# Global Foreclosure Settlement: Unsettling for RMBS

The recent global foreclosure settlement requires residential mortgage-backed securities (RMBS) investors to pay part of the price for the behaviors of the settling defendant servicers. As described more fully below, the settlement terms require the settling defendant servicers to:

- Provide $5 billion in cash and $20 billion in debt refinancing and debt forgiveness
- Adhere to more comprehensive and robust standards of loan servicing and foreclosure procedures
- Subject themselves to the oversight of a monitoring committee for compliance with the standards established under the global foreclosure settlement

However, the settlement terms also allow the settling defendant servicers to take credit for debt refinancing and debt forgiveness for loans that are owned by other parties, including trusts that issue RMBS to investors.

This memorandum provides a summary of the settlement's terms and an analysis of the potential impact of the settlement on RMBS investors.

## Introduction

When the goals are to stabilize and rehabilitate the residential real estate market, provide redress and compensation to wronged mortgage borrowers and establish servicing rules that simultaneously constrain abusive behaviors, yet still allow for flexibility and innovation, what is a government to do? Apparently, at least part of the answer is to require innocent RMBS investors to, in effect, pay part of the price for achieving these goals. Federal regulators and 49 state attorneys general[1] (Attorneys General) announced on February 9, 2012, and filed on March 12, 2012, a $25 billion settlement agreement[2] (the Settlement) with the five largest servicers of residential mortgages: Bank of America Corporation (BofA), Citigroup Inc. (Citi), JP Morgan Chase & Co. (JPMorgan), Ally Financial Inc. (Ally) and Wells Fargo & Company (Wells Fargo), and, together with BofA, Citi, JPMorgan and Ally, collectively, (the Settling Banks) to address alleged mortgage loan servicing and foreclosure abuses perpetrated during the nationwide housing market collapse. As described more fully below, the Settlement, the largest federal-state settlement ever obtained, requires the Settling Banks to:

- Provide $5 billion in cash and $20 billion in debt refinancing and debt forgiveness
- Adhere to more comprehensive and robust standards of loan servicing and foreclosure procedures
- Subject themselves to the oversight of a monitoring committee for compliance with the standards established under the Settlement

[1] The attorney general for the state of Oklahoma negotiated its own separate $18 million settlement.

[2] The Settlement, in the form of Consent Judgments (the Consent Judgments), were filed in the U.S. District Court for the District of Columbia on March 12, 2012.

The Settlement's terms have raised concerns in the RMBS investor community because it allows the Settling Banks to receive credit for debt forgiveness and relief to mortgage loans owned by third parties, including RMBS trusts. However, as described more fully below, while Settling Bank implementation will ultimately determine the Settlement's true effect upon RMBS, we anticipate that restrictions on modifications under applicable pooling and servicing agreements and each Settling Bank's own economic interests in implementing the terms of the Settlement may serve to mute the Settlement's potentially detrimental effects on RMBS investors. In short, the Settlement might not be fair to RMBS investors, but it could have been much worse.

## Background

Following allegations of the nationwide use of "robo-signed" affidavits in foreclosure proceedings in October of 2010, the Attorneys General and various federal agencies investigated the allegations and confronted the major mortgage servicing banks involved. After acknowledging that bank employees had improperly signed affidavits without reviewing the validity or accuracy of the sworn statements, several banks agreed to halt foreclosures until corrective measures could be implemented. In addition to robo-signing, certain banks were also alleged to have deceived borrowers while offering loan modifications. One such alleged deception, "dual-tracking," involved telling consumers that a loan modification was imminent while simultaneously foreclosing upon the property. It was also alleged that documentation policies and poor bank communications led to protracted foreclosure delays. The Settlement, which follows ten months of intensive negotiations between the Settling Banks and a coalition of Attorneys General and certain federal agencies[3], addresses the primary goals of the Attorneys General to:

- Provide relief to struggling homeowners to avoid foreclosure
- Reform the mortgage servicing industry
- Ensure that foreclosures are lawfully conducted
- Punish the banks for their misconduct

Nowhere in the stated goals did the Attorneys General mention "provide incentives for banks to forgive debts owed to others." We can only glean from this omission that such result is simply an unfortunate side effect.

## The Monetary Aspects of the Settlement

The Settling Banks agreed to pay billions of dollars through a combination of cash and in-kind contributions. The $25 billion[4] can be broken down into four main components:

- $5 billion in cash to foreclosed individuals and state and federal governments (the Cash Allocation);

[3] Though the DOJ and the Department of Housing and Urban Development (HUD) were the principal actors on behalf of the federal government, other federal agencies and departments were parties to the Settlement, including the Department of the Treasury, the Department of Agriculture, the Department of Veterans Affairs, the Federal Trade Commission, the Consumer Financial Protection Bureau and the Executive Office of the U.S. Trustees. However, the SEC, the Office of the Comptroller of the Currency, the FDIC and the Federal Housing Finance Agency are not parties to the Settlement.

[4] The aggregate commitments of the Settlement for the Settling Banks are BofA - $11.8 billion; Citi - $2.2 billion; Wells Fargo - $5.4 billion; JPMorgan -$5.3 billion and Ally - $.31 billion.

- $3 billion in refinancing at lower interest rates for underwater mortgages to borrowers who are current on their mortgage payments (the Refinancing Allocation)

- $10 billion in principal reduction of underwater mortgage loans to borrowers who, as of the date of the settlement, are either delinquent or at imminent risk of default (the Principal Reduction Allocation)

- $7 billion for miscellaneous programs, including forebearance programs for unemployed borrowers, anti-blight programs, short sale[5] programs and benefits for certain qualifying service members (the Miscellaneous Allocations and together with the Principal Reduction Allocation, collectively, the Consumer Relief Funds[6]).

Each of the 49 states participating in the Settlement received specifically delineated amounts of the allocations listed above (collectively, the Allocations) from the Settling Banks.

*The Cash Allocation*: The first $1.5 billion of the Cash Allocation is to be used to provide cash payments to borrowers whose homes were sold or taken in foreclosure by a Settling Bank between January 1, 2008 and December 31, 2011. Such payments will be made to those borrowers who submit claims and meet certain criteria established by the state members of the Monitoring Committee (defined and described more fully below). The Attorneys General estimate that, depending on the level of borrower response, borrowers who lost homes in foreclosure and were not properly offered loss mitigation or were otherwise improperly foreclosed upon shall receive approximately $2,000 each from the fund. Such borrowers will not release any individual claims that they may have against the Settling Banks in exchange for such payment. The remaining $3.5 billion of the Cash Allocation will go to state and federal governments to repay public funds lost as a result of servicer misconduct and to fund housing counselors, legal aid and other similar public programs determined by the state attorneys general. Mercifully for RMBS investors, this aspect of the Settlement does not require any cash outlay on their part.

*The Refinancing Allocation:* The $3 billion Refinancing Allocation will go toward refinancing loans for borrowers with above-market interest rate conventional mortgage loans, who are current on their mortgages but who owe more on their mortgages than their homes are worth. To be eligible, the loan must, among other things:

- Have been originated before 2009

- Be current with no delinquencies within the last 12 months

- Have not been modified in the last 24 months

- Have a current loan-to-value ratio greater than 100 percent

- Have an unpaid principal balance equal to or less than the highest GSE conforming loan limit cap as of January 1, 2010 (the Applicable Limit)

[5] Residential short sales are sales of homes in which the proceeds are less than the balance of the mortgages secured by the homes.

[6] We can only speculate why the Consent Judgments refer to these two specific allocations as Consumer Relief "Funds." It would seem to us that all of the "funds" in the Settlement are to be used toward the relief of consumers.

- Have a current interest rate of 5.25 percent or Freddie Mac's Primary Mortgage Market Survey rate + 100 basis points, whichever is greater

- Have an interest rate such that the minimum difference between the current interest rate and the offered interest rate must be at least .25 percent or the monthly payment must be reduced by at least $100.

Settling Banks must make the refinancing program available to all borrowers fitting the minimum eligibility criteria. Credit against each Settling Bank's respective portion of the Refinancing Allocation will be calculated as the difference between the preexisting interest rate and the offered interest rate times the unpaid principal balance times a multiplier based on the length of time the new rate applies or the remaining term of the loan. Any additional dollars spent by each Settling Bank on the program beyond such Settling Bank's required commitment shall be credited 25 percent against its first lien principal reduction obligation and 75 percent against its second lien principal obligation (as described below), up to such Settling Bank's related cap. RMBS investors also escaped harm with respect to this aspect of the Settlement, since it only applies to Settling Bank-owned first lien mortgage loans.

*The Principal Reduction Allocation:* The $10 billion Principal Reduction Allocation allows each Settling Bank to choose among a menu of benefits to provide directly to borrowers on and after March 1, 2012 and receive credit against the Principal Reduction Allocation up to a certain cap for each type of relief. A minimum of 30 percent of the Consumer Relief Funds must be permanent principal forgiveness on eligible first lien loans. To be eligible, among other requirements

- Borrowers must be at least 30 days delinquent or otherwise qualify as being at imminent risk of default

- Borrowers must have a pre-modification loan-to-value ratio (LTV) of at least 100 percent

- Post-modification payments should target a debt-to-income ratio[7] (DTI) of 31 percent

- First liens on occupied properties with unpaid principal balances within the Applicable Limit must constitute at least 85 percent of eligible credits for first liens

The Settlement provides that a minimum of 60 percent of the Consumer Relief Funds must be modifications on first and second lien loans.

Write-downs of otherwise eligible second lien mortgages will be creditable where such write-down facilitates either a first lien modification of an occupied property for which the borrower is 30 days delinquent or otherwise at imminent risk of default or a second lien modification of an occupied property with a second lien which is at least 30 days delinquent or otherwise at imminent risk of default. Settling Banks are required to write down second lien loans in accordance with eligibility criteria in certain circumstances where successful first lien modifications are completed until their consumer relief requirement credits are fulfilled. Unfortunately for RMBS investors, the Settling Banks will receive credit for forgiving principal on loans owned by third parties (including RMBS issuers) as described below.

[7] DTI is based on first lien mortgage debt only.

*The Miscellaneous Allocations:* The $7 billion Miscellaneous Allocations available under the Consumer Relief Funds menu include:

- Providing additional transitional funds to homeowners in connection with a short sale or deed-in-lieu of foreclosure
- Providing incentive payments to, and extinguishing second liens owed by, short sellers
- Waivers of deficiency claims when the Settling Bank can prove it had the ability to pursue such claims
- Forgiveness of payment arrearages for unemployed borrowers
- Anti-blight provisions to reduce community impact for unsightly and abandoned properties by providing credit for property demolitions and donations of foreclosed properties to municipalities or to disabled service members
- Short sales, short sale waivers and refinancing programs geared toward service members. Some of the Miscellaneous Allocations are capped as a percentage of the Consumer Relief Funds (e.g., anti-blight capped at 12 percent).

Assuming the Settling Banks stay within the applicable constraints for the Consumer Relief Funds, they can choose whatever relief they want from the menu of benefits. If they choose to provide relief for debts owned by RMBS issuers, the Settling Banks pay for their menu selection with funds otherwise payable to RMBS investors as described below.

*Credit Benefit Calculations:* The Settlement provides varying amounts of credit to the Settling Banks depending upon the nature of elements of the menu selected. For example, Settling Banks receive more credit for loans held by them for investment than for loans serviced by them for third-parties pursuant to servicing agreements. The credit given for writing down principal on first lien loans held by the Settling Banks for investment is $1.00 (for loans with an LTV less than 175 percent) versus just $.45 of credit for principal write-downs of comparable loans serviced by the Settling Banks that are owned by others.[8] Further, a Settling Bank will receive $1.00 credit if it makes payments to an unrelated second lien holder for release of a second lien but gets only a $.20 credit if the forgiveness is given by an investor. Further, servicers receive $.40 credit for every $1.00 in forbearance given on existing modifications. For second lien loans, Settling Banks receive $.90 credit for every $1.00 principal write-down on performing loans, $.50 credit for every $1.00 of principal write-downs on loans 90-179 days delinquent and $.10 credit for every $1.00 of principal write-down on loans 180 days or more delinquent. RMBS investors can take at least some comfort from the fact that the Settling Banks receive less than half of the amount of Settlement credit for forgiving amounts payable to RMBS investors as opposed to amounts payable to the Settling Banks.

*Enhanced Credit Benefit for Expedited Implementation:*
To incentivize the Settling Banks to expedite the realization of Consumer Relief Funds and the Refinancing Allocation (together, the Consumer Relief Requirement), the Settlement provides for the Settling Banks to receive an additional .25 percent credit against their outstanding settlement commitments for Consumer Relief Requirement amounts taken within the 12 months following March 1, 2012. The Settling Banks are required to

[8] For loans with an LTV greater than 175 percent, Settling Banks receive $.50 credit for every $1.00 of principal write-down (for only the portion of principal forgiven over 175 percent) on loans that they own and $.20 credit for every $1.00 of principal write-down on loans serviced by Settling Banks but held by others.

complete 75 percent of the Consumer Relief Requirement within two years of March 1, 2012. If a Settling Bank fails to meet its requirement within three years, such bank must pay an amount equal to 125 percent of its unmet commitment amount. If such bank failed to reach its two-year requirement and its three-year requirement, then the bank must pay an amount equal to 140 percent of its unmet commitment amount.

## The Servicing Aspects of the Settlement

The Settlement requires Settling Banks to adopt comprehensive servicing standards for residential mortgage loans and foreclosures. The servicing standards will be phased in over a 180-day period depending upon the importance of the servicing standard to the borrower and the difficulty of implementing the servicing standard for the Settling Banks. The terms of the Consent Judgment shall remain in full force and effect for 3½ years. As explained more fully below, however, the implementation of the standards on mortgage loans is subject to applicable laws, the terms of the related mortgage loan documents and any servicing agreement or requirements to which the servicer is a party.

Pursuant to the comprehensive servicing standards (the Servicing Standards) established under the Settlement, Settling Banks must, among other things:

- Ensure the accuracy of foreclosure and bankruptcy information and documentation, including a requirement that all affidavits, sworn statements and declarations be based upon the affiant's personal knowledge
- Ensure the accuracy of, and verify, borrower account information and timely apply payments to such borrower accounts
- Take steps to mitigate borrower losses by notifying borrowers of loss mitigation options prior to foreclosure referral
- Refrain from referring a borrower for foreclosure if such borrower has a pending loan modification meeting certain requirements
- Establish a single point of contact ("SPOC") who will communicate the options available to the borrower, coordinate receipt of all documents associated with modifications and be generally knowledgeable about the borrower's situation
- Develop an online portal linked to the Settling Bank's servicing system where borrowers can, at no cost, check the status of their loan modifications
- Maintain prescribed general loss mitigation requirements, including the maintenance of adequate staffing and systems for tracking borrower documentation related to foreclosures and loss mitigation, the establishment of minimum standards of education and experience for loss mitigation staff, the avoidance of compensation arrangements that encourage foreclosure over loss mitigation alternatives, the avoidance of the requirement that borrowers waive or release claims or defenses as a condition of loan modification and the avoidance of advising borrowers to go into default to qualify for loss mitigation relief
- Comply with certain requirements for force-placed insurance, including that a servicer should not obtain force-placed insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan's insurance requirement
- Develop and implement policies to ensure that REO properties do not become blighted[9]

[9] Other Servicing Standards established under the Settlement include: (i) implement processes to ensure that the servicer has a documented enforceable interest in a promissory note or mortgage; (ii) offer and facilitate loan (continued...)

Many of the reforms listed above are not new to the Settling Banks. Indeed, many of the reforms had already been adopted. For RMBS investors, the reforms are both positive and negative. Presumably, improved servicing could lead to better collection outcomes, and the requirement for force-placed insurance will lower related costs for RMBS investors. However, any benefit derived from such improvements could be overwhelmed by the increased loss mitigation and foreclosure timelines resulting from the more burdensome procedures.

## The Monitoring Aspects of the Settlement

Joseph A. Smith, a former banking commissioner of North Carolina, was appointed as an independent monitor (the Monitor) to ensure that the Settling Banks are complying with the requirements of the Settlement. In addition, a separate monitoring committee (the Monitoring Committee) comprised of representatives of the Attorneys General, state regulators, the DOJ and HUD, will monitor reports from the Settling Banks under the Settlement. The Settling Banks must pay the Monitoring Committee's fees and expenses.

The Settling Banks must conduct their own compliance reviews each quarter by establishing an internal quality control group that is independent from the servicing business. The internal quality control group must report to a senior employee or manager who has no direct operational responsibility for mortgage servicing.

Each of the Settling Banks, with the agreement of the Monitor and subject to the approval of the Monitoring Committee, must establish a work plan within 90 days of the Settlement which establishes how it will comply with the terms of the Settlement. Compliance with the servicing standards under the work plan will be measured against certain required performance metrics that will be applied and reported upon quarterly. Further, each Settling Bank must prepare regular reports detailing servicing complaints that may be related to patterns and practices of noncompliance with the terms of the Settlement, specifically those that are reasonably likely to cause harm to borrowers. The Monitor may take additional steps to investigate such complaints. The Monitor must also report quarterly on servicer complaints to the parties to the Settlement. Based on such report, the Attorneys General or the federal agencies that are parties to the Settlement may bring an enforcement action with respect to the violation. The Attorneys General or such federal agencies may seek non-monetary equitable relief or civil penalties awarded by the courts of not more than $1 million per uncured violation or up to $5 million for widespread non-compliance.

modifications rather than initiate foreclosure for borrowers that meet program eligibility requirements; (iii) adopt policies and processes to manage employees and third party agents retained by the servicer to provide foreclosure or bankruptcy-related servicing activities; (iv) Conduct regular reviews, not less than quarterly, of a sampling of court filings to make sure that such filings are accurate; (v) conduct regular reviews of third-party agents retained by the servicer in mortgage servicing work; (vi) meet a prescribed timeline of document delivery and event notification in connection with loan modifications; (vii) perform independent evaluations of first lien loan modification denials and appeals; (viii) comply with all provisions of the Servicemembers Civil Relief Act and any applicable state laws that protect borrowers who are service members; and (ix) ensure that all fees collected in connection with foreclosure and bankruptcy servicing are bona fide, reasonable and disclosed.

## The Release

The Settlement fully and finally releases the Settling Banks and any affiliated entities from certain federal and state civil and administrative claims[10] and any related civil or administrative penalties (including punitive damages). While the scope of the federal and state releases are different[11], the servicing conduct covered (the Covered Conduct) by the various releases are similar. Generally speaking, Covered Conduct includes virtually all servicing activity performed by the Settling Banks for their own account and for the accounts of third parties including, but not limited to, collecting and remitting mortgage payments, managing foreclosures and foreclosed properties, and facilitating borrower loss mitigation. The Covered Conduct also extends to loan origination activity, including loan documentation, processing and funding. HUD also separately provided a release for servicing conduct relating to the servicing of FHA-insured loans.

The federal and state releases are also subject to various exceptions, such as violations of criminal law, tax violations, claims relating to the creation, issuance and sale of securitizations and liability relating to private mortgage insurance. Importantly, the settlement agreement does not release the Settling Banks from any claims by natural persons, thus allowing individual suits by aggrieved victims of covered conduct. Nor does the Settlement preclude actions against the Settling Banks in connection with misrepresentations with regard to the quality of loans pooled into RMBS or wrongful securitization-related conduct to be investigated by the Residential Mortgage-Backed Securities Working Group (the RMBS Working Group).[12] So while the government is, in effect, requiring RMBS investors to pay part of the Settlement, at least it is not precluding RMBS investors from litigating against the Settling Banks to potentially obtain redress for wrongful securitization-related conduct by the Settling Banks.

## Potential Ramifications to RMBS

As noted above, many aspects of the Settlement are potentially troubling to RMBS investors. First and foremost, RMBS investors and bondholders have objected to the incentives that the Settlement provides to Settling Banks to write down principal of, and provide forbearance for, mortgage loans that the Settling Banks do not own themselves (i.e. mortgage loans that the Settling Banks service but which have been sold into RMBS transactions). *The American Banker* recently quoted Vincent Fiorillo, a portfolio manager at DoubleLine Capital and the president of the board of the Association of Mortgage Investors as saying that "[t]he banks are trying to pay these fines with our money."[13] It is certainly true that Settling Banks can pay their obligations under the Settlement by writing down loans sold into RMBS transactions, but that is not the

[10] Includes: potential servicing claims under the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), the Interstate Land Sales Full Disclosure Act (ILSFDA), the False Claims Act, the Racketeer Influenced and Corrupt Organizations Act (RICO), the Fair Credit Reporting Act (FCRA), the Real Estate Settlement Procedures Act (RESPA), the Truth in Lending Act (TILA), the Fair Debt Collection Practices Act and certain sections of the Gramm-Leach-Bliley Act and potential origination claims under ILSFA, TILA, RESPA, FCRA, and certain claims under FIRREA.

[11] For example, the federal release includes the servicing of loans of borrowers in bankruptcy, which is governed by federal law.

[12] Part of the federal government's Financial Fraud Enforcement Task Force, the RMBS Working Group seeks to streamline and strengthen efforts to investigate and prosecute wrongdoing with regard to the sale of residential mortgage-backed securities.

[13] See "MBS Investors Cry Foul Over National Mortgage Settlement" from *The American Banker* at http://www.americanbanker.com/issues/177_54/mortgage-servicer-settlement-securities-principal-writedowns-1047665-1.html.

extent of the problems. There are other potentially troublesome repercussions of the Settlement for RMBS, including, but not limited to:

- Certain mortgage borrowers will receive principal forgiveness or debt modification under the revised servicing standards who otherwise would have faced foreclosure in the first instance under the old standard. Should such mortgage borrowers wind up in foreclosure anyway, RMBS investors would shoulder the additional administrative and carrying costs incurred in connection with such ineffective modification or loan forgiveness that they would not have incurred under the old standard.
- Principal forgiveness for defaulting borrowers may present moral hazard for borrowers at risk of default. Such borrowers might intentionally stop paying their mortgages for a chance at having a portion of their principal forgiven, resulting in higher delinquency rates and potentially greater losses for owners of RMBS.
- Liquidation timelines may increase because the Settlement:
    - Requires the Settling Banks to look to foreclosure as a last resort
    - Gives homeowners a right to appeal denials of modifications
    - Forbids servicers to file foreclosures while a borrower is under consideration for a modification

The Settling Banks' ability to share losses on their second lien loans with bondholders represents a reversal of the normal mortgage lien priority. Typically, second lien loans would be written off before first lien holders would take a loss. However, under the Settlement, banks will receive credits for write-offs of their second liens and their first liens simultaneously. Further, by forgiving principal on the first lien, lenders can improve the position of the second lien.

However, there are mitigating factors that reduce the risks to RMBS investors. RMBS investors may take comfort from the fact that the Settlement expressly provides that Settling Banks must adhere to the terms of the applicable servicing agreements, pooling and servicing agreements and insurer requirements in the implementation of the Settlement. Indeed, in response to recent complaints by RMBS investors with regard to the ability of the Settling Banks to modify loans in RMBS trusts, an official at HUD recently confirmed that Settling Banks acting as servicers cannot take principal write-downs if the related RMBS contract does not permit them.[14] Further, for their part, the Settling Banks "have all said that they reduce principal only on loans for which they have received delegated authority from investors and that the mortgage settlement does not change that."[15] On a purely economic level, the Settlement provides more than twice as much credit for Settling Bank-owned mortgage loans ($1.00 for first lien loan principal forgiveness) than credit given for investor-owned loans ($.45 for first lien loan principal forgiveness). Taking all of this into consideration, the lack of safe harbor from suit and ensuing legal liabilities which the Settling Banks could face for modifying loans held by third parties, coupled with the economic incentives provided by the Settlement suggest that the Settling Banks may prefer to limit principal modifications to their own portfolios.

Interestingly, by not forcing the Settling Banks to modify loans held by third parties, the Settlement may actually be hurting RMBS. By not forgiving principal for troubled loans, many of these loans will require continued servicer advances. The extended mortgage loan timelines will negatively affect the senior-most

[14] Op. cit.

[15] Id.

classes by increasing losses through extending the average life of other classes, including subordinate debt which can absorb available cash flow. The lengthened timelines will aid interest-only classes or lower-rated classes by extending the periods for which such classes will receive interest on loans that would have otherwise been written down or completely written off.

Finally, the Settlement actually benefits RMBS in some ways. First, the Settlement requires servicers and insurance providers to lower rates on force-placed insurance to a commercially reasonable level. These costs are typically advanced by the servicers and ultimately reimbursed by the RMBS trust. Second, the more stringent quality control and monitoring standards will hold servicers more accountable for servicing decisions. To the extent such standards improve servicing and encourage more timely modification decisions, it will be a positive for RMBS investors.

Ultimately, the implementation of the Settlement by the Settling Banks will determine the Settlement's effects on RMBS. For the reasons above, we believe the impact upon RMBS may be muted. However, we will continue to monitor the implementation and impact of the Settlement upon RMBS and will continue to provide updates regarding any material developments.

Please feel free to contact any of the following Kaye Scholer attorneys if you have any questions about this Newsletter.


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