UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL CREDIT UNION ADMINISTRATION BOARD, as Liquidating Agent of Southwest Corporate Federal Credit Union and Members Union Corporate Federal Credit Union, Plaintiff, v. MORGAN STANLEY & CO., INC. and MORGAN STANLEY CAPITAL I INC., Defendants.	Case No. 13-cv-6705 (DLC)
NATIONAL CREDIT UNION ADMINISTRATION BOARD, as Liquidating Agent of Southwest Corporate Federal Credit Union and Members Union Corporate Federal Credit Union, Plaintiff, v. BEAR, STEARNS & CO., INC., n/k/a J.P. MORGAN SECURITIES, LLC, J.P. MORGAN SECURITIES LLC, J.P. MORGAN ACCEPTANCE CORP. I, Defendants.	Case No. 13-cv-6707 (DLC)
NATIONAL CREDIT UNION ADMINISTRATION BOARD, as Liquidating Agent of Southwest Corporate Federal Credit Union, Plaintiff, v. WACHOVIA CAPITAL MARKETS, LLC, n/k/a WELLS FARGO SECURITIES, LLC, Defendant.	Case No. 13-cv-6719 (DLC)

NATIONAL CREDIT UNION ADMINISTRATION BOARD, as Liquidating Agent of Southwest Corporate Federal Credit Union, Plaintiff, v. GOLDMAN, SACHS & CO., GS MORTGAGE SECURITIES CORP., Defendants.	Case No. 13-cv-6721 (DLC)
NATIONAL CREDIT UNION ADMINISTRATION BOARD, as Liquidating Agent of Southwest Corporate Federal Credit Union and Members United Corporate Federal Credit Union, Plaintiff, v. RBS SECURITIES, INC., f/k/a GREENWICH CAPITAL MARKETS, INC., and RBS ACCEPTANCE, INC., f/k/a GREENWICH CAPITAL ACCEPTANCE, INC., Defendants.	Case No. 13-cv-6726 (DLC)
NATIONAL CREDIT UNION ADMINISTRATION BOARD, as Liquidating Agent of Southwest Corporate Federal Credit Union and Members United Corporate Federal Credit Union, Plaintiff, v. BARCLAYS CAPITAL, INC., Defendant.	Case No. 13-cv-6727 (DLC)

NATIONAL CREDIT UNION ADMINISTRATION BOARD, as Liquidating Agent of Southwest Corporate Federal Credit Union and Members United Corporate Federal Credit Union, Plaintiff, v. UBS SECURITIES, LLC Defendant.	Case No. 13-cv-6731 (DLC)
NATIONAL CREDIT UNION ADMINISTRATION BOARD, as Liquidating Agent of Southwest Corporate Federal Credit Union and Members United Corporate Federal Credit Union, Plaintiff, v. CREDIT SUISSE SECURITIES (USA) LLC, CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP., Defendants.	Case No. 13-cv-6736 (DLC)

JOINT INITIAL REPORT

The parties in the above-referenced cases ("Cases") submit this Joint Initial Report ("Initial Report") pursuant to Section I(A) of the Standing Order for the Pilot Project Regarding Case Management Techniques for Complex Civil Cases in the Southern District of New York ("Pilot Project Standing Order").[1] Unless explicitly stated, nothing in this Initial Report is intended to create, limit, or waive any rights, privileges (including the attorney-client or any other applicable privilege), or defenses.

A. INITIAL PRETRIAL CONFERENCE CHECKLIST

1. Document Preservation and ESI

NCUA's Position: NCUA has taken steps to ensure the preservation of its electronically stored information pending resolution of the Cases. NCUA has complied with its preservation obligations under the Federal Rules of Civil Procedure and the Local

[1] On October 8, 2013, the Court stayed proceedings in *NCUA v. Residential Funding Securities, LLC*, 13-cv-6730, until January 31, 2014; therefore this Initial Report is not applicable to that case. Further, all the Defendants, except for Goldman, Sachs & Co. and GS Mortgage Securities Corp. (together, "Goldman Sachs") have filed a motion with the Judicial Panel on Multidistrict Litigation ("JPML") seeking to have these Cases transferred to the District of Kansas. *See In re Nat'l Credit Union Admin. Board Mortgage-Backed Sec. Litig*., MDL No. 2505 (J.P.M.L. Oct. 11, 2013). The JPML has yet to rule on the motion, which is expected to be heard on January 30, 2014. On November 4, 2013, the JPML rejected the defendants' motion for expedited consideration. *Id.* (J.P.M.L. Nov. 4, 2013) (Dkt. 28). The parties reserve the right to amend this Initial Report upon the JPML's resolution of defendants' motion. In addition, Goldman Sachs states that, on November 13, 2013, Goldman Sachs will be moving to compel arbitration of all claims asserted against it pursuant to the terms of an arbitration agreement executed by Southwest Corporate Federal Credit Union, the credit union on whose behalf NCUA has asserted claims against Goldman Sachs. NCUA denies that its claims against Goldman Sachs must be arbitrated, and will oppose any such motion. In light of Goldman Sachs's forthcoming motion to compel arbitration, Goldman Sachs believes that it is premature for any schedule for discovery and other matters to be entered at this time, but in an abundance of caution only, Goldman Sachs has joined with the other defendants in making this Initial Report and reserves the right to amend this Initial Report depending on the outcome of its motion to compel arbitration. Because NCUA believes that its claims against Goldman Sachs need not be arbitrated, NCUA denies that any Goldman Sachs motion to compel arbitration renders premature the scheduling of discovery and other matters in the Cases.

Rules for the Southern District of New York. Southwest Corporate Federal Credit Union and Members United Corporate Federal Credit Union (together, the "Credit Unions") were liquidated by NCUA and no longer exist. The Asset Management & Assistance Center ("AMAC"), a division of NCUA, acting pursuant to federal regulation, has preserved documents and electronic data for each Credit Union. Specifically, AMAC has obtained quarterly restore points of the Credit Unions' electronic data from January 1, 2005 to the dates of conservatorship, as well as post-conservatorship restore points. In addition, AMAC has preserved and maintains control of the Credit Unions' paper records. These records and data will continue to be preserved throughout the litigation of these Cases.

Defendants' Position:

Each Defendant has likewise taken steps to ensure the preservation of relevant electronically stored information and complied with their preservation obligations under the Federal Rules of Civil Procedure and the Local Rules for the Southern District of New York.

2. Initial Disclosures pursuant to Rule 26(a)(1)

NCUA's Position: There are no special circumstances in these cases that would render initial disclosures inappropriate. NCUA requests that the parties exchange initial disclosures on December 6, 2013. NCUA further requests that at or before the time for initial disclosures, Defendants be required to produce the most current loan schedules, final loan tapes (including supporting loan group data), and all underwriting guidelines and loan files in their possession, custody, or control, which pertain to the RMBS offerings at issue, at least some of which should be particularly easy to produce given that

they are also at issue in the *Federal Housing Finance Administration* actions (the "*FHFA* actions.").

Defendants' Position: Defendants believe that it is premature to discuss the timing of such disclosures, or the early production of certain categories of documents. No motion to dismiss will even be filed in these actions until November 13, and the motions to dismiss in all but one action are themselves stayed pending further order of the Court. Once these motions to dismiss are filed, all discovery will be automatically stayed under the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77a *et seq*. pending the resolution of the motions to dismiss ("PSLRA discovery stay"). The PSLRA discovery stay applies to stay the exchange of initial disclosures that otherwise are required by Federal Rule of Civil Procedure 26(a). *See, e.g.*, *Medhekar v. United States District Court*, 99 F.3d 325, 327-28 (9th Cir. 1996). Defendants agree that, to the extent these cases proceed past the initial pleading stage and into discovery, initial disclosures would be appropriate at that time. Plaintiff's request that parties exchange initial disclosures on December 6, 2013 is unreasonable. In *FHFA*, the parties did not exchange initial disclosures until one month after the motion to dismiss in the lead case had been decided. Here, the motion to dismiss briefing itself would not be complete on Plaintiff's proposed date.

To the extent discovery ultimately proceeds, Defendants would be amenable to meeting and conferring regarding the early production of loan tapes and other documents that can be located after a reasonable search of documents within their possession, custody, or control. Defendants note, however, that they do not necessarily have readily available for production underwriting guidelines, loan group data, or loan files pertaining

to the RMBS offerings at issue here. Those documents would likely need to be obtained from third-parties or would be produced during the ordinary course of discovery to the extent they are in Defendants' possession, custody or control. Even if the Court were to find that the exchange of initial disclosures and documents was appropriate at this time, notwithstanding the PSLRA discovery stay and the forthcoming motions to dismiss, NCUA's proposal that Defendants provide initial disclosures, loan tapes associated with multiple securitizations, and other documents that NCUA speculates are "particularly easy to produce" in three weeks is unreasonable. Indeed, NCUA's proposal to produce these materials in three weeks overlooks multiple practical problems and inefficiencies that would result from its proposal, including but not limited to the fact that NCUA has separately indicated that it will file a sampling motion, which (it contends) will obviate the need to produce anything more than sample loans, and that the parties have not yet even begun to negotiate the parameters of a protective order to govern production of these and other documents.

3. Possibility of Stay of Discovery

NCUA's Position: NCUA, as a federal agency, is not subject to the automatic stay provision of the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 77z-1, despite the fact that certain of these cases contain claims under the Securities Act of 1933.[2] At least two courts in related RMBS cases have rejected the identical argument

[2] The following cases include such claims under the Securities Act of 1933: *NCUA v. Bear, Stearns & Co, Inc., et al.*, 13-cv-6707; *NCUA v. Credit Suisse Sec. (USA) LLC, et al.*, 13-cv-6736; *NCUA v. Goldman, Sachs & Co, et al.*, 13-cv-6721; *NCUA v. Morgan Stanley & Co, Inc., et al.*, 13-cv-6705; *NCUA v. RBS Sec., Inc., et al.*, 13-cv-6726; and *NCUA v. UBS Sec., LLC,* 13-cv-6731. With respect to the actions that do not involve claims under the Securities Act, namely the *Wachovia* and *Barclays* actions, even Defendants acknowledge that the stay provision of the PSLRA does not apply.

that Defendants' raise here concerning the applicability of the PSLRA automatic stay provision. *See NCUA v. RBS*, Case No. 2:11-cv-05887 (C.D. Cal. Sept. 26, 2013) (ECF 201); *FHFA v. RBS*, Civ. No. 3:11-cv-01383 (D. Conn. Aug. 17, 2012) (ECF 61).

In *NCUA v. RBS*, the court ruled that NCUA's lawsuit as liquidating agent for a failed private credit union is not a "private action" under the PSLRA, and therefore not subject to the PSLRA's automatic stay of discovery. Similarly, in *FHFA v. RBS*, the court rejected RBS's request for a stay of all discovery pending a decision on the motion to dismiss because a suit brought by FHFA on behalf of private entities "is not a 'private action' under the PSLRA." ECF 61 at 10-11.[3]

Defendants' ignore this authority altogether. Instead, they erroneously claim that NCUA's alleged fee agreement with its private counsel demonstrates that this is a "private action" under the PSLRA. But, the *NCUA v. RBS* court expressly rejected that same argument because "the contractual-rights question the NCUA addressed in connection with" its provision of outside counsel services "was fundamentally different than the pure issue of statutory interpretation involved here." ECF 201 at 2.

Accordingly, NCUA respectfully submits that pursuant to Section II.A of the Pilot Project Standing Order, "discovery of documents, electronically stored information and tangible things" should "proceed pursuant to Rule 34" during the pendency of any motions to dismiss.[4]

Defendants' MDL motion should not alter this result as it is unlikely that any of these Cases will be transferred away from this Court. NCUA has opposed Defendants' request

[3] Judge Thompson further rejected RBS's assertion that a discovery stay was appropriate under Fed. R. Civ. P. 26(c). ECF 61 at 11-12.

[4] NCUA notes that the Pilot Project Standing Order did not apply to the *FHFA* actions.

for transfer because common questions of fact do not predominate among the cases that Defendants seek to MDL and because any efficiencies that may be achieved through an MDL can also be achieved through a unified scheduling order and discovery plan that applies across all of NCUA's actions. This is precisely the process that this Court and Chief Judge Alvin W. Thompson implemented to coordinate the 17 separate *FHFA* actions pending in two separate districts. Nonetheless, as NCUA has asserted in its opposition to Defendants' transfer motion, even to the extent that the JPML believes that an MDL is appropriate, it is most logical to transfer NCUA's cases to this district and centralize those cases before this Court. Through its experience with the related *FHFA* actions, this Court is intimately familiarity with the underlying factual, legal, and discovery issues surrounding RMBS lawsuits brought by a federal government agency.

NCUA further disagrees that Goldman Sachs' anticipated motion to compel arbitration provides any ground to stay discovery with respect to the *Goldman Sachs* action. NCUA will oppose this motion because, among other reasons, the arbitration provision that Goldman Sachs relies upon does not apply to Plaintiff's claims by its own terms. In any event, it is inapplicable as a matter of law under the specific statutory authority Congress provided to NCUA as liquidating agent. For example, because that purported agreement was not found in the files and records of the liquidated credit union, it cannot be enforced under 12 U.S.C. § 1787(b)(9). NCUA has also repudiated that agreement pursuant to 12 U.S.C. § 1787(c)(1).

Defendants' Position: NCUA is subject to the PSLRA discovery stay because these are "private actions" within the meaning of the Securities Act.[5] These actions are not regulatory enforcement actions, but rather are actions brought on behalf of private institutions seeking money and rescissory damages purportedly to recoup losses suffered in connection with their investment in the RMBS market. Because NCUA has stepped into the shoes of the private credit unions, these are private actions and the automatic PSLRA discovery stay applies. Plaintiff and its Office of Inspector General have themselves concluded that in bringing RMBS lawsuits on behalf of credit unions, Plaintiff is not acting as a federal agency. In a letter to Congressman Darrell Issa, Plaintiff stated that an executive order barring federal agencies from hiring outside counsel on a contingency fee basis does not apply to Plaintiff "when it is acting as conservator or liquidating agent for a federally insured credit union." (*See Letter from Congressman D. Issa to NCUA Inspector General W. DeSarno* (Oct. 16, 2012) at 2 (quoting *Letter from NCUA Chairman D. Matz to Congressman D. Issa* (Apr. 23, 2012)), *available at* http://oversight.house.gov/wp-content/uploads/2012/10/2012-10-16-DEI-to-DeSarno-NCUA-IG-contingency-fees.pdf.pdf.pdf). Nothing in the text of the PSLRA exempts this action from the statute's automatic stay of discovery.

NCUA relies on two cases from outside this District in which the courts permitted discovery to begin, notwithstanding the automatic PSLRA stay. Defendants believe

[5] Although there are no Securities Act claims in the *Wachovia* and *Barclays* actions, defendants in those cases submit that discovery in those cases should also be stayed to promote efficient coordination of discovery across all the actions. It would be highly inefficient for those two cases to commence discovery while discovery is stayed in the other actions. And in any event, as Defendants explain, discovery should be stayed in all actions regardless of the PSLRA.

those cases were wrongly decided. But even if they were not wrongly decided, the circumstances in the only case involving NCUA were far different.

In any event, if NCUA believes it is somehow exempt from the PSLRA discovery stay or that discovery should nonetheless proceed, it should file a motion under the statute to lift the stay, *see* 15 U.S.C. § 77c-1(b)(1), and such a motion should be the subject of full briefing, as it was in both cases NCUA relies on in support of its request here.

At the very least, the Court should stay discovery in all the cases until the motion to dismiss in the *Morgan Stanley* action is decided—consistent with the approach that the Court took in the *Federal Housing Finance Administration* actions. See Dec. 2, 2011 Hearing Transcript at 21:15-22; 40:9- 17, *In re Fed. Housing Fin. Agency*, 11-cv-5201 (S.D.N.Y.), ECF No. 33; May 14, 2012 Hearing Transcript at 11:19-12:8, *id.*, ECF No. 76[6] The outcome of that motion to dismiss may obviate discovery entirely, or streamline it considerably. Indeed, the very purpose of designating *Morgan Stanley* a lead case—as NCUA suggested in its October 22, 2013 letter to the Court—is to assist with "the efficient management of these actions." The Court's ruling on the motion to dismiss in *Morgan Stanley* will provide the parties with guidance as to the scope of the claims at

[6] Defendants also respectfully request that the Court grant a stay of discovery pursuant to Federal Rule of Civil Procedure 26(c). Under this Rule, courts often grant a stay of discovery pending decision on a dispositive motion to avoid the burden and expense of discovery that the decision may render pointless. This is exactly the sort of case for which a stay of discovery under Rule 26(c) is appropriate. Defendants are seeking protection from the massive burden and expense that will inevitably accompany any discovery in this highly complex securities case—burden and expense that necessarily would be obviated should this Court grant Defendants' motions to dismiss. And even if the Court does not grant Defendants' motions to dismiss in whole, a decision on the motions to dismiss may nevertheless narrow the claims and sharpen the issues, and so help to frame discovery in a way that significantly reduces unnecessary yet burdensome and highly costly discovery.

issue, and thus as to the scope of discovery. It would be extremely inefficient and burdensome to commence massive and expensive discovery, when some or all of NCUA's claims may not survive a motion to dismiss.

Moreover, several defendants have filed a motion ("MDL Motion") before the JPML to centralize these cases in the District of Kansas, where nine substantially similar cases have been pending, some for over two years. Proceeding immediately to discovery before the parties know where these cases will be litigated would be unduly burdensome, unnecessarily duplicative, and complicated. This is especially true given that NCUA is proposing (without providing any specific proposals) that discovery be coordinated with the cases that are now pending in the District of Kansas and the Central District of California. Accordingly, discovery should be stayed until the JPML resolves the MDL Motion, so that discovery relevant to these actions can be coordinated at the appropriate time with the other cases now pending in the District of Kansas and elsewhere.

Finally, with respect to Goldman Sachs, which will be moving to compel arbitration on November 13, 2013, it makes no sense and would likely result in a waste of judicial and party resources for discovery to begin before the forum for adjudicating these claims has been determined. Proceeding to discovery before the arbitration motion is decided would also undermine the interest in efficient and cost-effective resolution of arbitrable disputes. As Goldman Sachs will show in its November 13, 2013 motion to compel arbitration, NCUA's various arguments (*e.g.*, NCUA supposedly cannot locate the Credit Union's own copy of the arbitration agreement in its files) do not excuse its failure to comply with its arbitration agreement under the Federal Arbitration Act.

4. Possibility of communication/coordination with Magistrate Judge

The parties do not object to the possibility of communication/coordination between District Judge Denise L. Cote and Magistrate Judge James C. Francis with respect to pretrial matters.

5. Preliminary issues requiring Court intervention

NCUA's Position: To minimize the costs and burdens of discovery, NCUA intends to file a motion on the appropriateness of proof via statistical sampling, similar to the one brought by the Federal Housing Finance Agency in its RMBS litigation. *See Federal Housing Finance Agency v. UBS Americas, Inc., et al.*, Case No. 1:11-cv-05201 (S.D.N.Y. Feb. 29, 2012) (ECF 62). A determination by the Court in favor of limiting loan file discovery to those necessary to create scientifically valid statistical samples will greatly reduce the number of loan files at issue in these Cases.

At the initial conference, NCUA also wishes to discuss generally ways in which to coordinate discovery in the Cases. NCUA believes that coordination across the Cases in this District is appropriate, and also seeks to maximize efficiencies by also coordinating common discovery in cases that NCUA has filed in the District of Kansas[7] and the Central District of California.[8] In this regard, NCUA suggests a substantially similar

[7] NCUA has filed 9 cases in the District of Kansas; *NCUA v. RBS Sec., Inc.*, No. 11-cv-2340 (D. Kan.); *NCUA v. J.P. Morgan Sec. LLC*, No. 11-cv-2341 (D. Kan.); *NCUA v. Wachovia Capital Mkts., LLC*, No. 11-cv-2649 (D. Kan.); *NCUA v. Credit Suisse Sec. (USA) LLC*, No. 12-cv-2648 (D. Kan.); *NCUA v. UBS Sec. LLC*, No. 12-cv-2591 (D. Kan.); *NCUA v. Barclays Capital Inc.*, No. 12-cv-2631 (D. Kan.) (dismissed, appeal pending); *NCUA v. Bear, Stearns & Co.*, No. 12-cv-2781 (D. Kan.); *NCUA v. J.P. Morgan Chase Bank, N.A.*, No. 13-cv-2012 (D. Kan.) ("*WaMu*"); *NCUA v. Morgan Stanley & Co.*, No. 13-cv-2418 (D. Kan.)

[8] NCUA has filed two cases in the Central District of California: *NCUA v. Goldman Sachs & Co.*, No. 11-cv-6521 (C.D. Cal.); *NCUA v. RBS Sec., Inc.*, No. 11-cv-5887 (C.D. Cal.)

unified discovery plan and deposition protocol to the one that this Court and Chief Judge Thompson jointly entered in the *FHFA* actions.

Defendants' Position: Defendants believe that any motion for statistical sampling would be premature in light of: (a) the PSLRA discovery stay; (b) the pending MDL Motion; and (c) the forthcoming motions to dismiss and to compel arbitration. Plaintiff's request ignores the prospect that a decision on the *Morgan Stanley* motion to dismiss may eliminate or significantly narrow the claims and the securitizations at issue, which drastically would impact a sampling proposal. Further, any meaningful sampling protocol necessarily would require significant fact discovery, data analysis and input from statisticians and other experts, none of which has occurred, or even could commence now given the stay of discovery that will be in place. Although NCUA proposes early briefing on statistical sampling methodologies, it has already made an identical motion in the District of Kansas (which is fully briefed and pending). Given the pending MDL Motion, it would be wasteful of the Court's time and the parties' resources to duplicate the exact same motion in these cases if the JPML ultimately decides to transfer these cases to the District of Kansas.

To the extent these cases do remain in this District, and discovery ultimately proceeds here, Defendants are amenable to discussing ways to efficiently coordinate discovery among the cases in this District and elsewhere, taking into consideration, among other things, the schedules and procedural postures of these cases.[9] But at this juncture, any such discussions are premature. Defendants respectfully submit, however, that the discovery plan and deposition protocol adopted in the *Federal Housing Finance Agency*

[9] Defendants do not, however, agree to coordination to the extent such coordination would deprive them of the rights afforded them under the Federal Rules of Civil Procedure.

actions are not appropriate here, including because these cases involve multiple separate and distinct predecessor entities (including the predecessor entities in the various cases pending in the District of Kansas and the Central District of California), different securities and different securitizations.

6. Discovery Issues Envisioned and Procedure for Resolution

NCUA's Position: NCUA has no objection to the procedures for discovery disputes set forth in this Court's "Individual Practices in Civil Cases."

Defendants' Position: To the extent these cases remain in this District, and discovery ultimately proceeds, Defendants have no objection to the procedures for discovery disputes set forth in this Court's "Individual Practices in Civil Cases."

7. Proposed Discovery

a. Limitations on types of discovery beyond those in the Rules:

NCUA's Position: NCUA proposes that there be no limitations on the types of discovery beyond those provided in the Federal Rules of Civil Procedure.

Defendants' Position: To the extent these cases remain in this District, and discovery ultimately proceeds, Defendants agree that there should be no limitations on the types of discovery beyond those provided in the Federal Rules of Civil Procedure.

b. Limitations on scope of discovery:

NCUA's Position: As set forth above, NCUA proposes that the Court enter a discovery plan and deposition protocol that is substantially similar to that which was entered in the *FHFA* actions. NCUA further proposes that the parties and the

Court revisit the specifics of such a plan once the relevant motions to dismiss have been decided.

Defendants' Position: Defendants agree with NCUA that the specifics of any discovery plan or deposition protocol should await, at a minimum, decisions on the Defendants' motions to dismiss. In addition, it is premature to enter any specific discovery plan or deposition protocol in light of: (a) the PSLRA discovery stay; (b) the pending MDL Motion; and (c) the forthcoming motions to dismiss and to compel arbitration. As noted above, Defendants also respectfully submit that the discovery plan and deposition protocol adopted in the *Federal Housing Finance Agency* actions is not appropriate for these cases.

c. Limitations on timing and sequence of discovery:

NCUA's Position: NCUA proposes that fact discovery be completed before expert disclosures and expert discovery. Given the volume of documents and the extensive third-party and expert discovery expected in this case and the coordination of discovery with the District of Kansas and the Central District of California, NCUA believes that a 14 month fact discovery period, followed by a four month expert discovery period, is appropriate.

Defendants' Position: Defendants believe it is premature to impose a specific discovery schedule, or rule on the extent of inter-district coordination in light of: (a) the PSLRA discovery stay; (b) the pending MDL Motion; and (c) the forthcoming motions to dismiss and to compel arbitration. Moreover, each case involves different securities, different securitizations and different Defendants.

Accordingly, a specific discovery schedule and coordination plan should be revisited at a later date.

d. Limitations on restoration of electronically-stored information:

The parties have submitted a joint ESI submission addressing the issues set forth in Exhibit B to the Standing Order Pilot Project Regarding Case Management.

e. Agreement to allow depositions of trial witnesses named if not already deposed:

The parties agree that a party shall have the right to depose, prior to the witness's live testimony at trial, any witness designated by the opposing party to testify at trial who has not previously been deposed in that action.

f. Preservation depositions:

NCUA's Position: NCUA reserves the right to take document preservation depositions.

Defendants' Position: Defendants believe it is premature to discuss document preservation depositions at this juncture in light of: (a) the PSLRA discovery stay; (b) the pending MDL Motion; and (c) the forthcoming motions to dismiss and to compel arbitration. That said, Defendants do not oppose preservation depositions in principle, but believe the parties should meet and confer about the timing and necessity of such depositions at the appropriate time.

g. Foreign discovery and issues anticipated:

The parties do not anticipate any foreign issues or the need for any foreign discovery.

8. Proposed Schedule

NCUA's Position: See Section B, below.

Defendants' Position: Defendants believe it is premature to set a schedule at this juncture in light of: (a) the PSLRA discovery stay; (b) the pending MDL Motion; (c) the forthcoming motions to dismiss and to compel arbitration. It is far too early for the parties to be able to determine a specific, workable expert discovery schedule, again demonstrating why scheduling issues should be revisited after Defendants' motions to dismiss are resolved. While Defendants submit that the Court should defer setting a schedule for discovery, if the Court entertains a schedule for discovery at this time, Defendants object to Plaintiff's proposal that all fact discovery be completed in 14 months given the large number of certificates and loans at issue. Moreover, Defendants note that four months is insufficient for the completion of expert discovery because expert discovery will likely involve at least two categories of issues—those pertaining to loan reunderwriting and those pertaining to non-reunderwriting issues—each of which may require different time periods to complete. Notwithstanding the above, Defendants present a counterproposal for the Court's consideration in Section B, below.

9. Issues to be tried; narrowing of issues/mini-trials

NCUA's Position: NCUA does not recommend any narrowing of the issues for trial or see the need for mini-trials.

Defendants' Position: Defendants believe it may be appropriate to hold mini-trials on certain discrete issues including, for example, statutes of limitations and loss causation, but believe that it is premature to decide such issues at this juncture.

10. Bifurcation

NCUA's Position: NCUA does not anticipate any need for bifurcated proceedings.

Defendants' Position: Defendants believe that bifurcation on certain issues such as damages and loss causation may be appropriate, but believe that it is premature to decide such issues at this juncture.

11. Class certification issues

Not applicable.

12. ADR/Mediation

NCUA's Position: NCUA is willing to engage in pre-discovery settlement discussions with Defendants, whether private or through the Court's ADR/mediation process in accordance with Local Civil Rule 83.9.

Defendants' Position: Each Defendant is willing to engage in good faith settlement discussions with NCUA, including mediation, at the appropriate time. Each Defendant believes the services of a private mediator may be necessary, however, and also note that a joint mediation would not be appropriate here.

13. Magistrate Trial

The parties do not consent to trial by Magistrate Judge.

14. Pleadings, including sufficiency and amendments, and timing of amendments

NCUA's Position: NCUA does not have any current intent to amend its Complaints, but anticipates that Defendants will move to dismiss those Complaints. Depending on the Court's ruling on the motions to dismiss, NCUA reserves the right to amend its Complaints as appropriate.

Defendants' Position: Defendants intend to move to dismiss NCUA's Complaints.

15. Joinder of Additional Parties

NCUA's Position: NCUA does not anticipate joining additional parties.

Defendants' Position: At this early stage of the proceedings, Defendants have not yet decided whether or not to join any additional parties.

16. Expert Witnesses

NCUA's Position: NCUA believes that expert witnesses will be necessary for these Cases, including, but not limited to, experts on the issues of statistical sampling, loan re-underwriting, and damages. NCUA further believes that because certain issues cut across all of the Cases, coordinated expert reports on certain issues may be appropriate.

Defendants' Position: Although Defendants would be willing to discuss the potential for coordination of experts, at this time, and for a variety of legal, factual and practical reasons, Defendants believe that they would be unable to coordinate experts for most, if not all, issues. For example, it is unlikely that one expert for any one subject (and particularly with reunderwriting loan files) would be able to handle all of the work for all defendants. Given the many practical impediments to coordination of experts, Defendants reserve the right to submit individual reports as they deem appropriate.

17. Damages

NCUA's Position: Most of NCUA's damages are prescribed by statute under the Securities Act of 1933, Illinois and Texas blue sky statutes (and applicable statutes concerning pre-judgment interest). NCUA will address this issue in discovery as appropriate.

Defendants' Position: Each Defendant denies that it has engaged in any wrongdoing, or that NCUA has suffered any damages here attributable to any alleged wrongdoing by any Defendant.

18. Final pretrial order

The parties propose filing a final pretrial order 45 days before the trial date.

Possible Trial Ready Date

NCUA's Position: The NCUA proposes that trials be staggered in a similar manner as the FHFA actions and that the first of the Cases should be ready for trial 24 months after the start of discovery.

Defendants' Position: Defendants believe that staggered trials may be appropriate here, but believe that it is premature to set trial dates at this juncture given the pendency of the MDL Motion and forthcoming motions to dismiss and to compel arbitration.

19. Court logistics and mechanics

NCUA's Position: NCUA proposes that Erik Haas and Peter Tomlinson of Patterson Belknap Webb & Tyler LLP serve as liaison counsel for NCUA in the above-captioned actions and shall ensure that all attorneys representing NCUA in the Cases receive notice of Court Orders. NCUA further proposes that counsel for Morgan Stanley, the lead case designated by the Court, serve as liaison counsel for all Defendants in the above-captioned actions, and ensure that all Defendants' attorneys in the Cases receive notice of Court Orders. Otherwise, NCUA will comply with the Court's Individual Practices with regard to communications with the Court and motion practice.

Defendants' Position: Defendants are amenable to having James Rouhandeh of Davis Polk & Wardwell LLP, counsel for Morgan Stanley, serve as liaison counsel for all Defendants in the above-captioned actions.

20. Additional meet and confer sessions

NCUA's Position: Apart from the issues discussed above, NCUA does not anticipate the need for additional meet and confer sessions at this time.

Defendants' Position: Given Defendants' position that many of the matters discussed above are premature to discuss or decide upon in detail at this juncture, Defendants believe certain issues may need to be revisited depending on the outcome of the MDL Motion and motions to dismiss.

B. THE PARTIES' PROPOSED SCHEDULE

Deadline	NCUA's Proposal	Defendants' Proposal
Completion of Fact Discovery	14 months after the start of fact discovery	19 months after the start of fact discovery
Completion of Expert Discovery	4 months after the close of fact discovery for first case to go to trial; 4 months before the trial date for all other cases.	Plaintiff's proposed time period is insufficient and will need to be tailored to account for re-underwriting reports versus non-reunderwriting reports. In any event Defendants believe they will need at a minimum 8 months for expert discovery.
Date(s) for Dispositive Motions	30 days after the close of expert discovery	30 days after the close of expert discovery

Deadline	NCUA's Proposal	Defendants' Proposal
Date(s) for Exchange of Initial Expert Reports	45 days after the close of fact discovery for the first case to go to trial; 6 months before the trial date for all other cases	These dates will need to be tailored to take account of re-underwriting reports versus non-re-underwriting reports
Date(s) for Exchange of Witness Lists	60 days before Trial	60 days before Trial
Date(s) for Joint Preliminary Trial Reports	45 days before Trial	45 days before Trial
Date(s) for Final Joint Trial Reports	45 days before Trial	45 days before Trial
Date(s) for Case Management Conference	40 days before Trial	40 days before Trial

Dated: November 6, 2013

Respectfully submitted,

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