the overlapping management and the integrated structure, Ally knew or was reckless in not knowing of the misrepresentations and omissions concerning HFN's underwriting guidelines.

225. Bear Stearns' collapse and subsequent acquisition by JPMorgan has been the subject of intense public scrutiny and investigation, most notably by the FCIC. In February 2011, the FCIC released interviews with Bear Stearns executives regarding its role in the origination, acquisition, and securitization of mortgage loans. The documentary evidence revealed widespread fraudulent conduct on the part of Bear Stearns. Such fraudulent conduct has been the basis for both investigation and litigation by public officials, including the Attorney General of Oregon, who filed an action on behalf of the Oregon Public Employees Retirement Fund against Bear Stearns for misrepresentations in its role as issuer and underwriter in the sale of certificates. (*In re Bear Stearns Mortgage Pass-Through Certificates Litigation*, 08 Civ. 8093 (SDNY).)

226. Through its various affiliates and subsidiaries, Bear Stearns participated in every step of the securitization process, from the origination and servicing of the mortgage loans to the sponsoring and structuring of the securitization, to the underwriting and marketing of the Certificates. According to the FCIC, it was Bear Stearns that actually "pioneered" the "'vertical integration' mortgage model" so that it could have "a stake in every step of the mortgage business—originating mortgages, bundling these loans into securities, bundling these securities into other securities, and selling all of them on Wall Street." (FCIC Report at 204.) Between 2003 and 2006, Bear Stearns' revenue and profit increased by 123.8 percent and 77.6 percent, respectively. This growth was largely driven by mortgage finance and Bear Stearns' securitization machine. By 2006, Bear Stearns' securitizations accounted for 11 percent of the overall U.S. mortgage-securities market. Bear Stearns announced in its 2006 Annual Report: "Our vertically integrated franchise allows us to access every step of the mortgage process, including origination, securitization, distribution and servicing." (Bear Stearns 2006 Annual

Report, at 12, *available at* http://www.scribd.com/doc/7453453/Bear-Stearns-Annual-Report-2006.)

227. This vertical integration allowed Bear Stearns to control and manipulate the loan level documentation, to knowingly choose poor quality mortgage loans for securitization as a method of off-loading the loans to investors as soon as possible, and to selectively make repurchase claims of originators while simultaneously denying those of investors. By virtue of their control over each step in the securitization process, Bear Stearns had knowledge of the true characteristics and credit quality of the mortgage loans.

3. Other Evidence Demonstrating that The Fraud Defendants Knew Or Were Reckless In Not Knowing That Their Representations Were False

228. In addition to the unique insight gained from warehouse lending relationships, other evidence -- including Ally's and the Fraud Defendants' de-risking strategies -- supports the Fraud Defendants', Ally Sponsor's and Ally Depositors' knowledge or reckless disregard of the falsity of their representations in the Offering Materials.

229. Thus, for example, the Ally Sponsor filed over a dozen federal lawsuits in Minnesota against mortgage companies, claiming that the originators had failed to conduct adequate due diligence on borrowers and demanding that the originators repurchase the subject mortgage loans. The defendants in these lawsuits included at least one originator, Pinnacle, that had contributed loans to the Securitizations. (*See, e.g., Residential Funding Co., LLC v. Pinnacle Direct Funding Corp.*, Civ. No. 08-cv-00591 (D. Minn., Feb. 29, 2008); *see also* David Phelps, *ResCap Suing Brokers Who Originated Bad Mortgage Loans*, STAR TRIBUNE, Bus. at 1D, Aug. 10, 2008.)

230. Defendant Goldman's malfeasance in the RMBS market has also been reviewed and reported in detail by the United States Senate. A report issued by the Senate Permanent

Subcommittee on Investigations found that in exchange for lucrative fees, Goldman helped lenders like New Century securitize high risk, poor quality loans, obtain favorable credit ratings for the resulting RMBS, and sell the RMBS securities to investors, pushing billions of dollars of risky mortgages into the financial system. (SPSI Report at 377.)

231. That Goldman knew of the originator's abandonment of applicable underwriting guidelines and of the true nature of the mortgage loans it was securitizing is further evidenced by how Goldman handled its own investments. Goldman internally characterized its offerings as "junk," "dogs," "big old lemons," and "monstrosities." (FCIC Report at 235-36.) Nevertheless, it congratulated itself for successfully offloading such "junk" onto others. As the public learned in the FCIC's Report, by January 2007, "Daniel Sparks, the head of Goldman's mortgage department, extolled Goldman's success in reducing its subprime inventory, writing that the team had 'structured like mad and traveled the world, and worked their tails off to make some lemonade from some big old lemons." (*Id.* at 236.) Also, as early as December 2006, David Viniar, Goldman's Chief Financial Officer urged the head of Sales and Trading at Goldman to "be aggressive" in marketing subprime risk "because there will be very good opportunities as the markets go into what is likely to be even greater distress and we want to be in position to take advantage of them." (*Id.* at 235.)

232. Even more damning than Goldman's decision to use securitization as a tool to move declining loans off of Goldman's own books are the huge bets Goldman placed against the very mortgage-backed investments it sold to Freddie Mac. Goldman coupled those sales with an aggressive campaign to force lenders (the very same ones who originated loans in the Certificates) to repurchase defective loans which, due to the slowing securitization market, had been stuck on Goldman's own books.

233. Beginning in 2005 and into 2006, Goldman began to take an increasingly pessimistic view of the subprime mortgage market. Goldman's sophisticated and powerful proprietary models analyzed trends in the performance of hundreds of thousands of mortgages that collateralized its RMBS, and those models and superior access to data regarding the underlying mortgage positions on its books gave Goldman unique knowledge that those securities were not as safe as their offering materials and ratings represented to investors. In fact, Goldman's models and data showed that the RMBS had declined up to 70 percent from their face amounts. In his book, *Money and Power: How Goldman Sachs Came to Rule the World*, William D. Cohan explained:

> Goldman's RMBS model could analyze all the underlying mortgages and value the cash flows, as well as what would happen if interest rates changed, if prepayments were made, or if the mortgages were refinanced. The model could also spit out a valuation if defaults suddenly spiked upward . . . . [Goldman's] proprietary model was telling [Goldman] that it would not take much to wipe out the value of tranches of a mortgage-backed security that had previously looked very safe, at least in the estimation of the credit-rating agencies that had been paid (by Wall Street) to rate them investment grade. By tweaking the various assumptions based on events that seemed increasingly likely, [Goldman's] models were showing a marked decrease in the value of mortgage-related securities. Goldman's models said even if you don't believe housing prices are going to go down, even if we apply low-probability scenarios about it going negative ... there's no way this stuff can be worth anywhere near one hundred [cents on the dollar].... [Goldman's] models had them pegged anywhere between 30 cents and 70 cents . . . .

(WILLIAM D. COHAN, MONEY AND POWER: HOW GOLDMAN SACHS CAME TO RULE THE WORLD 494-95 (2011).) According to a former Goldman employee, these models as well as other information in Goldman's exclusive possession showed it "the writing on the wall in this market as early as 2005," Gretchen Morgenson & Louise Story, *Banks Bundled Bad Debt, Bet Against It and Won*, N.Y. Times, Dec. 24, 2009, and into the "the early summer of 2006." (SPSI Report at

398.) Goldman exploited its asymmetric access to, and possession of, information about the weakness in the mortgage loans collateralizing the Certificates it marketed and sold.

234. To reduce its massive financial exposure to the subprime mortgage market, Goldman began looking for ways to short the market (*i.e.*, to make investments which would rise in value and/or make payments to Goldman as the subprime mortgage market declined). Its shorting strategies included the purchase of credit default swap protection on the very RMBS positions it sold into the market. Goldman bet that the RMBS would decline in value and/or default; if so, its swap counterparty would be required to pay Goldman.

235. Goldman entered into swaps worth hundreds of millions of dollars during this time period, where it stood on the "short" side of the transaction, while its counterparty went "long." For example, according to the SPSI Report, Goldman underwrote GSAMP 2007-FM2, a securitization it sold to Freddie Mac, and then turned around and bet *against* that same securitization through use of credit default swaps. As the SPSI Report explained:

> Goldman marketed and sold the Fremont securities to its customers, while at the same time purchasing $15 million in CDS contracts referencing some of the Fremont securities it underwrote. Seven months later, by October 2007, the ratings downgrades had begun; by August 2009, every tranche in the GSAMP securitization had been downgraded to junk status.

(SPSI Report at 516 (footnotes omitted).) Goldman's shorting of GSAMP 2007-FM2 was emblematic of its approach to the Securitizations it marketed and sold to Freddie Mac. As a recent magazine article explained, "Goldman was like a car dealership that realized it had a whole lot full of cars with faulty brakes. Instead of announcing a recall, it surged ahead with a two-fold plan to make a fortune: first, by dumping the dangerous products on other people, and second, by taking out life insurance against the fools who bought the deadly cars." (Matt Taibbi, *The People vs. Goldman Sachs*, ROLLING STONE, May 26, 2011.)

236. Continuing from 2006 and 2007, Goldman used its shorting strategy as a way to reduce its own mortgage risk while continuing to create and sell mortgage-related products to its clients. In 2006, Goldman made a massive $9 billion bet that the same type of assets it was selling to investors like Freddie Mac would collapse. (SPSI Report at 419.) Goldman's net short position in 2007 rose as high as $13.9 billion. (*Id.* at 430.) As the SPSI Report explained, Goldman "sold RMBS and CDO securities to its clients without disclosing its own net short position against the subprime market or its purchase of CDS contracts to gain from the loss in value of some of the very securities it was selling to its client." (*Id.* at 9.)

237. On March 9, 2007, Goldman's Daniel Sparks wrote: "Our current largest needs are to execute and sell our new issues—CDO's and RMBS—and to sell our other cash trading positions . . . I can't overstate the importance to the business of selling these positions and new issues." (SPSI Hearing, Ex. 4/27- 76.) A leading structured finance expert, Sylvain R. Raynes, reportedly called Goldman's practice "the most cynical use of credit information that I have ever seen," and compared it to "buying fire insurance on someone else's house and then committing arson." As the SPSI Report found, Goldman "sold RMBS securities to customers at the same time it was shorting the securities and essentially betting that they would lose value." (SPSI Report at 513.)

238. This disregard for the clients' interests became a part of the culture at Goldman. Greg Smith, the former Executive Director of Goldman's equity derivative business, resigned from his position due to the "toxic and destructive" culture at Goldman. Smith lamented that "[i]f you were an alien from Mars and sat in on one of [Goldman's daily sales] meetings, you would believe that a client's success or progress was not part of the thought process at all." (Greg Smith, *Why I am Leaving Goldman Sachs*, N.Y. TIMES, Mar. 14, 2012.) In fact, Smith

recalled "five different managing directors refer[ring] to their own clients as 'muppets'. . . ." (*Id.*) Smith noted that one way to become a "leader" at Goldman was to "persuad[e] your clients to invest in the . . . products that [Goldman was] trying to get rid of because they [were] not seen as having a lot of potential profit" for Goldman. (*Id.*)

239. Another tactic that Goldman used to reduce its subprime exposure in 2006 was to force originators from which it bought mortgages to buy them back. Goldman's repurchase rights arose from mortgage purchase agreements that it entered into with originators. These agreements typically required originators to warrant that their loans were underwritten according to standard guidelines and conformed to certain characteristics, including the accuracy of the mortgage loan schedule, the absence of fraud by the originator or borrower, and compliance with federal and state laws. If a representation was breached, Goldman could demand that the originator repurchase the defective loans as required by the mortgage purchase agreement. Goldman hired third party re-underwriting firms to assist in this "put back" process and to find defects in the loans which would then be used as a basis to require their repurchase.

240. Goldman targeted its "put back" campaign at the originators whose loans Goldman knew were most likely to yield underwriting breaches upon examination. Goldman had unique insight into the quality of the loans purchased from originators, arising from diligence on the originators themselves as well as their loans. Goldman knew based on its many years of dealing with originators such as New Century that their loans were the worst on its books and thus the most likely to yield put back claims.

241. For example, the SPSI Report published a December 14, 2006 email from Goldman's Daniel Sparks which told colleagues, "stay focused and aggressive on MLN. . . ." (*See* SPSI Report at 405.) On January 8, 2007, Daniel Sparks wrote to a colleague, "I just can't

see how any originator in the industry is worth a premium. I'm also a bit scared of [A]ccredited [Aames' parent company] and [N]ew [C]entury, and I'm not sure about taking a bunch of new exposures." (*Id.* at 484 n.2036.)

242. On February 2, 2007, Sparks identified other prime targets of Goldman's repurchase campaign. He said that his "team is working on putting loans in the deals back to the [New Century, among others,] as there seem to be issues potentially including some fraud at origination, but resolution will take months and be contentious." (*Id.* at 484.)

243. On March 7, 2007, Sparks continued emphasizing Goldman's priority in ridding itself of loans issued by certain originators. He described Goldman's exposure as follows:

> As for the big 3 originators – Accredited, New Century and Fremont, our real exposure is in the form of put-back claims. Basically, if we get nothing back we would lose around $60mm vs loans on our books (we have a reserve of $30mm) and the loans in the [CDO and RMBS] trusts could lose around $60mm (we probably suffer about 1/3 of this in ongoing exposures) . . . .

(*Id.* at 485.)

244. In March 2007, following an analysis of a pool of loans, Goldman concluded that about 50 percent of the 200 files reviewed "look to be repurchase obligations." (*Id*. at 486.) Goldman made it a "priority" to re-underwrite and put back loans purchased from originators it considered weak. (*Id*. at 485.)

245. In total, between 2006 and 2007, Goldman made approximately $475 million in repurchase claims to the originators and others for loans in its inventory. All told, Goldman recovered approximately $82 million from this process. (*Id*. at 483.) After reviewing the loan files in one New Century deal, Goldman's analysts recommended to Goldman putting back 26 percent of the loan pool. (*See* SPSI Report at 485-86.)

246. Goldman is the subject of numerous criminal and regulatory probes related to its mortgage underwriting practices. (*See Wall Street Probe Widens*, The Wall Street Journal, May 12, 2010 (reporting on federal criminal and regulatory investigations of whether Goldman and others "misled investors about their roles in mortgage-bond deals").) These investigations further confirm that Goldman's misrepresentations were not mere isolated, innocent mistakes, but the result of the company's reckless or intentional misconduct.

247. For example, Goldman's misconduct prompted the Attorney General of Massachusetts to examine whether Goldman:

- failed to ascertain whether loans purchased from originators complied with the originators' stated underwriting guidelines;
- failed to take sufficient steps to avoid placing problem loans into securitization pools;
- failed to correct inaccurate information in securitization trustee reports concerning repurchases of loans; and
- failed to make available to potential investors certain information concerning allegedly unfair or problem loans, including information obtained during loan due diligence and the pre-securitization process, as well as information concerning Goldman Sachs' practices in making repurchase claims relating to loans in and out of securitizations.

248. Goldman settled with the Commonwealth of Massachusetts, paying it $60 million. (FCIC Report at 226.) In announcing the settlement, the Massachusetts Attorney General stated that Goldman did not take "sufficient steps to avoid placing problem loans in securitization pools." Goldman was also required to forgive all or portions of the balances on many loans it had bought and securitized, which resulted in tens of millions of dollars in additional expenses to Goldman.

249. Similarly, the SPSI Report concluded that Goldman "knowingly sold high risk, poor quality mortgage products to clients around the world, saturating financial markets with

complex, financially engineered instruments that magnified risk and losses when their underlying assets began to fail." (SPSI Report at 476; *see also id.* at 513 ("Goldman originated and sold RMBS securities that it *knew* had poor quality loans that were likely to incur abnormally high rates of default.") (emphasis added).)

250. JPMSI also knowingly included defective loans in its securitizations, thereby passing the risk of delinquency and default to investors. This behavior was continued during the worst period of the financial crisis. As investors were demanding that JPMorgan's newly acquired subsidiary, Bear Stearns, repurchase mortgage loans that were not underwritten to represented standards of quality, JPMorgan was denying those repurchase requests while simultaneously making repurchase demands for the very same loans from the originator, Capital One Financial Corp. In a June 26, 2008 letter to Capital One, Allison Malkin, an executive director with J.P. Morgan Securities (the entity with which Bear Stearns was eventually merged), stated "that it is [Bear Stearns'] position that these breaches materially and adversely affect the value" of the mortgage loans. (Jody Shenn, *JPMorgan Refused Mortgage Repurchases It Also Sought, Ambac Says*, BLOOMBERG.COM (Jan. 24, 2011, 8:46 PM), http://www.bloomberg.com/news/2011-01-25/jpmorgan-refused-mortgage-repurchases-it-also-sought-ambac-filing-claims.html.)

251. By 2006, however, JPMorgan had grown alarmed at the increasing rate of late payments in its subprime portfolio. As the pool quality of these mortgage loans became apparent, JPMorgan decided to exit its subprime positions. This decision came from JPMorgan's CEO, Jamie Dimon, evidencing knowledge of the perilous state of JPMorgan's subprime assets by JPMorgan senior management. An article in *Bloomberg* on February 17, 2010 revealed that JPMorgan CEO Jamie Dimon was fully aware that its residential mortgage backed securities

were of poor and deteriorating credit quality and that he attempted to shed the associated risk from JPMorgan's own balance sheet. The article reported that "[i]n October 2006, Mr. Dimon, JPMorgan's CEO, told William A. King, its then head of securitized products, that [JPMorgan] needed to start selling its subprime-mortgage positions." In late 2008, *Fortune Magazine* quoted the same October 2006 phone conversation, where Mr. Dimon instructed Mr. King to sell JPMorgan's positions: "I really want you to watch out for subprime! . . . We need to sell a lot of our positions. I've seen it before. This stuff could go up in smoke!" (Shawn Tully, *Jamie Dimon's swat team: How J.P. Morgan's CEO and His Crew are Helping the Big Bank Beat the Credit Crunch*, FORTUNE (September 2, 2008, 4:08 PM), *available at* http://money.cnn.com/2008/08/29/news/companies/tully_dimon.fortune/). By the end of 2006, JP Morgan had unloaded $12 billion in subprime assets that JPMorgan itself had originated. (*Id.*)

252. Despite Mr. Dimon's view that JPMorgan's subprime holdings "could go up in smoke!" and JPMorgan's decision to sell its holdings in subprime assets, JPMorgan continued to originate and securitize poorly underwritten mortgage loans and vouch for their quality. This was the time period in which Freddie Mac acquired Certificates that JPMSI underwrote.

253. With respect to Bear Stearns, loans acquired by Bear Stearns began to default at an increasing rate. These triggered concern in Bear Stearns as early as 2005. Rather than improving the quality of loans acquired for securitization, Bear Stearns reacted by changing the time period in which Bear Stearns was required to hold loans it acquired. Previously, Bear Stearns was required to hold third-party loans in inventory for between 30 and 90 days before the loans could be securitized. This allowed Bear Stearns to determine whether any of the loans would suffer from an early payment default. In 2006, Bear Stearns stopped screening out these

defective loans and instead required that all mortgage loans be securitized before the early payment default period expired. Bear Stearns Senior Managing Director Jeffrey Verschleiser confirmed the revised protocol in a June 13, 2006 e-mail to Haggerty stating that they need "to be certain we can securitize the loans with 1 month epd [early payment default] before the epd period expires." This desire to unload bad mortgage loans by selling them to other investors through the securitization process was further evidenced by a May 5, 2007 e-mail from Bear Stearns Managing Director Keith Lind, who demanded "to know why we are taking losses on 2nd lien loans from 2005 when they could have been securitized?????"

254. In addition to purposely acquiring and securitizing defective loans that did not meet their represented underwriting guidelines and selling them to investors, Bear Stearns' subprime subsidiary, EMC, further profited from these bad loans by making repurchase claims against the originator of the loans. Repurchase claims are derived from rights found in mortgage loan purchase agreements, whereby the originator makes representations to the sponsor (EMC) that the loans were underwritten in accordance with certain underwriting standards. If the sponsor (EMC) discovers this not to be the case, it can request that the originator repurchase any affected loans. Similarly, the PSA between EMC and the trust requires that EMC repurchase any loans it knows are defective. Instead of seeking the actual repurchase of these bad loans, however -- which would remove the loans from the trust and compensate the certificateholders -- EMC settled its repurchase claims and kept the settlement proceeds itself. EMC did not pass the proceeds of the repurchase claims on to the trust.

255. EMC came to several settlement agreements and other arrangements as part of its repurchase scheme. On January 30, 2007, an originator agreed to pay over $2.5 million to EMC "in lieu of repurchasing the Defective Loans." On December 18, 2007, an originator agreed to

pay almost $12 million "for full payment and satisfaction of the Monetary Claims, and the balance of the Settlement Amount (if any) for settlement of the Defective Loans." On October 1, 2007, an originator agreed to pay $1 million "in lieu of repurchasing the Defective Loans." According to an internal presentation requested by Bear Stearns' Managing Director and Head of Mortgage-Backed Securities, Thomas Marano, EMC received $1.9 billion from April 2006 to April 2007 in claim resolutions, with most resolutions being settlements. Bear Stearns would also accept discounts on future loan purchases instead of immediate cash settlements, valuing these arrangements at $367 million for the period beginning in 2007 through the first quarter of 2008. (*See also* Teri Buhl, *E-mails Suggest Bear Stearns Cheated Clients Out of Billions*, THE ATLANTIC, Jan. 25, 2011.)

256. These funds should have passed to the trusts but Bear Stearns did not disclose its repurchase settlements with certificateholders in the trust. In a December 11, 2009 deposition, Bear Stearns' Deal Manager Robert Durden could not identify a single "instance in which EMC or Bear Stearns disclosed to Ambac or other investors that it was recovering on EPDs [early payment defaults] from originators with respect to securitized mortgage loans, pocketing the money and not putting it into the trust." Bear Stearns knew this practice breached its representations and warranties made to purchasers of certificates: PriceWaterhouseCoopers advised Bear Stearns that the program was contrary to "common industry practices, the expectation of investors and . . . the provisions in the [deal documents]" in an August 31, 2006 audit, and, according to EMC President Stephen Golden, EMC concluded that it could not retain funds in connection with the repurchase claims in mid-2007. Despite this advice, EMC reached two such agreements in the latter half of 2007 and continued to fail to remit the proceeds to the

trust. (PriceWaterhouseCoopers LLP, Bear Stearns/EMC UPB Break Repurchase Project Audit Report, August 31, 2006 (Haas Decl., Ex. 18, EMC-AMB 006803209).)

257. As active participants in fraudulent origination practices, the Fraud Defendants, Ally Sponsor, and Ally Depositors knew or were reckless in disregarding the falsity of their statements in the Offering Materials concerning underwriting guidelines.

258. The Fraud Defendants, Ally Sponsor, and Ally Depositors also knew or recklessly disregarded that the owner-occupancy statistics and LTV ratios reported in the Offering Materials were false and misleading. Given their role as underwriters, sponsors and depositors of the securities, the relationships they had with loan originators, and this expertise in underwriting and securitizing RMBS, the Fraud Defendants, Ally Sponsor, and Ally Depositors had the practical ability to gain access to loan files and the ability and resources to test the reported data points, such as owner-occupancy rates and LTV ratios. They intentionally elected not to do so, rendering their representations concerning those data knowingly or recklessly false.

259. Moreover, upon information and belief, underwriters, including certain of the Fraud Defendants, influenced the appraisals used to determine LTV ratios. Government investigations have uncovered widespread evidence of appraisers being pressured to overvalue properties so more loans could be originated. For instance, several witnesses, ranging from the President of the Appraisal Institute to appraisers and lenders on the ground, confirmed that appraisers felt compelled to come in "at value" -- *i.e.*, at least the amount needed for the loan to be approved -- or face losing future business or their livelihoods. Given the systemic pressure applied to appraisers, upon information and belief, the appraisers themselves, the originators, and the underwriters did not believe that the appraised values of the properties -- and therefore LTV

ratios -- were true and accurate at the time they communicated the information to potential investors, including Freddie Mac.

260. Further, the Fraud Defendants and Ally Sponsor knew or were reckless in not knowing that the credit ratings reported for the Certificates failed to reflect the actual risk of the securities, and that the ratings agencies had no basis to believe in the accuracy of those ratings. Not only did these Defendants provide the ratings agencies false, loan-level information, but they also routinely engaged in "ratings shopping" -- *i.e.*, pressuring the ratings agencies for favorable ratings and playing the rating agencies off one another with the threat of withholding future business if the sponsoring bank was not given favorable treatment. As detailed in the SPSI Report:

> At the same time Moody's and S&P were pressuring their RMBS and CDO analysts to increase market share and revenues, the investment banks responsible for bringing RMBS and CDO business to the firms were pressuring those same analysts to ease rating standards. Former Moody's and S&P analysts and managers interviewed by the Subcommittee described, for example, how investment bankers pressured them to get their deals done quickly, increase the size of the tranches that received AAA ratings, and reduce the credit enhancements protecting the AAA tranches from loss. They also pressed the CRA analysts and managers to ignore a host of factors that could be seen as increasing credit risk. Sometimes described as "ratings shopping," the analysts described how some investment bankers threatened to take their business to another credit rating agency if they did not get the favorable treatment they wanted. The evidence collected by the Subcommittee indicates that the pressure exerted by investment banks frequently impacted the ratings process, enabling the banks to obtain more favorable treatment than they otherwise would have received.

(SPSI Report, at 278.)

261. As one S&P director put it in an August 8, 2006 e-mail: "[Our RMBS friends have] become so beholden to their top issuers for revenue [that] they have all developed a kind of Stockholm syndrome which they mistakenly tag as Customer Value creation." (SPSI Report

at 277.) Ratings analysts who complained about the pressure, or did not do as they were told, were quickly replaced on deals or terminated.

262. Summarizing the intense pressure investment banks put on ratings analysts to provide favorable ratings, a former Moody's VP and Senior Credit Officer testified before the FCIC that:

> The willingness to decline to rate, or to just say no to proposed transactions, steadily diminished over time. That unwillingness to say no grew in parallel with the company's share price and the proportion of total firm revenues represented by structured finance transactions . . . coincident with the steady drive toward *commoditization* of the instruments we were rating . . . . The threat of losing business . . . even if not realized, absolutely tilted the balance away from independent arbiter of risk towards a captive facilitator of risk transfer . . . . The message from management was . . . "Must say yes."

(*See* Written Testimony of Richard Michalek (FCIC Hearing, June 2, 2010), *available at* http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2008-0602-Michalek-corrected-oral.pdf; *see also* Written Statement of Eric Kolchinsky, Managing Director, Moody's Derivatives Group ("Managers of rating groups were expected by their supervisors and ultimately the Board of Directors . . . to build, or at least maintain, market shares. It was an unspoken understanding that loss of market share would cause a manager to lose his or her job;" "[L]owering credit standards . . . was one easy way for a managing director to regain market share."), *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=bd65f802-961c-4727-b176-72ece145baef.)

D. Freddie Mac Justifiably Relied on the Misrepresentations and Omissions in the Offering Materials and Was Damaged by the Fraud Defendants' Fraudulent Conduct

263. Freddie Mac is a government-sponsored enterprise chartered by Congress to provide liquidity, stability, and affordability to the U.S. housing and mortgage markets. In furtherance of this mission, Freddie Mac purchases mortgages and invests in RMBS.

264. Generally when purchasing RMBS, Freddie Mac requires compliance with its investment requirements, as well as various representations and warranties concerning, among other things, the credit quality of the underlying loans, evaluation of the borrower's ability to pay, the accuracy of loan data provided, and adherence to applicable local, state and federal law. Such representations and warranties were material to Freddie Mac's decision to purchase RMBS, including the Certificates.

265. The Fraud Defendants, Ally Sponsor, and Ally Depositors intended for investors, including Freddie Mac, to rely on their representations of material facts about the assets backing the Certificates. The Fraud Defendants, Ally Sponsor, and Ally Depositors instructed investors to rely on the information provided by them in the Registration Statements and no other information. Thus, the RAMP 2005-EFC7 Prospectus Supplement states: "You should rely on the information provided in this prospectus and the accompanying prospectus supplement, including the information incorporated by reference. . . . We have not authorized anyone to provide you with different information." The Prospectus Supplements for the remaining Securitizations contain similar language.

266. Furthermore, these Defendants regularly provided prospective RMBS investors with information concerning the volume of their annual securitization business to assure investors that, by virtue of their expertise in and share of the RMBS market, Freddie Mac should

rely upon the representations and warranties in their Offering Materials. (*See, e.g.*, RALI 2006-QO8 Prospectus Supplement.)

267. The Fraud Defendants, Ally Sponsor, and Ally Depositors knew that Freddie Mac had specific requirements for investing in non-agency mortgage-backed securities and the Fraud Defendants, Ally Sponsor, and Ally Depositors intended for Freddie Mac to rely on their fraudulent misstatements as shown by their provision of representations, warranties and anticipated credit ratings in connection with the Certificates, and their repetition of false loan statistics in term sheets, free writing prospectuses, and Prospectus Supplements, among other Offering Materials.

268. When the Fraud Defendants, Ally Sponsor, and Ally Depositors made misrepresentations and omissions in the Offering Materials, they were aware of Freddie Mac's investment requirements for purchasing RMBS. For example, Freddie Mac's guidelines to sellers provided, among other things:

> The methodology used in underwriting the extension of credit for each mortgage loan in the trust employs objective mathematical principles which relate the borrower's income, assets and liabilities to the proposed payment and such underwriting methodology does not rely solely on the extent of the borrower's equity in the collateral as the principal determining factor in approving such extension. Such underwriting methodology confirmed that at the time of origination (application/approval) the borrower had the ability to make timely payments on the mortgage loan.

269. Accordingly, Freddie Mac required the Defendants to provide representations and warranties regarding the origination and quality of the mortgage loans, including that the mortgage loans had been underwritten by the loan originators pursuant to extensive guidelines.

270. Freddie Mac relied, to its detriment, on the Fraud Defendants', Ally Sponsor's, and Ally Depositors' misrepresentations and material omissions in the Offering Materials.

271. Freddie Mac's reliance was justifiable because Freddie Mac necessarily was required to rely upon the Fraud Defendants, Ally Sponsor, and Ally Depositors to provide accurate information regarding the loans. Freddie Mac, as an investor, lacked access to the actual loan files, and the loan-level data essential to perform the necessary statistical tests with respect to, among other things, owner-occupancy and LTV ratios.

272. Freddie Mac's reliance also was justifiable because industry practice was for an investor to rely upon the representations and warranties of the sponsors and underwriters regarding the quality of the mortgage loans and the standards under which they were originated. Information regarding the originators' compliance with underwriting guidelines, owner-occupancy rates, LTV ratios, and data provided to credit ratings agencies, was peculiarly within the knowledge of the Fraud Defendants, Ally Sponsor, and Ally Depositors and investors were therefore required to rely upon the representations made by the sponsors, depositors, and underwriters to address the asymmetry of information concerning the mortgage loans underlying the securitizations.

273. The Offering Materials, including those filed with the SEC, did not provide sufficient information about the individual mortgage loans underlying the Certificates to render the Fraud Defendants', Ally Sponsor's, and Ally Depositors' false statements or omissions not misleading. While some aggregate data was provided about the mortgage loans in the collateral pool, such information did not disclose risk layering, or how many loans contained multiple risk factors. For example, the aggregate data may have disclosed how many borrowers had FICO scores below 650 and how many loans had LTV ratios greater than 80 percent, but it did not disclose how many loans had both characteristics. A loan originator applying underwriting guidelines would have evaluated such risk factors as a whole before extending a loan to the

borrower. Had the Non-Party Originators actually complied with their stated underwriting guidelines, as represented in the Offering Materials, the aggregated data provided in the Offering Materials would not have been misleading as to the credit quality of the loans.

274. Moreover, even if RMBS investors were expected to verify the information concerning each of the thousands of mortgage loans backing the Certificates -- and they are not -- Freddie Mac would not have been able to discover the Fraud Defendants', Ally Sponsor's, and Ally Depositors' misrepresentations and omissions concerning the mortgage loans prior to the closing. The Offering Materials represented what the expected composition of the loan pool would be on the closing date. The mortgage loan pools were not fully populated at the time of the misrepresentations and omissions, such that Freddie Mac necessarily had to rely on the accuracy of the information provided by the Fraud Defendants, Ally Sponsor, and Ally Depositors. (*Compare* Table 3 (Prospectus Supplement Dates) *with* Table 10 (Settlement Dates).) For example, the Prospectus Supplement for RASC 2007-KS3 was filed on March 28, 2007, but the settlement date -- *i.e.*, when the loans were assigned to the trust -- did not occur until several weeks later, on April 19, 2007. (*See id.*) Moreover, the Prospectus Supplements for all of the Securitizations described what the mortgage loan pool would be at the time of closing.

275. Freddie Mac was induced into buying the Certificates based on the false and misleading Offering Materials. Freddie Mac would not have purchased the Certificates had it known the truth concerning the matters alleged herein. Alternatively, Freddie Mac suffered damages because the price it paid for the Certificates was higher than the Certificates' actual value.

276. From the day Freddie Mac purchased the Certificates, Freddie Mac suffered injury. As a result of Defendants' misrepresentations, the true value of the Certificates on the date of purchase was far lower than the price paid for them by Freddie Mac.

FIRST CAUSE OF ACTION

Violation of Section 11 of the Securities Act of 1933 (Against Defendants Ally Securities, JPMSI, Credit Suisse, RBS, Citi, Barclays, UBS and Goldman Sachs)

277. Plaintiff realleges paragraphs 1 through 176 above as if fully set forth herein. For purposes of this cause of action, Plaintiff hereby expressly excludes any allegation that could be construed as sounding in fraud.

278. This claim is brought by FHFA pursuant to Section 11 of the Securities Act of 1933 and is asserted on behalf of Freddie Mac, which purchased the Certificates issued pursuant to the Registration Statements for the Securitizations listed in paragraph 46.

279. This claim is for strict liability based on the material misstatements and omissions in the Registration Statements, which registered securities that were *bona fide* offered to the public on or after September 6, 2005, for the 21 Securitizations (as specified in Table 1, *supra* at paragraph 47), and is asserted against the Underwriter Defendants.

280. The Underwriter Defendants acted as underwriters in connection with the sale of the Certificates for each of the 21 Securitizations (as specified in Table 1, *supra* at paragraph 47), directly and indirectly participated in distributing the Certificates, and directly and indirectly participated in drafting and disseminating the Registration Statements, which registered securities that were *bona fide* offered to the public on or after September 6, 2005. The Underwriter Defendants were underwriters for the Certificates, and are strictly liable for the misstatements and omissions in the Registration Statements under Section 11 of the Securities Act of 1933.

281. At the time that they became effective, each of the Registration Statements, as set forth above, contained material misstatements of fact and omitted information necessary to make the facts stated therein not misleading. The facts misstated or omitted were material to a reasonable investor in the Certificates sold pursuant to the Registration Statements.

282. The untrue statements of material facts and omissions of material fact in the Registration Statements are principally those set forth herein in Sections I.C. & I.D. and Appendix A, and pertain to purported compliance with underwriting guidelines, occupancy status, loan-to-value ratios and credit ratings.

283. Freddie Mac purchased or otherwise acquired the Certificates pursuant to the false and misleading Registration Statements and in the primary market. At the time it purchased the Certificates, Freddie Mac was unaware of the false and misleading statements and omissions alleged herein, and if Freddie Mac had known those facts, it would not have purchased the Certificates.

284. The Underwriter Defendants were obligated to make a reasonable investigation of the statements contained in the Registration Statements at the time they became effective to ensure that such statements were true and correct, and that there were no omissions of material facts required to be stated in order to make the statements contained therein not misleading.

285. The Underwriter Defendants did not exercise such due diligence and failed to conduct a reasonable investigation. In the exercise of reasonable care, these Defendants should have known of the false statements and omissions contained in or omitted from the Registration Statements filed in connection with the Securitizations, as set forth herein.

286. By virtue of the foregoing, Freddie Mac sustained substantial damages, including depreciation in the value of the Certificates, as a result of the misstatements and omissions in the

Registration Statements. Plaintiff is entitled to damages, jointly and severally, from each of the Underwriter Defendants.

287. Based on the foregoing, the Underwriter Defendants are jointly and severally liable for their wrongdoing.

SECOND CAUSE OF ACTION

Violation of Section 12(a)(2) of the Securities Act of 1933 (Against Defendants Ally Securities, JPMSI, Credit Suisse, RBS, Citi, Barclays, UBS and Goldman Sachs)

288. Plaintiff realleges paragraphs 1 through 176 as if fully set forth herein. For purposes of this cause of action, Plaintiff hereby expressly excludes any allegation that could be construed as sounding in fraud.

289. This claim is brought by Plaintiff pursuant to Section 12(a)(2) of the Securities Act of 1933 and is asserted on behalf of Freddie Mac, which purchased the Certificates issued pursuant to the Registration Statements in the Securitizations listed in paragraph 47.

290. The Underwriter Defendants are prominently identified as underwriters in each of the Prospectuses (which include the Prospectus Supplements) used to sell the Certificates. The Underwriter Defendants offered, promoted, and/or sold the Certificates publicly, including selling to Freddie Mac their Certificates, as set forth in the "Plan of Distribution" or "Underwriting" sections of the Prospectuses. The Underwriter Defendants offered, promoted, and/or sold the Certificates to Freddie Mac as specified in Tables 1, *supra* at paragraph 47, and Table 10, *supra* at paragraph 172, respectively.

291. The Underwriter Defendants offered, promoted, and/or sold the Certificates to Freddie Mac by means of the Prospectuses that contained untrue statements of material facts and omitted to state material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading. The Underwriter Defendants successfully solicited

Freddie Mac's purchases of the Certificates, and generated millions of dollars in commissions in connection with the sale of the Certificates.

292. The Underwriter Defendants offered the Certificates for sale, sold them, and distributed them by the use of means or instruments of transportation and communication in interstate commerce.

293. The Underwriter Defendants actively participated in the solicitation of Freddie Mac's purchase of the Certificates, and did so in order to benefit themselves. Such solicitation included assisting in preparing the Registration Statements, filing the Registration Statements, and/or assisting in marketing and selling the Certificates.

294. Each of the Prospectuses contained material misstatements of fact and omitted information necessary to make the facts stated therein not misleading. The facts misstated and omitted were material to a reasonable investor reviewing the Prospectuses.

295. The untrue statements of material facts and omissions of material fact in the Registration Statements, which include the Prospectuses, are set forth above in Sections I.C. & I.D. and Appendix A and pertain to compliance with underwriting guidelines, occupancy status, and loan-to-value ratios.

296. The Underwriter Defendants offered and sold the Certificates directly to Freddie Mac, pursuant to the false and misleading Prospectuses.

297. The Underwriter Defendants owed to Freddie Mac a duty to make a reasonable and diligent investigation of the statements contained in the Prospectuses, to ensure that such statements were true, and to ensure that there was no omission of a material fact required to be stated in order to make the statements contained therein not misleading. The Underwriter Defendants failed to exercise such reasonable care, and in the exercise of reasonable care should

have known that the Prospectuses contained untrue statements of material facts and omissions of material facts at the time of the Securitizations as set forth above.

298. Freddie Mac did not know of the misstatements and omissions contained in the Prospectuses at the time they purchased the Certificates. If Freddie Mac had known of those misstatements and omissions, it would not have purchased the Certificates.

299. Freddie Mac acquired the Certificates in the primary market pursuant to the Prospectuses.

300. Freddie Mac sustained substantial damages in connection with its investments in the Certificates and has the right to rescind and recover the consideration paid for the Certificates, with interest thereon. Plaintiff hereby seeks rescission and makes any necessary tender of its Certificates. In the alternative, Plaintiff seeks damages according to proof.

THIRD CAUSE OF ACTION

Violation of Section 15 of the Securities Act of 1933
(Against GMACM and Ally Financial)

301. Plaintiff realleges paragraphs 1 through 176 above as if fully set forth herein. For purposes of this cause of action, Plaintiff hereby expressly excludes any allegation that could be construed as sounding in fraud.

302. This claim is brought under Section 15 of the Securities Act of 1933, 15 U.S.C. §77o ("Section 15"), against GMACM and Ally Financial for controlling-person liability with regard to the Section 11 and Section 12(a)(2) causes of actions set forth above.

303. The Ally Sponsor was the sponsor for all 21 Securitizations carried out pursuant to the Registration Statements filed by the Ally Depositors (as specified in Table 1, *supra* at paragraph 47), and culpably participated in their violations of Sections 11 and 12(a)(2) by initiating these Securitizations, purchasing the mortgage loans to be securitized, determining the

structure of the Securitizations, selecting the Ally Depositors as special-purpose vehicles, and selecting the Underwriter Defendants as underwriters. In its role as sponsor, the Ally Sponsor knew and intended that the mortgage loans it purchased would be sold in connection with the securitization process, and that certificates representing the ownership interests of investors in the mortgages would be issued by the relevant trusts.

304. The Ally Sponsor sold the mortgage loans to the Ally Depositors (as specified in Table 1, *supra* at paragraph 47), and conveyed the mortgage loans to the Ally Depositors pursuant to an Assignment and Recognition Agreement or a Mortgage Loan Purchase Agreement. RFC controlled all aspects of the business of the Ally Depositors, who were special-purpose entities created for the purpose of acting as a pass-through for the issuance of the Certificates. As set forth in paragraph 63, *supra*, the officers and directors of the Ally Sponsor overlapped with the officers and directors of the Ally Depositors. In addition, the Ally Sponsor was able to, and did in fact, control the contents of the Registration Statements filed by the Ally Depositors, including the Prospectuses and Prospectus Supplements that contained material misstatements of fact and omitted facts necessary to make the contents therein not misleading.

305. GMAC-RFC is the corporate parent of, and controlled the business operations of, the Ally Sponsor and Ally Depositors. As set forth in paragraph 80, *supra*, the officers and directors of GMAC-RFC overlapped with the officers and directors of the Ally Depositors. As the sole corporate parent of the Ally Sponsor and Ally Depositors, GMAC-RFC had the practical ability to direct and control the actions of the Ally Sponsor and Ally Depositors in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of the Ally Sponsor and Ally Depositors.

306. GMAC-RFC oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Ally Depositors and the issuing trusts to serve as conduits for the mortgage loans.

307. ResCap wholly owns GMAC-RFC and is thus, a parent of RFC and the Ally Depositors. As set forth in paragraph 80, *supra*, the officers and directors of ResCap overlapped with the officers and directors of GMAC-RFC and the Ally Depositors. ResCap oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Ally Depositors and the issuing trusts to serve as conduits for the mortgage loans.

308. Defendant GMACM wholly owns ResCap, and is thus, a parent of GMAC-RFC, RFC, and the Ally Depositors. As set forth in paragraph 80, *supra*, the officers and directors of GMACM overlapped with the officers and directors of ResCap. GMACM oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Ally Depositors and the issuing trusts to serve as conduits for the mortgage loans.

309. Defendant Ally Financial wholly owns GMACM and Ally Securities and is the ultimate parent of ResCap, GMAC-RFC, the Ally Sponsor, and the Ally Depositors. As set forth in paragraph 80, *supra*, the officers and directors of Ally Financial overlapped with the officers and directors of GMACM and ResCap. As the sole corporate parent of Ally Securities, Ally Financial had the practical ability to direct and control the actions of Ally Securities in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of Ally Securities in connection with the issuance and sale of the Certificates. Ally culpably

participated in the violations of Section 11 and 12(a)(2) set forth above. It oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Ally Depositors and the issuing trusts to serve as conduits for the mortgage loans.

310. Ally Financial and GMACM are controlling persons within the meaning of Section 15 by virtue of their actual power over, control of, ownership of, and/or directorship of the Ally Sponsor, Ally Securities, and Ally Depositors at the time of the wrongs alleged herein and as set forth herein, including their control over the content of the Registration Statements.

311. Freddie Mac purchased the Certificates in the primary market. The Certificates were issued pursuant to the Registration Statements, including the Prospectuses and Prospectus Supplements, which at the time they became effective, contained material misstatements of fact and omitted facts necessary to make the facts stated therein not misleading. The facts misstated and omitted were material to a reasonable investor reviewing the Registration Statements.

312. Freddie Mac did not know of the misstatements and omissions in the Registration Statements; had Freddie Mac known of those misstatements and omissions, it would not have purchased the Certificates.

313. Freddie Mac has sustained damages as a result of the misstatements and omissions in the Registration Statements, for which it is entitled to compensation.

FOURTH CAUSE OF ACTION

Primary Violations of the Virginia Securities Act (Against Ally Securities, JPMSI, Credit Suisse, RBS, Citi, Barclays, UBS and Goldman Sachs)

314. Plaintiff realleges paragraphs 1 through 176 above as if fully set forth herein. For purposes of this cause of action, Plaintiff hereby expressly excludes any allegation that could be construed as sounding in fraud.

315. This claim is brought by Plaintiff pursuant to Section 13.1-522(A)(ii) of the Virginia Code and is asserted on behalf of Freddie Mac with respect to those Certificates identified above that were purchased by Freddie Mac and issued pursuant to the Registration Statements.

316. The Underwriter Defendants (as specified in Table 1, *supra* at paragraph 47) made false and materially misleading statements in the Prospectuses for the Securitizations effected under the Shelf Registration Statements.

317. The Underwriter Defendants are prominently identified in the Prospectuses, the primary documents that they used to sell the Certificates. The Underwriter Defendants offered the Certificates publicly, including selling to Freddie Mac the Certificates, as set forth in the "Method of Distribution" or equivalent underwriting section of each Prospectus.

318. The Underwriter Defendants offered and sold the Certificates to Freddie Mac by means of the Prospectuses, which contained untrue statements of material facts and omitted to state material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading. The Underwriter Defendants reviewed and participated in drafting the Prospectuses.

319. The Underwriter Defendants successfully solicited Freddie Mac's purchases of the Certificates. The Underwriter Defendants were paid a substantial commission based on the amount it received from the sale of the Certificates to the public.

320. The Underwriter Defendants offered the Certificates for sale, sold them, and distributed them to Freddie Mac in the State of Virginia.

321. The Underwriter Defendants actively participated in the solicitation of the Freddie Mac's purchase of the Certificates, and did so in order to benefit itself. Such solicitation

included assisting in preparing the Registration Statements, filing the Registration Statements, and assisting in marketing the Certificates.

322. Each of the Prospectuses contained material misstatements of fact and omitted facts necessary to make the facts stated therein not misleading. The facts misstated and omitted were material to a reasonable investor reviewing the Prospectuses, and specifically to Freddie Mac.

323. The untrue statements of material facts and omissions of material facts in the Registration Statements, which include the Prospectuses, are set forth above, and include compliance with underwriting guidelines, occupancy status, loan-to-value ratios, and accurate credit ratings.

324. The Underwriter Defendants offered and sold the Certificates directly to Freddie Mac pursuant to the materially false, misleading, and incomplete Prospectuses.

325. The Underwriter Defendants owed to Freddie Mac, as well as to other investors in these trusts, a duty to make a reasonable and diligent investigation of the statements contained in the Prospectuses, to ensure that such statements were true, and to ensure that there was no omission of a material fact required to be stated in order to make the statements contained therein not misleading.

326. The Underwriter Defendants failed to exercise such reasonable care. These Defendants in the exercise of reasonable care should have known that the Prospectuses contained untrue statements of material facts and omissions of material facts at the time of the Securitizations, as set forth above.

327. In contrast, Freddie Mac did not know, and in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in the Prospectuses at the time it

purchased the Certificates. If Freddie Mac had known of those untruths and omissions, it would not have purchased the Certificates.

328. Freddie Mac sustained substantial damages in connection with its investments in the Certificates and has the right to rescind and recover the consideration paid for the Certificates, with interest thereon. Plaintiff hereby seeks rescission and makes any necessary tender of its Certificates. In the alternative, Plaintiff seeks damages according to proof.

FIFTH CAUSE OF ACTION

Controlling Person Liability Under the Virginia Securities Act (Against GMACM and Ally Financial)

329. Plaintiff realleges paragraphs 1 through 176 above as if fully set forth herein. For purposes of this cause of action, Plaintiff hereby expressly excludes any allegation that could be construed as sounding in fraud.

330. This claim is brought under Section 13.1-522(C) of the Virginia Code and is asserted on behalf of Freddie Mac, which purchased the Certificates (identified in Table 10, *supra* at paragraph 172) that were issued pursuant to the Registration Statements. This claim is brought against GMACM and Ally Financial for controlling-person liability with regard to the claim brought by Plaintiff pursuant to Section 13.1-522(A)(ii).

331. The Ally Sponsor was the sponsor for all 21 Securitizations carried out pursuant to the Registration Statements filed by the Ally Depositors (as specified in Table 1, *supra* at paragraph 47), and culpably participated in their violations of Section 13.1-522(A)(ii) by initiating these Securitizations, purchasing the mortgage loans to be securitized, determining the structure of the Securitizations, selecting the Ally Depositors as special-purpose vehicles, and selecting the Underwriter Defendants as underwriters. In its role as sponsor, the Ally Sponsor knew and intended that the mortgage loans it purchased would be sold in connection with the

securitization process, and that certificates representing the ownership interests of investors in the mortgages would be issued by the relevant trusts.

332. The Ally Sponsor sold the mortgage loans to the Ally Depositors (as specified in Table 1 *supra* paragraph 47), and conveyed the mortgage loans to the Ally Depositors pursuant to an Assignment and Recognition Agreement or a Mortgage Loan Purchase Agreement. The Ally Sponsor controlled all aspects of the business of the Ally Depositors, who were special-purpose entities created for the purpose of acting as a pass-through for the issuance of the Certificates. As set forth in paragraph 63, *supra*, the officers and directors of the Ally Sponsor overlapped with the officers and directors of the Ally Depositors. In addition, the Ally Sponsor was able to, and did in fact, control the contents of the Registration Statements filed by the Ally Depositors, including the Prospectuses and Prospectus Supplements that contained material misstatements of fact and omitted facts necessary to make the contents therein not misleading.

333. GMAC-RFC is the corporate parent of, and controlled the business operations of, the Ally Sponsor and Ally Depositors. As set forth in paragraph 80, *supra*, the officers and directors of GMAC-RFC overlapped with the officers and directors of the Ally Depositors. As the sole corporate parent of the Ally Sponsor and Ally Depositors, GMAC-RFC had the practical ability to direct and control the actions of the Ally Sponsor and Ally Depositors in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of the Ally Sponsor and Ally Depositors.

334. GMAC-RFC oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Ally Depositors and the issuing trusts to serve as conduits for the mortgage loans.

335. ResCap wholly owns GMAC-RFC and is thus, a parent of the Ally Sponsor and Ally Depositors. As set forth in paragraph 80, *supra*, the officers and directors of ResCap overlapped with the officers and directors of GMAC-RFC and the Ally Depositors. ResCap oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Ally Depositors and the issuing trusts to serve as conduits for the mortgage loans.

336. Defendant GMACM wholly owns ResCap, and is thus, a parent of GMAC-RFC, the Ally Sponsor and Ally Depositors. As set forth in paragraph 80, *supra*, the officers and directors of GMACM overlapped with the officers and directors of ResCap. GMACM culpably participated in the violations of Section 13.1-522(A)(ii) set forth above. It oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Ally Depositors and the issuing trusts to serve as conduits for the mortgage loans.

337. Defendant Ally Financial wholly owns and controls GMACM and Ally Securities and is the ultimate parent of GMACM, ResCap, GMAC-RFC, the Ally Sponsor, and Ally Depositors. As set forth in paragraph 80, *supra*, the officers and directors of Ally Financial overlapped with the officers and directors of GMACM and ResCap. As the sole corporate parent of Ally Securities, Ally Financial had the practical ability to direct and control the actions of Ally Securities in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of Ally Securities in connection with the issuance and sale of the Certificates. Ally Financial culpably participated in the violations of Section 13.1-522(A)(ii) set forth above. It oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans'

characteristics in the Registration Statements and established special-purpose financial entities such as the Ally Depositors and the issuing trusts to serve as conduits for the mortgage loans.

338. Ally Financial and GMACM are controlling persons within the meaning of Section 13.1-522(C) of the Virginia Code by virtue of their actual power over, control of, ownership of, and/or directorship of the Ally Sponsor, Ally Securities, and Ally Depositors at the time of the wrongs alleged herein and as set forth herein, including their control over the content of the Registration Statements.

339. Freddie Mac purchased the Certificates, which were issued pursuant to the Registration Statements, including the Prospectuses and Prospectus Supplements, which contained material misstatements of fact and omitted facts necessary to make the facts stated therein not misleading. The facts misstated and omitted were material to a reasonable investor reviewing the Registration Statements, and specifically to Freddie Mac.

340. Freddie Mac did not know, and in the exercise of reasonable diligence could not have known, of the misstatements and omissions in the Registration Statements; had Freddie Mac known of those misstatements and omissions, it would not have purchased the Certificates.

341. Freddie Mac has sustained substantial damages as a result of the misstatements and omissions in the Registration Statements, for which it is entitled to compensation, and for which the Control Persons are jointly and severally liable.

SIXTH CAUSE OF ACTION

Common Law Fraud
(Against Ally Securities, JPMSI and Goldman Sachs)

342. Plaintiff realleges paragraphs 1 through 276 as if fully set forth herein.

343. Freddie Mac was fraudulently induced to purchase the Certificates by the Fraud Defendants' misrepresentations and omissions of material facts.

344. The material representations set forth above and in Appendix A and Appendix B were fraudulent, and the Fraud Defendants' representations falsely and misleadingly misrepresented and omitted material statements of fact. The representations at issue are identified in Sections I.C. and I.D. and in Appendix A and Appendix B.

345. The Fraud Defendants knew their representations and omissions were false and/or misleading at the time they were made, or made such representations and omissions recklessly without knowledge of their truth or falsity.

346. Each of the Fraud Defendants made the misleading statements with the intent and for the purpose of inducing Freddie Mac to purchase the Certificates.

347. Freddie Mac justifiably relied on the Fraud Defendants' false representations and misleading omissions.

348. But for the Fraud Defendants' fraudulent misrepresentations and omissions regarding the Fraud Defendants' underwriting practice and quality of the loans making up the securitizations, Freddie Mac would not have purchased the Certificates.

349. As a result of the foregoing, Freddie Mac has suffered damages in an amount to be proven at trial. Plaintiff hereby demands rescission and makes any necessary tender of the Certificates.

350. Because the Fraud Defendants defrauded Freddie Mac willfully and wantonly, and because, by their acts, the Fraud Defendants knowingly affected the general public, including but not limited to all persons with interest in the Certificates, Plaintiff is entitled to recover punitive damages.

SEVENTH CAUSE OF ACTION

Aiding and Abetting Fraud
(Against Ally Financial and GMACM)

351. Plaintiff realleges paragraphs 1 through 276 as if fully set forth herein.

352. This is a claim for aiding and abetting fraud against Ally and GMACM arising from the intentional and substantial assistance each rendered to the Fraud Defendants to advance the fraud on Freddie Mac.

353. Through overlapping personnel, strategies, and intertwined business operations, and the fluid transfer of information among the Defendants, Ally Financial and GMACM knew of the Fraud Defendants', Ally Sponsor's, and Ally Depositors' fraudulent scheme to offload the credit risks of non-agency loans to investors, including Freddie Mac. Each of these Defendants acted in concert to defraud Freddie Mac.

354. Ally Financial and GMACM through their employees and representatives, substantially assisted in, among other things: (a) the extension of warehouse loans to originators; (b) acquiring the underlying mortgage loans from the originators; (c) packaging up those loans into pools which were deposited into the Trust; (d) waiving into the collateral pools of the Trusts loans previously rejected by Clayton or otherwise non-compliant loans, despite the lack of compensating factors; (e) creating and structuring the Trusts whose Certificates would be sold to investors including Freddie Mac; and (f) preparing the Registration Statements which would be used to market the Certificates.

355. The Fraud Defendants, Ally Sponsor, and Ally Depositors would not have been able to implement their fraud against Freddie Mac without such substantial assistance.

356. Through overlapping personnel, strategies, and intertwined business operations, and the fluid transfer of information among the Defendants, each of the Fraud Defendants knew of the fraud perpetrated on Freddie Mac.

357. The Fraud Defendants, Ally Sponsor, and Ally Depositors could not have perpetrated their fraud without the substantial assistance of Ally Financial and GMACM, in the form of financial, strategic, and marketing assistance for their scheme. Through the fraudulent sale of the Certificates to the Freddie Mac, the Fraud Defendants, Ally Sponsor, and Ally Depositors were able to materially improve their financial condition by reducing their exposure to declining subprime-related assets and garnering millions of dollars in fees from the structuring and sale of the Certificates.

358. As a direct, proximate, and foreseeable result of the conduct of Ally Financial and GMACM Freddie Mac has suffered and will continue to suffer damages in an amount to be proven at trial. Plaintiff hereby demands rescission and makes any necessary tender of the Certificates.

359. Because the Fraud Defendants defrauded Freddie Mac willfully and wantonly, and because, by their acts, the Fraud Defendants knowingly affected the general public, including but not limited to all persons with interests in the Certificates, Plaintiff is entitled to recover punitive damages.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests that judgment be entered:

An award in favor of Plaintiff against all Defendants, jointly and severally, for:

a. Rescission and recovery of the consideration paid for the Certificates, with interest thereon (in connection with this request for rescission, the Certificates are hereby tendered to the Defendants);

b. Freddie Mac's monetary losses, including any diminution in value of the Certificates, lost principal and lost interest payments thereon, and consequential damages, including the cost of investigating the misrepresentations and performance of the underlying collateral to the Certificates, as well as any increased coupon payment on Freddie Mac's senior preferred stock held by the U.S. Treasury Department, arising from losses on the Certificates;

c. Punitive damages;

d. Attorneys' fees and costs;

e. Prejudgment interest at the maximum legal rate; and

f. Such other and further relief as the Court may deem just and proper.

DATED: New York, New York
June 13, 2012

KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP

By: _____

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Federal Housing Finance Agency, as Conservator for the Federal Home Loan Mortgage Corporation

EXHIBIT B

C5EFFHFC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL HOUSING FINANCING AGENCY	11 CV 05201 (DC)
v.	11 CV 06188 (DC)
UBS AMERICAS INC. and others and its related cases	11 CV 06190 (DC)
	11 CV 06192 (DC)
	11 CV 06193 (DC)
	11 CV 06195 (DC)
	11 CV 06196 (DC)
	11 CV 06198 (DC)
	11 CV 06200 (DC)
	11 CV 06201 (DC)
	11 CV 06202 (DC)
	11 CV 06203 (DC)
	11 CV 06739 (DC)
	11 CV 07010 (DC)
	11 CV 07048 (DC)

May 14, 2012
3:15 p.m.

Before:

HON. DENISE COTE,

District Judge

APPEARANCES

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declined to do so and communicated that decision to me in a letter of December 15th. I now have requests from six cases for a stay and as you remember what we had talked about was that I decide the motion to dismiss in this first action which ended up being the UBS action, and then everyone -- and then I expected I would lift the PSLRA stay with respect to all cases before me but everybody would have a right to write me in seven days of my decision to explain why the stay should not be lifted in their case.

And so six cases wrote. There's the VNB action, which I'll put to a side for a moment because there's agreement there, but I want to talk a little bit about that, but with respect to the FHFA cases, I got five requests. Three of those have fraud claims; 6198, 6202 and 7010. Two do not have fraud claims; 6189 and 6195 but they share defense counsel with the first three, Mayor, Brown & Platt and Williams & Connolly.

So I'm just going to think long and hard about the three with the fraud claims. So I think -- I'm not going to lift the -- I am going to lift the stay with respect to all FHFA cases and I'll talk a little bit more about that, but I think if there's going to be amended pleading we might want to amend first in the cases with the fraud claims as a group and do those motions to dismiss if there are any.

MR. SELENDY: We would be glad to do that, your Honor.

THE COURT: Okay. So, Mr. Selendy, I'm going to ask

you to talk this week with a proposal about a schedule for two rounds of amendments; first, for those cases with fraud claims and then a second round of amendments for the remaining FHFA cases. And I believe the cases with fraud claims are 6188, 6192, 6198, 6202, 6739 and 7010. So not all of the cases with fraud claims have resisted the lifting of the stay. I just want to note that.

So 7010 is the case in which Ally Financial is a defendant and there's been a filing for bankruptcy and I appreciate counsel being present for this conference even though some of the defendants in that case, as I understand it, are filing for bankruptcy.

I think there are, as I understand it, six defendants filing for bankruptcy in the Ally Financial case, 11 Civ. 7010, but we have many other defendants, including JPMorgan, Credit Suisse, Citi, RBS, Barclays, UBS, Goldman Sachs and why I'm thinking that I won't stay the entire action is because one of the things I think everyone has agreed upon is that if someone is deposed if at all possible that only happen once in this suite of cases. And as you'll hear later in this conference, lucky UBS is probably going to be among the first to be deposed here. At least that's going to be my proposal to all of you. And they're in 7010. So when their deposition happens, it should cover 7010 as well as every other case in which they're a defendant.

So my proposal would be, unless I hear a good reason otherwise, that obviously the automatic bankruptcy stay affects 7010 insofar as it affects the parties who have filed for bankruptcy court protection, but that the remainder of the case go forward, including against the underwriter defendants. Okay, so that takes care of the stay application in 7010 insofar as it addresses the bankruptcy issue.

The only developed argument with respect to pleading issues I think was made in 6202 and to some extent in 6195 and I looked at the two complaints in those actions to just make a quick assessment of the merits of the Section 11 arguments that had been highlighted in that brief letter. I noticed that -- I'm sorry, I might have given you the wrong numbers. 6202 and 6195. If I said other numbers I apologize.

As you know, there are three basic misrepresentations underlying the Section 11 claims and the letter does not suggest there was a failure to plead adequately one of those three claims on owner occupancy. I looked at the allegations with respect to the underwriter guidelines and the LTV issue. I don't think that they are sufficiently different that it would be appropriate to enter a stay.

Many of the cases who have asked for a stay have referred generally to the PSLRA stay language in principle. I don't think that's relevant anymore because of what I explained earlier, the process that we've undergone here together, my

willingness to decide a motion to dismiss that had a fraud claim, no one taking me up on that, so we're going to move forward as I gave everyone notice we would do at our first conference.

The last issue that's been raised is the shelf registration issue. This was an issue presented in footnotes in the motion to dismiss and I issued an order, as you all know, to ask for briefing in the text and I think I have the first brief on that and I'll address it when I get the complete set of briefs. So that will be decided soon.

That leaves I think in terms of stay issues the VNB case. There is agreement there that the VNB case be stayed. It's the only non-HFA case on my docket related to this matter. I'm happy to stay that case. There's consent by one and all. I think it makes good sense in a lot of ways, but I want to make sure that the plaintiff understands there that it will not be permitted to redepose any witness deposed in the FHFA litigation unless it can show it has discrete, unique questions that were not captured by the other questioning at a deposition. Is that agreeable, counsel?

MR. TSAPATSARIS: Yes, your Honor, although I do have a concern and we ask, VNB would ask if we be allowed to attend those depositions and have access to the transcripts if we're going to be locked into those issues.

THE COURT: I'll let you discuss that with counsel.

EXHIBIT C

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/16/2011

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- UBS AMERICAS, INC., et al., Defendants.	11 Civ. 5201 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- JPMORGAN CHASE & CO., et al., Defendants.	11 Civ. 6188 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- HSBC NORTH AMERICA HOLDINGS, INC., et al., Defendants.	11 Civ. 6189 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- BARCLAYS BANK PLC, et al., Defendants.	11 Civ. 6190 (DLC)

FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- DEUTSCHE BANK AG, et al., Defendants.	:	11 Civ. 6192 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- FIRST HORIZON NATIONAL CORP., et al., Defendants.	:	11 Civ. 6193 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- BANK OF AMERICA CORP., et al., Defendants.	:	11 Civ. 6195 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- CITIGROUP INC., et al., Defendants.	:	11 Civ. 6196 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- GOLDMAN, SACHS & CO., et al., Defendants.	:	11 Civ. 6198 (DLC)

FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- CREDIT SUISSE HOLDINGS (USA), INC., et al., Defendants.	:	11 Civ. 6200 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- NOMURA HOLDING AMERICA, INC., et al., Defendants.	:	11 Civ. 6201 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- MERRILL LYNCH & CO., INC., et al., Defendants.	:	11 Civ. 6202 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- SG AMERICAS, INC., et al., Defendants.	:	11 Civ. 6203 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- MORGAN STANLEY, et al., Defendants.	:	11 Civ. 6739 (DLC)

FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- COUNTRYWIDE FINANCIAL CORP., et al., Defendants.	:	11 Civ. 6916 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- ALLY FINANCIAL INC., et al., Defendants.	:	11 Civ. 7010 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- GENERAL ELECTRIC COMPANY, et al., Defendants.	:	11 Civ. 7048 (DLC)

DENISE COTE, District Judge:

These actions are now assigned to me for all purposes. It is hereby

ORDERED that the time to answer or to move to dismiss the complaint in all actions is stayed, with the exception of the action with docket number 11 Civ. 5201 (the "5201 Action"). The motion to dismiss to be filed in the 5201 Action on December 2, 2011 ("December 2 Motion"), shall address any of the seven grounds identified on pages four and five of the Defendants'

Proposal for the Efficient and Convenient Handling of These Cases as potential grounds for common dismissal motions applicable in that action.

IT IS FURTHER ORDERED that there will be a conference for all parties in all actions on December 2, 2011 at 2:00 p.m. At the conference, the Court will discuss with the parties, inter alia, the scheduling of motion practice and discovery in these actions, and a proposed schedule for any amendment of the complaint in the 5201 Action. Under that proposed schedule, any amended complaint in the 5201 Action in response to any argument made in the December 2 Motion shall be due on December 21, with no further opportunity to amend. If no amendment is made in the 5201 Action, then opposition to the December 2 Motion would be due January 6, 2012. Any reply would be due January 27.

IT IS FURTHER ORDERED that at the time any reply is served, the moving party shall supply two courtesy copies of all motion papers by mail or hand delivery to the Honorable Denise Cote, United States Courthouse, 500 Pearl Street, New York, NY 10007.

SO ORDERED:

Dated: New York, New York
November 16, 2011

DENISE COTE
United States District Judge

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

IN RE:

FEDERAL HOUSING FINANCE AGENCY 11 CV 5201 (DLC)

----------x

Also Docket Nos.
11 CV 6188, 11 CV 6189, 11 CV 6190,
11 CV 6192, 11 CV 6193, 11 CV 6195,
11 CV 6196, 11 CV 6198, 11 CV 6200,
11 CV 6201, 11 CV 6202, 11 CV 6203,
11 CV 6739, 11 CV 6916, 11 CV 7010,
11 CV 7048

----------x

VNB REALTY,

Plaintiff, 11 CV 6805

v.

Bank of America, et al.

Defendants.

----------x

New York, NY

December 2, 2011
2:00 p.m.

Before:

HON. DENISE L. COTE,

District Judge

started his arguing about the PSLRA. Did you want me to discuss at all the PSLRA or should we leave that, and, similarly, if your Honor is inclined to decide now that discovery will be held in abeyance at least through the motion to dismiss on a test case, then perhaps my office can be relieved of the burden of filing the reply brief on the PSLRA status that is due next week. Otherwise, we will file it on the 7th per Judge Patterson's order.

THE COURT: You don't have to file a reply. I am going to finish going through my outline. Then we are going to take a break so that you get a chance to talk with each other and come back and convince me why my tentative suggestions here are wrong and I should change my mind, but right now there will be no discovery until I issue a ruling on the motion to dismiss.

If 5201 survives that motion to dismiss, right now I'm thinking that discovery would proceed in all of the cases. There is one caveat. If I got a sense that there was a really strong statute of limitations argument in another case or two, that the motion practice in 5201 didn't really tee up well, I would be open to extending the discovery stay in that small set of cases. That is my preliminary thinking.

So we use this time while the motion to dismiss is being briefed and decided for you folks to talk about if discovery starts how it would be organized both in terms of

EXHIBIT E

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/6/12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- UBS AMERICAS, INC., et al., Defendants.	11 Civ. 5201 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- JPMORGAN CHASE & CO., et al., Defendants.	11 Civ. 6188 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- HSBC NORTH AMERICA HOLDINGS, INC., et al., Defendants.	11 Civ. 6189 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- BARCLAYS BANK PLC, et al., Defendants.	11 Civ. 6190 (DLC)

FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- DEUTSCHE BANK AG, et al., Defendants.	:	11 Civ. 6192 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- FIRST HORIZON NATIONAL CORP., et al., Defendants.	:	11 Civ. 6193 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- BANK OF AMERICA CORP., et al., Defendants.	:	11 Civ. 6195 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- CITIGROUP INC., et al., Defendants.	:	11 Civ. 6196 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- GOLDMAN, SACHS & CO., et al., Defendants.	:	11 Civ. 6198 (DLC)

FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- CREDIT SUISSE HOLDINGS (USA), INC., et al., Defendants.	:	11 Civ. 6200 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- NOMURA HOLDING AMERICA, INC., et al., Defendants.	:	11 Civ. 6201 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- MERRILL LYNCH & CO., INC., et al., Defendants.	:	11 Civ. 6202 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- SG AMERICAS, INC., et al., Defendants.	:	11 Civ. 6203 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- MORGAN STANLEY, et al., Defendants.	:	11 Civ. 6739 (DLC)

VNB REALTY, INC., Plaintiff, -v- BANK OF AMERICA CORPORATION, et al., Defendants.	:	11 Civ. 6805 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- COUNTRYWIDE FINANCIAL CORP., et al., Defendants.	:	11 Civ. 6916 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- ALLY FINANCIAL INC., et al., Defendants.	:	11 Civ. 7010 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- GENERAL ELECTRIC COMPANY, et al., Defendants.	:	11 Civ. 7048 (DLC)

ORDER

DENISE COTE, District Judge:

Pursuant to the Court's December 5, 2011 Order, the parties have submitted proposals on January 10 and 13 for the management of discovery in these cases. The plaintiff submitted a letter of January 17 addressed to the defendants' January 13 filing. On February 2, the parties provided a status report on their negotiations concerning electronic discovery and a protective order. The parties continue to discuss a protocol for the sampling of loan files. In their submissions, the parties explain that there are 17 groups of affiliated defendants containing 83 entity defendants. It is hereby

ORDERED that within seven days of the Court's ruling on the motion to dismiss in Federal Housing Finance Agency v. UBS Americas, Inc., et al., 10 Civ. 5201, any defendant who believes that a continuation of the discovery stay is appropriate in its particular case shall submit a letter-brief of no more than five pages setting forth the reasons for which the stay should be continued. In each case in which such a letter-brief is filed, the stay shall be continued until the Court has acted on the application.

IT IS FURTHER ORDERED that the plaintiff's application for permission to serve initial document requests is granted. The deadline for responding to these requests will be discussed at

any Rule 26(f) conference that may follow a decision on the motion to dismiss.

IT IS FURTHER ORDERED that the plaintiff's application for an order directing the parties to exchange proposed custodian and search term lists during the pendency of the discovery stay is denied.

IT IS FURTHER ORDERED that in the event the parties do not agree on a protocol for the sampling of loan files, the plaintiff shall submit its proposed protocol by **February 20, 2012**, and the defendants shall submit their proposed protocol by **February 24, 2012.**

SO ORDERED:

Dated: New York, New York
February 6, 2012

DENISE COTE
United States District Judge

EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- UBS AMERICAS, INC., et al., Defendants.	11 Civ. 5201 (DLC) OPINION & ORDER

APPEARANCES:

For the plaintiff:
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Kathleen M. Sullivan
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DENISE COTE, District Judge:

This is one of seventeen actions brought by the Federal Housing Finance Agency ("FHFA" or "the Agency"), as conservator of the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, the "Government Sponsored Enterprises" or

"GSEs"), against various financial institutions involved in the packaging, marketing and sale of residential mortgage-backed securities that the GSEs purchased in the period from 2005 to 2007. Fifteen of the actions filed in New York courts -- both state and federal -- are currently concentrated before this Court for coordinated pretrial proceedings.[1]

FHFA brought this case against USB Americas, Inc. ("UBS Americas") and various affiliated entities and individuals[2] on July 27, 2011. The Agency's Second Amended Complaint ("SAC"), filed on December 21, 2011, asserts claims under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933, 15 U.S.C. §§ 77k, *l*(a)(2), o; the Virginia Securities Act, VA Code Ann.

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[1] See Federal Housing Finance Agency ("FHFA") v. UBS Americas, Inc., et al., 11 Civ. 5201 (DLC); FHFA v. JPMorgan Chase & Co., et al., 11 Civ. 6188 (DLC); FHFA v. HSBC North America Holdings, Inc., et al., 11 Civ. 6189 (DLC); FHFA v. Barclays Bank PLC, et al., 11 Civ 6190 (DLC); FHFA v. Deutsche Bank AG, et al., 11 Civ. 6192 (DLC); FHFA v. First Horizon National Corp., et al., 11 Civ 6193 (DLC); FHFA v. Bank of America Corp., et al., 11 Civ. 6195 (DLC); FHFA v. Citigroup Inc., et al., 11 Civ. 6196 (DLC); FHFA v. Goldman, Sachs & Co., et al., 11 Civ. 6198 (DLC); FHFA v. Credit Suisse Holdings (USA), Inc., et al., 11 Civ. 6200 (DLC); FHFA v. Nomura Holding America, Inc., et al., 11 Civ. 6201 (DLC); FHFA v. Merrill Lynch & Co., Inc., et al., 11 Civ. 6202 (DLC); FHFA v. SG Americas, Inc., et al., 11 Civ. 6203 (DLC); FHFA v. Morgan Stanley, et al., 11 Civ. 6739 (DLC); FHFA v. Ally Financial Inc., et al., 11 Civ. 7010 (DLC).

[2] The defendants are UBS Americas, UBS Real Estate Securities, Inc. ("UBS Real Estate"), UBS Securities, LLC ("UBS Securities"), Mortgage Asset Securitization Transactions, Inc. ("MASTR"), David Martin, Per Dyrvik, Hugh Corcoran, and Peter Slagowitz.

§ 13.1-522(A)(ii), (C); the District of Columbia Securities Act, D.C. Code § 31-5606.05(a)(1)(B), (c); and the common law tort of negligent misrepresentation. On January 20, 2012, defendants filed a motion to dismiss the SAC. The motion was fully submitted on February 24. For the reasons that follow, the motion is granted in part.

BACKGROUND

On July 30, 2008, in the midst of a housing crisis, Congress passed the Housing and Economic Recovery Act of 2008 ("HERA"). See Pub. L. No. 110-289, 122 Stat. 2654 (2008). As part of the Act, Congress established FHFA as the regulator of Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. See id. § 1101. HERA included a provision authorizing the Director of FHFA to place the GSEs into conservatorship under the Agency's authority "for the purpose of reorganizing, rehabilitating, or winding up [their] affairs." Id. § 1367(a)(3). On September 6, 2008, FHFA Director James B. Lockhart III invoked this authority and appointed the Agency as conservator of both GSEs, giving FHFA the right to assert legal claims on their behalf.

The SAC can be briefly summarized. Plaintiff contends that Fannie Mae and Freddie Mac purchased over $6.4 billion in residential mortgage-backed securities ("RMBS") sponsored or

underwritten by UBS entities during the period between September 2005 and August 2007. RMBS are securities entitling the holder to income payments from pools of residential mortgage loans that are held by a trust. For each of the securities at issue here, the offering process began with a "sponsor," which acquired or originated the mortgage loans that were to be included in the offering.[3] The sponsor transferred a portfolio of loans to a trust that was created specifically for that securitization; this task was accomplished through the involvement of an intermediary known as a "depositor."[4] The trust then issued Certificates to an underwriter, in this case UBS Securities, which in turn, sold them to the GSEs. The Certificates were backed by the underlying mortgages. Thus, their value depended on the ability of mortgagors to repay the loan principal and interest and the adequacy of the collateral in the event of default.

Each of the Certificates implicated in this case was issued pursuant to one of seven Shelf Registration Statements filed

[3] The mortgage originators in this case, none of whom are parties to the action, include Wells Fargo Bank, N.A.; Countrywide Home Loans; American Home Mortgage Corp.; Fremont Investment & Loan; WMC Mortgage Corp.; IndyMac Bank, F.S.B.; and New Century Mortgage Corp.

[4] For 16 of the 22 securitizations at issue in this case, defendant UBS Real Estate acted as the sponsor and defendant MASTR acted as the depositor.

with the Securities and Exchange Commission ("SEC"). Each individual defendant signed one or more of the two Shelf Registration Statements that pertained to the securitizations for which MASTR acted as depositor. The Registration Statement, together with the relevant prospectus and prospectus supplement constitute the "offering documents" for each security.

Generally, FHFA asserts that the offering documents for the twenty-two securitizations identified in the complaint "contained materially false statements and omissions."[5] More

[5] The twenty-two securitizations at issue are: Argent Securities Inc. Trust, Series 2006-W3 ("ARSI 2006-W3"); Fremont Home Loan Trust, Series 2006-B ("FHLT 2006-B"); Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2005-C ("INABS 2005-C"); Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2005-D("INABS 2005-D"); Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2006-D ("INABS 2006-D"); Home Equity Mortgage Loan Asset-Backed Trust, Series INABS 2007-A ("INABS 2007-A"); MASTR Asset Backed Securities Trust, Series 2005-WF1 ("MABS 2005-WF1"); MASTR Asset Backed Securities Trust, Series 2005-FRE1 ("MABS 2005-FRE1"); MASTR Asset Backed Securities Trust, Series 2005-HE2 ("MABS 2005-HE2"); MASTR Adjustable Rate Mortgages Trust, Series 2005-8 ("MARM 2005-8"); MASTR Adjustable Rate Mortgages Trust, Series 2006-2 ("MARM 2006-2"); MASTR Adjustable Rate Mortgages Trust, Series 2006-OA1 ("MARM 2006-OA1"); MASTR Asset Backed Securities Trust, Series 2006-FRE2 ("MABS 2006-FRE2); MASTR Asset Backed Securities, Series 2006-WMC2 ("MABS 2006-WMC2"); MASTR Asset Backed Securities Trust, Series 2006-WMC3 ("MABS 2006-WMC3"); MASTR Asset Backed Securities Trust, Series 2006-NC2 ("MABS 2006-NC2"); MASTR Asset Backed Securities, Series 2006-WMC4 ("MABS 2006-WMC4"); MASTR Asset Backed Securities Trust, Series 2006-NC3 ("MABS 2006-NC3"); MASTR Adjustable Rate Mortgages Trust, Series 2007-1 ("MARM 2007-1"); MASTR Asset Backed Securities Trust, Series 2007-WMCI ("MABS 2007-WMC1"); MASTR Adjustable Rate Mortgages Trust, Series 2007-3 ("MARM 2007-3"); and MASTR Asset Backed Securities Trust 2007-HE2 ("MABS 2007-HE2").

particularly, the SAC alleges that "[d]efendants falsely represented that the underlying mortgage loans complied with certain underwriting guidelines and standards, including representations that significantly overstated the borrowers' capacity to repay their mortgage loans." The offering documents are also alleged to have contained representations regarding "the percentage of loans secured by owner-occupied properties and the percentage of the loan group's aggregate principal balance with loan-to-value ratios within specified ranges" that were both false and materially incomplete. Plaintiff asserts that "the false statements of material facts and omissions of material facts in the Registration Statements, including the Prospectuses and Prospectus Supplements, directly caused Fannie Mae and Freddie Mac to suffer billions of dollars in damages," because "[t]he mortgage loans underlying the GSE Certificates experienced defaults and delinquencies at a much higher rate than they would have had the loan originators adhered to the underwriting guidelines set forth in the Registration Statement."

DISCUSSION

I. FHFA's Claims are Not Barred by the Securities Act's Statute of Repose.

Defendants' chief argument in favor of dismissal is that this action is untimely because "all of Plaintiff's claims were

extinguished no later than August 30, 2010 -- nearly one full year before the original complaint was filed on July 27, 2011." Defendants argue that this action is governed by Section 13 of the Securities Act, which sets forth the time limitations that generally apply to claims under Section 11 or Section 12(a)(2). Titled "Limitation of Actions," Section 13 provides:

> No action shall be maintained to enforce any liability created under section 77k [Section 11] or 771(a)(2) [Section 12(a)(2)] of this title unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence . . . . In no event shall any such action be brought to enforce a liability created under section 77k or 771(a)(2) of this title more than three years after the security was bona fide offered to the public, or under section 771(a)(2) of this title more than three years after the sale.

15 U.S.C. § 77m (emphasis added). Thus, under Section 13, a suit alleging that a defendant violated either Section 11 or Section 12(a)(2) must be filed (a) within one year of the date that the plaintiff discovered the violation, or (b) within three years of the date that the security was offered to the public, whichever is earlier. Courts sometimes refer to the former period as a "statute of limitations" and the latter period as a "statute of repose." See P. Stoltz Family Partnership L.P. v. Daum, 355 F.3d 92, 102 (2d Cir. 2004).

As noted above, FHFA's claims pertain to securities offerings that occurred between September 2005 and August 2007.

Because these offerings occurred more than three years before July 27, 2011, when this suit was filed, under normal circumstances Section 13 would bar FHFA's Securities Act claims, irrespective of when the Agency "discovered" the violations that it alleges. FHFA does not dispute that this is so. It argues, however, that the timeliness of its claims is governed not by Section 13 but rather by HERA, which the Agency argues establishes superseding rules governing the timeliness of any action in which FHFA is a plaintiff.

In particular, FHFA relies on HERA § 1367(b)(12), which provides:

> (A) In general -- Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Agency as conservator or receiver shall be--
>
> (i) in the case of any contract claim, the longer of--
>
> (I) the 6-year period beginning on the date on which the claim accrues; or
>
> (II) the period applicable under State law; and
>
> (ii) in the case of any tort claim, the longer of--
>
> (I) the 3-year period beginning on the date on which the claim accrues; or
>
> (II) the period applicable under State law.
>
> (B) Determination of the date on which a claim accrues -- For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of--
>
> (i) the date of the appointment of the Agency as conservator or receiver; or

> (ii) the date on which the cause of action accrues.

12 U.S.C. § 4617(b)(12) (emphasis added). In the Agency's view, HERA governs the timeliness of its Securities Act claims, to the exclusion of Section 13 entirely. For the claims at issue in this case, which accrued prior to the conservatorship and sound in tort, the Agency maintains that the only relevant timeliness concern is the three-year statute of limitations dictated by HERA. Thus, because FHFA was appointed conservator of the GSEs on September 6, 2008, it had until September 6, 2011 to bring this case, making it timely when filed on July 27, 2011.

Defendants dispute this reading of HERA. They argue that, to the extent it applies to federal claims at all, the statute's only effect with regard to the Securities Act was to relieve FHFA of the requirement that it file suit within one year of discovering the misrepresentations for which it seeks to recover; the three-year post-offering deadline remains in place. But this argument cannot be squared with HERA's text or purpose.

A. "Statutes of Limitations" and "Statutes of Repose"

Because the parties' disagreement turns on the meaning of HERA, a federal statute, we must "begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt.

Dist., 541 U.S. 246, 252 (2004) (citation omitted). If a statute's language is unambiguous, "the sole function of the courts is to enforce it according to its terms." Katzman v. Essex Waterfront Owners LLC, 660 F.3d 565, 568 (2d Cir. 2011) (citation omitted). As the Supreme Court has recently reminded us, however, when it comes to the meaning of a particular statutory phrase, "context matters." Carco Pharm. Labs., Ltd. v. Novo Nordisk A/S, 132 S. Ct. 1670, 1681 (2012); see also id. n.6 (citing FCC v. AT&T Inc., 131 S. Ct. 1177, 1181-85 (2011), for the proposition that a proposed definition should be rejected where "it [does] not always hold in ordinary usage and the statutory context suggest[s] it [does] not apply"). Thus, when interpreting a statute, courts are not to "construe each phrase literally or in isolation." Pettus v. Morgenthau, 554 F.3d 293, 297 (2d Cir. 2009). Rather, they must "attempt to ascertain how a reasonable reader would understand the statutory text, considered as a whole." Id.

In contending that HERA does not affect Section 13's three-year deadline for claims under the Securities Act, defendants rely heavily on the semantic distinction between "statutes of limitations" and "statutes of repose." Although closely related, the two terms are, at least in theory, conceptually distinct:

> "[S]tatutes of limitations bear on the availability of remedies and, as such, are subject to equitable defenses, the various forms of tolling, and the potential application of the discovery rule. In contrast, statutes of repose affect the availability of the underlying right: That right is no longer available on the expiration of the specified period of time. In theory, at least, the legislative bar to subsequent action is absolute, subject to legislatively created exceptions set forth in the statute of repose."

Stoltz, 355 F.3d at 102 (quoting Calvin W. Corman, Limitation of Actions, § 1.1, at 4-5 (1991)).

Relying on this distinction, defendants argue that because HERA addresses only "statutes of limitations" and makes no mention of "statutes of repose," it cannot have altered the three-year post-offering bar that Section 13 imposes on claims under the Securities Act. But, as is apparent even from the title of the treatise on which the Stoltz Court relied, in ordinary usage, the semantic distinction between "statutes of repose" and "statutes of limitations" is not as clear as defendants would have us believe.

Indeed, Congress, the courts and learned commentators regularly use the term "limitations" to encompass both types of timeliness provision. As FHFA notes, Section 13 itself is entitled "Limitations on Actions," and nowhere uses the term "repose." See 15 U.S.C. § 77m. Even more tellingly, in 2002, Congress modified the repose period applicable to claims under

the Securities Exchange Act of 1934, the Securities Act's cousin statute, in a provision entitled "Statute of limitations for securities fraud." Sarbanes-Oxley Act, Pub. K. No. 107-204, § 804, 116 Stat. 745, 801 (2002) (codified at 28 U.S.C. § 1658(b)) (emphasis added); see Stoltz, 355 F.3d at 104 (acknowledging that this provision "extend[ed] the effective date of the statute of repose from three years to five years"). This Court and others in this District, well versed in the law of securities, have likewise used the term "statute of limitations" to invoke the three-year repose period on which the defendants rely here. See In re WorldCom, Inc. Sec. Litig., Nos. 02 Civ. 3288 (DLC), 03 Civ. 9499 (DLC), 2004 WL 1435356, at *3 (S.D.N.Y. June 28, 2004) (referencing "the three year statute of limitations contained in the Securities Act"); id. at *6 ("Prior to the enactment of Sarbanes-Oxley, the statute of limitations for Exchange Act claims was a one-year/three-year regime."); In re Alcatel Sec. Litig., 382 F. Supp. 2d 513, 522 (S.D.N.Y. 2005) ("The Court need not address the three-year statute of limitations under section 13 of the Securities Act"); In re Global Crossing, Ltd. Sec. Litig., 313 F. Supp. 2d 189, 198 (S.D.N.Y. 2003) (Lynch, J.) (discussing "the one-year/three-year statute of limitations set forth in 15 U.S.C. § 77m"); Griffin v. PaineWebber Inc., 84 F. Supp. 2d 508, 512 n.1 (S.D.N.Y. 2000)

(addressing the "3-year statute of limitations" applicable to claims under Section 12(a)(2) of the Securities Act).

Using the term "statute of limitations" to encompass both the narrow meaning intended by Stoltz as well as any repose period makes sense, because, conceptually, a "statute of repose" must be understood in relation to the "statute of limitations" that it acts upon -- that is as a limitation on the plaintiff's ability to argue that the regular time limit for bringing a claim should be tolled or that it began to run at some later-than-expected point. Indeed, when the only timeliness provision in a statute is one that is not subject to equitable defenses and is therefore absolute -- in the terminology of Stoltz, when the claim is governed only by a "statute of repose" -- the law generally refers to the timeliness provision not as a "statute of repose" but as a "statute of limitations" that is "jurisdictional" in nature. See John R. Sand & Gravel Co. v. United States, 552 U.S. 130, 133-34 (2008).[6]

As should be apparent from this discussion, the definition of "statute of limitations" proposed by the defendants does not

[6] Admittedly, there is a formal distinction between Soltz's notion of a "statue of repose," which is envisioned as a substantive bar to recovery, and a jurisdictional statute of limitations, which bars the Court from acting on the plaintiff's claim but, in theory, does not alter her substantive rights. This difference is largely theoretical, however. What matters from the perspective of the "reasonable reader," Pettus, 554 F.3d at 297, is that the claim is categorically barred.

always "hold in ordinary usage." Novo Nordisk, 132 S. Ct. at 1681 n.6. Moreover, the statutory context strongly suggests that defendants' proposed definition of "statute of limitations" does not apply here.

Passed by the Senate during a special weekend session and signed by the President only days later, HERA is emergency legislation aimed at addressing some of the most pressing problems of the housing crisis -- chief among them the questionable financial security of the GSEs. Consistent with this goal, Congress gave FHFA the power to appoint itself conservator of the GSEs and "take such action as may be -- (i) necessary to put the [GSEs] in a sound and solvent condition; and (ii) appropriate to carry on the business of the [GSEs] and preserve and conserve [their] assets and property," 12 U.S.C. § 4617(b)(2)(D). In addressing the Agency's powers as conservator, Congress specifically referenced the "collect[ion of] all obligations and money due to the [GSEs]." Id. § 4617(b)(2)(B)(ii). In order to facilitate these functions, HERA specified a "statute of limitations with regard to any action brought by the Agency as conservator" that, in the case of claims such as these, entitles the Agency to three years from the onset of the conservatorship to bring suit. As another court has recognized, the purpose of this provision was

unambiguously to give FHFA "more time to decide whether and how to pursue any claims it inherited as [the GSEs'] newly-appointed conservator." In re Fed. Nat. Mortg. Ass'n Sec., Deriv., ERISA Litig., 725 F. Supp. 2d 169, 177-78 (D.D.C. 2010), reversed on other grounds by Kellmer v. Raines, 674 F.3d 848 (D.C. Cir. 2012).[7]

Reading HERA's reference to "statute of limitations" in the narrow fashion that defendants propose would undermine the congressional purpose of a statute whose overriding objective was to maximize the ability of FHFA to "put the [GSEs] in a sound and solvent condition." 12 U.S.C. § 4617(b)(2)(D). The

[7] Defendants contend that while this may have been Congress's intent with respect to statutes of limitations, Congress could not have intended to affect statutes of repose for another reason as well. The argument turns on defendants' characterization of statutes of limitations as "procedural" and statutes of repose as "substantive." Defendants assert that because "a federal statute cannot re-write state substantive law," HERA could not, as a matter of federal power, displace state statutes of repose. Accordingly, they conclude that HERA's limitations provision must be read to apply only to statutes of limitations at both the state and federal levels.

Defendants' argument fails on two fronts. First, they have the legal doctrine backwards: state sovereignty principles primarily limit Congress's ability to affect state-court procedure, not its ability to modify state substantive law. See Jinks v. Richland County, 538 U.S. 456, 464 (2003). Second, the Supreme Court has rejected defendants' argument that state statutes of limitation should be considered "procedural" for purposes of federalism analysis. Indeed, in Jinks itself, the Court recognized that federal legislation purporting to toll state statutes of limitations "falls on the 'substantive' side of the line" and is therefore within the federal power. Id. at 465.

more natural reading of the provision, the one that is both in-line with everyday usage and consistent with the objectives of the statute overall, is that by including in HERA a provision explicitly setting out the "staute[s] of limitations" applicable to claims by FHFA, Congress intended to prescribe comprehensive time limitations for "any action" that the Agency might bring as conservator, including claims to which a statute of repose generally attaches.[8]

B. HERA's Statute of Limitations Provision Applies to Both Federal and State Claims.

Defendants next argue that HERA's limitations provision applies only to state statutes of limitations and, consequently, has no relevance to federal-law claims such as those that plaintiff brings under the Securities Act. In support of this argument, defendants point out chiefly that while HERA § 1367(b)(12) anticipates cases in which state tort and contract

[8] Defendants argue that in order to conclude that Section 13's three-year statute of repose does not apply to FHFA's claims, the Court would be required to conclude that HERA impliedly repealed that provision of the Securities Act. They are wrong. Even on the construction suggested by the plaintiff, Section 13 continues to apply with full force to the vast majority of litigants; HERA creates an exception for a single, privileged plaintiff -- FHFA. Moreover, because, as explained above, HERA's reference to the "statute of limitations" encompasses not only the narrower use of the term advocated by defendants but also what defendants refer to as "statutes of repose," HERA no more impliedly repealed the latter than it did the former. And even defendants agree that, to the extent it applies to federal claims, HERA constitutes a valid extension of Section 13's one-year limitation period.

law might afford a statute of limitations longer than the three- and six-year periods specified, it makes no similar provision for federal statutes, such as the Racketeer Influenced and Corrupt Organizations Act, that carry a longer limitations period.

This argument fails in the face of the limitations provision's plain language, which states in unambiguous terms that it shall apply to "any action brought by the Agency as conservator," 12 U.S.C. § 4617(b)(12)(A) (emphasis added). Defendants' interpretation is also inconsistent with HERA's objective, discussed at length above, of facilitating FHFA's mission to "to put the [GSEs] in a sound and solvent condition" by, among other things, "collect[ing on] all obligations and money due to [them]." Id. § 4617(b)(2)(D), 4617(b)(2)(B)(ii).[9]

Although it may be the case, as defendants contend, that Congress could have been clearer about HERA's applicability to claims under federal law, "the mere possibility of clearer phrasing cannot defeat the most natural reading of a statute; if it could (with all due respect to Congress), we would interpret a great many statutes differently than we do." Novo Nordisk A/S, 132 S. Ct. at 1682. In this case, for the reasons that

[9] For the same reasons the Court rejects defendants' argument, made in a footnote, that HERA does not apply to statutory claims.

have been discussed at length in this Opinion, the most natural reading of Section 1367(b)(12) is that it affords FHFA three years from the date of conservatorship to bring suit on its Securities Act claims, irrespective of any other provision of law.

II. The GSEs' Claims Were Open When FHFA's Conservatorship Began.

Defendants also contend that, even if HERA governs the timeliness of Securities Act claims in general, plaintiff's particular claims were barred by Section 13's one-year statute of limitations before the relevant provision of the HERA took effect. As defendants note, HERA explicitly provides that the statute does not revive claims for which the statute of limitations had expired prior to the conservatorship unless the claim arose from "fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the regulated entity." 12 U.S.C. § 4617(b)(13).

In order to show that plaintiff's Securities Act claims accrued and expired prior to the conservatorship, defendants cite a series of news accounts, lawsuits and other reports that they assert placed the GSEs on "inquiry notice" of the potential that the offering materials for these securities contained material misstatements or omissions. In focusing their

arguments around when the GSEs had "inquiry notice," defendants rely on Second Circuit authority that plaintiff argues has been abrogated by the Supreme Court's decision in Merck & Co. v. Reynolds, 130 S. Ct. 1784 (2010). Thus, before analyzing defendants' specific claims, some discussion of the accrual standard under the Securities Act is warranted.

A. Accrual of Claims Under the Securities Act

As noted, Section 13 of the Securities Act sets out the accrual standards and time limitations that apply to actions brought under Sections 11 or 12(a)(2). As relevant here, Section 13 provides:

> No action shall be maintained to enforce any liability created under section 77k or 77l(a)(2) of this title unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence . . . .

15 U.S.C. § 77m (emphasis added). The equivalent provision governing claims under the Exchange Act reads, in relevant part:

> [A] private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934, may be brought not later than . . . 2 years after the discovery of the facts constituting the violation . . . .

28 U.S.C. § 1658 (emphasis added).

Unlike Section 13, the Exchange Act provision omits any reference to circumstances in which discovery of the basis for the claim "should have been made by the exercise of reasonable diligence." Nonetheless, prior to Merck, the law in this Circuit was that the accrual standards under the two statutes were identical. See Dodds v. Cigna Secs., Inc., 12 F.3d 346, 349-50 (2d Cir. 1993).[10] Thus, a potential plaintiff under either the Securities Act or the Exchange Act was deemed to have "discover[ed]" an untrue statement or omission upon obtaining "actual knowledge of the facts giving rise to the action or notice of the facts, which in the exercise of reasonable diligence, would have led to actual knowledge." Kahn v. Kohlberg, Kravis, Roberts & Co., 970 F.2d 1030, 1042 (2d Cir. 1992). Moreover, the prevailing view in this Circuit became that the two statutes "impose[d] a duty of inquiry," that was triggered when "the circumstances [were] such as to suggest to a

[10] Although the Sarbanes-Oxley Act of 2002 ("SOX"), Pub. L. No. 107-204, 116 Stat. 745, lengthened the limitations periods available to Exchange Act plaintiffs, the key accrual language was left unchanged. Before SOX, claims under Section 10(b) of the Exchange Act were governed by the statute of limitations applicable to private claims of market manipulation under Section 9(e) of the original Act. That provision read, in part:

> No action shall be maintained to enforce any liability created under this section, unless brought within one year after the discovery of the facts constituting the violation and within three years after such violation.

See Dodds, 12 F.3d at 350 n.2 (quoting 15 U.S.C. § 78i(e) (1988)).

person of ordinary intelligence the probability" that she had a cause of action. Jackson Nat. Life Ins. Co. v. Merrill Lynch & Co., Inc., 32 F.3d 697, 701 (2d Cir. 1994) (emphasis added) (citation omitted).

In Merck, the Supreme Court rejected the Second Circuit's "inquiry notice" standard as applied to the accrual of claims under the Exchange Act. As the Court explained, "the 'discovery' of facts that put a plaintiff on 'inquiry' notice does not automatically begin the running of the limitations period." 130 S. Ct. at 1798. "If the term 'inquiry notice' refers to the point where the facts would lead a reasonably diligent plaintiff to investigate further, that point is not necessarily the point at which the plaintiff would already have discovered facts showing scienter or other 'facts constituting the violation.'" Id. at 1797.

The Court acknowledged, however, that, "'discovery' in respect to statutes of limitations for fraud has long been understood to include discoveries a reasonably diligent plaintiff would make." Id. at 1795. Accordingly it declined to fashion a rule that would require an Exchange Act plaintiff, in all cases, to possess actual knowledge of the facts constituting the violation before the statute of limitations could begin to run. Rather, the Court concluded that the limitations period

under the Exchange Act begins to run upon discovery of, or when "a reasonably diligent plaintiff would have discovered, the facts constituting the violation." Id. at 1798 (quoting 28 U.S.C. § 1658(b)(1)). Following Merck, the Second Circuit has held that a fact is not "discovered" for the purposes of Exchange Act claims until "a reasonably diligent plaintiff would have sufficient information about that fact to adequately plead it in a complaint." City of Pontiac Gen. Emps. Ret. Sys. v. MBIA, Inc., 637 F.3d 169, 175 (2d Cir. 2011).

The Second Circuit has yet to rule on whether Merck's holding extends beyond the context of the Exchange Act to claims under the Securities Act. But the majority of district courts that have considered the matter have concluded that it does. See In re Bear Stearns Mortgage Pass-Through Certificates Litig., No. 08 Civ. 8093 (LTS)(KNF), 2012 WL 1076216, at *12 (S.D.N.Y. Mar. 30, 2012); In re Wachovia Equity Sec. Litig., 753 F. Supp. 2d 326, 370-71 & n.39 (S.D.N.Y. 2011); Brecher v. Citigroup Inc., 797 F. Supp. 2d 354, 367 (S.D.N.Y. 2011); New Jersey Carpenters Health Fund v. Residential Capital, LLC, Nos. 08 CV 8781 (HB), 08 CV 5093 (HB), 2011 WL 2020260, at *4 (S.D.N.Y. May 19, 2011); but see In re IndyMac Mortgage-Backed Securities Litig., 793 F. Supp. 2d 637, 648 (S.D.N.Y. 2011).

The majority position makes good sense. Both statutes use the plaintiff's "discover[y]" of the factual predicate of the claim as the triggering date for the statute of limitations. Although the Securities Act includes the qualification that the limitations period may also begin to run "after such discovery should have been made by the exercise of reasonable diligence," 15 U.S.C. § 77m, the Merck Court interpreted the use of the term "discover" in the context of the Exchange Act to embrace an essentially identical diligence requirement and nonetheless concluded that the inquiry standard that defendants advocate in this case was excessively broad.

Given that the Supreme Court has interpreted the Exchange Act's "discovery" standard to imply the diligence requirement that the Securities Act makes explicit, there appears to be no principled reason to depart from the precedents of this Circuit holding that the accrual standards under the two statutes are to be interpreted identically. See Dodds, 12 F.3d at 349-50. Indeed, the Merck Court itself described with approval the long-standing practice of adopting the Securities Act's explicit "reasonable diligence" standard for the Exchange Act accrual date, despite "the omission of an explicit provision to that effect." Merck, 130 S. Ct. at 1795. Accordingly, the Court concludes that the statute of limitations for FHFA's Securities

Act claims did not begin to run until "a reasonably diligent plaintiff" in the GSEs' position would have had "sufficient information about [a given misstatement or omission] to adequately plead it in a complaint." City of Pontiac, 637 F.3d at 175.

B. The GSEs' Discovery of Defendants' Alleged Misstatements

Applying the accrual standard set out in Merck and City of Pontiac, the Court has little trouble concluding that FHFA's Securities Act claims were open at the time the time the GSEs were placed into conservatorship. As discussed in greater detail below, the essence of the Agency's case is that the offering materials for the securitizations at issue here included materially false or misleading information regarding: (1) the value of the underlying mortgage properties; (2) the percentage of underlying properties that were owner occupied; and (3) the degree to which the underlying mortgage loans were underwritten in accordance with certain risk guidelines. To support these allegations, the SAC relies principally on FHFA's own survey of loan-level data for a sample of mortgage loans in each securitization, which the Agency argues, reveals that the offering materials contained material inaccuracies with regard to each of the three categories of information. To support the allegation that defendants failed to act diligently to ensure

that loans included in the securitizations had been underwritten in accordance with the risk guidelines set out in the offering materials, the SAC also cites a series of government and private reports that have revealed systematic underwriting failures by many of the mortgage originators whose loans were included in the Securitizations.

Defendants seize on this last point, noting that a myriad of legal complaints, government investigations, news articles and statements by the GSEs' own representatives makes clear that the originators' questionable loan practices were widely known as early as September 2007. From this fact, defendants conclude that "Fannie Mae and Freddie Mac . . . were on notice of the misrepresentations and omissions about which they complain" more than a year before September 6, 2008, when they were placed into conservatorship. As noted above, however, under Merck the relevant question in assessing the timeliness of these claims is not when the GSEs were put "on notice" of the potential that the prospectuses included material misstatements or omissions, but rather when they, or a reasonably diligent plaintiff in their position, could have "discovered" that this was so with sufficient particularity to plead a Securities Act claim that would survive a motion to dismiss.

To the extent defendants contend this standard was met as early as September 2007, that claim is significantly undercut by the assertion elsewhere in their motion to dismiss that FHFA has, even now, failed to allege facts sufficient to support a claim under the Securities Act. Recognizing this tension in their argument, defendants attempt to turn the tables on the plaintiff -- asserting that "either the information in the SAC is insufficient to plead its claims, or Plaintiff had enough information to plead its claims prior to September 2007." But defendants pose a false dichotomy. Between 2007 and the filing of this complaint an important event occurred that caused the GSEs to discover that the loans included in the securitizations they bought from defendants were not as advertised: the securities were downgraded from investment grade to near-junk status. The earliest of those downgrades occurred on February 15, 2008 for Freddie Mac, and March 3, 2008, for Fannie Mae -- less than a year before September 6, 2008, when the GSEs were placed into conservatorship.

The truth of the matter is that when the GSEs learned of the loan originators' dubious underwriting practices says little about when they discovered the facts that form the basis of this complaint. FHFA's claim here is not that the originators failed to scrutinize loan applicants adequately in general; it is that

defendants failed to act diligently to ensure that, consistent with the representations in the offering materials, the originators' questionable practices did not lead to the inclusion of non-conforming loans in the particular securitizations sold to the GSEs. The downgrade of the securities' credit ratings and the results of the loan audit that FHFA undertook in response to that action are crucial to the Agency's claim in this regard, since they are the only facts that connect the originators' general practices to particular securities that the GSEs bought from defendants. Accord In re Bear Sterns Mortg. Pass-Through Certs. Litig., No. 08 Civ. 8093(LTS)(KNF), 2012 WL 1076216, at *14 ("[A]bsent a decline in the Certificates' ratings (or some other indicator of a steep decline in the Certificates' value), it is difficult to see how a plaintiff could have plausibly pled that the epidemic of indiscretions in the MBS industry had infected his or her Certificates."). Indeed, several courts in this district have concluded that, even under the pre-Merck, duty-of-inquiry standard for accrual, generalized reports like those relied upon by defendants are insufficient to trigger the statute of limitations. See, e.g., Pub. Emples. Ret. Sys. v. Merrill Lynch & Co., 714 F. Supp. 2d 475, 479-80 (S.D.N.Y. 2010).

The 2007 reports, lawsuits and investigations regarding loan origination practices cited by defendants may have signaled a potential for problems in the RMBS market generally -- and may, as plaintiff suggests, have triggered a duty on the part of defendants to scrutinize the loans included in their securitizations more closely -- but such reports were insufficient to trigger the Securities Act's statute of limitations. Until such time they did or with diligence should have "discovered" otherwise, the GSEs were entitled to rely on defendants' assertion that the loans that underlay these particular securities complied with the guidelines set out in the offering materials.[11] The public reporting discussed in the SAC is relevant to plaintiff's claims only insofar as it negates any effort by defendants to maintain that they exercised due diligence or reasonable care to ensure that the loans included in the securitizations were as described. See In re Morgan Stanley Info. Fund Sec. Litig., 592 F.3d 347, 359 n.7 (2d Cir. 2010) (recognizing that "section 11 provides several due diligence defenses available to non-issuer defendants, see 15

[11] For this reason, the fact that, in August 2007, Freddie Mac sued American Home Mortgage ("AHM"), one of the originators at issue here, asserting that AHM had sold it loans "determined to be of non-investment quality" is not sufficient to show that the claims at issue here had accrued as of that date. The GSEs were entitled to assume that defendants had made diligent efforts to ensure that the originators' dubious lending practices did not infect the particular loans included in these securitizations.

U.S.C. § 77k(b), and section 12(a)(2) contains a 'reasonable care' defense, id. § 77l (a)(2)."). Whatever questions the GSEs might have harbored in 2007 about the quality of the securitizations they bought from defendants, it cannot be said that they should have "discovered" that those securitizations in fact contained loans that failed to meet the standards set out in the offering materials until they were alerted to this possibility by the ratings agencies in early 2008. The claims were therefore open in September 2008 when FHFA's conservatorship began.

III. FHFA Has Standing to Bring This Action.

HERA provides that during the period beginning with the creation of FHFA and "ending on the date on which the [FHFA] Director is appointed and confirmed, the person serving as the Director of the Office of Federal Housing Enterprise Oversight [OFHEO] of the Department of Housing and Urban Development . . . shall act for all purposes as, and with the full powers of, the Director." 12 U.S.C. § 4512(b)(5). Consistent with this provision, James Lockhart, the President-appointed and Senate-confirmed Director of OFHEO, led FHFA from the time of its creation until the President designated Edward Demarco as Acting Director of FHFA on August 25, 2009.

Defendants contend that Section 4512(b)(5) violates the Appointments Clause of the Constitution, which provides, as relevant here, that "the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." U.S. Const. art. II, § 2, cl. 2. Defendants maintain that because Lockhart, an inferior officer, was not separately nominated and confirmed to lead FHFA, his directorship was an unconstitutional congressional appointment and that, consequently, the actions that he took as Acting Director -- including placing Fannie Mae and Freddie Mac into conservatorship -- were invalid under the Appointments Clause. They further argue that because Lockhart never validly served as Director of FHFA, his resignation could not trigger the provision under which DeMarco was appointed, so that the constitutional defect in Lockhart's appointment infects DeMarco's tenure as Acting Director as well. These claims are meritless.

It is well established that Congress may confer on validly appointed officers "additional duties, germane to the offices already held by them . . . without thereby rendering it necessary that the incumbent should be again nominated and appointed." Shoemaker v. United States, 147 U.S. 282, 301

(1893); accord Weiss v. United States, 510 U.S. 163, 171-75 (1994); Lo Duca v. United States, 93 F.3d 1100, 1110 (2d Cir. 1996). Defendants do not seriously contend that the functions that HERA assigned to the Director of FHFA were not germane to those that Lockhart was already performing as the Director of OFHEO. HERA transferred the "functions, personnel, and property" of OFHEO from the Department of Housing and Urban Development to the newly created FHFA, which, like OFHEO, was tasked primarily with overseeing the operations of the GSEs. See HERA, tit. III, 122 Stat. 2794-2799 (codified at 12 U.S.C. § 4511 note). The powers that HERA assigned to FHFA beyond those previously enjoyed by OFHEO were intended to further this common mission and thus entirely germane to Lockhart's previous function.[12] Defendants' Appointments Clause challenge therefore fails.

III. FHFA Has Adequately Pled Violations of the Securities Act.

Defendants also maintain that FHFA has failed to plead sufficient facts to state a claim under the Securities Act. Because FHFA does not allege that the defendants engaged in fraud, its pleadings are governed by Federal Rule of Civil

[12] To the extent this conclusion is inconsistent with Olympic Fed. Sav. & Loan Ass'n v. Dir., Office of Thrift Supervision, 732 F. Supp. 1183, 1193 (D.D.C. 1990), the Court respectfully disagrees with that decision.

Procedure 8(a)(2), which requires that the complaint contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Although this rule "does not require detailed factual allegations, . . . a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation omitted). "A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." Id. (citation omitted).

The SAC asserts claims under Sections 11, 12(a)(2), and 15 of the Securities Act. Section 11 provides a private cause of action against the issuers and other signatories of a registration statement that "contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading," 15 U.S.C. § 77k(a). A fact is material for the purposes of Section 11 if "there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to act." Hutchison v. Deutsche Bank Sec. Inc., 647 F.3d 479, 485 (2d Cir. 2011) (citation omitted). Section 12(a)(2) imposes liability under similar circumstances with respect to prospectuses and oral communications, 15 U.S.C.

§ 77*l*(a)(2). Neither provision requires allegations of scienter, reliance, or loss causation in order to state a claim. Fait v. Regions Fin. Corp., 655 F.3d 105, 109 (2d Cir. 2011). Section 15 extends "control person" liability to "[e]very person who, by or through stock ownership, agency, or otherwise . . . controls any person liable under [Section 11] or [Section 12]." 15 U.S.C. § 77o.

As noted above, FHFA identifies three principal categories of what it argues is misleading or false information in the offering materials that accompanied the RMBS at issue here. First, the Agency asserts that the prospectus supplements understated the loan-to-value (LTV) ratio of the underlying mortgage pools. Second, it contends that the offering materials overstated the percentage of properties in the supporting loan groups that were owner occupied. Finally, FHFA maintains that the offering materials represented that the underlying mortgage loans were underwritten according to certain risk guidelines when, in fact, "there were pervasive and systematic breaches of those guidelines." Defendants contend that the SAC fails to state a claim with respect to any of the three categories of statements.[13]

[13] In a footnote, defendants also maintain that, in addition to failing adequately to allege conduct violative of the Securities Act, the SAC does not assert that MASTR was a "statutory

A. LTV Ratio

The offering materials for each securitization included group-level representations regarding the LTV ratios of the underlying mortgages. For any given mortgage, the LTV ratio is determined by computing the balance of the loan as a percentage of the value of the property that secures it, often determined on the basis of an appraisal. LTV ratio is a measure of credit risk. The higher the ratio, the less equity the homeowner has in the property, and the more likely she is to default. Mortgages with an LTV ratio in excess of 100% are "underwater," and are highly susceptible to default, because the homeowner has little financial incentive to continue making payments in the event her financial circumstances change or the value of her home further declines. Such mortgages are highly risky for note holders, because the value of the property is insufficient to cover the balance of the loan in the event of a default.

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seller," a necessary condition for establishing liability under Section 12. This argument is easily rejected. A person is a "statutory seller" -- and therefore a proper Section 12(a)(2) defendant -- if he "successfully solicited the purchase of a security, motivated at least in part by a desire to serve his own financial interests or those of the securities' owner." In re Morgan Stanley Info. Fund Sec. Litig., 592 F.3d at 359 (citation omitted). Consistent with this definition, the SAC alleges that MASTR "actively participated in the solicitation of the GSEs' purchase of the GSE Certificates, and did so in order to benefit itself."

Just as LTV ratio is a measure of the riskiness of an individual home loan, so too is it an indicator of the investment-worthiness of a security backed by the income from many such loans. Each Prospectus Supplement that defendants signed in connection with these offerings included statistics regarding the distribution of LTV ratios across the underlying loan pool. For example, the Prospectus Supplement prepared regarding the MABS 2007-WMC1 Securitization, cited in the complaint, represented that none of the mortgages in the supporting loan group had an LTV ratio in excess of 100% and that "approximately 29.24% of the Group I Mortgage Loans [whose certificates the GSEs purchased] had loan-to-value ratios . . . in excess of 80.00%."

FHFA alleges that these figures, and similar LTV information reported in the offering materials for the other twenty-one issuances, were material to the GSEs in deciding whether to invest in the securities. It further alleges these data were false and therefore actionable under Sections 11 and 12(a). In support of the latter assertion, the Agency cites the results of its own review of loan-level data for a sampling of mortgage loans included in each securitization. The data review, which used an automated valuation model to estimate the property value at the time of origination for each loan sampled,

revealed that, for each securitization at issue here, the Prospectus Supplement significantly understated the percentage of loans with an LTV ratio in excess of 80%. Moreover, although the Prospectus Supplements indicated that the securitizations included no loans that were underwater, the Agency found that, with regard to seventeen of the securitizations, underwater loans accounted for 10% or more of the sample. In the case of the MABS 2007-WMC1 Securitization, for example, the Agency found that while the prospectus supplement indicated that only about 29.24% of the relevant loans had LTV ratios above 80%, the actual number was 61.97%. The data review also determined that 18.55% of the loans sampled in the MABS 2007-WMC1 Securitization had LTV ratios in excess of 100%.

Defendants counter that the LTV ratios and the housing appraisals that underlie them are statements of opinion that cannot give rise to liability under Sections 11 and 12(a)(2). They note that appraisal value is a subjective determination that is largely a function of the particular methods and assumptions employed by the appraiser, and that claims under the Securities Act generally lie only when there has been an "untrue statement of a material fact," 15 U.S.C. § 77k(a) (emphasis added). In support of their position, defendants cite a series of cases from this District, which they claim, hold that LTV

ratios are, at root, opinion statements and therefore non-actionable under the Securities Act. Defendants misstate the holdings of these cases and the law in this area.

1. Opinion Liability Under the Securities Act

It is true, as defendants note, that Sections 11 and 12(a)(2) of the Securities Act impose liability only for an omission or "untrue statement of a material fact." 15 U.S.C. §§ 77k(a), 77*l*(a)(2) (emphasis). But "matters of belief and opinion are not beyond the purview of these provisions." Fait, 655 F.3d at 110. In Fait, the Second Circuit concluded that statements in the offering materials for certain securities that purported to convey management's estimates of goodwill in an acquired company, despite "depend[ing] on management's determination of the 'fair value' of assets acquired and liabilities assumed, which are not matters of objective fact," could nevertheless give rise to liability under the Securities Act, provided the plaintiff could show that the estimates were both objectively false and disbelieved by the speaker when made ("subjectively false"). See id. at 113.

Defendants and FHFA agree that the statements regarding LTV ratios at issue in this case depend on appraisers' estimates regarding the values of the underlying properties and that because those values "are not matters of objective fact," Fait

governs plaintiff's claims in this respect. They disagree only about the identity of the "speaker" whose disbelief in the statements plaintiff must plead. Plaintiff contends that it is sufficient under Fait that the SAC alleges that the appraisers, who are not defendants in this case, did not believe that the valuations they assigned to the underlying properties were accurate. Defendants counter that in order to state a claim adequately under Fait, plaintiff must assert that the statement upon which it seeks to predicate liability "was both objectively false and disbelieved by the defendant at the time it was expressed." Fait, 655 F.3d at 110 (emphasis added). Although, admittedly, there is dictum in Fait that superficially supports defendants' claim, upon closer examination of that decision and its reasoning, the Court is convinced that plaintiff has the better of the argument.

The confusion surrounding whom Fait requires to have disbelieved an opinion statement in order for it to be actionable under the Securities Act can be explained largely by the fact that, in the majority of cases, the opinion upon which the plaintiff seeks to rely is an opinion first articulated by one or more of the Securities Act defendants. In Fait itself, for example, Regions Financial Corporation was both a defendant in the Securities Act case and the originator of the goodwill

estimates that the plaintiffs alleged were materially false. Id. at 110-12; see also In re Gen. Elec. Co. Sec. Litig., No. 09 Civ. 1951 (DLC), 2012 WL 1371016, at *9 (S.D.N.Y. Apr. 18, 2012) (analyzing officer-defendant's statement that "in the recent market volatility, we continue to successfully meet our commercial paper needs.") Fait, therefore, did not require the Second Circuit to address the issue that the parties pose here: how to treat opinions that the offering materials attribute to someone other than a defendant. Fait's reasoning is, however, helpful in addressing this question. It points squarely in favor of plaintiff's position, imposing upon the plaintiff the duty to plead that the person who formed the opinion did not believe the opinion when she expressed it.

As noted above, Fait recognized a narrow set of circumstances under which statements of opinion may constitute an "untrue statement of a material fact," 15 U.S.C. §§ 77k(a), 77*l*(a)(2), and therefore support liability under the Securities Act. In reaching this outcome, the Second Circuit relied heavily on the Supreme Court's analysis in Virginia Bankshares, Inc. v. Sandberg, which recognized that statements of opinion or belief "are factual in two senses: as statements that [the person to whom the belief is ascribed] . . . hold[s] the belief

stated and as statements about the subject matter of the . . . belief expressed." 501 U.S. 1083, 1092 (1991).

In order to understand the Court's reasoning, it is helpful to analyze it in the context of this case. Here, for example, the Prospectus Supplement for the MABS 2007-WMC1 Securitization represented that 29.24% of the loans in the relevant group had LTV ratios above 80%. This representation is equivalent to a claim that, for the remaining 70.76% of loans, an appraiser subjectively valued the mortgage security at or above 125% of the relevant loan amount.

The valuations are, of course, the subjective judgments of the appraisers. See In re Salomon Analyst Level 3 Litig., 373 F. Supp. 2d 248, 251-52 (S.D.N.Y. 2005) (Lynch, J.) ("[V]aluation models depend so heavily on the discretionary choices of the modeler . . . that the resulting models and their predictions can only fairly be characterized as subjective opinions."). But although the appraisals are matters of opinion in one sense, they also constitute factual statements: that the appraised value represents the appraiser's true belief as to the value of the property. Fait holds that, under the Securities Act, liability may attach to this implied assertion -- that the originator of the opinion sincerely holds the belief reported -- where the assertion is shown to be false. Applied to this case,

the plaintiff alleges that the appraisers did not accurately communicate their subjective views regarding the value of the properties at issue. To put it bluntly, the plaintiff asserts that the appraisers did not actually believe that the homes underlying the LTV ratios were worth as much as the appraisers reported they were worth.

Plaintiff is therefore correct that the "subjective falsity" that Fait requires in order to impose Securities Act liability based on a statement of opinion is falsity on the part of the originator of the opinion, who may or may not be a Securities Act defendant. This conclusion is confirmed by the practice in federal court with respect to opinion-based Securities Act claims in multi-defendant cases. The Securities Act does not require a defendant-specific showing of subjective falsity in order to impose liability for opinion statements, nor do defendants argue that such a requirement exists. Indeed, in Fait the Second Circuit seemed to assume that if the complaint had alleged that the company's representations regarding goodwill "falsely represented the speakers' beliefs at the time they were made," 655 F.3d at 107, such an allegation would be sufficient to state a claim against not only the company, but also against the individuals, underwriters and accounting firm named in the complaint. Defendants have articulated no legal

principle that would distinguish their position in this case from that of an underwriter that is subjected to Securities Act liability based on insincere statements of opinion by its issuer co-defendant.

Indeed, the fact that Fait requires a showing of "subjective falsity" only on the part of the originator of an opinion statement serves to clarify the relationship between "subjective falsity" and scienter in the context of claims under the Exchange Act. Although the Fait Court was careful to emphasize that the concepts are different, see 655 F.3d at 112 n.5, courts have struggled to distinguish these two lines of inquiry, in part because, where the originator of the opinion is a defendant, "proving the falsity of the statement 'I believe this investment is sound' is the same as proving scienter." Podany v. Robertson Stephens, Inc., 318 F. Supp. 2d 146, 154 (S.D.N.Y. 2004). Once it is acknowledged that the "subjective falsity" inquiry is directed at determining the truth of the statement, "I believe," rather than the fraudulent intent of any defendant who later reports that claim, the distinction becomes clearer. And, of course, while a plaintiff must plead scienter for each Exchange Act defendant, under the Securities Act the plaintiff need only allege subjective falsity as to the originator of the opinion expressed in the offering documents.

Although they are not dispositive of the issue, policy considerations also make plain that this interpretation of Fait's "subjective falsity" requirement is the correct one. A statement of opinion included in a registration statement or other offering document is material from the perspective of the reasonable investor only to the extent that the person to whom the opinion is attributed has particular expertise with regard to the matter about which the opinion is rendered. In other words, what makes the opinion statement relevant and worthy of inclusion in the offering materials is that it purports to represent the view of an individual whose judgment matters. As noted, this person will often be an agent, director, or underwriter of the company issuing the securities, but it need not necessarily be. For instance, in this case representations regarding LTV ratios -- and the property value estimates that underlay them -- were material to investors precisely because they believed that these figures represented the sincere judgments of professional appraisers with experience making these sorts of assessments. Without a doubt it is as important to investors that the appraisers truly believed the estimates on which the LTV ratios were built as it is that defendants -- who tabulated and reported appraisal values following the completion

of their due diligence inquiry -- believed that this information was correct.

Finally, this reading of Virginia Bankshares and Fait is entirely consistent with the Structure of the Securities Act and the affirmative defenses that it makes available to defendants under Sections 11 and 12(a)(2). Where a non-issuer defendant can show that he conducted a "reasonable investigation" and concluded that the statements contained in the registration statement were true, he can avoid liability under Section 11. See 15 U.S.C. § 77k(b)(3)(A); In re WorldCom, Inc. Secs. Litig., 346 F. Supp. 2d 628, 662 (S.D.N.Y. 2004). Section 12(a)(2) likewise permits a defendant to avoid liability by making an affirmative showing that he exercised "reasonable care" to avoid any untruth or omission. See 15 U.S.C. § 77l(a)(2). "Underwriters function as the first line of defense with respect to material misrepresentations and omissions in registration statements," WorldCom, 346 F. Supp. 2d at 662, and it is entirely appropriate to impose on them the obligation to vet the accuracy of opinion statements attributed to third parties. But the availability of these defenses gives some comfort that Securities Act defendants will not be held liable for inaccuracies that they truly could not have prevented.

2. Application

In light of the forgoing analysis, FHFA has alleged actionable misrepresentations with regard to the LTV ratios that defendants reported in their offering materials. Since the materiality of this information is undisputed, the only issue is whether the Agency has adequately alleged that the property appraisals -- as presented through the LTV ratios -- "were both false and not honestly believed when made." Fait, 655 F.3d at 113.

The loan-sampling results reported in the SAC are sufficiently suggestive of widespread inaccuracies in appraisal value to render plausible the Agency's claim that the LTV information reported in the offering materials was "objectively false." As discussed above, FHFA's analysis of the loan data suggests that the Prospectus Supplement for the MABS 2007-WMC1 Securitization overstated the percentage of loans with an LTV ratio at or below 80% by over 30%. The Agency reports similar findings with respect to the other twenty-one securitizations at issue here.

The allegations in the SAC likewise satisfy Fait's "subjective falsity" requirement. The SAC asserts that "appraisers themselves routinely furnished appraisals that the appraisers understood were inaccurate and that they knew bore no

reasonable relationship to the actual value of the underlying property." To support this claim, the SAC cites a series of news stories, lawsuits and government investigations that have revealed instances in which appraisers connected to some of the mortgage originators at issue here were found to have systematically and knowingly overstated the value of homes in order to allow borrowers to obtain larger loans than they could afford. The SAC also alleges that the LTV data reported in the offering materials deviates so significantly from the results of plaintiff's loan-loan level analysis as to raise a plausible inference that the appraisers knowingly inflated their valuations.

B. Owner-Occupancy Rates

Defendants next attack FHFA's allegation that the offering materials overstated the percentage of properties in the supporting loan group for each securitization that were owner occupied. The prospectus supplement for each securitization provided a break-down of the mortgages in the supporting loan group based on whether the property that secured the loan was owner occupied, a second home, or an investment property. Staying with the example of the MABS 2007-WMC1 Securitization, the prospectus supplement reported that, for the Group I certificates that the GSEs purchased, 1,810 (or 98.32%) of the

1,841 underlying properties were owner occupied. This information was material to investors, because a borrower whose primary residence is the mortgaged property is less likely to default than one who uses it as a second home or as an investment.

FHFA contends that the owner-occupancy information in the prospectus supplement for the MABS 2007-WMC1 Securitization, as well similar information reported for the other twenty-one securitizations at issue here, was false. As part of its survey of the loan group supporting each securitization, FHFA used a number of tests in an effort to determine whether the owner-occupancy information reported in the prospectus supplements was accurate. Specifically it examined whether (1) a borrower's property tax bill was being mailed to the mortgaged property six months after the loan closed; (2) whether the borrower claimed an owner-occupied tax exemption on the mortgaged property; and (3) whether the mailing address of the property was reflected in the borrower's credit reports, tax records, or lien records. The survey revealed that 13.11% of the loans in the supporting loan group for the MABS 2007-WMC1 Securitization failed two or more of these tests, indicating that in all likelihood these properties were not owner occupied. The Agency contends that the 11.62% difference between its own findings and the owner-

occupancy numbers reported in the prospectus supplement is a strong indicator that the reported data was materially false at the time of origination. Its survey reveals similar discrepancies with regard to the other securitizations at issue in this case.

Defendants do not dispute that the SAC adequately alleges that the reported rates of owner occupancy were material. They maintain instead that, because the prospectus supplements for sixteen of the twenty-two securitizations included a disclaimer that owner-occupancy statistics were "as reported by the mortgagor at the time of origination," the SAC was required to allege that the representations incorporated into the offering materials were not in fact made by the borrowers at the time of origination. As plaintiff notes, by its own terms, defendants' argument does not apply to six of the twenty-two securitizations cited in the SAC. In any case, as outlined below, defendants' contention that the Agency was required to allege falsity on the part of the underlying borrowers is without merit.

1. Securities Act Liability for Third-Party Statements of Fact

As noted, liability under the Securities Act is strict liability. Section 11 of the Act provides that any signer, director of the issuer, preparing or certifying accountant, or underwriter may be liable if "any part of the registration

statement . . . contained an untrue statement of a material fact or omitted to state a material fact." 15 U.S.C. § 77k(a). Section 12(a)(2) likewise imposes liability on "any person . . . who offers or sells a security by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact." 15 U.S.C. § 77l(a)(2).

As the Supreme Court has recognized with regard to Section 11, these provisions are designed "to assure compliance with the disclosure provisions of the [Securities] Act by imposing a stringent standard of liability on the parties who play a direct role in a registered offering." Herman & MacLean v. Huddleston, 459 U.S. 375, 381-82 (1983). If defendants were correct that a party could transform the Securities Act's strict liability regime into one that required scienter simply by attributing factual information in the offering materials to a non-defendant third-party, this purpose would be significantly undermined.

Defendants' position is also inconsistent with the structure of statute. Although the liability of issuers under Section 11 is "virtually absolute," In re Morgan Stanley Info. Fund. Sec. Litig., 592 F.3d at 359 (citation omitted), Section 11 provides an affirmative defense of "due diligence" that is available to defendants other than the issuer of the security. See 15 U.S.C. § 77k(b)(3); WorldCom, 346 F. Supp. 2d at 659,

662-64 (S.D.N.Y. 2004). As is true of all affirmative defenses, a Securities Act defendant generally bears the burden of demonstrating his due diligence, and, for that reason, due diligence cannot be asserted as a basis for dismissal pursuant to Rule 12(b)(6). In re Morgan Stanley Info. Fund. Sec. Litig., 592 F.3d at 359 n.7.

For present purposes, the precise contours of the due diligence defense are less important than the fact that, in setting out the defense, the Securities Act specifically contemplates circumstances in which a plaintiff's prima facie case is founded on a factual assertions in the registration statement "purporting to be a copy of or extract from a report or valuation of [a third-party] expert," or "purporting to be a statement made by an official person." 15 U.S.C. § 77k(b)(3)(B)-(D). These provisions discuss in detail the "due diligence" showing required to avoid liability for such an assertion and nowhere suggest that the plaintiff's prima facie case is somehow undermined by the attribution of the information to a third-party. It is thus plain from the statutory structure itself that a Securities Act defendant cannot simply claim that she blindly reported information given to her by third parties and thereby avoid liability for inaccuracies that made their way into the offering materials.

2. Application

Turning to plaintiff's specific claim that the offering documents for these securitizations contained material misstatements regarding owner-occupancy, the SAC adequately states a claim for relief under the Securities Act. As discussed above, defendants do not dispute that the SAC adequately alleges that the reported rates of owner occupancy were material to a reasonable investor's decision whether to buy the securities. Nor do they challenge the Agency's finding that borrowers' credit reports and lien records provide a plausible basis for inferring that the true rates of owner occupancy were substantially lower than those reported in the offering materials. Moreover, as set forth above, the Securities Act does not condition liability on a showing that defendants themselves inaccurately represented the data that they received from the borrowers.

Defendants only remaining argument is that the Agency's survey, which examined, among other things, where borrowers' property tax bills were being mailed six-months after the loan closed, does not establish that at the time of origination owner-occupancy rates differed from those reported in the offering materials. Whether or not defendants are correct with regard to the proof that would be required at trial, at the very

least, the Agency's survey results render plausible its claim that the owner-occupancy rates reported in the offering materials were materially false. That is all that is required at this stage of the litigation.

C. Compliance With Underwriting Standards

The prospectus and prospectus supplement for each of the securitizations at issue in this case described the underwriting guidelines that were said to govern the origination of mortgages with whose income the securitization was backed. The MABS 2007-WMC1 Securitization, already discussed in the context of FHFA's other claims, provides a useful example.

MABS 2007-WMC1 was assembled from mortgages originated by WMC Mortgage Corp., a mortgage banking company incorporated in California. Defendant MASTR acted as the depositor for the securitization; defendant UBS Real Estate was the sponsor and seller; and defendant UBS Securities was the underwriter. The prospectus supplement for the MABS 2007-WMC1 Securitization included the following representations:

- Underwriting Standards. The mortgage loans have been either (i) originated generally in accordance with the underwriting guidelines established by [WMC Mortgage Corp.] (collectively, the "Underwriting Guidelines") or (ii) purchased by WMCMC or GE Money Bank after re-underwriting the mortgage loans generally in accordance with the Underwriting Guidelines.

- The Underwriting Guidelines are primarily intended to (a) determine that the borrower has the ability to repay the mortgage loan in accordance with its terms and (b) determine that the related mortgaged property will provide sufficient value to recover the investment if the borrower defaults.

- Under the Underwriting Guidelines, WMC verifies the loan applicant's eligible sources of income for all products, calculates the amount of income from eligible sources indicated on the loan application, reviews the credit and mortgage payment history of the applicant and calculates the Debt Ratio to determine the applicant's ability to repay the loan, and reviews the mortgaged property for compliance with the Underwriting Guidelines.

- Under the Underwriting Guidelines, various risk categories are used to grade the likelihood that the mortgagor will satisfy the repayment conditions of the mortgage loan. These risk categories establish the maximum permitted LTV, maximum loan amount and the allowed use of loan proceeds given the borrower's mortgage payment history, the borrower's consumer credit history, the borrower's liens/charge-offs/bankruptcy history, the borrower's Debt Ratio, the borrower's use of proceeds (purchase or refinance), the documentation type and other factors. In general, higher credit risk mortgage loans are graded in categories that require lower Debt Ratios and permit more (or more recent) major derogatory credit items such as outstanding judgments or prior bankruptcies.

- The Underwriting Guidelines permit mortgage loans with LTVs . . . of up to 100% (which is subject to reduction depending upon credit-grade, loan amount and property type).

- The Underwriting Guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and require, among other things, (1) an appraisal of the mortgaged property which conforms to Uniform Standards of Professional Appraisal Practice and (2) an audit of

> such appraisal by a WMC-approved appraiser or by WMC's in-house collateral auditors (who may be licensed appraisers) and such audit may in certain circumstances consist of a second appraisal, a field review, a desk review or an automated valuation model.

(emphasis added). The prospectus supplements for the other twenty-one securitizations contained similar representations. The MABS 2007-WMC1 Securitization did, however, contain the following clause:

> On a case-by-case basis [the originator] may determine that, based upon compensating factors, a prospective mortgagor not strictly qualifying under the underwriting risk category or other guidelines described below warrants an underwriting exception. Compensating factors may include, but are not limited to, low debt-to-income ratio ("Debt Ratio"), good mortgage payment history, an abundance of cash reserves, excess disposable income, stable employment and time in residence at the applicant's current address. It is expected that a substantial number of the mortgage loans to be included in the trust will represent such underwriting exceptions.

(emphasis added). Similar cautionary language was included in the prospectus supplements for six of the other twenty-one securitizations.

FHFA alleges that the originators of the loans underlying the securitizations systematically disregarded these underwriting guidelines in order to increase production and profits derived from their mortgage lending businesses. Defendants counter that the SAC fails to state a plausible claim that the statements regarding the underwriting standards were

false. They argue that plaintiff's claims impermissibly rely on a forensic analysis of too few loans and on statistics about loan performance years after registration. They also argue that plaintiff has ignored warnings in the offering materials that there were "exceptions" to the stated guidelines and, in some cases, that a "substantial number" of the underlying loans deviated from those guidelines.

The SAC has plausibly alleged that the offering materials contained false statements regarding originators' compliance with the underwriting standards. In support of this claim, the SAC relies primarily on the results of FHFA's forensic review of individual loan files, which found, for example, that out of 996 randomly selected loans included in the MABS 2007-WMC1 and MABS 2006-WMC2 securitizations, approximately 78% were not underwritten in accord with the applicable underwriting guidelines. The claim is further supported by: investigations by government and private agencies that revealed underwriting failures by originators that contributed loans to the securitizations at issue here, confidential witness accounts, and, ultimately, the surge in defaults on the underlying mortgages and collapse of the certificates' credit ratings. Taken together, these allegations are sufficient to render

plausible FHFA's assertion that the mortgage originators serially deviated from their mortgage underwriting standards.

This conclusion is unaltered by statements in the offering materials that the standards were only "generally" followed. Such limiting language does not assist a Securities Act defendant faced with a plausible assertion that as few as 1/4 of the mortgages in a given loan pool conformed to the underwriting standards. Nor are plaintiff's claims defeated by the disclosure in seven of the prospectus supplements that a "substantial" number of the loans deviated from the underwriting standards. These prospectus supplements also represented that any deviations would be warranted based on "compensating factors." By plausibly alleging a widespread failure to conduct any underwriting, the plaintiff has adequately pleaded the falsity of this representation as well.

Finally, defendants cite Item 1111 of SEC Regulation AB, 17 C.F.R. § 229.1111(a)(3), for the proposition that they may be held liable only for failing to disclose deviations from the underwriting guidelines that were known to them. This is another meritless attempt by the defendants to alter the plaintiff's pleading burden by grafting a scienter requirement onto Securities Act claims.

Item 1111 of Regulation AB requires that issuers of asset-backed securities disclose "the solicitation, credit-granting or underwriting criteria used to originate or purchase the pool assets, including, to the extent known, any changes in such criteria and the extent to which such policies and criteria are or could be overridden." 17 C.F.R. § 229.1111(a)(3) (emphasis added). The regulation thus imposes on a Section 11 defendant the duty to disclose not only underwriting criteria for the assets that underlie the securities, but also, "to the extent" the issuer knows of them, any changes in those criteria and the extent to which those criteria "could be overridden." Id. Indeed, this duty imposed by Item 1111 may have prompted the cautionary language recited above that was incorporated into the offering materials for seven of the securitizations.

Yet, plaintiff's claim with regard to loan-underwriting standards is not that defendants failed to report information about changes in the underwriting criteria of which the defendants were aware, but that they affirmatively misrepresented the standards that "generally" governed the underwriting of mortgages included in the supporting pools. Regulation AB's guidance with regard to what information must be included in the offering materials does nothing to call into question defendants' overriding obligation under the Securities

Act to avoid false statements in their offering materials. In re Lehman Bros. Secs. and ERISA Litig., 684 F. Supp. 2d 485, 493-94 (S.D.N.Y. 2010).

D. Section 15 Control Person Liability

UBS Americas, UBS Real Estate, and the individual defendants also contend that the SAC fails to allege that they exercised sufficient authority over the primary defendants to establish "control person" liability under Section 15. As noted above, Section 15 extends liability under the Securities Act to "[e]very person who, by or through stock ownership, agency, or otherwise . . . controls any person liable under [Section 11] or [Section 12]." 15 U.S.C. § 77o. This Court has previously held that the act of signing a registration statement, as the individual defendants in this case are alleged to have done, is a manifestation of the signer's responsibility for the information contained in the document and, therefore, sufficient to establish "control person" status. See In re. WorldCom, Inc. Sec. Litig., 294 F. Supp. 2d 392, 420 (S.D.N.Y. 2003). With respect to the corporate defendants, the SAC alleges that UBS Real Estate was actively involved in coordinating the securitization process and determining the structure of each offering and that UBS Americas was not simply the corporate parent of UBS Securities and MASTR but, in practice, controlled

their actions in issuing and selling RMBS certificates. These allegations are sufficient to avoid dismissal of plaintiff's Section 15 claims at this early stage of the litigation.

E. MASTR is a Statutory Seller Under Section 12(a)(2).

Finally, defendants maintain that MASTR is not a proper defendant with respect to plaintiff's Section 12(a)(2) and equivalent state-law claims. While Section 11 is limited to certain offering participants by its express terms, liability under Section 12(a)(2) is governed by the "statutory seller" requirement.

> An individual is a 'statutory seller' -- and therefore a potential section 12(a)(2) defendant -- if he: (1) passed title, or other interest in the security, to the buyer for value, or (2) successfully solicited the purchase of a security, motivated at least in part by a desire to serve his own financial interests or those of the securities' owner.

In re Morgan Stanley Info. Fund Secs. Litig., 592 F.3d at 359 (citation omitted).

Defendants contend that the SAC does not allege that MASTR is a "statutory seller" or include facts that would support such a finding. As plaintiff notes, however, SEC Rule 159A, provides that "in a primary offering of securities," an issuer is a statutory seller for the purposes of Section 12(a)(2) "regardless of the underwriting method used to sell the issuer's securities." See 17 C.F.R. § 230.159A; accord Citiline

Holdings, Inc. v. iStar Financial Inc., 701 F. Supp. 2d 506, 512 (S.D.N.Y. 2010). Moreover, the Securities Act provides that "with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors . . . the term 'issuer' means the person or persons performing the acts and assuming the duties of depositor." 15 U.S.C. § 77b(a)(4). As noted, the securitizations at issue here were structured as investments trusts, and, for sixteen of the twenty-two of them, MASTR acted as depositor. MASTR is therefore a proper defendant under Section 12(a)(2).

Defendants resist this analysis by asserting that the provision of the Securities Act equating an "issuer" with a "depositor" does not apply to RMBS. But this argument is contradicted by Securities Act Rule 191, which provides that "[t]he depositor for the asset-backed securities acting solely in its capacity as depositor to the issuing entity is the 'issuer' for purposes of the asset-backed securities of that issuing entity." 17 CFR § 230.191. To the extent defendants would argue that the Rule's reference to "asset-backed securities" does not encompass RMBS, they are foreclosed from doing so by their reliance elsewhere in their motion on Regulation AB, which likewise governs "asset-backed securities" and was adopted as part of the same rulemaking proceeding that

resulted in Rule 191. See Asset-Backed Securities, SEC Release No. 8518, 84 S.E.C. Docket 1624, 2004 WL 2964659, at *9, *2012 (Dec. 22, 2004).

IV. FHFA's Negligent Misrepresentation Claims Fail.

Although FHFA has adequately alleged violations of the securities laws, the Agency cannot sustain its negligent misrepresentation claims. Under New York law, a plaintiff asserting a claim for negligent misrepresentation must allege, inter alia, that "the defendant had a duty, as a result of a special relationship, to give correct information." Hydro Investors, Inc. v. Trafalgar Power Inc., 227 F.3d 8, 20 (2d Cir. 2000) (citation omitted). In a commercial context, liability does not attach as a matter of course for merely negligent statements; rather, it is imposed "only on those who possess unique or specialized expertise, or who are in a special position of confidence and trust with the injured party such that reliance on the negligent misrepresentation is justified." Kimmel v. Schaefer, 675 N.E.2d 450, 454 (1996).

The Agency cannot credibly allege that a "special relationship" existed between the GSEs and the defendants, nor has it seriously attempted to do so. While it is true that "[w]hether the nature and caliber of the relationship between the parties is such that the injured party's reliance on a

negligent misrepresentation is justified generally raises an issue of fact," id., courts regularly hold as a matter of law that an arm's length business arrangement between sophisticated and experienced parties cannot give rise to a "special relationship." See, e.g., Aerolineas Galapagos, S.A. v. Sundowner Alexandria, LLC, 905 N.Y.S.2d 152, 152 (App. Div. 1st Dep't 2010); Sebastian Holdings, Inc. v. Deutsche Bank AG, 912 N.Y.S.2d 13, 15 (App. Div. 1st Dep't 2010); Silvers v. State, 893 N.Y.S.2d 12 (App. Div. 1st Dep't 2009).

MBIA Ins. Corp. v. Countrywide Home Loans, Inc., 928 N.Y.S.2d 229 (App. Div. 1st Dep't 2010), is particularly instructive here. MBIA, a provider of financial guarantee insurance, brought fraud and negligent misrepresentation claims against Countrywide, asserting that Countrywide entities had made material misrepresentations concerning the origination and quality of the mortgage loans that underlay mortgage-backed securities for which the plaintiff had written insurance policies. While permitting the fraud claim to go forward, the New York State motion court dismissed the negligent misrepresentation claim as inadequately pled. The Appellate Division affirmed, noting that in light of the fact that "[t]he transactions in question were conducted by two sophisticated commercial entities" operating at arms length, "[t]he claim that

Countrywide had superior knowledge of the particulars of its own business practices [was] insufficient to sustain the cause of action." Id. at 235-36.

So too here, FHFA cannot plausibly assert that the GSEs were so unequally situated vis-à-vis the defendants as to give rise to a claim for negligent misrepresentation. As defendants emphasize in their motion to dismiss, the GSEs were highly sophisticated players in the mortgage-backed securities market, which they participated in not only as purchasers but also as packagers and marketers of securities. As in MBIA, the fact that, with regard to the securities at issue in this case, the defendants had greater knowledge of the underlying loan files and the practices of third-party due diligence providers is not sufficient to establish a "special relationship."

The Agency seeks to avoid the "special relationship" requirement by arguing that its negligent misrepresentation claims are governed by the law of the District of Columbia, in the case of Fannie Mae, and Virginia, in the case of Freddie Mac. Unlike New York, these jurisdictions appear not to require that a plaintiff demonstrate a "special relationship" in order to sustain a negligent misrepresentation claim. Unfortunately for FHFA, however, its choice-of-law argument is meritless.

The Agency's common law claims are governed by New York choice-of-law principles pursuant to Klaxon co. v. Stentor Elec. Mfg. Co, 313 U.S. 487, 496-97 (1941). New York has adopted the "interest analysis" approach to choice of law, which seeks "to give controlling effect to the law of the jurisdiction which, because of its relationship or contact with the occurrence or the parties, has the greatest concern with the specific issue raised in the litigation." Licci ex rel. Licci v. Lebanese Canadian Bank, SAL, 672 F.3d 155, 158 (2d Cir. 2012) (citation omitted). In the context of tort law, interest analysis distinguishes between conduct-regulating rules, which dictate appropriate standards of conduct, and loss-allocating rules, which "prohibit, assign, or limit liability after the tort occurs." Id. (citation omitted). "If conflicting conduct-regulating laws are at issue, the law of the jurisdiction where the tort occurred will generally apply because that jurisdiction has the greatest interest in regulating behavior within its borders." GlobalNet Fin. Com, Inc. v. Frank Crystal & Co., Inc., 449 F.3d 377, 384 (2d Cir. 2006) (citation omitted).

The parties agree that the duty to avoid negligent misrepresentations is a conduct-regulating rule and that, consequently, the law of the jurisdiction where the tort occurred should govern FHFA's claims. They disagree only about

whether the alleged misrepresentations "occurred" in New York, where the defendants are based, or in the District of Columbia and Virginia, where Fannie Mae and Freddie Mac, respectively, were injured. This dispute is easy to resolve. As should be clear from the discussion above, interest analysis understands the jurisdiction where the tort occurred to be that in which the defendant engaged in the behavior that the conduct-regulating rule seeks to deter. In this case, that jurisdiction is undisputedly New York, where the defendants prepared and disseminated the allegedly misleading offering materials that are at the center of this litigation. Because New York is the jurisdiction with the most significant relationship to plaintiff's negligent misrepresentation claims and because, as noted above, plaintiff's pleadings are inadequate to state a claim under New York law, the negligent misrepresentation claims are dismissed.

CONCLUSION

Defendants' January 20 motion to dismiss is denied as to FHFA's securities law claims and granted as to the negligent misrepresentation claims.

SO ORDERED:

Dated: New York, New York
May 4, 2012

DENISE COTE
United States District Judge

EXHIBIT G

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/15/12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- UBS AMERICAS, INC., et al., Defendants.	11 Civ. 5201 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- JPMORGAN CHASE & CO., et al., Defendants.	11 Civ. 6188 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- HSBC NORTH AMERICA HOLDINGS, INC., et al., Defendants.	11 Civ. 6189 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- BARCLAYS BANK PLC, et al., Defendants.	11 Civ. 6190 (DLC)

FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- DEUTSCHE BANK AG, et al., Defendants.	:	11 Civ. 6192 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- FIRST HORIZON NATIONAL CORP., et al., Defendants.	:	11 Civ. 6193 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- BANK OF AMERICA CORP., et al., Defendants.	:	11 Civ. 6195 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- CITIGROUP INC., et al., Defendants.	:	11 Civ. 6196 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- GOLDMAN, SACHS & CO., et al., Defendants.	:	11 Civ. 6198 (DLC)

FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- CREDIT SUISSE HOLDINGS (USA), INC., et al., Defendants.	:	11 Civ. 6200 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- NOMURA HOLDING AMERICA, INC., et al., Defendants.	:	11 Civ. 6201 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- MERRILL LYNCH & CO., INC., et al., Defendants.	:	11 Civ. 6202 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- SG AMERICAS, INC., et al., Defendants.	:	11 Civ. 6203 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- MORGAN STANLEY, et al., Defendants.	:	11 Civ. 6739 (DLC)

FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- ALLY FINANCIAL INC., et al., Defendants.	:	11 Civ. 7010 (DLC)
FEDERAL HOUSING FINANCE AGENCY, etc., Plaintiff, -v- GENERAL ELECTRIC COMPANY, et al., Defendants.	:	11 Civ. 7048 (DLC) ORDER

DENISE COTE, District Judge:

At a conference with the parties on May 14, 2012, the following rulings were entered on the record. It is hereby

ORDERED that the defendants in 11 Civ. 5201 ("5201") shall answer by **June 22, 2012.**

IT IS FURTHER ORDERED that FHFA shall propose a schedule for amending its pleadings in the other 15 FHFA cases by **May 18, 2012.**

IT IS FURTHER ORDERED that the applications for a stay made by the defendants in 11 Civ. 6189, 11 Civ. 6195, 11 Civ. 6198, 11 Civ. 6202, and 11 Civ. 7010 are denied, except that litigation in 11 Civ. 7010 is stayed as to any defendant that is subject to the "automatic stay" codified in section 362 of the Bankruptcy Code, 11 U.S.C. § 362(a).

IT IS FURTHER ORDERED that the request by the Ally Financial and Residential Capital defendants in 11 Civ. 7010 for an amendment to the proposed protective order is denied.

IT IS FURTHER ORDERED that the parties' other requests regarding the contents of the proposed protective order are resolved as described on the record at the May 14 conference.

IT IS FURTHER ORDERED that the finalized protective order shall be presented for approval of the Court by **May 25, 2012**.

At the May 14 conference, the Court proposed a structure and schedule for management of the 16 FHFA cases, including the trial of the 16 cases in four tranches. Document discovery will be substantially complete by September 30. Depositions will begin in January 2013. Each deponent will be deposed once. The defendants as a group may take 20 depositions of FHFA and its constituent entities. FHFA may take 20 depositions of each corporate family of defendants. Each case will be separately tried. The first tranche will include one case: 5201. The remaining cases will be divided among the three remaining tranches. Any summary judgment motion in 5201 will be fully submitted by May 17, 2013; its pretrial order will be due August 2, 2013. 5201 will be tried during the Fall of 2013. The pretrial orders for the remaining tranches will be filed December 6, 2013; May 2, 2014; and August 1, 2014.

At a conference on either June 13 or 14, a schedule for this litigation will be adopted. Accordingly,

IT IS FURTHER ORDERED that by **June 6, 2012,** the parties shall e-mail submissions to the Court not exceeding 10 pages that contain their proposals for the scheduling and conduct of discovery in and trial of the 16 cases. Their proposals should include which of the 15 cases would populate the second through fourth tranches. The submissions should identify which proposals are jointly made by the FHFA and the defendants, and where disagreements exist. The parties should make every effort to submit joint proposals.

At the May 14 conference, the parties agreed that the cost and burden of the examination of all of the loan files would be prohibitive and that discovery should be confined to a sample of the files. To assist all parties in determining an appropriate sample for the trials of all of the issues in these cases, or at least an appropriate process to identify such a sample,

IT IS FURTHER ORDERED that the defendants shall provide the final closing loan tapes provided to Trustees and the information sufficient to identify originators of each loan, as required by the Order of May 8, on a rolling basis, with the final production to be made no later than **June 8, 2012.** In the event any party currently has such tapes and information in its possession, it should be provided to FHFA by **May 18, 2012.**

IT IS FURTHER ORDERED that by **June 6, 2012**, the parties shall e-mail submissions to the Court not exceeding 10 pages that contain their proposals for the protocol the parties shall follow in determining the sample for each case. The parties should make every effort to submit a joint proposal.

SO ORDERED:

Dated: New York, New York
May 15, 2012

DENISE COTE
United States District Judge

EXHIBIT H

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/14/12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL HOUSING FINANCE AGENCY, Plaintiff, -v- UBS AMERICAS INC., et al., Defendants; And other FHFA cases.	11 Civ. 5201 (DLC) 11 Civ. 6188 (DLC) 11 Civ. 6189 (DLC) 11 Civ. 6190 (DLC) 11 Civ. 6192 (DLC) 11 Civ. 6193 (DLC) 11 Civ. 6195 (DLC) 11 Civ. 6196 (DLC) 11 Civ. 6198 (DLC) 11 Civ. 6200 (DLC) 11 Civ. 6201 (DLC) 11 Civ. 6202 (DLC) 11 Civ. 6203 (DLC) 11 Civ. 6739 (DLC) 11 Civ. 7010 (DLC) 11 Civ. 7048 (DLC)

PRETRIAL
SCHEDULING ORDER

As set forth at the conference held on June 13, 2012, the following schedule shall govern the further conduct of pretrial proceedings in these cases:

2012

6/13/12 Plaintiff was required to have filed amended pleadings in the "Fraud Claim Cases": 11 Civ. 6188 (DLC), 11 Civ. 6192 (DLC), 11 Civ. 6198 (DLC), 11 Civ. 6202 (DLC), 11 Civ. 6739 (DLC), 11 Civ. 7010 (DLC).

6/25/12 The parties shall inform the Court in a letter of no longer than two pages of any unresolved disputes regarding electronic discovery.

6/25/12 Counsel in FHFA v. First Tennessee Bank, 12 Misc. 193 (DLC), shall inform the Court of whether the motion to enforce FHFA's administrative subpoenas is moot.

6/28/12 Deadline to amend the pleadings in the "Non-Fraud Claim Cases": 11 Civ. 6189 (DLC), 11 Civ. 6190 (DLC),

11 Civ. 6193 (DLC), 11 Civ. 6195 (DLC), 11 Civ. 6196 (DLC), 11 Civ. 6200 (DLC), 11 Civ. 6201 (DLC), 11 Civ. 6203 (DLC), 11 Civ. 7048 (DLC).

7/13/12 Any motion to dismiss in Fraud Claim Cases due.

9/7/12 Opposition due.
9/28/12 Any reply due.

8/17/12 Any motion to dismiss in Non-Fraud Claim Cases due.

10/5/12 Opposition due.
10/26/12 Any reply due.

9/7/12 By this date, parties in all cases must contact the chambers of Magistrate Judge Francis to arrange for settlement discussions under his supervision to take place in Fall 2012.

9/30/12 Document production in all cases must be substantially complete.

11/1/12 The parties shall file submissions of no longer than ten pages addressed to: (1) the schedule for expert discovery in each case, (2) limitations on depositions of third parties in each case, and (3) protocols for noticing and scheduling depositions.

11/9/12 There will be a status conference for all parties in all actions at 10:30 a.m. in Courtroom 15B, United States Courthouse, 500 Pearl Street, New York, New York.

2013

1/2/13 Depositions begin in all cases.

6/14/13 All fact and expert discovery in 11 Civ. 5201 ("UBS") must be completed.

7/12/13 Deadline to file any summary judgment motion in UBS.

8/9/13 Opposition due.
8/30/13 Any reply due.

12/6/13 All fact and expert discovery in all remaining cases must be completed.

12/6/13 The Joint Pretrial Order must be filed in UBS. As described in greater detail in this Court's Individual Practices in Civil Cases, the following documents must be filed with the Pretrial Order: Voir Dire, Requests to Charge and a Memorandum of Law addressing all questions of law expected to arise at trial.

12/13/13 Opposition to any motion in limine due.
12/20/13 Any reply due.

2014

Tr.1 1/13/14 The trial in UBS will begin at 9:30 a.m.

1/24/14 Deadline to file any summary judgment motion in cases other than UBS.

3/21/14 Opposition due.
4/11/14 Any reply due.

5/2/14 Joint Pretrial Orders must be filed in Tranche 2 cases: 11 Civ. 6188 ("Chase") and 11 Civ. 6202 ("Merrill").

5/9/14 Opposition to any motion in limine due.
5/16/14 Any reply due.

Tr.2 6/2/14 Trials will begin in Chase and Merrill. In the event Chase settles before trial, a Tranche 3 case will also go to trial on 6/2/14 or shortly thereafter.

8/1/14 Joint Pretrial Orders must be filed in Tranche 3 cases: 11 Civ. 6192 ("Deutsche Bank"); 11 Civ. 6198 ("Goldman Sachs"); and 11 Civ. 6200 ("Credit Suisse").

8/15/14 Opposition to any motion in limine due.

8/22/14 Any reply due.

Tr.3 9/29/14 Trials will begin in Deutsche Bank, Goldman Sachs and Credit Suisse.

2015

Tr.4 1/2015 Tranche 4 trials begin. Tranche 4 will contain all remaining cases that have not settled.

IT IS HEREBY ORDERED that at the time any motion is fully briefed, the moving party shall supply two courtesy copies of all motion papers to Chambers by mail or delivery to the United States Courthouse, 500 Pearl Street, New York, New York.

IT IS FURTHER ORDERED that the following procedures shall govern the conduct of the trial in UBS.

1. All exhibits must be pre-marked.

2. At the start of the trial each party will present the Court with the following documents:

   (a) Three copies of a complete exhibit list.

   (b) A set of pre-marked exhibits assembled sequentially i) in a looseleaf binder, or ii) in separate manila folders labeled with the exhibit numbers and placed in a suitable container or box for ready reference.

   (c) The exhibits should include copies of the sections of any depositions that are intended to be offered into evidence and any charts or summaries of evidence.

3. Counsel should be available every day at 9:00 a.m. (except for the first day of trial) in order to discuss with the Court any legal or evidentiary issues expected to arise during the day.

4. Testimony will generally be taken between 9:30 a.m. and 5:00 p.m. from Monday through Thursday. There will be a mid-morning recess, a mid-afternoon recess, and a lunch break from 12:45 p.m. to 2 p.m.

5. There should be no sidebars during jury trials. Counsel are expected to anticipate any problems that might require a ruling from the Court and to raise those issues with the Court in advance of the time that the jury will be hearing the evidence.

6. If counsel intend to distribute copies of documentary exhibits to the jury, make a separate copy for each juror.

7. Counsel should make certain that they have custody of all original exhibits. The Court does not retain them and the Clerk is not responsible for them.

Dated: New York, New York
June 14, 2012

DENISE COTE
United States District Judge

EXHIBIT I

FEDERAL HOUSING FINANCE AGENCY

STATEMENT

Contact: Corinne Russell (202) 414-6921
Stefanie Mullin (202) 414-6376

For Immediate Release
September 7, 2008

STATEMENT OF FHFA DIRECTOR JAMES B. LOCKHART

Good Morning

Fannie Mae and Freddie Mac share the critical mission of providing stability and liquidity to the housing market. Between them, the Enterprises have $5.4 trillion of guaranteed mortgage-backed securities (MBS) and debt outstanding, which is equal to the publicly held debt of the United States. Their market share of all new mortgages reached over 80 percent earlier this year, but it is now falling. During the turmoil last year, they played a very important role in providing liquidity to the conforming mortgage market. That has required a very careful and delicate balance of mission and safety and soundness. A key component of this balance has been their ability to raise and maintain capital. Given recent market conditions, the

balance has been lost. Unfortunately, as house prices, earnings and capital have continued to deteriorate, their ability to fulfill their mission has deteriorated. In particular, the capacity of their capital to absorb further losses while supporting new business activity is in doubt.

Today's action addresses safety and soundness concerns. FHFA's rating system is called GSE Enterprise Risk or G-Seer. It stands for Governance, Solvency, Earnings and Enterprise Risk which includes credit, market and operational risk. There are pervasive weaknesses across the board, which have been getting worse in this market.

Over the last three years OFHEO, and now FHFA, have worked hard to encourage the Enterprises to rectify their accounting, systems, controls and risk management issues. They have made good progress in many areas, but market conditions have overwhelmed that progress.

The result has been that they have been unable to provide needed stability to the market. They also find themselves unable to meet their affordable housing mission. Rather than letting these conditions fester and worsen and put our markets in jeopardy, FHFA, after painstaking review, has decided to take action now.

Key events over the past six months have demonstrated the increasing challenge faced by the companies in striving to balance mission and safety and soundness, and the ultimate disruption of that balance that led to today's announcements. In the first few months of this year, the secondary market showed significant deterioration, with buyers demanding much higher prices for mortgage backed securities.

In February, in recognition of the remediation progress in financial reporting, we removed the portfolio caps on each company, but they did not have the capital to use that flexibility.

In March, we announced with the Enterprises an initiative to increase mortgage market liquidity and market confidence. We reduced the OFHEO-directed capital requirements in return for their commitments to raise significant capital and to maintain overall capital levels well in excess of requirements.

In April, we released our Annual Report to Congress, identifying each company as a significant supervisory concern and noting, in particular, the deteriorating mortgage credit environment and the risks it posed to the companies.

In May OFHEO lifted its 2006 Consent Order with Fannie Mae after the company completed the terms of that order. Subsequently, Fannie Mae successfully raised $7.4 billion of new capital, but Freddie Mac never completed the capital raise promised in March.

Since then credit conditions in the mortgage market continued to deteriorate, with home prices continuing to decline and mortgage delinquency rates reaching alarming levels. FHFA intensified its reviews of each company's capital planning and capital position, their earnings forecasts and the effect of falling house prices and increasing delinquencies on the credit quality of their mortgage book.

In getting to today, the supervision team has spent countless hours reviewing with each company various forecasts, stress tests, and projections, and has evaluated the performance of their internal models in these analyses. We have had many meetings with each company's management teams, and have had frank exchanges regarding loss projections, asset valuations, and capital adequacy. More recently, we have gone the extra step of inviting the Federal Reserve and the OCC to have some of their senior mortgage credit experts join our team in these assessments.

The conclusions we reach today, while our own, have had the added benefit of their insight and perspective.

After this exhaustive review, I have determined that the companies cannot continue to operate safely and soundly and fulfill their critical public mission, without significant action to address our concerns, which are:

- the safety and soundness issues I mentioned, including current capitalization;
- current market conditions;
- the financial performance and condition of each company;
- the inability of the companies to fund themselves according to normal practices and prices; and
- the critical importance each company has in supporting the residential mortgage market in this country,

Therefore, in order to restore the balance between safety and soundness and mission, FHFA has placed Fannie Mae and Freddie Mac into conservatorship. That is a statutory process designed to stabilize a troubled institution with the

objective of returning the entities to normal business operations. FHFA will act as the conservator to operate the Enterprises until they are stabilized.

The Boards of both companies consented yesterday to the conservatorship. I appreciate the cooperation we have received from the boards and the management of both Enterprises. These individuals did not create the inherent conflict and flawed business model embedded in the Enterprises' structure. I thank the CEOs for their service in these difficult times.

The goal of these actions is to help restore confidence in Fannie Mae and Freddie Mac, enhance their capacity to fulfill their mission, and mitigate the systemic risk that has contributed directly to the instability in the current market. The lack of confidence has resulted in continuing spread widening of their MBS, which means that virtually none of the large drop in interest rates over the past year has been passed on to the mortgage markets. On top of that, Freddie Mac and Fannie Mae, in order to try to build capital, have continued to raise prices and tighten credit standards.

FHFA has not undertaken this action lightly. We have consulted with the Chairman of the Board of Governors of the Federal Reserve System, Ben

Bernanke, who was appointed a consultant to FHFA under the new legislation. We have also consulted with the Secretary of the Treasury, not only as an FHFA Oversight Board member, but also in his duties under the law to provide financing to the GSEs. They both concurred with me that conservatorship needed to be undertaken now.

There are several key components of this conservatorship:

First, Monday morning the businesses will open as normal, only with stronger backing for the holders of MBS, senior debt and subordinated debt.

Second, the Enterprises will be allowed to grow their guarantee MBS books without limits and continue to purchase replacement securities for their portfolios, about $20 billion per month without capital constraints.

Third, as the conservator, FHFA will assume the power of the Board and management.

Fourth, the present CEOs will be leaving, but we have asked them to stay on to help with the transition.

Fifth, I am announcing today I have selected Herb Allison to be the new CEO of Fannie Mae and David Moffett the CEO of Freddie Mac. Herb has been the Vice Chairman of Merrill Lynch and for the last eight years chairman of TIAA-CREF. David was the Vice Chairman and CFO of US Bancorp. I appreciate the willingness of these two men to take on these tough jobs during these challenging times. Their compensation will be significantly lower than the outgoing CEOs. They will be joined by equally strong non-executive chairmen.

Sixth, at this time any other management action will be very limited. In fact, the new CEOs have agreed with me that it is very important to work with the current management teams and employees to encourage them to stay and to continue to make important improvements to the Enterprises.

Seventh, in order to conserve over $2 billion in capital every year, the common stock and preferred stock dividends will be eliminated, but the common and all preferred stocks will continue to remain outstanding. Subordinated debt interest and principal payments will continue to be made.

Eighth, all political activities -- including all lobbying -- will be halted immediately. We will review the charitable activities.

Lastly and very importantly, there will be the financing and investing relationship with the U.S. Treasury, which Secretary Paulson will be discussing. We believe that these facilities will provide the critically needed support to Freddie Mac and Fannie Mae and importantly the liquidity of the mortgage market.

One of the three facilities he will be mentioning is a secured liquidity facility which will be not only for Fannie Mae and Freddie Mac, but also for the 12 Federal Home Loan Banks that FHFA also regulates. The Federal Home Loan Banks have performed remarkably well over the last year as they have a different business model than Fannie Mae and Freddie Mac and a different capital structure that grows as their lending activity grows. They are joint and severally liable for the Bank System's debt obligations and all but one of the 12 are profitable. Therefore, it is very unlikely that they will use the facility.

During the conservatorship period, FHFA will continue to work expeditiously on the many regulations needed to implement the new law. Some of the key regulations will be minimum capital standards, prudential safety and soundness

standards and portfolio limits. It is critical to complete these regulations so that any new investor will understand the investment proposition.

This decision was a tough one for the FHFA team as they have worked so hard to help the Enterprises remain strong suppliers of support to the secondary mortgage markets. Unfortunately, the antiquated capital requirements and the turmoil in housing markets over-whelmed all the good and hard work put in by the FHFA teams and the Enterprises' managers and employees. Conservatorship will give the Enterprises the time to restore the balances between safety and soundness and provide affordable housing and stability and liquidity to the mortgage markets. I want to thank the FHFA employees for their work during this intense regulatory process. They represent the best in public service. I would also like to thank the employees of Fannie Mae and Freddie Mac for all their hard work. Working together we can finish the job of restoring confidence in the Enterprises and with the new legislation build a stronger and safer future for the mortgage markets, homeowners and renters in America.

Thank you and I will now turn it back to Secretary Paulson.

EXHIBIT J

THE DEPARTMENT OF THE TREASURY

Agency Financial Report

Fiscal Year 2011



November 15, 2011

The United States Department of the Treasury

Our Vision

Set the global standard in financial and economic leadership

Our Mission

Serve the American people and strengthen national security by managing the U.S. Government's finances effectively, promoting economic growth and stability, and ensuring the safety, soundness, and security of the U.S. and international financial systems

Our Values

Service

Work for the benefit of the American people

Integrity

Aspire to the highest ethical standards of honesty, trustworthiness, and dependability

Excellence

Strive to be the best, continuously improve, innovate, and adapt

Objectivity

Encourage independent views

Accountability

Responsible for our conduct and work

Community

Dedicated to excellent customer service, collaboration, and teamwork while promoting diversity

THE DEPARTMENT OF THE TREASURY

Agency Financial Report

Fiscal Year 2011



For the online version of this report, please visit:
http://www.treasury.gov
and search for "2011 AFR"

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obtained five data sources, and proposed legislative changes in support of the GOVerify Portal.

The Office of Financial Innovation and Transformation (OFIT) was created to develop and share government-wide financial solutions to lower overall financial transaction processing costs, facilitate the resolution of audit issues, and increase transparency of financial information. In OFIT's first year of operation, the team identified key initiatives that could be implemented over the next five years to collectively deliver $1-2 billion in annual savings upon full adoption by the Federal Government. OFIT developed an approach that will move these initiatives forward by pursuing a three pronged financial management strategy that deploys common technology solutions, expands the use of shared transactional service, and launches key enablers.

OFIT developed, in cooperation with other federal entities and FMS, business cases and project plans to launch two of the twelve key initiatives, including a portal for the electronic submission of vendor invoices and an automated way to settle intra-governmental transaction disputes. Additionally, OFIT developed data standards to support electronic invoicing. The adoption of electronic invoicing capabilities across the Federal government will reduce the cost by as much as 50 percent or $450 million annually.

Moving forward

The IRS will continue to take actions to increase the rate of electronic filing of tax returns by individuals and businesses. While providing alternatives to telephone customer service will continue to be a high priority, the IRS will continue to properly staff all toll-free sites in order to achieve future level of service targets and ensure effective taxpayer communication.

Treasury anticipates that forecasting government receipts and outlays in fiscal year 2012 will continue to be challenging given potential changes legislative changes by Congress and the difficulty in forecasting the strength of the economy. As part of its effort to continually improve its forecasts, the Department will work to update and modify existing models and monitor new initiatives.

U.S. and World Economies Perform at Full Economic Potential

The Treasury Department develops, coordinates, and enforces the economic and financial policies that enable sustained development at home and abroad. In fiscal year 2011, Treasury programs to help strengthen and reform the financial system made substantial progress. TARP's bank programs have provided a substantial positive return to the taxpayer. Treasury also continued to work in cooperation with the Federal Housing Finance Agency (FHFA) to support the housing market and protect the taxpayers' investment in the Government Sponsored Enterprises (GSEs).

The Department also focused on spurring economic growth for local communities and American small businesses through initiatives designed to provide funding for projects that would encourage job creation and further investment. Achieving domestic goals is not possible without coordination with our international partners. On the global stage, Treasury collaborated with key partners to ensure American economic competitiveness and prosperity through stabilization of financial systems abroad and support of open trade and investment policies.

Profitably Managed the Troubled Asset Relief Program

In the fall of 2008, the nation was in the midst of the worst financial crisis since the Great Depression. The U.S. financial system and economy were on the verge of catastrophic collapse. The *Emergency Economic Stabilization Act of 2008* was enacted into law to create TARP, under which the Department of the Treasury took a variety of actions to stabilize the financial system and prevent a possible second Great Depression. The authority to make new commitments to invest funds under TARP expired on October 3, 2010. Treasury is moving quickly to recover the Federal Government's investments in a manner consistent with the duty to promote financial stability and protect taxpayers' interests.

Several major developments occurred in fiscal year 2011. On March 30, Treasury announced that TARP's bank programs officially turned a profit. Moving forward, Treasury is working to exit the remaining investments and continue

recovering taxpayer dollars. Ultimately, Treasury expects that TARP's bank programs will produce a lifetime profit of more than $20 billion. In May 2011, Chrysler repaid the remainder of its TARP loans, a full six years ahead of schedule. Treasury has now exited from its investment with Chrysler at a smaller loss than initially expected. Additionally, the American International Group (AIG) completed a major restructuring plan, marking a major milestone in the company's remarkable turnaround and putting taxpayers in a better position to recover their investment in AIG.

As of September 30, 2011, TARP has a total estimated cost of $70.2 billion, a fraction of the original $700 billion amount originally authorized by Congress. Most of the program's expected costs result from assistance provided to struggling homeowners and the automobile industry.

Worked to Stabilize the Housing Market

In the face of the worst housing crisis in a generation, Treasury played an important role in the government's programs to prevent avoidable foreclosures and support the continued repair of the housing market in fiscal year 2011.

Under Treasury's Home Affordable Modification Program (HAMP), one of several critical homeownership assistance programs under the Making Home Affordable initiative, over 800,000 families received permanent mortgage modifications. By setting affordability standard procedures and providing a framework for homeowner assistance that the private sector can follow, HAMP has also driven industry improvements that resulted in two million additional modifications outside the program. Treasury continues to refine and strengthen the Department's housing programs and is taking additional steps to help ensure Americans are better served by their mortgage companies. These steps include publishing a compliance scorecard for each of the 10 largest HAMP servicers and requiring all Making Home Affordable-participating servicers to assign a single point of contact to each homeowner requesting a HAMP modification.

Another key housing priority for the Department in fiscal year 2011 was comprehensive housing finance reform. In February, the Administration laid out a plan to wind down Fannie Mae and Freddie Mac and reform the nation's housing finance system. In February 2011, the Treasury Department and the Department of Housing and Urban Development released a report, "Reforming America's Housing Finance Market," that offered a new framework for housing finance. The report reflected Treasury's view that private capital should provide the dominant share of mortgage credit, and Fannie Mae and Freddie Mac should be wound down commensurate with the health of the housing market and the economy. The report concluded that government should have three core responsibilities in the housing finance market: consumer protection and robust supervision, targeted assistance for low and medium income homeowners and renters, and maintaining the ability to provide market stability in the event of a crisis.

Treasury is also working with FHFA on new options for selling single-family real estate owned properties held by Fannie Mae and Freddie Mac, and the Federal Housing Administration, as well as changes to the Home Affordable Refinance Program (HARP) that would help allow more Americans to refinance their mortgages at today's historically low rates.

Managed Senior Preferred Stock Purchase Agreements

The *Housing and Economic Recovery Act of 2008* (HERA) authorized the Department to purchase obligations and other securities issued by Fannie Mae, Freddie Mac or one of the 12 Federal Home Loan Banks. At the time the Federal Housing Finance Agency (FHFA) placed Fannie Mae and Freddie Mac into conservatorship in September 2008, Treasury established Senior Preferred Stock Purchase Agreements (SPSPAs) to ensure that each firm maintained a positive net worth. The maximum amount available to each GSE under this agreement is currently based on a formulaic cap that allows continued draws for three years ending December 2012 at amounts that will automatically adjust upwards quarterly by the cumulative amount of any losses realized by either GSE and downward by the cumulative amount of any gains, but not below $200 billion, and will become fixed at the end of the three years. At the conclusion of the three-year period, the remaining commitment will then be fully available to be drawn per the terms of the agreements. As of September 30, 2011 and 2010, the Department's gross

investment in Fannie Mae and Freddie Mac were $169.0 billion and $148.2 billion, respectively.

The U.S. Government's investment in and support of the GSEs through the SPSPAs was structured in such a way that ensures virtually all profits in the company revert to the Government in the form of dividends on the preferred shares in Fannie Mae and Freddie Mac. To get a true picture of the Government's exposure in the companies, it is critical to factor in those dividends and net them against the draws that the GSEs make from Treasury. For instance, for fiscal year 2011, while the GSEs had $20.8 billion in gross draws, this was before accounting for $15.6 billion in dividends paid back to Treasury, resulting in a net draw of $5.2 billion. As of September 30, 2011 and 2010, the Department's net cost for financial support provided to the GSEs under the SPSPAs after accounting for those dividends were $136.9 billion and $131.7 billion, respectively.

Freddie Mac is projected to have positive net operating income starting in the fiscal year 2012 and Fannie Mae is project to have positive net operating income starting in fiscal year 2013. However, over time their net income will be inadequate to cover the senior preferred dividend payments due to Treasury based on the balance of preferred stock outstanding and the accretion of the balance due to incremental draws over time to fund further dividends. The projections take into account that the GSEs will be gradually winding down their retained mortgage portfolios to the $250 billion cap specified in the SPSPAs and assume modest price increases on the single family guarantee business implemented gradually over time after 2013. As noted above, liabilities for gross draws under the SPSPAs do not represent the true net cost to taxpayers – since they do not include dividends paid to taxpayers on the preferred shares.

IMPLEMENTED REGULATORY REFORM

Treasury helped to coordinate the rulemaking process to implement the comprehensive reforms to the financial system passed by Congress last year in the Dodd-Frank Act, including stronger protections for consumers and tougher limits on risk-taking by banks. These reforms will help make the financial system more secure and better protect the American taxpayer.

Under the Dodd-Frank Act, the Secretary of the Treasury has responsibility for standing up the CFPB and performing certain functions until a CFPB Director is in place. The CFPB was established on July 21, 2010, to make the market for consumer financial products and services work for American consumers, responsible providers, and the economy as a whole. The CFPB has rulemaking, supervisory, enforcement, and other authorities relating to consumer financial products and services. Many of these authorities transferred from seven other federal agencies to the CFPB on July 21, 2011.

Dodd-Frank also established the OFR within the Treasury Department to provide data and analysis to the FSOC and its member agencies. OFR is working to improve the quality and transparency of financial information, conduct and sponsor research related to financial stability, and promote best practices in risk management. In fiscal year 2011, the OFR focused on the initial implementation of its institutional infrastructure and on the initial delivery of data and research-related services to FSOC.

In its first year of operation, the FSOC met nine times. Throughout these meetings, the Council worked to establish its institutional framework, adopted rules of operation, released proposed regulations establishing procedures under the *Freedom of Information Act*, and adopted a transparency policy. Throughout the year, the Council drafted several studies and reports required by the Dodd-Frank Act. On January 18, 2011, the Council released studies on implementation of the Volcker Rule, concentration limits, the economic impact of Dodd-Frank, and risk retention requirements for asset-backed securities. On July 18, 2011, the Council released a report which outlined how various secured creditors are treated in existing resolution regimes and examined whether limiting the amount a secured creditor receives after a default would be an effective means of improving market discipline and protecting U.S. taxpayers.

The Dodd-Frank bill established the FIO within the Department of the Treasury. The FIO is tasked with monitoring the insurance industry for gaps in regulations, providing guidance and recommendations to FSOC regarding insurers which may pose a systemic risk to the insurance or financial systems, monitoring the extent to which underserved communities have access to affordable

EXHIBIT K

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FORM 10-Q

FEDERAL HOME LOAN MORTGAGE CORP - FMCC

Filed: May 03, 2012 (period: March 31, 2012)

Quarterly report with a continuing view of a company's financial position

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.**

For the quarterly period ended March 31, 2012

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.**

For the transition period from to

Commission File Number: 001-34139

Federal Home Loan Mortgage Corporation

(Exact name of registrant as specified in its charter)

Freddie Mac

Federally chartered corporation	**8200 Jones Branch Drive McLean, Virginia 22102-3110**	**52-0904874**	**(703) 903-2000**
(State or other jurisdiction of incorporation or organization)	*(Address of principal executive offices, including zip code)*	*(I.R.S. Employer Identification No.)*	*(Registrant's telephone number, including area code)*

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports); and (2) has been subject to such filing requirements for the past 90 days. ☒ Yes ☐ No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). ☒ Yes ☐ No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☒

Non-accelerated filer (Do not check if a smaller reporting company) ☐ Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). ☐ Yes ☒ No

As of April 23, 2012, there were 650,033,623 shares of the registrant's common stock outstanding.

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purchased from PC trusts, net of recoveries. The majority of these losses are associated with loans originated in 2005 through 2008. While loans originated in 2005 through 2008 will give rise to additional credit losses that have not yet been incurred and, thus, have not yet been provisioned for, we believe that, as of March 31, 2012, we have reserved for or charged-off the majority of the total expected credit losses for these loans. Nevertheless, various factors, such as continued high unemployment rates or further declines in home prices, could require us to provide for losses on these loans beyond our current expectations.

Borrower payment performance (for all early stages of delinquency) improved at March 31, 2012, compared to December 31, 2011. In addition, the number of seriously delinquent loan additions declined during the first quarter of 2012. However, several factors, including delays in the foreclosure process, have resulted in loans remaining in serious delinquency for longer periods than prior to 2008, particularly in states that require a judicial foreclosure process. As of March 31, 2012 and December 31, 2011, the percentage of seriously delinquent loans that have been delinquent for more than six months was 73% and 70%, respectively.

The credit losses and loan loss reserves associated with our single-family credit guarantee portfolio remained elevated in the first quarter of 2012, due in part to:

- Losses associated with the continued high volume of foreclosures and foreclosure alternatives. These actions relate to the continued efforts of our servicers to resolve our large inventory of seriously delinquent loans. Due to the length of time necessary for servicers either to complete the foreclosure process or pursue foreclosure alternatives on seriously delinquent loans in our portfolio, we expect our credit losses will continue to remain high even if the volume of new serious delinquencies continues to decline.
- Continued negative impact of certain loan groups within the single-family credit guarantee portfolio, such as those underwritten with certain lower documentation standards and interest-only loans, as well as 2005 through 2008 vintage loans. These groups continue to be large contributors to our credit losses. Loans originated in 2005 through 2008 comprised approximately 30% and 36% of our single-family credit guarantee portfolio, based on UPB at March 31, 2012 and 2011, respectively; however, these loans accounted for approximately 88% and 91% of our credit losses during the three months ended March 31, 2012 and 2011, respectively.
- Cumulative decline in national home prices of 28% since June 2006, based on our own index. As a result of this price decline, approximately 20% of loans in our single-family credit guarantee portfolio, based on UPB, had estimated current LTV ratios in excess of 100% (*i.e.*, underwater loans) as of March 31, 2012.
- Weak financial condition of many of our mortgage insurers, which has reduced our estimates of expected recoveries from these counterparties.

Some of our loss mitigation activities create fluctuations in our delinquency statistics. For example, loans that we report as seriously delinquent before they enter a modification trial period continue to be reported as seriously delinquent until the modifications become effective and the loans are removed from delinquent status by our servicers. See "RISK MANAGEMENT — Credit Risk — *Mortgage Credit Risk — Single-family Mortgage Credit Risk — Credit Performance — Delinquencies*" for further information about factors affecting our reported delinquency rates.

Conservatorship and Government Support for our Business

We have been operating under conservatorship, with FHFA acting as our conservator, since September 6, 2008. The conservatorship and related matters have had a wide-ranging impact on us, including our regulatory supervision, management, business, financial condition, and results of operations.

We are dependent upon the continued support of Treasury and FHFA in order to continue operating our business. Our ability to access funds from Treasury under the Purchase Agreement is critical to keeping us solvent and avoiding the appointment of a receiver by FHFA under statutory mandatory receivership provisions.

While the conservatorship has benefited us, we are subject to certain constraints on our business activities imposed by Treasury due to the terms of, and Treasury's rights under, the Purchase Agreement and by FHFA, as our Conservator.

Under the Purchase Agreement, Treasury made a commitment to provide funding, under certain conditions, to eliminate deficits in our net worth. The $200 billion cap on Treasury's funding commitment will increase as necessary to eliminate any net worth deficits we may have during 2010, 2011, and 2012. We believe that the support provided by Treasury pursuant to the Purchase Agreement currently enables us to maintain our access to the debt markets and to have adequate liquidity to conduct our normal business activities, although the costs of our debt funding could vary.

We received cash proceeds of $146 million from our draw under Treasury's funding commitment during the first quarter of 2012 related to a quarterly deficit in equity at December 31, 2011. To address our net worth deficit of

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$18 million at March 31, 2012, FHFA, as Conservator, will submit a draw request on our behalf to Treasury under the Purchase Agreement in the amount of $19 million. FHFA will request that we receive these funds by June 30, 2012. Upon funding of the draw request: (a) our aggregate liquidation preference on the senior preferred stock owned by Treasury will be $72.3 billion; and (b) the corresponding annual cash dividend owed to Treasury will be $7.23 billion.

We pay cash dividends to Treasury at an annual rate of 10%. Through March 31, 2012, we paid aggregate cash dividends to Treasury of $18.3 billion, an amount equal to 26% of our aggregate draws received under the Purchase Agreement. As of March 31, 2012, our annual cash dividend obligation to Treasury on the senior preferred stock exceeded our annual historical earnings in all but one period. As a result, we expect to make additional draws in future periods, even if our operating performance generates net income or comprehensive income.

Neither the U.S. government nor any other agency or instrumentality of the U.S. government is obligated to fund our mortgage purchase or financing activities or to guarantee our securities or other obligations.

For more information on conservatorship and the Purchase Agreement, see “BUSINESS — Conservatorship and Related Matters” in our 2011 Annual Report.

Consolidated Financial Results

Net income was $577 million and $676 million for the first quarters of 2012 and 2011, respectively. Key highlights of our financial results include:

- Net interest income was $4.5 billion for both the first quarters of 2012 and 2011, reflecting the impact of a reduction in the average balances of our higher-yielding mortgage-related assets offset by lower funding costs in the first quarter of 2012 compared to the first quarter of 2011.
- Provision for credit losses for the first quarter of 2012 declined to $1.8 billion, compared to $2.0 billion for the first quarter of 2011. The provision for credit losses for the first quarter of 2012 reflects stabilizing expected loss severity on single-family loans and a decline in the number of seriously delinquent loan additions.
- Non-interest income (loss) was $(1.5) billion for the first quarter of 2012, compared to $(1.3) billion for the first quarter of 2011, largely driven by an increase in derivative losses, partially offset by a decline in net impairments of available-for-sale securities recognized in earnings during the first quarter of 2012 compared to the first quarter of 2011.
- Non-interest expense declined to $596 million in the first quarter of 2012, from $697 million in the first quarter of 2011, primarily due to a reduction in REO operations expense.
- Comprehensive income was $1.8 billion for the first quarter of 2012 compared to $2.7 billion for the first quarter of 2011. Comprehensive income for the first quarter of 2012 was driven by the $577 million net income and a reduction in net unrealized losses related to our available-for-sale securities.

Mortgage Market and Economic Conditions

Overview

The U.S. real gross domestic product rose by 2.2% on an annualized basis during the first quarter of 2012, compared to 1.6% during 2011, according to the Bureau of Economic Analysis. The national unemployment rate was 8.2% in March 2012, compared to 8.5% in December 2011, based on data from the U.S. Bureau of Labor Statistics. In the data underlying the unemployment rate, an average of over 210,000 monthly net new jobs were added to the economy during the first quarter of 2012, which shows evidence of a slow, but steady positive trend for the economy and the labor market.

Single-Family Housing Market

The single-family housing market continued to experience challenges in the first quarter of 2012 primarily due to continued weakness in the employment market and a significant inventory of seriously delinquent loans and REO properties in the market.

Based on data from the National Association of Realtors, sales of existing homes in the first quarter of 2012 averaged 4.57 million (at a seasonally adjusted annual rate), increasing from 4.37 million in the fourth quarter of 2011. Based on data from the U.S. Census Bureau and HUD, new home sales in the first quarter of 2012 averaged 337,000 (at a seasonally adjusted annual rate) increasing approximately 4% from approximately 325,000 in the fourth quarter of 2011. We estimate that home prices remained relatively stable during the first quarter of 2012, with our nationwide index registering approximately a 0.3% decline from December 2011 through March 2012 without adjustment for seasonality. This estimate was based on our own price index of mortgage loans on one-family homes funded by us or Fannie Mae.

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