

*To Be Argued By:*  
ROBERT J. GIUFFRA, JR., ESQ.  
*Time Requested: 30 Minutes*

New York County Clerk's Index No. 601475/09

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# Court of Appeals

## STATE OF NEW YORK

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ABN AMRO BANK N.V.; BNP PARIBAS; CALYON; HSBC BANK USA, N.A.;  
KBC INVESTMENTS CAYMAN ISLANDS V LTD.; MERRILL LYNCH  
INTERNATIONAL; BANK OF AMERICA, N.A.; MORGAN STANLEY CAPITAL  
SERVICES INC.; NATIXIS; NATIXIS FINANCIAL PRODUCTS INC.; THE ROYAL  
BANK OF SCOTLAND PLC; SOCIÉTÉ GÉNÉRALE; UBS AG, LONDON BRANCH;  
and WACHOVIA BANK, N.A.,

*Plaintiffs-Appellants,*

—and—

BARCLAYS BANK PLC; CITIBANK, N.A.; CANADIAN IMPERIAL BANK OF  
COMMERCE; JPMORGAN CHASE BANK, N.A.; COÖPERATIEVE CENTRALE  
RAIFFEISEN-BOERENLEENBANK B.A., NEW YORK BRANCH; ROYAL BANK OF  
CANADA; SMBC CAPITAL MARKETS LIMITED,

*Plaintiffs,*

—against—

MBIA INC., MBIA INSURANCE CORPORATION,  
and MBIA INSURANCE CORP. OF ILLINOIS,

*Defendants-Respondents.*

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### BRIEF FOR PLAINTIFFS-APPELLANTS

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Date Completed: March 16, 2011

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**STATEMENT PURSUANT TO § 500.1(F) OF  
THE RULES OF THE COURT OF APPEALS**

Plaintiff BNP Paribas states that it has over 1,000 subsidiaries and affiliates, which are too numerous to list, but states that its principal U.S. subsidiaries include Bank of the West; First Hawaiian Bank; BNP Paribas Securities Corp.; BNP Paribas Prime Brokerage, Inc.; BNP Paribas Commodity Futures Inc.; Paribas North America, Inc. and BNP Paribas North America, Inc. BNP Paribas states that its principal non-U.S. subsidiaries include Fortis Bank SA/NV; BGL BNP Paribas; BNL Banca Commerciale; BNP Paribas Securities Services and BNP Paribas Investment Partners.

**STATEMENT PURSUANT TO § 500.1(F) OF  
THE RULES OF THE COURT OF APPEALS**

Plaintiff Crédit Agricole Corporate and Investment Bank, New York Branch (f/k/a Calyon) states that it is 95.3% owned by Crédit Agricole S.A., whose shares are listed on the French Stock Exchange (the “Premier marché d’Euronext Paris”). Crédit Agricole S.A has over 600 subsidiaries and affiliates, which are too numerous to list.

**STATEMENT PURSUANT TO § 500.1(F) OF  
THE RULES OF THE COURT OF APPEALS**

Plaintiff HSBC Bank USA, N. A. states that it is a wholly-owned subsidiary of HSBC USA, Inc., which in turn, is a subsidiary of HSBC North America, Inc., which is indirectly owned by HSBC Holdings plc. HSBC Bank USA, N.A. has over 100 wholly owned subsidiaries too numerous to list, but states that its principal subsidiaries are HSBC Retail Credit (USA) Inc. and HSBC Mortgage Corporation (USA).

**STATEMENT PURSUANT TO § 500.1(F) OF  
THE RULES OF THE COURT OF APPEALS**

Plaintiff KBC Investments Cayman Islands V Ltd states that it is a wholly-owned subsidiary of KBC Investments Hong Kong Limited, which in turn is wholly owned by KBC Bank nv, which in turn is wholly owned by KBC Groep nv. KBC Investments Cayman Islands V Ltd does not have any operating subsidiaries.

KBC Groep nv has hundreds of subsidiaries too numerous to list, but states that its principal U.S. subsidiaries include Corona Delaware LLC; EK002 LLC; EK003 LLC; EK045 LLC; Equity Key LLC; Equity Key Real Estate Option LLC; KBC Alternative Investment Management (USA) Inc.; KBC Bank Funding LLC II; KBC Bank Funding LLC III; KBC Bank Funding LLC IV; KBC Bank Funding Trust II; KBC Bank Funding Trust III; KBC Bank Funding Trust IV; KBC Financial Holding Inc.; KBC Financial Products USA Inc.; Lonsdale LLC; Midas Life Settlements LLC; Pacifica Group LLC; Reverse Mortgage Loan Trust 2008-1; Upright Holdings FP Inc; World Alliance Financial Corporation; KBC Orion Commercial Loan Master Trust; BKB Realty Corporation and KBC Net Lease Investment LLC.

KBC Groep nv states that its principal non-U.S. subsidiaries include KBC Bank NV; KBC Verzekeringen NV; Kredietbank SA Luxembourgeoise; KBC Bank NV; Antwerpse Diamantbank NV; CBC Banque SA; Centea NV;

Ceskoslovenska Obchodna Banka a.s.; Ceskoslovenska Obchodni Banka a.s.;  
Cibank AD; Commercial Bank "Absolut Bank" (ZAO); K & H Bank Zrt.; KBC  
Asset Management NV; KBC Bank Deutschland AG; KBC Bank Ireland Plc.;  
KBC Financial Products UK Limited; KBC Investments Hong Kong Limited;  
KBC Investments Limited; KBC Lease Holding NV; KBC Private Equity NV;  
KBC Real Estate NV; KBC Securities NV; Kredyt Bank SA; Nova Ljubljanska  
Banka d.d.; KBC Verzekeringen NV; ADD NV; Assurisk SA; CSOB Pojist'ovna  
a.s.; CSOB Poist'ovna a.s.; Fidea NV; Groep VAB NV; K & H Insurance Rt.;  
KBC Banka A.D. Beograd; Towarzystwo Ubezpieczen I Reasekuracji WARTA  
SA; ZAD DZI Life; NLB Vita d.d.; Brown, Shipley & Co. Limited; KB Lux Immo  
SA; KBL Beteiligungs AG; KBL Monaco Private Bankers SA; KBL Richelieu  
Banque Privée SA; Kredietbank (Suisse) SA; Puilaetco Dewaay Private Bankers  
SA and Theodoor Gilissen Bankiers NV.

**STATEMENT PURSUANT TO § 500.1(F) OF  
THE RULES OF THE COURT OF APPEALS**

Plaintiff Merrill Lynch International states that it is a wholly-owned indirect subsidiary of Bank of America Corporation. Merrill Lynch International is directly owned by ML UK Capital Holdings (97.227% ownership) and SNC Securities Limited (2.773% ownership).

ML UK Capital Holdings is wholly owned by Merrill Lynch Holdings Limited, which in turn is wholly owned by MLEIH Funding, which in turn is wholly owned by Merrill Lynch Europe Intermediate Holdings, which in turn is wholly owned by Merrill Lynch Europe Limited, which in turn is owned by Merrill Lynch UK Holdings (79% ownership) and ML EMEA Holdings II LLC (21% ownership). Merrill Lynch UK Holdings is wholly owned by ML EMEA Holdings LLC, which in turn is wholly owned by Merrill Lynch International Incorporated, which in turn is wholly owned by Merrill Lynch & Co., Inc., which in turn is wholly owned by Bank of America Corporation. ML EMEA Holdings II LLC is wholly owned by Merrill Lynch Liquidity Portfolio, L.P., which in turn is wholly owned by Merrill Lynch Group Holdings I, L.L.C., which in turn is wholly owned by Merrill Lynch Group, Inc., which in turn is wholly owned by Merrill Lynch & Co., Inc., which in turn is wholly owned by Bank of America Corporation. Bank of America Corporation has 2,030 direct and indirect subsidiaries, which are too numerous to list.

SNC Securities Limited is wholly owned by Smith Bros Limited, which in turn is wholly owned by Merrill Lynch Holdings Limited, which in turn is wholly owned by MLEIH Funding. The ownership structure of MLEIH Funding is set forth above.



**STATEMENT PURSUANT TO § 500.1(F) OF  
THE RULES OF THE COURT OF APPEALS**

Plaintiff Bank of America, N.A. states that it is a wholly-owned indirect subsidiary of Bank of America Corporation. Bank of America, N.A. is wholly owned by BANA Holding Corporation, which in turn is wholly owned by BAC North America Holding Company, which in turn is wholly owned by NB Holdings Corporation, which in turn is wholly owned by Bank of America Corporation. Bank of America Corporation is the only publicly-held company that owns, directly or indirectly, a 10% or greater interest in Bank of America, N.A. Bank of America Corporation has 2,030 direct and indirect subsidiaries, which are too numerous to list.

**STATEMENT PURSUANT TO § 500.1(F) OF  
THE RULES OF THE COURT OF APPEALS**

Plaintiff Morgan Stanley Capital Services Inc. states that it is a wholly-owned, direct subsidiary of Morgan Stanley. Morgan Stanley Capital Services Inc. has no subsidiaries. Morgan Stanley's subsidiaries, as of September 30, 2010, include:

Bayfine DE LLC  
Bayview Holding Ltd.  
Bayfine Cayman Ltd.  
Bayfine DE Inc.  
Bayfine UK  
Belmondo LLC  
Cauca LLC  
Corporate Equipment Supplies, Inc.  
Cournot Holdings Inc.  
Cournot Capital Inc.  
Dean Witter Capital Corporation  
Dean Witter Realty Inc.  
Dean Witter Holding Corporation  
Civic Center Leasing Corporation  
Dean Witter Leasing Corporation  
Dean Witter Realty Credit Corporation  
Dean Witter Realty Fourth Income Properties Inc.  
Dean Witter Realty Growth Properties Inc.  
Dean Witter Realty Income Properties I Inc.  
Dean Witter Realty Income Properties II Inc.  
Dean Witter Realty Income Properties III Inc.

Dean Witter Realty Yield Plus Inc.  
Dean Witter Realty Yield Plus II Inc.  
Realty Management Service Inc.  
Dean Witter Reynolds Venture Equities Inc.  
Early Adopter Fund Manager Inc.  
Fuegos LLC  
Fundlogic (Jersey) Limited (Channel Island)  
FV-I, Inc.  
GSS III Funding, Inc.  
GSS III Funding Partner, Inc.  
Global Special Situations III Funding L.P.  
ISG Alternative Investments Inc.  
Japan Core Funding, Inc.  
Jolter Investments Inc.  
Morgan Rundle Inc.  
MR Ventures Inc.  
Morgan Stanley & Co. Incorporated  
Corporate Services Support Corp.  
Dean Witter Reynolds Insurance Agency (Ohio) Inc.  
Dean Witter Reynolds Insurance Agency (Oklahoma) Inc.  
Dean Witter Reynolds Insurance Agency (Texas) Inc.

Dean Witter Reynolds Insurance  
 Services, Inc. (Puerto Rico)  
 Graystone Wealth Management  
 Services LLC  
 Luxco 45 Sarl  
 Morgan Stanley Dean Witter  
 Insurance Services (Arizona) Inc.  
 Morgan Stanley Insurance Services  
 Inc.  
 Morgan Stanley Flexible Agreements  
 Inc.  
 Morgan Stanley Kew Limited  
 MS Alpha Holdings LLC  
 Morgan Stanley JV Holdings LLC  
 Morgan Stanley Smith Barney  
 Holdings LLC  
 AST StockPlan LLC  
 Consulting Group Advisory Services  
 LLC  
 Demeter Management LLC  
 Morgan Stanley GWM Feeder  
 Strategies LLC  
 Morgan Stanley HedgePremier GP  
 LLC  
 Morgan Stanley Smith Barney  
 Australia Pty Limited  
 Bow Lane Nominees Pty. Ltd.  
 Bowyang Nominees Pty Limited  
 Skeet Nominees Pty Limited  
 Morgan Stanley Smith Barney FA  
 Notes Holdings LLC  
 Morgan Stanley Smith Barney  
 Financing LLC  
 Morgan Stanley Smith Barney  
 Holdings (UK) Limited  
 Morgan Stanley Private Wealth  
 Management Limited  
 Quilter Holdings Limited  
 Quilter & Co. Limited

C.I.P.M. Nominees Limited (Channel  
 Island)  
 Coastal Nominees (International)  
 Limited  
 Coastal Nominees Limited  
 Commercial Trust Co. Ltd. (Channel  
 Island)  
 Hawkshead Trust Nominees Limited  
 Pembroke Quilter (Ireland) Nominees  
 Limited  
 QGCI Nominees Limited (Channel  
 Island)  
 Quilpep Nominees Limited  
 Quilter Fund Management Ltd.  
 Quilter Nominees Limited  
 Morgan Stanley Smith Barney LLC  
 Morgan Stanley Smith Barney  
 Insurance Services LLC  
 Morgan Stanley Smith Barney Payco  
 LLC  
 SBHU Life Agency Inc.  
 Morgan Stanley Smith Barney Private  
 Management II LLC  
 Morgan Stanley Smith Barney Private  
 Management LLC  
 Morgan Stanley Smith Barney  
 Venture Services LLC  
 Morgan Stanley Swiss Holdings  
 GmbH  
 Bank Morgan Stanley AG  
 MS Securities Services Inc.  
 Prime Dealer Services Corp.  
 V2 Holdings (USA), Inc.  
 E Musica Entertainment Group Inc.  
 Gee Street Records, Inc.  
 V2 Records, Inc.  
 V2 Publishing (Holdings) Limited  
 V2 Music Publishing (Holdings)  
 Limited  
 V2 Music Publishing Limited

Morgan Stanley ABS Capital I Inc.  
 Morgan Stanley ABS Capital II Inc.  
 Morgan Stanley Altabridge Ltd.  
 Morgan Stanley Amalthea UK  
 Limited  
 Morgan Stanley Amanu LLC  
 Makatea JV Inc.  
 Morgan Stanley Moorea Inc.  
 Morgan Stanley Pinaki Limited  
 Morgan Stanley Raraka Limited  
 Morgan Stanley Tepoto Limited  
 Morgan Stanley Asset Funding Inc.  
 Morgan Stanley Becketts LLC  
 Morgan Stanley Copse LLC  
 Morgan Stanley Chapel LLC  
 Woodcote Capital S.a.r.l.  
 Morgan Stanley Gerrards Limited  
 Morgan Stanley Atlas, Inc.  
 Morgan Stanley Barents LLC  
 Morgan Stanley Biscay LLC  
 Morgan Stanley Alpha Investments  
 LLP  
 Morgan Stanley Epsilon Investments  
 Limited  
 Morgan Stanley Plymouth Limited  
 Morgan Stanley Viking LLC  
 Morgan Stanley Fastnet LLC  
 Morgan Stanley Humber LLC  
 Fitzroy Partnership  
 Morgan Stanley Kite LLC  
 Morgan Stanley Swallow Limited  
 Hampshire Trading B.V.  
 Morgan Stanley Semaine Sarl  
 Ras Dashen Cayman Ltd.  
 Morgan Stanley Firecrest LLC  
 Morgan Stanley Plover Limited  
 Fyled Energy Limited  
 Fyled Limited Partnership  
 Morgan Stanley Foxton Limited  
 Partnership

Morgan Stanley Sandpiper Limited  
 Sand Lake Limited Partnership  
 Morgan Stanley Starling Limited  
 Morgan Stanley Puffin LLC  
 Morgan Stanley Boscastle Holding  
 Limited  
 Morgan Stanley Cornerways Cayman  
 Limited  
 Morgan Stanley Monmouth UK  
 Morgan Stanley Capital I Inc.  
 Morgan Stanley Capital Group Inc.  
 NewSubsidiary  
 Cayman Energy Ltd.  
 Ghent Energy Limited  
 Heidmar Group Inc.  
 Houston Bayport Energy LLC  
 MGM International Group LLC  
 Morgan Stanley Capital Group Czech  
 Republic s.r.o.  
 Morgan Stanley Capital Group  
 (España), S.L.  
 Morgan Stanley Clean Development,  
 LLC  
 Morgan Stanley Capital Group  
 Energy Europe Limited  
 Morgan Stanley Renewables  
 Development I (Cayman) Limited  
 Morgan Stanley Commodities  
 Investment Limited  
 Morgan Stanley Commodity  
 Opportunities Fund LLC  
 Morgan Stanley Energy Development  
 Corp.  
 Morgan Stanley Capital Group  
 Cyprus Limited  
 Morgan Stanley Petroleum  
 Development, LLC  
 Wellbore Capital, LLC  
 MS TELA LLC  
 MSDW Power Development Corp.

Cogeneracion Prat S.A.  
 Minnewit B.V.  
 MS Coal Trading Corp.  
 MS Solar Holdings Inc.  
 Solar Access CA, LLC  
 MS Solar Solutions Corp.  
 Naniwa Energy LLC  
 Naniwa Terminal LLC  
 Van Twillwer B.V.  
 Power Contract Finance, L.L.C.  
 Power Contract Financing II, Inc.  
 Power Contract Financing II, L.L.C.  
 South Eastern Electric Development  
 Corporation  
 South Eastern Generating Corporation  
 TransMontaigne Inc.  
 Olco Petroleum Group Inc.  
 Canterm Canadian Terminals Inc.  
 TransMontaigne Product Services Inc.  
 TransMontaigne Holdings Inc.  
 TransMontaigne GP L.L.C.  
 Utility Contract Funding II, L.L.C.  
 Morgan Stanley Capital Management,  
 LLC  
 Morgan Stanley Domestic Holdings,  
 Inc.  
 Morgan Stanley Bank, N.A.  
 Morgan Stanley Capital Partners III,  
 Inc.  
 Morgan Stanley Capital REIT Inc.  
 Saxon Advance Receivables  
 Company, Inc.  
 Morgan Stanley Capital REIT IV, Inc.  
 Morgan Stanley Capital Services Inc.  
 NewSubsidiary  
 MS Avondale 1 B.V.  
 MS Avondale 2 B.V.  
 Morgan Stanley Capital Trust III  
 Morgan Stanley Capital Trust IV  
 Morgan Stanley Capital Trust V

Morgan Stanley Collateralized  
 Financing Inc.  
 Morgan Stanley Commercial  
 Financial Services, Inc.  
 Morgan Stanley Commercial  
 Mortgage Capital, Inc.  
 Morgan Stanley Content Corporation  
 Morgan Stanley Darica Funding, LLC  
 Ascension Loan Vehicle, LLC  
 Morgan Stanley Dean Witter Equity  
 Funding, Inc.  
 Morgan Stanley Dean Witter  
 International Incorporated  
 Dean Witter Reynolds GmbH  
 Dean Witter Reynolds International,  
 Inc.  
 Morgan Stanley (DWRRBS) Limited  
 Morgan Stanley Derivative Products  
 Inc.  
 Morgan Stanley Distributors Inc.  
 Morgan Stanley Domestic Leasing  
 Inc.  
 Morgan Stanley Durango LLC  
 Morgan Stanley Afdera Cayman  
 Limited  
 Morgan Stanley Amba Alagi LLC  
 Morgan Stanley Ambasel LLC  
 Morgan Stanley Elan LLC  
 Cimarron Investments LLC  
 Riva Investments LLC  
 Morgan Stanley Emerging Markets  
 Inc.  
 Always Limited  
 Inter Capital Alliance Company  
 Limited  
 Inter Capital Alliance Holding  
 Limited  
 MS China 1 Limited  
 DAH Limited  
 Dare Limited

MS China 2 Limited  
 MS China 3 Limited  
 MS China 4 Limited  
 MS China 5 Limited  
 MSGHYLADD  
 MSJI 2 LLC  
 MSJI LLC  
 Philippine Asset Investment (SPV -  
 AMC) Inc.  
 Morgan Stanley Equity Services Inc.  
 Morgan Stanley Europa LLC  
 Morgan Stanley Callisto Cayman Ltd.  
 Morgan Stanley Elara Cayman Ltd.  
 Morgan Stanley Eurydome Cayman  
 Ltd.  
 Morgan Stanley Luxembourg  
 Holdings Sàrl  
 Morgan Stanley Europe Reinsurance  
 S.A.  
 Morgan Stanley Luxembourg  
 Reinsurance S.A.  
 Morgan Stanley Metis (Gibraltar)  
 Limited  
 Morgan Stanley Ganymede  
 Luxembourg Sarl  
 Morgan Stanley Ananke Luxembourg  
 Sarl  
 Morgan Stanley Carme Luxembourg  
 Sarl  
 Morgan Stanley Himalia Cayman  
 Limited  
 Morgan Stanley Sinope Cayman  
 Limited  
 Morgan Stanley Adrastea Netherlands  
 B.V.  
 Morgan Stanley IO Cayman Limited  
 Cayman Islands  
 Morgan Stanley Iocaste Cayman  
 Limited

Morgan Stanley Pasiphae Netherlands  
 B.V.  
 Morgan Stanley Leda Cayman Ltd.  
 Morgan Stanley Stoneyside Cayman  
 Limited  
 Morgan Stanley White Horse UK  
 Morgan Stanley Financial Products  
 Inc.  
 Morgan Stanley Fund Services Inc.  
 Morgan Stanley Fund Services  
 (Bermuda) Ltd.  
 Morgan Stanley Fund Services  
 (Cayman) Ltd.  
 Morgan Stanley Fund Services  
 (Ireland) Limited  
 Morgan Stanley Fund Services (UK)  
 Limited  
 Morgan Stanley Fund Services USA  
 LLC  
 Morgan Stanley Galway LLC  
 Morgan Stanley Global Emerging  
 Markets, Inc.  
 Morgan Stanley Global Funding Trust  
 Morgan Stanley Global Strategies  
 Management Holdings, Inc.  
 Morgan Stanley Global Strategies  
 Management LLC  
 Morgan Stanley Hedging Co. Ltd.  
 Morgan Stanley International  
 Holdings Inc.  
 Arno Limited  
 European Principal Assets Limited  
 Credito Fondario e Industriale -  
 Fonspa SpA  
 Limited Liability Company City  
 Mortgage Bank  
 Pylon Holding Limited  
 Limited Liability Company  
 Rinocenter  
 Volmar Holdings Limited

Fosbury Investments Cooperatieve  
 U.A. Netherlands  
 ITALSEC S.r.l.  
 Morgan Stanley AB  
 Morgan Stanley Advantage Services  
 Private Limited  
 Morgan Stanley Asia Holdings I Inc.  
 Morgan Stanley Asia Holdings II Inc.  
 Morgan Stanley Asia Holdings III  
 Inc.  
 Morgan Stanley Asia Holdings IV  
 Inc.  
 Morgan Stanley Asia Holdings VI  
 Inc.  
 Morgan Stanley Asia Pacific  
 (Holdings) Limited  
 Morgan Stanley (Hong Kong)  
 Holdings Limited  
 Morgan Stanley Asia International  
 Limited  
 Morgan Stanley Asia Regional  
 (Holdings) IV Limited  
 Morgan Stanley Hong Kong 1238  
 Limited  
 Morgan Stanley Asia Securities  
 Products LLC  
 Morgan Stanley Asia Limited  
 Morgan Stanley Asia Products  
 Limited  
 Morgan Stanley Hong Kong  
 Securities Limited  
 Morgan Stanley Asia (Taiwan) Ltd.  
 Morgan Stanley Hong Kong Futures  
 Limited  
 Morgan Stanley Hong Kong 1239  
 Limited  
 Morgan Stanley Information  
 Technology (Shanghai) Limited  
 Morgan Stanley Services Limited  
 MSDW-JL Holdings I Limited

Morgan Stanley Bosphorus Limited  
 Morgan Stanley Canmore Limited  
 Morgan Stanley Caledonia Limited  
 Morgan Stanley Japan (Holdings) Ltd.  
 City Forum Capital Limited  
 Morgan Stanley Asia Regional  
 (Holdings) III Limited  
 Morgan Stanley (Singapore) Holdings  
 Pte. Ltd.  
 Morgan Stanley Asia (Singapore) Pte.  
 Morgan Stanley Asia (Singapore)  
 Securities Pte Ltd  
 Morgan Stanley Capital Group  
 (Singapore) Pte.  
 Morgan Stanley Investment  
 Management Company  
 Morgan Stanley Labuan Investment  
 Bank Limited  
 Morgan Stanley Singapore Pte. Ltd.  
 Morgan Stanley Dean Witter Japan  
 Group, Ltd.  
 MSDW-JL Holdings II Limited  
 Morgan Stanley Products Limited  
 MS Capital Cayman Ltd.  
 MS Remora Ltd.  
 MSJL Holdings 4682 Limited  
 MS CYM Preferred Ltd.  
 MSJS Preferred YK  
 MSJL Holdings Limited  
 Morgan Stanley Japan Holdings Co.,  
 Ltd.  
 Hybrid Capital K.K.  
 TM, Limited  
 Hybrid Capital Second K.K.  
 Jipang Mortgage Finance Co., Ltd.  
 Morgan Stanley Asset & Investment  
 Trust Management Co., Limited  
 Morgan Stanley Japan Securities Co.,  
 Ltd.

Morgan Stanley Japan Business  
 Group Co., Ltd.  
 Morgan Stanley Japan Group Co.,  
 Ltd.  
 Morgan Stanley Capital K.K.  
 K.K. MST Investment Management  
 Morgan Stanley Tokyo Properties  
 K.K.  
 MS Real Estate Advisors Co., Ltd.  
 Panorama Hospitality, K.K.  
 MSDW Birkdale Limited  
 MSDW Muirfield Limited  
 MSDW Lytham Limited  
 Swilken Limited  
 Morgan Stanley Asia Pacific Services  
 Limited  
 Morgan Stanley Asset Management  
 S.A.  
 Morgan Stanley Australia Finance  
 Limited  
 Morgan Stanley (Australia) Real  
 Estate Holdings Pty Limited  
 Morgan Stanley (Australia) Servco  
 Pty Limited  
 Morgan Stanley International Real  
 Estate Limited  
 Morgan Stanley Bank AG  
 Morgan Stanley B.V.  
 Morgan Stanley Canada Limited  
 Morgan Stanley Capital  
 (Luxembourg) S.A.  
 Morgan Stanley Capital, S.A. de C.V.,  
 SOFOM, E.N.R.  
 Morgan Stanley Cayman Holdings I  
 Limited  
 Morgan Stanley Commodities  
 Trading Cayman Holdings Limited  
 Morgan Stanley Commodities  
 Trading Hong Kong Holdings  
 Limited

Morgan Stanley Commodities  
 Trading (China) Limited  
 MS Gamma Holdings LLC  
 Cabot 37 Limited  
 Cabot 34 Limited  
 Cabot 35 Limited  
 Morgan Stanley Hong Kong Limited  
 Morgan Stanley Hong Kong  
 Nominees Limited  
 Morgan Stanley Hungary Analytics  
 Limited  
 Morgan Stanley International Limited  
 Morgan Stanley Group (Europe)  
 Advantage Home Loans Limited  
 Bayfine UK Products  
 Morgan Stanley Angel Limited  
 Suffolk Trading B.V.  
 V2 Music (Holdings) Limited  
 Morgan Stanley Leitrim Sarl  
 Morgan Stanley Kerry Limited  
 Morgan Stanley Richmond Limited  
 Morgan Stanley Bank International  
 Limited  
 Morgan Stanley Bank International  
 (China) Limited  
 Morgan Stanley Capital Group  
 Limited  
 Morgan Stanley (Europe) Limited  
 Morgan Stanley Gala Limited  
 (Channel Island)  
 Morgan Stanley Finance plc  
 Morgan Stanley Caballa Limited  
 Morgan Stanley Gastoro Investments  
 Limited  
 Morgan Stanley Pintado Investments  
 Limited  
 Woburn IV Cooperatieve U.A.  
 Woburn V Cooperatieve U.A.  
 Morgan Stanley Corporate Holdings  
 Limited



MSDW Corporate Investments I  
 Limited (Channel Island)  
 MSDW Corporate Investments II  
 Limited (Channel Island)  
 Sunningdale Cooperatieve UA  
 Wentworth Cooperatieve U.A.  
 Woburn Cooperatieve UA  
 Morgan Stanley Investments (UK)  
 Limited  
 Morgan Stanley Investment  
 Management Limited  
 Morgan Stanley Investment  
 Management (ACD) Limited  
 Morgan Stanley JY Holdings Limited  
 Morgan Stanley JY Limited  
 Morgan Stanley Property  
 Management (UK) Limited  
 Morgan Stanley Services (UK)  
 Limited  
 Morgan Stanley (Structured Products)  
 Jersey Limited (Channel Island)  
 Morgan Stanley UK Group  
 Morgan Stanley & Co. International  
 plc  
 Cabot 38 Limited  
 Morgan Stanley Derivative Products  
 (Singapore) Pte. Ltd.  
 Morgan Stanley Equity Trading  
 (Singapore) Pte. Ltd.  
 Morgan Stanley Derivative Products  
 (Spain) S.L.  
 Morgan Stanley Humboldt  
 Investments Limited  
 Clearcreek, S.L.  
 Morgan Stanley Langton Limited  
 Morgan Stanley Longcross Limited  
 Morgan Stanley Derivative Products  
 (Netherlands) B.V.  
 Drake II Investments Limited  
 Morgan Stanley Maple Limited

Morgan Stanley Bridel S.a.r.l.  
 Morgan Stanley Strategic Investments  
 Limited  
 Morgan Stanley Lyle Investments  
 Limited  
 Morgan Stanley Dover Investments  
 Limited  
 Morgan Stanley Fisher Investments  
 Limited  
 Ashwood Cooperatieve U.A.  
 Badalona Investments I Limited  
 Badalona Investments II Limited  
 Badalona Investments III Limited  
 Badalona Investments IV Limited  
 Morgan Stanley Lundy Investments  
 Limited  
 Wadway 1 Cooperatieve U.A.  
 Wadway2 Cooperatieve U.A.  
 Sabadell Investments I Limited  
 Sabadell Investments II Limited  
 Sabadell Investments III Limited  
 Sabadell Investments IV Limited  
 Woburn VI Cooperatieve U.A.  
 Morgan Stanley Elz GmbH  
 Morgan Stanley Saar GmbH  
 Morgan Stanley Equity Finance  
 (Denmark) ApS  
 Morgan Stanley Equity Financing  
 Services (Sweden) AB  
 Morgan Stanley (France) SAS  
 Morgan Stanley Havel GmbH  
 Morgan Stanley Dill GmbH  
 Morgan Stanley Main GmbH  
 Morgan Stanley Isar GmbH  
 Morgan Stanley Mosel GmbH  
 Morgan Stanley Kochi Limited  
 Camomile Liffey Investments (UK)  
 Limited  
 Morgan Stanley Durham Investments  
 Limited

Honeybourne Holdings Limited  
 Morgan Stanley Devon Investments  
 Limited  
 Morgan Stanley Cumbria Investments  
 Morgan Stanley Berkshire  
 Investments Limited (Channel  
 Island)  
 Morgan Stanley Cheshire Investments  
 Limited (Channel Island)  
 Morgan Stanley Dorset Investments  
 Limited  
 Kerala Investments Limited  
 Morgan Stanley Cork Limited  
 Morgan Stanley Malabar Limited  
 Morgan Stanley Creedy Limited  
 Morgan Stanley Brunton Sarl  
 Morgan Stanley Putney Limited  
 Morgan Stanley Hoxne Limited  
 Morgan Stanley Lowman Limited  
 Morgan Stanley Mildenhall S.a.r.l.  
 Morgan Stanley Byzantine S.a.r.l.  
 Morgan Stanley Rosetta Investments  
 S.a.r.l.  
 Morgan Stanley Finchley Limited  
 Morgan Stanley Rasam Limited  
 Morgan Stanley Vindolanda Equity  
 S.a.r.l.  
 Morgan Stanley Shannon Limited  
 Morgan Stanley Adur Limited  
 Morgan Stanley Shoreditch Limited  
 Morgan Stanley Mandarin Limited  
 Morgan Stanley Harlequin  
 Investments Limited  
 Morgan Stanley Pintail Investments  
 Limited  
 Bonaire Cooperatieve U.A.  
 Metsys Cooperatieve U.A.  
 Orangewood Cooperatieve U.A.  
 Saenredam Cooperatieve U.A.  
 Saldanha Cooperatieve U.A.

Tamboer Cooperatieve U.A.  
 Morgan Stanley Neudorf S.a.r.l.  
 Morgan Stanley Piccadilly Limited  
 Morgan Stanley Rhein SARL  
 Morgan Stanley Clausen Sarl  
 Morgan Stanley Eich Sarl  
 Morgan Stanley Rivelino Investments  
 Limited  
 Morgan Stanley Dolor Limited  
 Morgan Stanley Gerson Limited  
 Morgan Stanley Tostao Limited  
 Morgan Stanley Silvermere Limited  
 Morgan Stanley Bowline Limited  
 Morgan Stanley Penberthy Limited  
 Archimedes Investments  
 Cooperatieve U.A.  
 Hanger Straight Limited  
 Terrassa I Investments Limited  
 Terrassa II Investments Limited  
 Terrassa III Investments Limited  
 Terrassa IV Investments Limited  
 Morgan Stanley Shanklin Limited  
 Morgan Stanley Northcote  
 Investments Limited  
 Bermont Cooperatieve U.A.  
 Borderwijk Cooperatieve U.A.  
 Morgan Stanley Norton Investments  
 Limited  
 Morgan Stanley Victoria Limited  
 Shavano Cooperatieve U.A.  
 Morgan Stanley Hampstead Limited  
 Morgan Stanley Yarmouth Limited  
 Morgan Stanley Taiwan Limited  
 Morgan Stanley Waterloo Limited  
 Moor Lane Investments Limited  
 (Channel Island)  
 MSDW Portrush Limited  
 Morgan Stanley Propus Limited  
 Morgan Stanley Bathern Limited  
 Morgan Stanley Ursa SARL

Morgan Stanley Hercules SARL  
 Morgan Stanley Lyra SARL  
 Morgan Stanley Temple Limited  
 Newburgh Investments Limited  
 Morgan Stanley Turnberry Limited  
 Morgan Stanley Medway Limited  
 Morgan Stanley Cadzand II Limited  
 Morgan Stanley Ock Limited  
 Morgan Stanley Weaver Sarl  
 Morgan Stanley Cadzand III Limited  
 Morgan Stanley Knightsbridge  
 Limited  
 Morgan Stanley Oostburg B.V.  
 Morgan Stanley Oostburg and  
 Partners S.e.c.s.  
 Ramey Sarl  
 Morgan Stanley Mallard Investments  
 Limited  
 Carysforth Investments Limited  
 Haddington Investments Limited  
 Morgan Stanley Millbrae Investments  
 B.V.  
 Morgan Stanley Montgomerie  
 Investments Limited  
 Morgan Stanley Cadzand Limited  
 Morgan Stanley Malin Investments  
 Limited  
 Woburn III Cooperatieve U.A.  
 Morgan Stanley Raleigh Investments  
 Limited  
 Morgan Stanley Langtree Investments  
 B.V.  
 Drake Investments Limited  
 Norwegian Energy Limited  
 Morgan Stanley & Co. Limited  
 East Sussex Financing Limited  
 (Channel Island)  
 Cottenden Financing Unlimited  
 (Channel Island)  
 Morgan Stanley Securities Limited

Morstan Nominees Limited  
 Morgan Stanley UK Limited  
 Morgan Stanley Pension Trustee  
 Limited  
 Morgan Stanley Trustee Limited  
 Morgan Stanley Wertpapiere GmbH  
 OOO Morgan Stanley Bank  
 Morgan Stanley Strategic Funding  
 Limited  
 MS Leasing UK Limited  
 Morgan Stanley Finance (C.I.)  
 Limited (Channel Island)  
 MSDW Fixed Income Limited  
 (Channel Island)  
 Morgan Stanley Jubilee Investments  
 Limited  
 Augusta Cooperatieve U.A.  
 Morgan Stanley Eden Investments  
 Limited  
 Willow Capital Limited (Channel  
 Island)  
 Morgan Stanley Investment  
 Management (Australia) Pty  
 Limited  
 Morgan Stanley Investment  
 Management (Korea) Limited  
 Morgan Stanley Investments  
 (Mauritius) Limited  
 Morgan Stanley (Israel) Ltd.  
 Morgan Stanley Japan Limited  
 Morgan Stanley Latin America  
 Incorporated  
 Banco Morgan Stanley S.A.  
 Morgan Stanley Administradora de  
 Carteiras S.A.  
 Morgan Stanley C.T.V.M. S.A.  
 Morgan Stanley Dean Witter do  
 Brasil Ltda.  
 Morgan Stanley Uruguay Ltda.

Morgan Stanley Mauritius Company  
 Limited  
 Alanoushka Finlease and Investments  
 Private Limited  
 Morgan Stanley Asia Regional  
 (Holdings) II LLC  
 Morgan Stanley India Capital Private  
 Limited  
 Morgan Stanley India Primary Dealer  
 Private Limited  
 Morgan Stanley India Securities  
 Private Limited  
 Morgan Stanley India Company  
 Private Limited  
 Morgan Stanley India Financial  
 Services Private Limited  
 Morgan Stanley India Services  
 Private Limited  
 Morgan Stanley Investment  
 Management Private Limited  
 MSIM Global Support and  
 Technology Services Private  
 Limited  
 Morgan Stanley Menkul Degerler  
 A.S.  
 Morgan Stanley México, Casa de  
 Bolsa, S.A. de C.V.  
 Morgan Stanley (Thailand) Limited  
 Morgan Stanley San Donato SARL  
 Morgan Stanley Syrah Two Limited  
 Morgan Stanley Donegan Limited  
 Morgan Stanley Middle East Inc.  
 Morgan Stanley Saudi Arabia  
 Morgan Stanley Mortgage Servicing  
 Limited  
 Prime Commercial Mortgage  
 Servicing GmbH  
 Morgan Stanley Pacific Services  
 Limited

Morgan Stanley Poggio Secco  
 Limited  
 Alpino Investments Limited  
 Morgan Stanley Clare SARL  
 Morgan Stanley Private Equity  
 Management Korea, Ltd.  
 Morgan Stanley Real Estate  
 Investment GmbH  
 Morgan Stanley SGR (Società di  
 Gestione del Risparmio) SpA  
 Morgan Stanley Spanish Holdings  
 S.L.U.  
 Morgan Stanley SV, SAU  
 Morgan Stanley Structured Products  
 (Cayman) I Limited  
 Morgan Stanley Pacific Limited  
 Morgan Stanley Investment  
 Consultancy (Beijing) Company  
 Limited  
 Morgan Stanley Trading  
 Beteiligungs-GmbH  
 Morgan Stanley Ukraine LLC  
 MS Equity Financing Services  
 (Luxembourg) S.à.r.l.  
 MS Italy (Holdings) Inc.  
 MSAM/Kokusai (Cayman Islands),  
 Inc.  
 MSAM/Kokusai II (Cayman Islands),  
 Inc.  
 MSDW Finance (Netherlands) BV  
 MSDW Investment Holdings (US)  
 Inc.  
 Morgan Stanley UK Trader  
 Morgan Stanley Corporate Trader  
 Morgan Stanley Financial Trader  
 Morgan Stanley Equity Trader  
 Morgan Stanley Weser GmbH  
 MSDW Investments (Cayman)  
 Limited

MSDW Investment Holdings (UK)  
 Ltd.  
 Cabot 1 Limited  
 Applied Risc Technologies Limited  
 Cornwall Financing UK Limited  
 (Channel Island)  
 Morgan Stanley Cornwall  
 Investments UK Limited (Channel  
 Island)  
 Morgan Stanley Investment Holdings  
 Jersey Limited Channel Island  
 Lancashire Trading B.V.  
 Norfolk Trading B.V.  
 Wiltshire Trading B.V.  
 Morgan Stanley Funding Limited  
 (Channel Island)  
 Yorkshire Trading B.V.  
 MSL Incorporated  
 Morgan Stanley SPV I (Cayman  
 Islands) LLC  
 Farlington Company  
 Providence DE LLC  
 Providence Canada Co.  
 Providence Cayman Investments  
 Limited  
 Providence DE Investments Co.  
 PT Morgan Stanley Asia Indonesia  
 PT Morgan Stanley Indonesia  
 Morgan Stanley International  
 Incorporated  
 Morgan Stanley South Africa (Pty)  
 Limited  
 Morgan Stanley Asia Holdings V Inc.  
 Morgan Stanley (Australia) Holdings  
 Pty Limited  
 Morgan Stanley Australia Limited  
 Morgan Stanley (Australia) Securities  
 Holdings Pty Limited  
 Morgan Stanley Australia Securities  
 Limited

Morgan Stanley Australia Securities  
 (Nominee) Pty Limited  
 Morgan Stanley Capital Holdings  
 Morgan Stanley Dean Witter  
 Financial Holdings, LLC  
 Morgan Stanley Hong Kong Finance  
 Limited  
 Morgan Stanley UK Capital Limited  
 Morgan Stanley Dean Witter HK  
 RAV IV, LLC  
 The HK RAV IV Trust  
 Morgan Stanley International Finance  
 SA  
 Morgan Stanley International  
 Insurance Ltd.  
 MSIL Captive Insurance, Inc.  
 Morgan Stanley SerCo Solutions Pty  
 Limited  
 Morgan Stanley SPV II (Cayman  
 Islands) LLC  
 MSDWIH Limited  
 Cabot 2 Limited  
 MS Cabot Inc.  
 Morgan Stanley Investment Advisors  
 Inc.  
 Morgan Stanley Services Company  
 Inc.  
 Morgan Stanley Investment  
 Management Inc.  
 Morgan Stanley AIP Funding Inc.  
 Morgan Stanley Alternative  
 Investments Inc.  
 GTB Capital Partners GP LP  
 Morgan Stanley AIP (Cayman) GP  
 Ltd.  
 Morgan Stanley Select Investment  
 Strategies Ltd.  
 Morgan Stanley AIP Falconer 2008  
 GP LP  
 Morgan Stanley AIP GP LP

Morgan Stanley Alternative  
 Investment Partners LP  
 Morgan Stanley Comprehensive  
 Alternatives Fund I LP  
 Morgan Stanley EPMF I GP LP  
 Morgan Stanley GDOF GP LP  
 Morgan Stanley PMF III GP LP  
 Morgan Stanley SCRSIC Strategic  
 Partnership Fund GP Inc.  
 Morgan Stanley Distribution, Inc.  
 Morgan Stanley (Jersey) Limited  
 (Channel Island)  
 Morgan Stanley Leveraged Equity  
 Fund II, Inc.  
 Morgan Stanley Private Equity Asia  
 (Cayman) Limited  
 Morgan Stanley Private Equity Asia  
 Limited  
 Morgan Stanley Private Equity  
 Advisory (Beijing) Limited  
 Morgan Stanley Leveraged Equity  
 Holdings Inc.  
 Morgan Stanley Life Holding  
 Incorporated  
 Longevity Insurance Company  
 Morgan Stanley Malbec LLC  
 Morgan Stanley ML Acquisition Inc.  
 Morgan Stanley Mortgage Capital  
 Holdings LLC  
 Morgan Stanley Capital REIT II Inc.  
 Morgan Stanley Capital REIT III Inc.  
 Morgan Stanley Dean Witter Asset  
 Capital Inc.  
 Morgan Stanley Residential Mortgage  
 Inc.  
 MSSHG I Ltd.  
 Saxon Capital, Inc.  
 Saxon Capital Holdings, Inc.  
 SCI Services, Inc.  
 Saxon Mortgage, Inc.

Saxon Holding, Inc.  
 TRS Securities and Certificates, Inc.  
 Saxon Mortgage Services, Inc.  
 Saxon Funding Management LLC  
 Morgan Stanley Securitized Assets  
 LLC  
 Saxon Asset Securities Company  
 Morgan Stanley Municipal Funding  
 Inc.  
 Morgan Stanley Municipal  
 Management, Inc.  
 Morgan Stanley Overseas Finance  
 Ltd.  
 Morgan Stanley Overseas Services  
 (Jersey) Limited (Channel Island)  
 Morgan Stanley Preferred Strategies  
 Inc.  
 Morgan Stanley Principal Funding,  
 Inc.  
 Morgan Stanley (Hungary) Financial  
 Services Limited Liability  
 Company  
 MSXL Asia Pacific Limited  
 MSXL China Ltd.  
 SPV Columbus S.r.L.  
 Morgan Stanley Principal Strategies,  
 Inc.  
 Morgan Stanley Private Equity Asia,  
 Inc.  
 Morgan Stanley Real Estate Advisor,  
 Inc.  
 MSREA Holdings, Inc.  
 MS Multifamily Investment Platform,  
 Inc.  
 MSREA Holdings, LLC  
 MSREA LL Holdings, LLC  
 Morgan Stanley Real Estate Funding  
 II, Inc.  
 Morgan Stanley Real Estate Funding  
 II, L.P.

MS Moon Holdings LLC  
 DBFLA Services LLC  
 Morgan Stanley Real Estate F  
 Funding, Inc.  
 Morgan Stanley Real Estate F  
 Funding Partner, Inc.  
 Morgan Stanley Real Estate F  
 International Funding, L.P.  
 Morgan Stanley Real Estate  
 Investment Management Inc.  
 Morgan Stanley Real Estate Fund,  
 Inc.  
 MSREF I, L.L.C.  
 Morgan Stanley Real Estate  
 Investment Management II, Inc.  
 MSREF II-CO, L.L.C.  
 Morgan Stanley Realty Incorporated  
 BH-MS Realty Inc.  
 BH-MS Leasing Inc.  
 Brooks Harvey & Co., Inc.  
 Dean Witter Global Realty Inc.  
 Japan Realty Finance Company II  
 Lombard Servicing Inc.  
 Morgan Stanley Properties, Inc.  
 Morgan Stanley Capital (Real Estate)  
 Pte. Ltd.  
 Morgan Stanley Properties Corso  
 Venezia S.r.l.  
 Morgan Stanley Properties France  
 SAS  
 Morgan Stanley Properties Germany  
 GmbH  
 Morgan Stanley Properties Hong  
 Kong Limited  
 Morgan Stanley Capital Ltd.  
 MSK Management II, Ltd.  
 Morgan Stanley Properties  
 (Mauritius) India

Morgan Stanley Properties India Real  
 Estate Management Private  
 Limited  
 MSP China Holdings Limited  
 Morgan Stanley Properties Advisory  
 Corp. Limited  
 Beijing Kaili Asset Servicing Co.,  
 Ltd.  
 Morgan Stanley Properties (China)  
 Co. Ltd.  
 MSDI Investment Services  
 Panorama Hospitality Global, Inc.  
 Panorama Hospitality Limited  
 MS Japan REIT Holding KK  
 MS Japan Strategic Core Acquisition  
 KK  
 Tokyo Realty Investment Company II  
 Morgan Stanley Reinsurance Ltd.  
 Morgan Stanley Renewables Inc.  
 Morgan Stanley Biomass LLC  
 Morgan Stanley BrightSource LLC  
 Morgan Stanley Geothermal LLC  
 Morgan Stanley Renewable  
 Development Fund LLC  
 Third Planet Windpower, LLC  
 Morgan Stanley Wind LLC  
 MS Greenrock LLC  
 Carson Solar I, LLC  
 MS Solar I LLC  
 MF Mesa Lane, LLC  
 MS SolarCity LLC  
 Solar Star California III LLC  
 Solar Star California V LLC  
 Solar Star California VI LLC  
 Solar Star California IX LLC  
 Solar Star WMT I, LLC  
 Morgan Stanley Risk Services LLC  
 Morgan Stanley SECAP Funding,  
 LLC

Morgan Stanley Secured Financing  
 LLC  
 Morgan Stanley Securities, Inc.  
 MS Equity Products (Luxembourg)  
 S.à.r.l  
 Morgan Stanley Foreign Complex  
 Trust  
 Morgan Stanley Securitization  
 Funding Inc.  
 Morgan Stanley Senior Funding, Inc.  
 Inversiones Sudamerica Uno Ltda  
 Morgan Stanley European Event  
 Driven Finance, Inc.  
 Morgan Stanley European Funding,  
 Inc.  
 Morgan Stanley European Leveraged  
 Products Inc.  
 Morgan Stanley European  
 Transaction Finance, Inc.  
 Morgan Stanley MSSF LLC  
 Morgan Stanley Senior Funding  
 (Capital), Inc.  
 Morgan Stanley Senior Funding  
 (Nova Scotia) Co.  
 MSSFG (SPV-AMC) Inc  
 Tenedora Dalia, S.A. de C.V.,  
 SOFOM, E.N.R.  
 Morgan Stanley Services Canada  
 Holding Corp.  
 Morgan Stanley Services Canada  
 Corp.  
 Morgan Stanley Services Inc.  
 Morgan Stanley Special Situations  
 Group Inc.  
 Morgan Stanley Stingray LLC  
 Morgan Stanley Syrah One Limited  
 Morgan Stanley Barbera One Limited  
 Morgan Stanley Grenache One  
 Limited

Morgan Stanley Grenache Three  
 Limited  
 Morgan Stanley Grenache Two  
 Limited  
 Morgan Stanley Technical Services  
 Inc.  
 Morgan Stanley Technical Services  
 MB/VC Inc.  
 Morgan Stanley Tindur LLC  
 Morgan Stanley Arete Limited  
 Morgan Stanley Hubbard Inc.  
 Drumlin JV Inc.  
 Morgan Stanley Immarsuak LLC  
 Morgan Stanley Hatteras I LLC  
 Morgan Stanley Pennine LLC  
 Morgan Stanley Scaffell Limited  
 Morgan Stanley Snowdon Inc.  
 Hamar JV Inc.  
 Morgan Stanley Torridon LLC  
 Morgan Stanley Hatteras II LLC  
 Morgan Stanley Tower, LLC  
 MS Financing Inc.  
 NewSubsidiary  
 Broadway 522 Fifth JV LLC  
 G.H.Y. Capital II B.V.  
 Morgan Stanley 1585 Broadway LLC  
 Morgan Stanley 750 Building Corp.  
 G.H.Y. Capital B.V.  
 MS Beta Holdings LLC  
 Morgan Stanley CS Aviation  
 Holdings, LLC  
 MSDW LTCP, L.L.C.  
 MS Harrison LLC  
 Morgan Stanley Trust  
 Morgan Stanley Credit Corporation  
 Morgan Stanley Credit Corporation of  
 Iowa  
 Morgan Stanley Credit Corporation of  
 Minnesota



Morgan Stanley Credit Corporation of Pennsylvania	Morgan Stanley Private Equity Asia III, Inc.
Morgan Stanley Credit Corporation of Tennessee	Morgan Stanley Private Equity Asia III, L.L.C.
NOVUS Financial Corporation of Washington	MSPEA SLP III, L.L.C.
NOVUS Receivables Financing Inc.	Morgan Stanley Real Estate Securities Global Best Ideas GP Inc.
Morgan Stanley Trust National Association	MS Alternatives Funding, Inc.
Morgan Stanley Venture Capital III, Inc.	MS Alternatives Funding Partner, Inc.
Morstan Development Company, Inc.	Morgan Stanley Capital Partners V Funding LP
MS 10020, Inc.	MS Infrastructure I Funding LP
MS Debt Opportunities Corp.	MS Alternatives Holding C Inc.
MS Hawk I LLC	MS Alternatives Holding C (Cayman) Ltd.
MS Holdings Incorporated	MS Alternatives Holding D Inc.
ARS FIHF GP Inc.	MS Alternatives Holding E Inc.
ARS GMEMN GP Inc.	MS ARS Holding A Inc.
Morgan Stanley ARS Funding Inc.	MS ARS Holding B Inc.
Morgan Stanley HFP Investment Inc.	MS Capital Partners Adviser Inc.
Morgan Stanley Hedge Fund Partners Cayman Ltd	MS Fixed Income Group Management Inc.
Morgan Stanley Hedge Fund Partners GP LP	MSCP V GP, Inc.
Morgan Stanley Hedge Fund Partners LP	MS Capital Partners V GP LP
Morgan Stanley IMDCP Funding, LLC	MS Capital Partners V LP
Morgan Stanley Infrastructure Inc. NewSubsidiary	MS Credit Partners GP Inc.
Morgan Stanley Infrastructure GP LP	MS Credit Partners GP L.P.
Morgan Stanley Offshore Infrastructure GP, Ltd.	MS Credit Partners Holdings Inc.
Morgan Stanley Infrastructure Holdings Inc.	MSGFI Management Inc.
Morgan Stanley Merchant Banking Insurance Holdings, LLC	Private Investment Partners Inc.
Morgan Stanley Merchant Banking Insurance Company	Private Investment Partners GP Inc.
	TAM Investment Holdings, Inc.
	FrontPoint Partners LLC
	Brookville Horizons Fund GP, LLC
	Brookville Onshore Horizons Fund I GP, LLC
	FPP Healthcare Fund 2X GP, LLC
	FrontPoint Asian Event Driven Fund GP, LLC
	FrontPoint Asia Pacific GP, LLC

FrontPoint BCO GP, LLC  
 FrontPoint Brookville Loan Fund GP, LLC  
 FrontPoint Consumer and Industrials Fund GP, LLC  
 FrontPoint Copia Energy Horizons Fund GP, LLC  
 FrontPoint Currency Fund GP, LLC  
 FrontPoint Enhanced Alpha Fund I GP, LLC  
 FrontPoint Enhanced Index Fund U.S. Equity Series GP, LLC  
 FrontPoint Enhanced TIPS GP, LLC  
 FrontPoint Euroasia Opportunity Fund GP, LLC  
 FrontPoint European Fund GP, LLC  
 FrontPoint Financial Horizons Fund GP, LLC  
 FrontPoint Financial Services Fund GP, LLC  
 FrontPoint Global Emerging Markets Fund GP, LLC  
 FrontPoint Global Enhanced Inflation Linked Bond Index Fund GP, LLC  
 FrontPoint Global Equity Portfolio Fund GP, LLC  
 FrontPoint Greater China Fund GP, LLC  
 FrontPoint Healthcare Centennial Fund GP, LLC  
 FrontPoint Healthcare Fund GP, LLC  
 FrontPoint Healthcare Horizons Fund GP, LLC  
 FrontPoint Healthcare Long Horizons Fund GP, LLC  
 FrontPoint Japan Fund 2X GP, LLC  
 FrontPoint Japan Fund GP, LLC  
 FrontPoint Japan Small/Mid Cap Fund GP, LLC  
 FrontPoint JEMN GP, LLC

FrontPoint Leveraged Multi-Strategy Fund GP, LLC  
 FrontPoint Management (Hong Kong), Ltd.  
 FrontPoint Management Inc.  
 FrontPoint Management Japan Limited  
 FrontPoint Management (Singapore) Pte. Ltd.  
 FrontPoint Management (UK) LLP  
 FrontPoint Michigan Strategic Partnership Fund GP, LLC  
 FrontPoint Multi-Strategy Fund GP, LLC  
 FrontPoint Partners Trading Fund GP, LLC  
 FrontPoint Quantitative Macro Fund GP, LLC  
 FrontPoint RCL Equity Long/Short Fund GP, LLC  
 FrontPoint Relative Value Opportunities Fund GP, LLC  
 FrontPoint Service Company (UK) Limited  
 FrontPoint Service Company (UK) No 2 Limited  
 FrontPoint Strategic Alpha Manager, LLC  
 FrontPoint Strategic Credit Fund GP, LLC  
 FrontPoint Technology Fund GP, LLC  
 FrontPoint Universal GP, LLC  
 FrontPoint Utility and Energy Fund GP, LLC  
 FrontPoint Volatility Opportunities Fund GP, LLC  
 Stadia Capital GP, LLC  
 MS Lion LLC

Morgan Stanley Beta Investments  
 Limited  
 Morgan Stanley Bucine Limited  
 Morgan Stanley Cooper Limited  
 Morgan Stanley Gamma Investments  
 Morgan Stanley Portland Investments  
 Limited  
 MS Leopard Inc.  
 MS Lynx Ltd.  
 Puma JV LLC  
 MS Tiger Ltd.  
 Oncilla LLC  
 MS Low Income Housing  
 Corporation  
 Conchita I LLC  
 Esox LLC  
 Guanaco I LLC  
 Mombacho I LLC  
 MS Guaranteed Tax Credit Fund  
 XVI, LLC  
 MS Guaranteed Tax Credit Fund  
 XXIII, LLC  
 Morgan Stanley Georgia Tax Credit  
 Fund III, LLC  
 Morgan Stanley New Markets, Inc.  
 MS New Markets I LLC  
 MS New Markets II LLC  
 MS New Markets III LLC  
 MS New Markets IV LLC  
 MS New Markets V LLC  
 MS New Markets VI LLC  
 MS New Markets VII LLC  
 MS New Markets VIII LLC  
 MS New Markets IX LLC  
 MS New Markets X LLC  
 MS CTH MHP II LLC  
 MS CTH SLP Operating LLC  
 MS CTH Special General Partner II  
 LLC  
 MS LIHTC FCG LLC

MS LIHTC FCG Fund I LLC  
 MS LIHTC FCG Fund II LLC  
 MS LIHTC FCG II LLC  
 Paquia LLC  
 Pietra I LLC  
 Pietra II LLC  
 Pietra III LLC  
 Pinol I LLC  
 Pinol II LLC  
 Pinol III LLC  
 Pinol IV LLC  
 Wiwili IV LLC  
 Pinol V LLC  
 BMC NAB Trust Investment Fund  
 LLC  
 HIGC Investment Fund LLC  
 PSFG Funding LLC  
 Trova I LLC  
 Trova II LLC  
 Trova III LLC  
 Trova IV LLC  
 Viento LLC  
 Viento II LLC  
 Viento III LLC  
 Viento IV LLC  
 Viento V LLC  
 Viento VI LLC  
 Viento VII LLC  
 Viento VIII LLC  
 Viento IX LLC  
 Viento X LLC  
 Viento XI LLC  
 Viento XII LLC  
 Viento XIII LLC  
 Viento XIV LLC  
 Wiwili I LLC  
 Wiwili II LLC  
 Wiwili III LLC  
 Wiwili V LLC  
 SHCO 7 S.a.r.l.

SHCO 8 S.a.r.l.  
 SHCO 9 S.a.r.l.  
 Vicuna IV LLC  
 Morgan Stanley Spad Investments  
 Limited  
 Morgan Stanley Morane Investments  
 Limited  
 Morgan Stanley Curtiss Investments  
 Limited  
 Wiwili VI LLC  
 MS Low Income Housing II  
 Corporation  
 Morgan Stanley Kashi LLC  
 MS LIHTC FCG INT LLC  
 MS Taishan Inc.  
 Vicuna I LLC  
 Vicuna II LLC  
 Vicuna III LLC  
 Warepool 1A LLC  
 Warepool 2A LLC  
 Warepool 3A LLC  
 Warepool 4A LLC  
 Warepool 5A LLC  
 Warepool 6A LLC  
 Warepool 7A LLC  
 Warepool 8A LLC  
 Warepool 9A LLC  
 MS Low Income Housing III  
 Corporation  
 Warepool SLP LLC  
 MS Pegau LLC  
 Millport Holdings LLC  
 Millport I LLC  
 Elderslie Holdings Limited  
 Elderslie Limited  
 Esporta Holdings Limited  
 Esporta Limited  
 Littlehill (US) LLC  
 Ravelston LLC  
 MS Beaucastel LLC

Rhone Robles LLC  
 MS Real Estate Mezzanine Advisor,  
 Inc.  
 MS Revel EFS LLC  
 D&Z Limited  
 MS Structured Asset Corp.  
 MS Synfuels, Inc.  
 MS Rosebank LLC  
 Morgan Stanley Strand Limited  
 NewSubsidiary  
 Cornelia Limited  
 Clifton Limited  
 Lamis Sarl  
 Lesley Sarl  
 Lindley Sarl  
 Linksfield Sarl  
 Seapoint Investments (Proprietary)  
 Limited  
 MS Douglasdale Limited  
 Bondi Limited  
 MS Melville LLC  
 MS Dainfern LLC  
 MS Greenside LLC  
 MS Houghton LLC  
 Sandhurst Partnership  
 MS Sandhurst FX LLC  
 Morgan Stanley Prosen Limited  
 Morgan Stanley Limpopo LLC \*  
 Morgan Stanley Breede Inc.  
 Morgan Stanley Lomati LLC  
 Morgan Stanley Vaal LLC  
 Clova Investments LP  
 MS Technology Holdings, Inc.  
 MS Venture Capital Holding Inc.  
 MSAM Holdings II, Inc.  
 Van Kampen Investments Inc.  
 Van Kampen Advisors Inc.  
 Van Kampen Asset Management  
 Van Kampen Exchange Corp.  
 Van Kampen Funds Inc.

Van Kampen Investor Services Inc.	Stadium Capital Financing Group, LLC
MSBF Inc.	Morgan Stanley BrokerTec Holdings Inc.
MSCP III Holdings, Inc.	Morgan Stanley Strategic Investments, Inc.
Morgan Stanley Proprietary Trading Co. (Cayman) Limited	Eaux Vives Water Bottling Corp.
MSDW Capital Partners IV, Inc.	Morgan Stanley Bahamas Investments, LLC
MSDW Carnoustie LLC	MSDW International Employee Services LLC
MSDW Gleneagles Limited	MSDW Nederland B.V.
Marchmont Capital, Inc.	MSDW Oak, LLC
MSDW CPIV Holdings, Inc.	Maple JV, LLC
MSDW Credit Products Inc.	Sycamore II, Inc.
Morgan Stanley Credit Products Ltd.	Maple Finance, Inc.
MSDW EFS Holdings Inc.	MSDW Birch (Cayman) Limited
MSDW Emerging Equity, Inc.	MSDW Offshore Equity Services Inc.
MSDW Fixed Income Ventures Inc.	Fundlogic Holdings Inc.
Morgan Stanley Principal Investments, Inc.	Fundlogic SAS
JHP Holdings, LLC	Morgan Stanley Alzette S.a.r.l.
JHP Pharmaceuticals, LLC	Morgan Stanley New Hampshire LLC
MHC Co-Invest Genpar	Morgan Stanley Deshka LLC
MHC Co-Invest, LP	Morgan Stanley Barnard LLC
Morgan Stanley Principal Investments Asia LLC	Morgan Stanley Chandra LLC
Morgan Stanley Mayak Limited	Morgan Stanley Keck LLC
MS China 6 Limited	Morgan Stanley Mayall LLC
MS China 7 Limited	Morgan Stanley Equity Financing Services Ireland Limited
MS China 8 Limited	Morgan Stanley Equity Holdings (Ireland)
MS China 16 Limited	Morgan Stanley Equity Trading (DIFC) Limited
MSPI Mauritius 1 Limited	Morgan Stanley Equity Trading GP Limited (Channel Island)
Morgan Stanley Principal Investments Europe LLC	Morgan Stanley Luxembourg Equity Holdings S.a.r.l.
Morgan Stanley Principal Investments Netherlands BV	Morgan Stanley Bramley Limited
Morgan Stanley Principal Investments North America LLC	Morgan Stanley Corporate Holdings (Ireland)
MS China 9 Limited	
MS China 12 Limited	
MS China 10 Limited	
MS China 11 Limited	
MSPI Hong Kong I Limited	

Morgan Stanley Derivative Products  
 (Luxembourg) Sarl  
 Morgan Stanley Finance (Gibraltar)  
 Limited  
 Morgan Stanley Luxembourg Equity  
 Trading (Jersey) LP (Channel  
 Island)  
 Morgan Stanley Equity Finance  
 (Malta) Limited  
 Morgan Stanley Grund Sàrl  
 Morgan Stanley Derivative Products  
 (Portugal), Unipessoal Lda  
 Morgan Stanley Euro Financing  
 (Ireland) Limited  
 Morgan Stanley Warta GmbH  
 Morgan Stanley Kadarka Limited  
 Morgan Stanley (NSW) Pty Limited  
 Morgan Stanley Somerset Limited  
 Morgan Stanley Moselle S.a.r.l.  
 Morgan Stanley Equity Trading LP  
 (Channel Island)  
 Morgan Stanley Wiltz S.a.r.l.  
 Morgan Stanley Heythorp  
 Investments  
 Morgan Stanley Equity Holdings  
 (Netherlands) B.V.  
 Morgan Stanley Equity Investments  
 (UK) Limited  
 Morgan Stanley GFD Hedge  
 Holdings Limited  
 Morgan Stanley GFD Hedge  
 Holdings II Limited  
 Morgan Stanley GFD Proprietary  
 Holdings Limited  
 MSDW Equity Finance Services I  
 (Cayman) Ltd  
 .MSDW Offshore Equity Services  
 (Korea) Inc.  
 MSDW OIP Investors, Inc.  
 MSDW PE/VC Holdings, Inc.

MSDW Real Estate Special Situations  
 II, Inc.  
 MSDW Real Estate Special Situations  
 II-A Dutch Manager, B.V.  
 MSDW Real Estate Special Situations  
 II-B Dutch Manager, B.V.  
 MSDW Real Estate Special Situations  
 II-C Dutch Manager, B.V.  
 MSDW Real Estate Special Situations  
 II Holdings, L.L.C.  
 MSDW Real Estate Special Situations  
 II Manager, L.L.C.  
 MSDW Real Estate Special Situations  
 II-A Manager, L.L.C.  
 MSDW Real Estate Special Situations  
 II-B Manager, L.L.C.  
 MSDW Real Estate Special Situations  
 II-C Manager, L.L.C.  
 MSDW Real Estate Special Situations  
 II Partner, L.L.C.  
 MSRESS II GP Co-Investment Ltd.  
 Cayman Islands  
 MSDW Strategic Ventures Inc.  
 MSDW Synfuels III, Inc.  
 MSDW Venture Partners IV, Inc.  
 MSDW VP IV Holdings, Inc.  
 MSEOF, Inc.  
 MSEOF Management, LLC  
 MSEOF Manager SARL  
 MSGEM Holdings, Inc.  
 MSIT Holdings, Inc.  
 MSPEA Holdings, Inc.  
 MSREA Guaranty, Inc.  
 MSRE Mezzanine, Inc.  
 MSRE Mezzanine, LLC  
 MSRE Mezzanine-GP, LLC  
 MSREF II, Inc.  
 MSREF II, L.L.C.  
 MSREF III, Inc.  
 MSREF III, L.L.C.

MSREF IV, Inc.	MSREF VII Global, L.L.C.
MSREF IV, L.L.C.	MSREF VII Global, L.P.
MSREF IV Domestic-GP, L.L.C.	MSREF VII Global-GP, L.P.
MSREF IV Domestic-LP, L.L.C.	MSREF VII Global-LP, L.L.C.
MSREF IV International-GP, L.L.C.	MSREF VII Global (U.S.), L.L.C.
MSREF IV International-LP, L.L.C.	MSREF VII Global-GP (U.S.), L.L.C.
MSREF V Funding, Inc.	MSREI Holding, Inc.
MSREF V Funding Partner, Inc.	MSRESS III, Inc.
MSREF V International Funding, L.P.	NewSubsidiary
MSREF V, Inc.	MSRESS III Manager, L.L.C.
MSREF V, L.L.C.	Morgan Stanley Real Estate Special
MSREF V U.S.-GP, L.L.C.	Situations III-GP, L.L.C.
Morgan Stanley Real Estate Fund V	MSREI Post Co-Investment GP,
U.S., L.P.	L.L.C. *
MSP Real Estate Fund V, L.P.	MSRESS III Monroe GP, L.L.C.
MSREF V U.S.-LP, L.L.C.	MSRESS III Opportunities Fund-GP,
MSREF V International-GP, L.L.C.	L.L.C.
Morgan Stanley Real Estate Investors	Morgan Stanley Real Estate Special
V U.S., L.P.	Situations III-LP, L.L.C.
MSREF V International-LP, L.L.C.	MSUH Holdings I, Inc.
MSREF Real Estate Advisor, Inc.	MSUH Holdings II, Inc.
MSREF VI, Inc.	MS SP Urban Horizons, Inc.
MSREF VI International-LP, L.L.C.	MS Urban Horizons, Inc.
MSREF VI, L.L.C.	MSVP 2002 Holdings, Inc.
MSREF VI International-GP, L.L.C.	MSVP 2002, Inc.
Morgan Stanley Real Estate Fund VI	MSYS Holdings Inc.
International -T, L.P.	Musum I LLC
Morgan Stanley Real Estate Fund VI	Musum II LLC
International -TE, L.P.	Pettingell LLC
Morgan Stanley Real Estate Investors	PG Holdings, Inc.
VI International, L.P.	PG Holdings III, Inc.
MSREF VII, Inc.	PG Investors II, Inc.
NewSubsidiary	PG Investors III, Inc.
MSREF VII Global (Cayman), L.L.C.	Pierpont Power, Inc.
MSREF VII Global (Cayman), Ltd.	Providence DE Funding Co.
MSREF VII Global-GP Holding	Providence DE Holdings Co.
(Cayman), L.L.C.	Providence Cayman Holdings Limited
MSREF VII Global (Cayman), L.P.	Shuksan LLC
MSREF VII Global-GP (Cayman),	Morgan Stanley Eder S.a.r.l.
L.P.	Strategic Investments I, Inc.

MS Strategic (Mauritius) Limited  
Strategic Investments II, Inc.  
Tooole Power, Inc.  
Ventura Holdings Inc.  
MS PA Gaming Holdings, Inc.

Ventura Holdings NJ, Inc.  
Ventura AC LLC  
Ventura Opportunities, LLC  
Zephyr (Cayman) Limited



**STATEMENT PURSUANT TO § 500.1(F) OF  
THE RULES OF THE COURT OF APPEALS**

Plaintiff Natixis states that it is a publicly-traded company that is approximately 71% owned by French banking group BPCE. Natixis has approximately 940 subsidiaries too numerous to list, but states that its principal U.S. subsidiaries are AEW Capital Management, L.P.; AlphaSimplex Group, LLC; Aurora Investment Management L.L.C.; Capital Growth Management, L.P.; Caspian Capital Management, LLC; Coface North America Holding Company; Essilor of America, Inc.; Gateway Investment Advisers, LLC; Hansberger Global Investors, Inc.; Harris Associates L.P.; Interfinance Natixis N.V.; Loomis, Sayles & Company, L.P.; Loomis, Sayles Trust Company, LLC; Natexis AMBS Company LLC; Natexis Funding USA LLC; Natexis Investment Corp.; Natexis Investment Corp.; Natexis Securities Inc.; Natexis Strategic Partners I GP, LLC; Natixis Abm LLC; Natixis Alternative Investments (US), Inc.; Natixis Asset Management Advisors, L.P.; Natixis Bleichroeder LLC; Natixis Caspian Private Equity, LLC; Natixis Commodity Markets Inc.; Natixis Credit Advisors LLC; Natixis Derivatives Inc; Natixis Financial Products LLC; Natixis Funding Corp; Natixis Global Asset Management, L.P.; Natixis Municipal Products Inc; Natixis North America LLC; Natixis Pramex International Corp.; Natixis Real Estate Capital LLC; Natixis Real Estate Holdings LLC; Natixis Securities North America Inc; Natixis U.S. CIB LLC; Natixis U.S. Finance Company, LLC; Natixis U.S.

Finance Company, LLC; Natixis U.S. Holdings, Inc.; NBP Capital Trust I; NBP Capital Trust III; Pentelia Capital Mgt LLC US; Reich & Tang Asset Management, LLC; Snyder Capital Management, L.P.; Vaughan Nelson Investment Management, L.P. and Vaughan Nelson Trust Company. Natixis states that its principal non-U.S. subsidiaries are:

Natixis Services Property Ltd –	Investima 33
Johannesburg	Investima 34
Natixis Australia Pty Ltd	Investima 35
Natixis Belgique Investissements	Investima 5
Natixis Servicos E Informaticoes Ltda	Investima 53 - Sas
Dubai Gold & Commodities Exchange	Investima 54 - Sas
Natixis Moscou	Investima 6 Sas
Coface Holding	Investima 67 - Sas
Crane 1	Investima 68 - Sas
Crane 2	Investima 70 - Sas
Crane 3	Investima 71 - Sas
Crane 4	Investima 72 - Sas
Crane 5	Investima 74 Ex Natixis Arbitrage
Cristal Negotiations	Investima 8 Sas
Icmos France Sas	Investima 9 Sas
Investima 11 Sas	Natixis Environnement &
Investima 14	Infrastructures
Investima 16	Natixis Finance
Investima 17	Natixis Innov
Investima 18	Natixis Marco
Investima 19	Natixis Securities - Sas
Investima 25	Phoenix 1 Ex Investima 60 - Sas
Investima 26	Phoenix 2 Ex Investima 61 Sas
Investima 27	Phoenix 3 Ex Investima 62 Sas
Investima 28	Phoenix 4 Ex Investima 63 Sas
Investima 29	Saint Dominique Radio
Investima 3	Sas Montmartre 1
Investima 30	Sas Val A
Investima 31	Sci Altair 1
Investima 32	Sci Altair 2

Sci Antin Haussmann  
 Tolbiac Finance  
 Val B Inversora  
 Natixis Asia Limited  
 Natixis Commodity Markets Asia  
 Natixis Financial Instruments Ltd -  
     Caimans  
 Natinium Financial Products  
 Natixis Corporate Solutions Ltd  
 Nexgen Capital Ltd  
 Nexgen Financial Holdings Ltd  
 Nexgen Reinsurance Ltd  
 Universe Holding Ltd  
 Vallauris Ii Clo Plc  
 Captiva Capital Iii Gp Sarl  
 Captiva Capital Luxembourg Sarl  
 Captiva Capital Management Sarl  
 Comodot Sarl  
 Essential Resources Partners  
 European Kyoto Fund  
 Fili Sa Lux  
 Gestion Internationale - Luxembourg  
 Green Cove Capital Management Sarl  
 Gulf Capital Luxembourg  
 Natelife Sa  
 Natelyne Sa  
 Natixis Alternative Assets Ex Natixis  
     Alternative  
 Natixis Bank  
 Natixis Luxembourg Investissements  
 Natixis Real Estate Feeder  
 Natixis Trust  
 Reacomex  
 Wacapou Leasing Sa  
 Califano Investments Ltd  
 Natixis Malta Investments Ltd  
 Nexgen Mauritius Ltd  
 Icmos Bv  
 Hypercube Portfolio Management Ltd

Natixis Alternative Holding-K Gbp  
     (Uk)  
 Natixis Commodity Markets Ltd  
 Natixis Structured Products Ltd -  
     Jersey  
 Natixis Gestion De Fortune Sa  
 Batik Lease 3 Snc  
 Batik Lease 2 Snc  
 Batik Lease 1 Snc  
 Natixis Brasil Sa  
 Sci Haussmann 90  
 320 Soccia -  
 Constantin Sofia  
 Manon Naticaly  
 Um Amad Leasing - Snc  
 Natixis Consumer Finance  
 Natixis Consumer Finance It  
 Novacredit  
 1818 Partenaires  
 Anteis Epargne  
 Banque Privee 1818 Ex La Compagnie  
     1818  
 Cie 1818 Gestion  
 Natixis Private Banking  
 Natixis Private Equity  
 Ventech China Ltd  
 Dahlia Partners  
 Mode Et Finance Conseil - Sas  
 Npe Rip  
 Optidev Pme 2009  
 Sdgp 61  
 Sdgp 65  
 Sdgp 66  
 Natixis Ventech China Ab  
 Npei Lux Sa  
 Natixis Immo Exploitation  
 Natixis Algerie  
 Natixis Assurances  
 Natixis Assurances Partenaires  
 Natixis Life

Compagnie Europeenne De Garanties	Natixis Axeltis Limited
Et Cautions	Natixis Global Associates Germany
Assurances Bp Vie	GmbH
Nami Investment	Natixis Asset Management - Nam
Fructifoncier	Natixis Asset Management Finance -
Abp Pompe Sci	Namf
Abp Iena Sci	Natixis Asset Management
Natixis Paiements	Participations 1
Natixis Inversiones Scr	Natixis Epargne Financiere
Natixis Private Equity International -	Natixis Epargne Financiere Services
Npei	Ngam - Natixis Global Asset
Natixis Private Equity Asia Ltd - Npea	Management
India Waste Water Treatment	Ngamp1 - Natixis Global Am
Compagny	Participations 1
Npe India Holdings	Ngamp2 - Natixis Global Am
Npe India Partners	Participations 2
Mercosul Management Ltd	Ngamp3 - Natixis Global Am
Financiere Natixis Singapore 2 Pte. Ltd	Participations 3
- Fns2	Natixis Global Associates Italia Sgr
Financiere Natixis Singapore 4 Pte. Ltd	S.P.A.
- Fns4	Natixis Asset Management Japan
Financiere Natixis Singapore 5 Pte.	Kennedy Financement Luxembourg
Ltd- Fns5	Natixis Global Associates Uk Limited
Financiere Natixis Singapore Pte Ltd	Natixis Global Associates Switzerland
Natixis Private Equity Internat	Sàrl
Singapore - Npeis	Ngaswz
Vitalia Vie	Axeltis Ex Ngamp4 - Natixis Global
Natixis Funding	Am Participatio
Npeo 2 Sa	Exddc Ex Dupont Denant Contrepartie
Natixis Altair It Shared Services	Natixis Global Associates Sa -
Natixis Transport Finance	Luxembourg
Natixis Factor Ex Natexis Factorem	Natixis Interepargne
Natixis Venture Selection	Natixis Private Equity Int. Management
Contango Trading	Natixis Coficine
Contango Asia Trading Pte Ltd	Actem Partners
Invest Kappa	Natixis Immo Developpement
Assurances Bp Prevoyance	Sci Montigny Centre Gare
Ixis Cmna Ip Asset Holdings -	Sci Du 1 Bis Et 3 Rue Jean Bonnal
Luxembourg	Sci Du 10-12 Rue Des Pavillons
Natixis Participations 1	Sci Du 65 Rue De La Republique

Sci Les Jardins D'helios  
 Natexpar Sc  
 Naxicap Partners  
 Optidev Pme 2010  
 Natixis Participations  
 Nbp Invest  
 Nixen Partners  
 Cladel Transactions  
 Immobiliere Natixis Sas  
 Les Berges De Croissy  
 Snc Domi-Moulineaux  
 Natixis Fonciere Ex Spafica  
 Fonciere Kupka  
 Nem Partners  
 Mci - Media Consulting & Investment -  
 Coface Debitorenmanagement  
 Coface Finanz  
 Coface Holding Ag  
 Coface Kredit Versicherung  
 Coface Rating De  
 Coface Rating Holding  
 Coface Danmark Services  
 Coface Servicios Espana  
 Coface Servicios Portugal  
 Bim Ce  
 Coface  
 Kompass International  
 Coface Assicurazioni  
 Coface Factoring Italia  
 Coface Italia  
 Coface Service Italia  
 Coface Nederland Services  
 Cimco System  
 Coface Debt Purchase Ltd  
 Coface Receivables Finance Ltd  
 Coface Uk Holdings Ltd  
 Coface Uk Services Ltd  
 Credico Ltd  
 Creditor Group Holdings Ltd  
 London Bridge Finance Ltd

The Creditors Groups Ltd  
 Coface Services South Asia Pacific  
 Coface South Africa Insurance Cie Ltd  
 Coface Sverige Services  
 Coface Austria Kreditversicherung  
 Coface Kreditversicherung Services  
 Coface Hungary Insurance Services  
 Coface Poland Insurance Service  
 Coface Servicios Chile Sa  
 Coface Sigorta Turkey  
 Coface Services  
 Coface Services Ecuador Sa  
 Coface Holding America Latina Sa De  
 Cv  
 Coface Servicios Panama Sa  
 Coface Services Venezuela Ca  
 Fimipar  
 Coface Do Brasil Servicios  
 Gerenciamento Credito  
 Cofinpar  
 Coface Israel Holding  
 Cfdi  
 Gfi S.A.  
 Naxicap Holding Tourisme 2010  
 Naxicap Holding 2010  
 Unistrat  
 Kompass Holding  
 Providente Partenaire  
 Invest Alpha  
 Invest Delta  
 Investima 2  
 Investima 48 Snc  
 Investima 49 Snc  
 Investima 50 Snc  
 Investima 51 Snc  
 Investima 52 Snc  
 Saint Do Wind Snc  
 Snc Saint Dominique Navigation  
 Devimmo Algerie Spa  
 Cheque De Mesa Sa

Natixis Intertitres  
 Lugdunum Gestion  
 Ecrinvest 6  
 Sci Valmy Coupole  
 Coface Expert  
 Coface Services Peru Sa  
 Dahlia Sicar A Sca  
 Creninvest 1  
 Gie Regiolise 1  
 Gie Skravig Bail  
 Pm Lacanau Snc  
 Pm Lamentin Snc  
 Snc Maohi Ex Investima 21  
 Gie Hermine Bail  
 Ecrinvest 12  
 Ecrinvest 13  
 Ecrinvest 14  
 Ecrinvest 15  
 Ecrinvest 16  
 Ecrinvest 17  
 Ecrinvest 18  
 Ecrinvest 19  
 Ecrinvest 20  
 Invest Omega  
 Nem 2  
 Snc Cladel Participations  
 Sci Bbp Invest 1  
 Natixis Lease  
 Fructibail  
 Fructibail Invest  
 Sci Du Petit Champ  
 Natixis Bail  
 Fructicomi  
 Gce Bail  
 Natixis Energieco  
 Sci Mistral Saint-Roch  
 Lease Expansion  
 Natixis Lld  
 Spafic  
 India Power Corporation

Natixis Overseas Funds Management  
 Sa  
 Essential Resources Debt Fund  
 Creninvest 7  
 Invest Gamma  
 1818 Immobilier  
 Co-Assur  
 Initiative Et Finance Gestion  
 Val B  
 Npe Coinvest 1  
 Providente Sa  
 Ixen Ex Natexis Industrie  
 Nem Invest Sas  
 Natixis Multimanager  
 Natixis Investissement  
 Sas Financiere Cbm  
 Ixen Fcpr Iii  
 Natixis Investment Services Japan Ltd  
 Altor Group  
 Sci Les Fontenelles  
 Coface Servicios Argentina Sa  
 Coface Servicios Costa Rica Sa  
 Natixis Private Equity Opportunities  
 Natixis Private Equity Norway As  
 Cogeri  
 A Venture  
 Natixis Cape  
 Gino 99 Sc  
 Kontron Instruments Pacemaker Scs  
 Ixen Fcpr Ii Ex Natexis Industrie Fcpr  
 Ii  
 Coface Services Colombia Sa  
 Natixis Investissement Partners  
 Initiative Et Finance Investissement  
 Nieuhof Snc  
 Mundo Verde Investments Llc  
 Npe Mercosul Fund Lp  
 Sci Aurelie  
 Sci Compans  
 Sci Murco

Sofineti  
 Coface Chile  
 Natixis Environnement &  
     Infrastructures Lux  
 Seventure Partners  
 Nuxe Groupe  
 Coface Central Europe Holding Ag  
 Coface Bulgaria Cms  
 Coface Croatia Cms  
 Coface Poland Cms  
 Coface Czech Cms  
 Coface Slovakia Cms  
 Coface Slovenia Cms  
 Nra Coface Arb  
 Cerip-Services Banques  
 Algiers Business Centers Spa  
 Pentelia Capital Mgt Ltd Bermudes  
 Natixis Financement  
 Societe Civile Nem  
 Slib  
 Slibk Uk Ltd  
 Slib Belgium  
 Eurofideme 2  
 Natixis Capital Partners Limited (Uk)  
 Captiva Capital Sarl  
 Ventech - Ex Sdgp 31  
 Coface Bdi  
 Gartner General Partner Gmbh  
 Aew Europe  
 Cgw Gestion D'actifs  
 Hv Invest 1  
 Sas Pial 11  
 Sas Pial 13  
 Sci Pial 22  
 Sci Pial 23  
 Aew Europe Spa  
 Aew Europe Sarl  
 Al Gp Sarl  
 Epi Advisory Sarl  
 Pbw Real Estate Asset Management Bv

Aew Central Europe  
 Aew Europe Advisory Ltd  
 Aew Europe Cc Limited  
 Aew Europe Gp Limited  
 Aew Europe Partners Ltd  
 Aew Europe Partnership  
 Aew Global Ltd  
 Aew Global Uk Ltd  
 Curzon Capital Partner Ii Gp Limited  
 Curzon Special Gp Limited  
 Epi General Partner Limited  
 Epi Lp Limited  
 Aew Europe Sgp  
 Nami - Natixis Asset Management  
     Immobilier  
 Natixis Immo Services  
 Sci Bbp Invest 2  
 Fmca - Film & Media Collecting  
     Agency  
 Sci Boulogne Ilot V  
 Gie Restauprise  
 Captiva Capital Luxembourg Partners  
     Sca  
 Captiva Capital Ii Sarl  
 Kr Real Estate Gmbh & Co.Kg  
 Banque Populaire Developpement  
 Sci Acquigny  
 Dahlia Gestion Sa  
 Sdgp 25  
 Partecis  
 Titres Cadeaux  
 Societe Civile Seventure  
 Finatem  
 Kurma Life Sciences Partners  
 Compagnie Fonciere Du Palais Royal  
 Sci Du 23 Ter Rue Du Telegraphe  
 Tour Gallieni Ii - Sas  
 Sarl La Demi Lieue  
 Sci Du 13 Square Des Arts  
 Fructi-Telesurveillance

Assurances Bp Iard  
 Solassur  
 Gie Multifleet  
 Cape Natixis Sgr  
 Epf Partners  
 Coface Igk Holding Ag  
 Cr Cheque Emploi Service Universel  
 Coface Moscow Cms  
 Gie Tamarin  
 Coface Latvia Cms  
 Luxxon Participacoes  
 Societe Financiere De Distribution -  
     Sfd  
 Coface St. Petersburg Cms  
 Tolstoi Investimentos Sa  
 Coface Ukraine Cms  
 Newlincs -Grimsby  
 Calilux Sarl  
 Krokus Pe Sp  
 Sci Tour 21 24  
 Axa Assurcredit  
 Sci Bois D'arcy Participations  
 La Boisdarcyenne Sa  
 Benfeld International Lp  
 Ixen Fcpr  
 Sophia Euro Lab  
 Cofacredit  
 Gie Les Jeunes Bois  
 Captiva Capital Luxembourg Partners  
     Ii Sca  
 Assurances Biat-  
 Mantra Gestion  
 Adir  
 H2o Am Holding  
 Gie Norma  
 Financiere Du Cheval Vert  
 Gie Opera 2 Bail  
 Sci Hotel De Police De Strasbourg  
 Sas Euro Capital  
 Gie Pm Guyenne

Fideppp Fcpr  
 Assurances Bp Maroc - Attaamine  
     Chaabi  
 Paris Titrisation  
 Eurotitrisation  
 Financiere Icjm  
 Coface Estonia Cms  
 Emertec Gestion  
 Vr Factorem Gmbh  
 Emertec Energie Et Environnement  
 Inserm Transfert Initiative  
 Cine Lumieres De Paris Sa  
 Cita  
 Societe De Services Immobiliers Et  
     Mobiliers  
 Sci 81 83 Rue Des Enfants Du Paradis  
 Sofinnova Sa  
 Noalys  
 Sci Lille Atrium Et Tour Sud  
 Sas Inserm Transfert Initiative  
 Ouest Croissance  
 Cube Infrastructure Fund  
 Cube Transport Sca  
 Cube Communications Infrastruture  
     Sca  
 Cube Energy  
 Cube Environnement Sca  
 Sci Bicso - Banque Indust Et Ciale Du  
     Sud Ouest  
 Financiere Cofrad  
 Nord Sud Developpement  
 Sci Banque Populaire Du Massif  
     Central  
 Sci De La Croix Blanche  
 Credit Cooperatif  
 Cep Picardie  
 Cep Rhone Alpes  
 Cep Ile De France  
 Cep Loire Drome Ardeche  
 Cep Bourgogne Franche Comte



Cep Aquitaine Poitou Charentes  
 Banque Chaix  
 Banque Dupuy, De Parseval  
 Banque Marze  
 Banque Pelletier  
 Bp Bourgogne Franche Comte Dijon  
 Bp Centre Atlantique Niort  
 Bp Cote D'azur Nice  
 Bp D'alsace Strasbourg  
 Bp Des Alpes Grenoble  
 Bp Du Massif Central Clermont  
 Ferrand  
 Bp Du Nord Lille  
 Bp Du Sud Ouest Bordeaux  
 Bp Du Sud Perpignan  
 Bp Loire Et Lyonnais Lyon  
 Bp Lorraine Champagne Metz  
 Bp Occitane Toulouse  
 Bp Provencale Et Corse Marseille  
 Bp Rives De Paris  
 Bp Val De France St Quentin En  
 Yvelines  
 Bred Banque Populaire  
 Bred Gestion  
 Casden Banque Populaire

Ccso - Credit Commercial Du Sud-  
 Ouest  
 Cep Alsace  
 Cep Auvergne Limousin  
 Cep Bretagne Pays De Loire  
 Cep Cote D'azur  
 Cep Languedoc Roussillon  
 Cep Loire Centre  
 Cep Normandie  
 Cep Provence Alpes Corse  
 Financiere De Participation Bps  
 Sann Snc  
 Vilc - Vietnam International Leasing  
 Cep Nord France Europe  
 Bp Atlantique Nantes  
 Cep Lorraine Champagne Ardenne  
 Cofibred Compagnie Financiere De La  
 Bred  
 Cep Midi Pyrenees  
 Sbe  
 Aviateur Capital Limited  
 Bred Cofilease  
 Parnasse Finance  
 S.P.G.R.E.S.  
 Bp De L'ouest Rennes  
 Banque De Savoie

**STATEMENT PURSUANT TO § 500.1(F) OF  
THE RULES OF THE COURT OF APPEALS**

Plaintiff Natixis Financial Products LLC states that it is a wholly-owned subsidiary of Natixis North America LLC, which in turn is wholly owned by Natixis U.S. Holdings, Inc. Natixis U.S. Holdings, Inc. is 15% owned by Natixis and 85% owned by Natixis Global Asset Management Participations 1. Natixis Financial Products LLC does not have any subsidiaries.

Natixis is a publicly-traded company that is approximately 71% owned by French banking group BPCE.

Natixis Global Asset Management Participations 1 is wholly owned by Natixis Global Asset Management, which in turn is wholly owned by Natixis Participations 1, which in turn is wholly owned by Natixis.

**STATEMENT PURSUANT TO § 500.1(F) OF  
THE RULES OF THE COURT OF APPEALS**

Plaintiff The Royal Bank of Scotland N.V. (formerly known as ABN AMRO Bank N.V.) is wholly owned by RBS Holdings N.V., which is wholly owned by RFS Holdings B.V., which is 97.72% owned by The Royal Bank of Scotland Group plc. The Royal Bank of Scotland Group plc has approximately 1,400 subsidiaries, which are too numerous to list. The principal subsidiaries of The Royal Bank of Scotland Group plc are The Royal Bank of Scotland plc; National Westminster Bank Plc; Citizens Financial Group, Inc.; Coutts & Company; RBS Securities Inc.; RBS Insurance Group Limited; Ulster Bank Limited and RBS Holdings N.V.

**STATEMENT PURSUANT TO § 500.1(F) OF  
THE RULES OF THE COURT OF APPEALS**

Plaintiff The Royal Bank of Scotland plc is wholly owned by The Royal Bank of Scotland Group plc. The Royal Bank of Scotland Group plc has approximately 1,400 subsidiaries, which are too numerous to list. The principal subsidiaries of The Royal Bank of Scotland Group plc are The Royal Bank of Scotland plc; National Westminster Bank Plc; Citizens Financial Group, Inc.; Coutts & Company; RBS Securities Inc.; RBS Insurance Group Limited; Ulster Bank Limited and RBS Holdings N.V.

**STATEMENT PURSUANT TO § 500.1(F) OF  
THE RULES OF THE COURT OF APPEALS**

Plaintiff Société Générale states that it has approximately 800 subsidiaries, which are too numerous to list, but states that its principal U.S. subsidiaries include:

Aegis Holdings (Offshore) Ltd.  
Aegis Holdings (Onshore) Inc.  
Alternative Investment Research And Technologies LLC  
Amundi Alternative Investments Services, Inc.  
Amundi Alternative Investments, Inc.  
Amundi Investment Solutions Americas Holding Inc.  
Amundi Investment Solutions Americas LLC  
Amundi Us Holding, Inc.  
Amundi Investment Advisors Usa, Inc.  
CGI Finance, Inc.  
CGI North America Inc.  
Classic Yacht Documentation Inc.  
Cranbury America Corporation  
Buchanan Street Partners, L.P.  
BFVI Advisors, LLC  
BFIV Advisors, L.P.  
BFV Advisors, LLC  
BSP Mountain Vista Manager, LLC  
BSP Mountain Vista, LLC  
Buchanan Fund III, LLC, The  
Buchanan Fund IV, LLC, The  
Buchanan Fund V, LLC  
Buchanan Investment Advisors, LLC  
Buchanan Investors, L.P.  
Buchanan Investors II, L.P.

Buchanan Storage Capital, L.P.  
Buchanan Street Partners, L.P.  
Buchanan Urban Investors II, LLC  
Cranbury America Corporation  
Crescent Mach I G.P. Corporation  
Crescent/Mach I Partners, L.P.  
Diversification Fund LLC  
Edouard VII Properties, Inc.  
Emerging Markets Real Estate Co-Investment Partners I, L.P.  
Emerging Markets Real Estate Co-Investment Partners II, LP  
Emerging Markets Real Estate Ontario Partners II, LP  
Emerging Markets Real Estate Tax Exempt Partners I, L.P.  
Emerging Markets Real Estate Tax Exempt Partners II, L.P.  
Emerging Markets Real Estate Taxable Partners I, LP  
Emerging Markets Real Estate Taxable Partners II, L.P.  
Energy Fund XV (Cayman), L.P.  
Energy Fund XV, L.P.  
Energy Fund XV-A, L.P.  
Energy Fund XV-B, L.P.  
European Partners In Emerging Markets, Inc.  
Fep Receivables Funding 2002-2, L.P.

Fep Receivables Participation  
 Funding 2002-2, L.P.  
 Genavent Manager LLC  
 Genavent Partners LP  
 Hines/TCW Emerging Markets Real  
 Estate Development II, LLC  
 Hines/TCW/Dean Witter Emerging  
 Markets Partner I, LLC  
 Hines/TCW/Dean Witter Emerging  
 Markets Real Estate Development  
 I, LLC  
 Hotel Du Bois Rouge Corp.  
 Institutional Benchmarks Series  
 L.L.C.  
 Lyra Capital LLC  
 Lyxor Asset Management Holding  
 Corp.  
 Lyxor Asset Management Inc.  
 Lyxor Premium LLC  
 Lyxor Premium Sub-Fund LLC  
 Lyxor Starway Fund LP  
 Lyxor/Eva Pentangle Partners Fund  
 LLC  
 Lyxor/Wnt Fund LLC  
 Lyxor Edge Inc.  
 Metropolitan West Asset  
 Management, LLC  
 Metwest Enhanced Talf Strategy  
 Fund Gp, LLC  
 Metwest Enhanced Talf Strategy  
 Fund, L.P.  
 Mwam Distributors, LLC  
 Newedge Alternative Strategies, Inc.  
 Newedge Facilities Management, Inc.  
 Newedge USA, LLC  
 Purchase Acquisition Company II,  
 LLC  
 Rexus L.L.C.  
 SG Americas Securities Holdings,  
 LLC

SG Americas Securities, LLC  
 SG Americas, Inc.  
 SG Americas Equities Corp.  
 SG Americas Operational Services,  
 Inc.  
 SG Constellation, Inc.  
 SG Equipment Finance USA Corp.  
 SG Finance LLC  
 SG Mortgage Finance Corp.  
 SG Mortgage Securities, LLC  
 SG Preferred Capital II, L.L.C  
 SG Preferred Capital III, L.L.C.  
 SG Structured Products, Inc.  
 SG Ventures I, L.P.  
 Sgaif, Inc.  
 Sgaih, Inc.  
 SGB Finance North America, Inc.  
 Societe Generale Commodities  
 Products, LLC  
 Societe Generale Energy Corp.  
 Societe Generale Financial  
 Corporation  
 Societe Generale Investment  
 Corporation  
 Societe Generale North America, Inc.  
 Starview Partners Fund L.P.  
 TCW Absolute Return Credit, LLC  
 TCW Absolute Return Credit Fund,  
 L.P.  
 TCW Advisers (Bermuda), Ltd.  
 TCW Alpha Tactical (Ci) L.P.  
 TCW Alpha Tactical Ltd.  
 TCW Americas Management L.P.  
 TCW Americas Development  
 Association, L.P.  
 TCW Asset Management Company  
 TCW Asset Management Company  
 International Limited  
 TCW BSP Holdings, Inc.  
 TCW Capital

TCW Capital Investment Corporation  
 TCW Concentrated Core Equities  
 Limited Partnership  
 TCW Corporate Bond Limited  
 Partnership  
 TCW-Eig Alternative Investments,  
 LLC  
 TCW-EIG Fund XV Partners, L.P.  
 TCW-EIG Fund XV Partners, L.P.  
 TCW (EMRE II), LP  
 TCW (Energy X), LLC  
 TCW Energy Fund X - NI, LP  
 TCW Energy Fund XB - NI, LP  
 TCW Energy Fund XC - NI, LP  
 TCW Energy Fund XD - NI, LP  
 TCW Energy Fund XIV (Cayman),  
 L.P.  
 TCW Energy Fund XIV Salt Creek  
 Co-Invest, L.P.  
 TCW Energy Fund XIV, L.P.  
 TCW Energy Fund XIV-A, L.P.  
 TCW Energy Fund XIV-B, L.P.  
 TCW Energy Fund XV (Cayman),  
 L.P.  
 TCW Energy Fund XV, L.P.  
 TCW Energy Fund XV-A, L.P.  
 TCW Energy Fund XV-B, L.P.  
 TCW Energy Funds X Holdings, LP  
 TCW Energy Partners, LLC  
 TCW Funds Distributors  
 TCW Group, Inc., The  
 TCW High Yield Limited Partnership  
 TCW International Fixed Income,  
 L.P.  
 TCW Investment Management  
 Company  
 TCW Leveraged Income Trust, L.P.  
 TCW Leveraged Income Trust II, L.P.  
 TCW Leveraged Income Trust IV,  
 L.P.

TCW Linc 1 Class C, LP  
 TCW (Linc II), L.P.  
 TCW (Linc IV), LLC  
 TCW Long/Short Opportunities Gp,  
 LLC  
 TCW Long/Short Opportunities Fund,  
 L.P.  
 TCW (Mac), LLC  
 TCW Matched Co-Investment LP I  
 TCW (Mezzanine III), LP  
 TCW Multi-Strategy Limited  
 Partnership 1  
 TCW Opportunistic Core Plus Fixed  
 Income Limited Partnership  
 TCW Royalty Company  
 TCW Senior Secured Floating Rate  
 Loan Fund, L.P.  
 TCW Senior Secured Floating Rate  
 Loan Fund (Cayman), L.P.  
 TCW Senior Secured Loan Fund, L.P.  
 TCW Shared Opportunity Fund II,  
 L.P.  
 TCW Shared Opportunity Fund III,  
 LP  
 TCW Shared Opportunity Fund IV,  
 L.P.  
 TCW Shared Opportunity Fund IVB,  
 L.P.  
 TCW Shared Opportunity Fund V,  
 L.P.  
 TCW (Shop IIB) LLC  
 TCW (Shop III), LP  
 TCW (Shop IV), LLC  
 TCW (Shop V), LLC  
 TCW Special Credits  
 TCW Special Credits Fund V-The  
 Principal Fund  
 TCW Special Mortgage Credits Fund  
 II (Cayman), L.P.

TCW Special Mortgage Credits Fund II Gp, L.L.C.	TCW/Crescent Mezzanine Partners V, L.P.
TCW Special Mortgage Credits Fund II, L.P.	TCW/Crescent Mezzanine Partners VB, L.P.
TCW Special Mortgage Credits Fund III (Cayman), L.P.	TCW/Crescent Mezzanine Partners VC, L.P.
TCW Special Mortgage Credits Master Fund, L.P.	TCW/Crescent Mezzanine Trust
TCW Special Placements Fund III	TCW/Crescent Mezzanine Trust III
TCW Strategic Mbs Fund III (Cayman), L.P.	TCW/Drum Special Situation Partners, LLC
TCW Tsop II Partners, LP	TCW/Latin America Partners, L.L.C.
TCW Value Added Limited Partnership	TCW/Latin America Management Partners, LLC
TCW Value Opportunities L.P.	TCW/Latin America Private Equity Partners, L.P.
TCW/Buchanan Fund VI, L.P.	TCW/Palmetto Investors, LLC
TCW/Buchanan Street Partners, Inc.	TCW/Palmetto State Partners, LLC
TCW/Crescent Mezzanine, LLC	TCW/SD Special Mortgage Credits Investment Limited Partnership
TCW/Crescent Mezzanine III, L.L.C.	TCW 1998 Partnership Equity Plan, LP
TCW/Crescent Mezzanine IV, LLC	TCW 1999 Partnership Equity Plan, LP
TCW/Crescent Mezzanine V, LLC	TCW 2001 Partnership Equity Plan, LP
TCW/Crescent Mezzanine Investment Partners, LP	TCW 2002 Partnership Equity Plan, LP
TCW/Crescent Mezzanine Management III, L.L.C.	Tower Hill Securities, Inc.
TCW/Crescent Mezzanine Management IV, LLC	Tropicana Funding Incorporated
TCW/Crescent Mezzanine Management V, LLC	Trust Company of the West
TCW/Crescent Mezzanine Partners, L.P.	West Gate Advisors, LLC
TCW/Crescent Mezzanine Partners III, LP	West Gate Leveraged Loan Fund Gp, LLC
TCW/Crescent Mezzanine Partners III Netherlands, L.P.	West Gate Leveraged Loan Master Fund, L.P.
TCW/Crescent Mezzanine Partners IV, LP	WFS Financial Services Inc.
TCW/Crescent Mezzanine Partners IVB, LP	WGMA Gp, LLC
	YICM (Delaware), Inc.



**STATEMENT PURSUANT TO § 500.1(F) OF  
THE RULES OF THE COURT OF APPEALS**

Plaintiff UBS AG, London Branch states that it is a licensed branch of

UBS AG. UBS AG's principal subsidiaries include:

1fa Information (Itc) Ltd.  
24 Union Street Properties Limited  
Ac I INV Soundview LLC  
Ac I Soundview LLC  
Act Properties LLC  
Aj Corporation  
Alexander Directorships Limited  
Allentown Crossings Limited  
Partnership  
Ampress Park Management  
Limited  
Apollo Nominees Ltd.  
Arc Wgbrkny001, LLC  
Arc Wgepri0001, LLC  
Arc Wgprvri0001, LLC  
Arc Wgsiny0001, LLC  
Argosa Corp Inc  
Ari Acquisition Corporation  
Arista Capital Management, LLC  
Ashmore Global Consolidation  
And Recovery Fund Pcc Limited  
Ausbildungszentrum Schloss  
Wolfsberg AG  
Basel Holdings Limited  
Baugesellschaft Blatten  
Blyth Eastman Paine Webber  
Servicing Inc.  
Bond Trust  
Brigham Services Limited  
Brigham Services Limited Moscow  
Branch

Brinson Partners Inc. Deferred  
Compensation Plan  
Brispot Nominees Pty Limited  
British Industrial Corporation,  
Limited  
Bv  
Beteiligungsverwal-  
Tungsgesellschaft Mbh  
Canven (Ci) Limited  
Capvis (Ci) Limited  
Ccr Asset Management S.A.  
Chesspot Nominees Pty Limited  
Cjsc UBS Advisory Services  
Cjsc UBS Nominees  
Cjsc UBS Securities  
Commercial Services Corporation -  
Coseco  
Corpboard Ltd  
Corporate Aircraft Funding  
Company, LLC  
Corporate Asset Backed  
Corporation  
Cre 10 LLC  
Cre 81st Street LLC  
Cre Breinigsville Gp LLC  
Cre Breinigsville Lp LLC  
Cre Edge LLC  
Cre Greece Triple Net Holdings  
LLC  
Cre Ip LLC  
Cre Ivy Brook LLC  
Cre Jv Five Branch Holdings LLC

Cre Jv Five Branch Holdings Mezz  
 LLC  
 Cre Jv Mixed Five Branch  
 Holdings LLC  
 Cre Jv Mixed Five II 1 Branch  
 Holdings LLC  
 Cre Master Jv Holdings LLC  
 Cre Rockwell Asheville LLC  
 Cre Rockwell Champaign LLC  
 Cre Rockwell Columbus LLC  
 Cre Rockwell Greenville LLC  
 Cre Rockwell Kings Mountain  
 LLC  
 Cre Rockwell Rogersville LLC  
 Cre Soundview Jv LLC  
 Cre Waterside LLC  
 Cre-W Union Square Investors  
 LLC  
 Dalgland Nominees (Pty) Ltd  
 Debenture Nominees Limited  
 Decagon Investments Private  
 Limited  
 Dillon Read Asset Securitization  
 Corp.  
 Dillon Read Capital Management  
 (Uk) Ltd  
 Dillon Read Capital Management  
 LLC  
 Dillon Read Solutions (Shanghai)  
 Co. Ltd.  
 Dillon, Read Inc.  
 Doveriya Holdings Limited  
 Dr Associates Ii, Lp  
 Durham Triple Net Holdings LLC  
 Ellington Co., Ltd.  
 Eltub Nominees Limited  
 Fenway Services Limited  
 Fidelis Alternative Strategies Llp  
 First Directorships Limited,  
 Bahamas

Firtown International Holdings Ltd  
 Fondcenter AG  
 Fondvest Alternative Strategies  
 Limited  
 Gateway Land Corp.  
 General Secretaries Ltd  
 Global Alternative Strategies Ltd  
 Hotel Seepark AG  
 Hsi Holding NV  
 Icg Wus Holdings LLC  
 Inter-Concern-Revisions Gmbh  
 Wirtschaftsprüfungsgesellschaft  
 Intrag AG  
 J.C. Bradford & Co. Inc. (Usa)  
 Jeffco, Inc.  
 Jocar Nominees Limited  
 Kidder, Peabody & Co.  
 Incorporated  
 Kidder, Peabody & Co.  
 Incorporated (Usa)  
 Kilala Sa  
 Kingsway Holding Corporation  
 Lantern Structured Asset  
 Management Limited  
 Longbeech Directorships Limited  
 Lynch Pin Holdings Limited  
 Maiden Lane Leasing Corp.  
 Manidi Sa  
 Master Triple Net Holdings LLC  
 Melnew Nominees Pty Limited  
 Midtown Associates Limited  
 Partnership/1984  
 Midtown, Inc.  
 Mitchell Hutchins Inc.  
 Mortgage Asset Securitization  
 Transactions, Inc.  
 North Street Consumer Phone  
 Services LLC  
 Ns Secretaries Limited  
 Nyre Holding Corp.

Ooo UBS Bank  
 Paine Webber Development Corporation  
 Paine Webber Leasing Corporation  
 Painewebber Capital Inc.  
 Painewebber Capital Services Inc.  
 Painewebber Inc.  
 Painewebber International Inc.  
 Painewebber Life Holdings Inc.  
 Painewebber Mortgage Acceptance Corporation Iii  
 Painewebber Partners Inc.  
 Painewebber Real Estate Holdings Inc.  
 Painewebber T. C., Inc.  
 Painewebber Trading Inc.  
 Painewebber Uk Holdings  
 Pan Nominees Limited  
 Panserve Ltd  
 Pasternak Holdings Limited  
 Pegasus Foundation Ltd.  
 Pfca Home Equity Investment Trust  
 Phildrew Nominees Limited  
 Pij Ltd.  
 Platin 512. Gmbh  
 Prediction Company LLC  
 Presto AG In Liq.  
 Prime Securities Trust No 1  
 Prime Securities Trust No 2  
 Prime Securities Trust No 3  
 Prime Securities Trust No 3f  
 Prime Securities Trust No 7  
 Prime Securities Trust No 7f  
 Prime Security Holdings Pty Limited  
 Private Equity Holding Inc.  
 Productive Nominees Limited  
 Pt UBS Securities Indonesia  
 Pw Acquisitions Corp.

Pw Acquisitions X, LLC  
 Pw Capitol Corporation  
 Pw Champlain Corporation  
 Pw Fitchburg Corporation  
 Pw Franklin Corporation  
 Pw Fremont Corporation  
 Pw Geneva Corporation  
 Pw Hamilton Corporation  
 Pw Ibd Partners Inc.  
 Pw Lincoln Harbor Inc.  
 Pw Main Corporation  
 Pw Mccullough Corporation  
 Pw Northwestern Corporation  
 Pw Realty Partners, LLC  
 Pw Spring Mountain Corporation  
 Pyxis Investment Strategies Llp  
 Realia Holding AG In Liquidation  
 Redmen's Land Corp.  
 Ref Sf Properties LLC  
 Rml Leasing Corp.  
 Rmm Corporation  
 Rong Rui Asset Management Company Ltd  
 Rui Hua Investment Holding Limited  
 Ruiyin Ruixin Consulting Co. Ltd  
 S.G. Securities U.K. Limited  
 S.G. Warburg & Company Limited  
 S.G. Warburg Overseas Ltd.  
 S.G. Warburg Securities Sa  
 Sag Consulting, S.A.  
 Sbc Warburg Australia Securities Trust No. 1  
 Sbc Futures, Inc.  
 Second Directorships Limited  
 Seed Equity Funding Management L.L.C.  
 Seeyet Investments Limited  
 Selinus Corporation NV  
 Serf Holding Limited

Serf No 1 Limited  
 Serf No 2 Limited  
 Services (Wolfsberg) AG  
 Siena Financial Products Ltd.  
 Siena Reinsurance Ltd.  
 Sixth Avenue Realty Corporation  
 Soundview Technology  
 Corporation  
 Soundview Technology Group, Inc.  
 Soundview Technology Photonics  
 Limited Fund LLC  
 Southern Pines Triple Net Holdings  
 LLC  
 Srf Whaler Inc.  
 Stepway Limited  
 Stichting Vermogensgiro  
 Beleggingsrekening  
 Stretford Nominees Limited  
 Stripe 2 Gp (Jersey) Limited  
 Stripe Gp (Guernsey) Limited  
 Stripe Gp (Jersey) Limited  
 Sun Street Properties Limited  
 Susie Transfer Ab  
 Swiss Advisory Group Sa  
 Swiss Bank Center I Association,  
 Inc.  
 Swiss Bank Site Master  
 Association, Inc.  
 Swiss Finance Corporation  
 (Mauritius) Limited  
 The Ventures Limited  
 The Phildrew 1999 Lp  
 The Phildrew 2000 Lp  
 Three Keys Limited  
 Topcard Service AG  
 Triton Holdco Limited  
 Trumbull Property Fund Gp LLC  
 Trumbull Property Growth &  
 Income Fund Gp LLC

Trumbull Property Income Fund  
 Gp LLC  
 UBS (2003) Limited  
 UBS (Bahamas) Ltd  
 UBS (France) Sa  
 UBS (France) Sa Bordeaux Office  
 UBS (France) Sa Lyon Office  
 UBS (France) Sa Marseille Office  
 UBS (France) Sa Nantes Office  
 UBS (France) Sa Strasbourg Office  
 UBS (Grand Cayman) Limited  
 UBS (India) Private Ltd  
 UBS (Italia) Spa  
 UBS (Italia) Spa Bologna Branch  
 UBS (Italia) Spa Brescia Branch  
 UBS (Italia) Spa Florence Branch  
 UBS (Italia) Spa Modena Branch  
 UBS (Italia) Spa Padova Branch  
 UBS (Italia) Spa Rome Branch  
 UBS (Italia) Spa Treviso Branch  
 UBS (Italia) Spa Turin Branch  
 UBS (Jersey) Limited  
 UBS (Lux) Equity Fund - Euro  
 Countries Accelerator  
 UBS (Lux) Equity Fund - Euro  
 Countries Optimizer  
 UBS (Lux) Open-End Real Estate  
 Fund Management Company  
 S.À.R.L.  
 UBS (Luxembourg) S.A.  
 UBS (Luxembourg) Sa Austria  
 Branch  
 UBS (Luxembourg) Sa Austria  
 Branch Salzburg Office  
 UBS (Luxembourg) Sa Dublin  
 Branch  
 UBS (Monaco) S.A.  
 UBS (Uruguay) Limitada  
 UBS Advisory And Capital  
 Markets Australia Pty Ltd

UBS Advisory Services Limited  
 UBS Advisory Services Limited  
 Moscow Branch  
 UBS AG  
 UBS AG Abu Dhabi  
 Representative Office  
 UBS AG Almaty Representative  
 Office  
 UBS AG Athens Representative  
 Office  
 UBS AG Australia Branch  
 UBS AG Bangkok Representative  
 Office  
 UBS AG Beijing Branch  
 UBS AG Beirut Representative  
 Office  
 UBS AG Bogota Representative  
 Office  
 UBS AG Cairo Representative  
 Office  
 UBS AG Canada Branch  
 UBS AG Caracas Representative  
 Office  
 UBS AG Cayman Island Branch  
 UBS AG Chicago Branch  
 UBS AG Dubai Branch  
 UBS AG Dubai Representative  
 Office  
 UBS AG Guangzhou  
 Representative Office  
 UBS AG Hong Kong Branch  
 UBS AG Hungary Representative  
 Office  
 UBS AG Istanbul Representative  
 Office  
 UBS AG Jakarta Representative  
 Office  
 UBS AG Jersey Branch  
 UBS AG Johannesburg  
 Representative Office

UBS AG Kaohsiung Branch  
 UBS AG Kiev Representative  
 Office  
 UBS AG Kuala Lumpur  
 Representative Office  
 UBS AG Labuan Branch  
 UBS AG Lima Representative  
 Office  
 UBS AG London Branch  
 UBS AG Los Angeles Branch  
 UBS AG Manama Representative  
 Office  
 UBS AG Mexico City  
 Representative Office  
 UBS AG Miami Branch  
 UBS AG Moscow Representative  
 Office  
 UBS AG Mumbai Branch  
 UBS AG Nashville Loan  
 Production Office  
 UBS AG New York (1285 Avenue  
 Of The Americas) Branch  
 UBS AG New York (1285 Avenue  
 Of The Americas) Pwm Branch  
 UBS AG New York (1285 Avenue  
 Of The Americas) Pwm Branch  
 Jersey City Loan Production  
 Office  
 UBS AG New York (299 Park  
 Avenue) Branch  
 UBS AG New York (299 Park  
 Avenue) Uhnw Branch  
 UBS AG Nicosia Representative  
 Office  
 UBS AG Panama Representative  
 Office  
 UBS AG Paris Branch  
 UBS AG Philippine Representative  
 Office

UBS AG Prague Representative Office	UBS AG Tampa Branch Houston/River Oaks (Pj) Loan Production Office
UBS AG Qatar Financial Centre Branch	UBS AG Tampa Branch Jacksonville (Tj) Loan Production Office
UBS AG San Francisco Branch	UBS AG Tampa Branch Long Beach Loan Production Office
UBS AG Santiago De Chile Representative Office	UBS AG Tampa Branch Los Angeles (725 S. Figueroa Street) Loan Production Office
UBS AG Seoul Branch	UBS AG Tampa Branch Minneapolis Loan Production Office
UBS AG Shanghai Representative Office	UBS AG Tampa Branch Newport Beach (Uj) Loan Production Office
UBS AG Singapore Branch	UBS AG Tampa Branch Paramus (Hk) Loan Production Office
UBS AG Stamford Branch	UBS AG Tampa Branch Peachtree (Ax) Loan Production Office
UBS AG Swiss Branches - Generic	UBS AG Tampa Branch Philadelphia (Py) Loan Production Office
UBS AG Switzerland Stockholm Bankfilial	UBS AG Tampa Branch San Francisco (Fn) Loan Production Office
UBS AG Taichung Branch	UBS AG Tampa Branch Seattle (Wi) Loan Production Office
UBS AG Taipei Branch	UBS AG Tampa Branch Springfield Loan Production Office
UBS AG Tampa Branch	UBS AG Tampa Branch Stamford (Bw) Loan Production Office
UBS AG Tampa Branch 1285 Avenue Of Americas New York Loan Production Office	UBS AG Tampa Branch Vienna Loan Production Office
UBS AG Tampa Branch Boca Raton (Bx) Loan Production Office	UBS AG Tel Aviv Representative Office
UBS AG Tampa Branch Boston/Federal (Pw) Loan Production Office	UBS AG Tokyo Branch
UBS AG Tampa Branch Charlotte (C4) Loan Production Office	
UBS AG Tampa Branch Chicago (Cp) Loan Production Office	
UBS AG Tampa Branch Cincinnati Loan Production Office	
UBS AG Tampa Branch Dallas/Park Cities (Lm) Loan Production Office	
UBS AG Tampa Branch Denver/Tech (Dk) Loan Production Office	

UBS AG Tokyo Branch Nagoya  
 Business Office  
 UBS AG Tokyo Branch Osaka  
 Business Office  
 UBS AG Tokyo Branch Otemachi  
 Business Office  
 UBS AG Warsaw Representative  
 Office  
 UBS AG Weehawken Loan  
 Production Office  
 UBS AGrivest LLC  
 UBS Alternative And Quantitative  
 Investments Limited  
 UBS Alternative And Quantitative  
 Investments LLC  
 UBS Americas Inc.  
 UBS Asesores Mexico, S.A. De  
 C.V.  
 UBS Asesores Sa  
 UBS Asia Equities Limited  
 UBS Ast Kommerzielle  
 Immobilien Schweiz  
 UBS Australia Foundation  
 UBS Australia Foundation Pty Ltd  
 UBS Australia Holdings Ltd  
 UBS Australia Limited  
 UBS Bank (Canada)  
 UBS Bank (Canada) Calgary  
 Branch  
 UBS Bank (Canada) Montreal  
 Branch  
 UBS Bank (Canada) Vancouver  
 Branch  
 UBS Bank (Netherlands) B.V.  
 UBS Bank Mexico, S.A.  
 Institucion De Banca Multiple,  
 UBS Grupo Financiero  
 UBS Bank USA  
 UBS Bank USA Tampa Back  
 Office

UBS Bank, S.A.  
 UBS Bank, S.A. Barcelona Branch  
 UBS Bank, S.A. Bilbao Branch  
 UBS Bank, S.A. La Coruña Branch  
 UBS Bank, S.A. Sevilla Branch  
 Andalucia  
 UBS Bank, S.A. Valencia Branch  
 UBS Bank, S.A. Zaragoza Branch  
 UBS Belgium Sa/NV  
 UBS Belgium Sa/NV Antwerp  
 Agency  
 UBS Belgium Sa/NV Ghent  
 Agency  
 UBS Beteiligungs-GmbH & Co. Kg  
 UBS Bond Fund Management  
 Company S.A.  
 UBS Brasil Acquisition Holding  
 S.A.  
 UBS Brasil Administradora De  
 Valores Mobiliarios Ltda  
 UBS Brasil Holding Financeira  
 S.A.  
 UBS Brasil Serviços De Assessoria  
 Financeira Ltda.  
 UBS Capital (Jersey) Ltd  
 UBS Capital Americas Investments  
 II, LLC  
 UBS Capital Asia Pacific Limited  
 UBS Capital Bv  
 UBS Capital Holdings LLC  
 UBS Capital Investors Inc.  
 UBS Capital Jersey Corporation I  
 Ltd  
 UBS Capital Latin America Ldc  
 UBS Capital LLC  
 UBS Capital Markets Australia  
 Holdings Pty Ltd  
 UBS Capital Securities (Jersey)  
 Limited  
 UBS Card Center AG

UBS Carlyle Realty Partners Gp, LLC	UBS Deutschland AG Düsseldorf Branch
UBS Casa De Bolsa, S.A. De C.V.	UBS Deutschland AG Essen Branch
UBS Cash Management Australia Ltd	UBS Deutschland AG Hamburg Branch
UBS Charitable Foundation Hong Kong Limited	UBS Deutschland AG Munich Branch
UBS Clearing And Execution Services Limited	UBS Deutschland AG Nürnberg Branch
UBS Clearing Services Corporation	UBS Deutschland AG Rosenheim Branch
UBS Consulting Limited	UBS Deutschland AG Stuttgart Branch
UBS Corporate Finance South Africa (Proprietary) Limited	UBS Deutschland AG Wiesbaden Branch
UBS Corporation Australia Pty Limited	UBS Dynamic Floor Fund Management Company S.A.
UBS Credit Corp.	UBS East Asia Limited
UBS Custody Services Netherlands B.V.	UBS Emerging Economies Fund Management Company S.A.
UBS Custody Services Singapore Pte. Ltd.	UBS Employee Benefits Trust Limited
UBS Custody Singapore Pte. Ltd.	UBS Energy LLC
UBS Cyprus Moscow Limited	UBS Equity Finance Limited
UBS Cyprus Moscow Limited Representative Office	UBS Equity Fund Management Company S.A.
UBS Derivatives Hong Kong Limited	UBS Etf Advisory Holding S.A.
UBS Deutschland AG	UBS Eucalyptus Management, L.L.C.
UBS Deutschland AG Bad Homburg Branch	UBS Fiduciaria Spa
UBS Deutschland AG Berlin Branch	UBS Finance (Curaçao) NV
UBS Deutschland AG Bielefeld Branch	UBS Finance (Delaware) LLC
UBS Deutschland AG Bremen Branch	UBS Financial Services Inc.
UBS Deutschland AG Cologne Branch	UBS Financial Services Incorporated Of Puerto Rico
UBS Deutschland AG Dortmund Branch	UBS Financial Services Insurance Agency Inc.
	UBS Finanzholding Gmbh



UBS Focused Fund Management  
 Company S.A.  
 UBS Forex Inc  
 UBS Fund Advisor, L.L.C.  
 UBS Fund Management  
 (Luxembourg) S.A.  
 UBS Fund Management  
 (Switzerland) AG  
 UBS Fund Services (Cayman) Ltd  
 UBS Fund Services (Ireland)  
 Limited  
 UBS Fund Services (Luxembourg)  
 S.A.  
 UBS Fund Services (Luxembourg)  
 S.A. Poland Branch  
 UBS Fund Services (Usa) LLC  
 UBS Funding I LLC  
 UBS Funding II LLC  
 UBS Funding III LLC  
 UBS Funding IV LLC  
 UBS Funding IX LLC  
 UBS Funding V LLC  
 UBS Funding VI LLC  
 UBS Funding VII LLC  
 UBS Funding VIII LLC  
 UBS Funding X LLC  
 UBS Futures Financing Inc.  
 UBS Futures Singapore Ltd.  
 UBS Gestión Sociedad Gestora De  
 Instituciones De Inversión  
 Colectiva Sa  
 UBS Global Asset Management  
 (Americas) Inc.  
 UBS Global Asset Management  
 (Australia) Ltd  
 UBS Global Asset Management  
 (Canada) Inc.  
 UBS Global Asset Management  
 (Deutschland) Gmbh

UBS Global Asset Management  
 (Hong Kong) Limited  
 UBS Global Asset Management  
 (Hong Kong) Limited Beijing  
 Representative Office  
 UBS Global Asset Management  
 (Italia) S.R.L.  
 UBS Global Asset Management  
 (Italia) Sgr Spa  
 UBS Global Asset Management  
 (Japan) Ltd  
 UBS Global Asset Management  
 (Jersey) Ltd  
 UBS Global Asset Management  
 (Singapore) Ltd  
 UBS Global Asset Management  
 (Taiwan) Ltd  
 UBS Global Asset Management  
 (Uk) Ltd  
 UBS Global Asset Management  
 (Uk) Ltd Bahrain Branch  
 UBS Global Asset Management  
 (Us) Inc.  
 UBS Global Asset Management  
 Client Services Ltd  
 UBS Global Asset Management  
 Funds Ltd  
 UBS Global Asset Management  
 Holding (No. 2) Ltd  
 UBS Global Asset Management  
 Holding Ltd  
 UBS Global Asset Management  
 Life Ltd  
 UBS Global Asset Management  
 Mexico, S.A. De C.V.  
 UBS Global Asset Management  
 Trust Company  
 UBS Global Life AG  
 UBS Global Trust Corporation

UBS Global Trust Corporation  
 Singapore Branch  
 UBS Gp (Cayman) Ltd  
 UBS Grupo Financiero, S.A. De  
 C.V.  
 UBS Hana Asset Management  
 Company Ltd  
 UBS Holding (France) Sa  
 UBS Holding Canada Ltd.  
 UBS Holdings Asia Limited  
 UBS Holdings Cayman Limited  
 UBS Holdings Pty Ltd  
 UBS Hong Kong Nominees  
 Limited  
 UBS Hypotheken AG  
 UBS Ib Co-Investment 2001 Gp  
 Limited  
 UBS Ib Co-Investment 2001 Gp  
 No 2 Limited  
 UBS Immobilier (France) Sa  
 UBS Infrastructure Fund Gp Uk  
 Ltd  
 UBS Institutional Fund  
 Management Company S.A.  
 UBS Insurance Agency Of Puerto  
 Rico Incorporated  
 UBS International Holdings Bv  
 UBS International Hong Kong  
 Limited  
 UBS International Ib Limited  
 UBS International Infrastructure  
 Fund Gp Cayman Ltd.  
 UBS International Life Limited  
 UBS International Life Limited  
 Paris Branch  
 UBS International Uk Limited  
 UBS Investment Bank Nederland  
 Bv  
 UBS Investment Management  
 Canada Inc

UBS Investments Australia Pty Ltd  
 UBS Investments Limited  
 UBS Investments Philippines, Inc.  
 UBS Islamic Fund Management  
 Company S.A.  
 UBS Italia Sim Spa  
 UBS Italia Sim Spa Rome Office  
 UBS Jersey Nominees Limited  
 UBS Jersey Pension Scheme  
 Trustee Limited  
 UBS Juniper Management, L.L.C.  
 UBS Leasing AG  
 UBS Life AG  
 UBS Life Insurance Agency Co  
 Ltd  
 UBS Life Insurance Company Usa  
 UBS Limited  
 UBS Limited Niederlassung  
 Deutschland  
 UBS Limited Succursale De France  
 UBS Limited Uk Stockholm  
 Bankfilial  
 UBS Limited, London, Swiss  
 Branch, Opfikon  
 UBS Loan Finance LLC  
 UBS Management Services Hk  
 Limited  
 UBS Medium Term Bond Fund  
 Management Company S.A.  
 UBS Menkul Degerler As  
 UBS Money Market Fund  
 Management Company S.A.  
 UBS New Zealand Holdings  
 Limited  
 UBS New Zealand Limited  
 UBS Nominees (Pty) Ltd  
 UBS Nominees Alpha Limited  
 UBS Nominees Limited, Jersey  
 UBS Nominees Ltd, Cayman  
 UBS Nominees Pty Ltd

UBS O'Connor Investor LLC  
 UBS O'Connor Limited  
 UBS O'Connor LLC  
 UBS O'Connor Trading Limited  
 UBS Oficina De Representación Sa  
 UBS Pension Trustee Company  
 Limited  
 UBS Pensions Trustees Uk Limited  
 UBS Polybahn AG  
 UBS Portfolio LLC  
 UBS Preferred Funding (Jersey)  
 Limited  
 UBS Preferred Funding Company  
 LLC II  
 UBS Preferred Funding Company  
 LLC IV  
 UBS Preferred Funding Company  
 LLC IX  
 UBS Preferred Funding Company  
 LLC V  
 UBS Preferred Funding Company  
 LLC VI  
 UBS Preferred Funding Company  
 LLC VII  
 UBS Preferred Funding Company  
 LLC VIII  
 UBS Principal Capital Asia Ltd.  
 UBS Private Banking Nominees  
 Ltd  
 UBS Private Equity Management,  
 L.L.C.  
 UBS Property Limited  
 UBS Property Limited Moscow  
 Branch  
 UBS Real Estate Investments Inc  
 UBS Real Estate Kag Mbh Czech  
 Branch  
 UBS Real Estate Kag Mbh Dutch  
 Branch

UBS Real Estate Kag Mbh French  
 Branch  
 UBS Real Estate Kag Mbh Italian  
 Branch  
 UBS Real Estate Kag Mbh  
 Portuguese Branch  
 UBS Real Estate Kag Mbh Spanish  
 Branch  
 UBS Real Estate  
 Kapitalanlagegesellschaft Mbh  
 UBS Real Estate Luxembourg  
 Holdings Sah  
 UBS Real Estate Securities Inc.  
 UBS Realty & Office Engineering  
 Company (Pty) Limited  
 UBS Realty Capital LLC  
 UBS Realty Investors LLC  
 UBS Reorganisation 2006-01 Ltd  
 UBS Reorganisation 2009-03 Ltd  
 UBS Reorganisation 2010-01 Ltd  
 UBS Reorganisation 2010-02 Ltd  
 UBS Reorganisation 2010-03 Ltd  
 UBS Responsibility Fund  
 Management Company S.A.  
 UBS Russia Limited  
 UBS Saudi Arabia  
 UBS Saudi Arabia Holding Limited  
 UBS Sauerborn Private Equity  
 Komplementär Gmbh  
 UBS Secretaries Limited, Jersey  
 UBS Secretaries Ltd, Cayman  
 UBS Sector Portfolio Management  
 Company S.A.  
 UBS Securities (Thailand) Ltd  
 UBS Securities Asia Limited  
 UBS Securities Asia Limited  
 Beijing Representative Office  
 UBS Securities Asia Limited  
 Shanghai Representative Office  
 UBS Securities Australia Ltd

UBS Securities Canada Inc.  
 UBS Securities Canada Inc.  
     Calgary Sub-Branch  
 UBS Securities Canada Inc.  
     Montreal Branch  
 UBS Securities España Sociedad  
     De Valores Sa  
 UBS Securities France Sa  
 UBS Securities Hong Kong  
     Limited  
 UBS Securities India Private  
     Limited  
 UBS Securities International  
     Limited  
 UBS Securities Israel Limited  
 UBS Securities Japan Ltd  
 UBS Securities Japan Ltd Tokyo  
     Branch  
 UBS Securities Limited  
 UBS Securities LLC  
 UBS Securities Malaysia Sdn Bhd  
 UBS Securities New Zealand  
     Limited  
 UBS Securities Nominees Limited  
 UBS Securities Philippines Inc  
 UBS Securities Pte. Ltd.  
 UBS Securities Pte. Ltd. Seoul  
     Branch  
 UBS Securities Pte. Ltd. Taipei  
     Branch  
 UBS Service Centre (Poland) Sp. Z  
     O.O.  
 UBS Services Limited  
 UBS Services LLC  
 UBS Servicios, S.A. De C.V.  
 UBS Short Term INvest  
     Management Company S.A.  
 UBS Sif Management Company  
     S.A.  
 UBS Sociedad De Bolsa Sa

UBS South Africa (Proprietary)  
     Limited  
 UBS Strategy Fund Management  
     Company S.A.  
 UBS Swiss Financial Advisers AG  
 UBS Tamarack Management,  
     L.L.C.  
 UBS Tc (Jersey) Ltd  
 UBS Third Party Management  
     Company S.A.  
 UBS Third Party Sif Management  
     Company S.A.  
 UBS Trading S.A.  
 UBS Trust Company Of Puerto  
     Rico  
 UBS Trust Company, National  
     Association  
 UBS Trust Company, National  
     Association - Houston, Tx Office  
 UBS Trust Company, National  
     Association - Orlando, Fl Office  
 UBS Trust Company, National  
     Association - Weehawken, Nj  
     Office  
 UBS Trustee Company Limited  
 UBS Trustees (B.V.I.) Limited  
 UBS Trustees (Bahamas) Ltd  
 UBS Trustees (Cayman) Ltd  
 UBS Trustees (Jersey) Ltd  
 UBS Trustees (Singapore) Ltd  
 UBS U.S. Mid Cap Growth Equity  
     Fund  
 UBS Uk Holding Limited  
 UBS Uk Properties Limited  
 UBS Ukraine Tov  
 UBS USA LLC  
 UBS Utah Services LLC  
 UBS Va N°1 Fund Management  
     Compny, S.À.R.L.

UBS Warburg C.I. 2001 General  
Partner Gmbh  
UBS Warburg Finance Asia  
Limited  
UBS Warburg Ltd  
UBS Warburg Swaps Inc.  
UBS Wealth Management (Uk) Ltd  
UBS Wealth Management  
Australia Ltd  
UBS Wealth Management  
Australia Nominees Pty Ltd  
UBS Wealth Management Israel  
Ltd  
UBS Willow Management, L.L.C.  
Unihouse Nominees Limited

Union Bank Of Switzerland  
(Pensions) Limited  
Union Valoren AG  
Valgroup Hold Sa  
Vermogensparaplu Beheer B.V.  
Wall Street Realty Corporation  
Warbont Nominees Pty Limited  
Warburco Nominees Ltd  
Wg Charles Street LLC  
Wg West Village LLC  
Whiteside Nominees Limited  
Widder Hotel AG  
Winooski Ltd.  
Wit Capital Corporation  
Wuhu Ltd.  
Yorke Secretaries Limited

**STATEMENT PURSUANT TO § 500.1(F) OF  
THE RULES OF THE COURT OF APPEALS**

Plaintiff Wachovia Bank, N.A. has been succeeded by Wells Fargo Bank, N.A. Wells Fargo Bank, N.A. is a direct, wholly-owned subsidiary of Wells Fargo & Co. Wells Fargo & Co.'s subsidiaries, inclusive of Wells Fargo Bank, N.A.'s subsidiaries, are:

A. G. Edwards Capital, Inc.  
Asgi Private Equity Partners 1999  
L.P.  
Asgi Private Equity Partners 2001  
L.P.  
Asgi Private Equity Partners QP 1999  
L.P.  
Asgi Private Equity Partners QP 2001  
L.P.  
A. G. Edwards Hedging Services, Inc.  
Abca, Inc.  
1005 Corp.  
Aco Brokerage Holdings Corporation  
Wells Fargo Insurance Services Usa,  
Inc.  
American E & S Insurance Brokers  
California, Inc.  
Britt/Paulk Insurance Agency, Inc.  
Union Commerce Title Company,  
LLC  
W.C.A. Service Corporation, Inc.  
Wells Fargo Global Broker Network,  
LLC  
Wells Fargo Insurance Services Of  
New York, Inc.  
Wells Fargo Insurance Services Of  
West Virginia, Inc.  
Wells Fargo Third Party  
Administrators, Inc.

Selectnet Plus, Inc.  
Wells Fargo Re, Inc.  
Wells Fargo Special Risks, Inc.  
Age Capital Holding, Inc.  
Asgi Private Equity Partners 1999  
L.P.  
Asgi Private Equity Partners 2001  
L.P.  
Asgi Private Equity Partners Qp 1999  
L.P.  
Asgi Private Equity Partners Qp 2001  
L.P.  
Age International, Inc.  
Alternative Strategies Group, Inc.  
Alternative Strategies Managed  
Futures & Commodities Platform  
LLC  
Alternative Strategies Offshore  
Platform, Spc  
Alternative Strategies Platform, LLC  
Alternative Strategies Real Estate  
Platform, LLC  
Asgi Agility Income Fund  
Asgi Hedged Equities, Accredited,  
L.P.  
Asgi Hedged Equities, Super  
Accredited, L.P.  
Asgi Multi-Strategy Fund II, Super  
Accredited, L.P.

Asgi Multi-Strategy, Accredited, L.P.  
 Asgi Multi-Strategy, Super  
 Accredited, L.P.  
 Asgi Private Equity Fund II, L.P.  
 Asgi Private Equity Fund, L.P.  
 Evergreen Private Investment Funds--  
 Hedged Opportunities Fund,  
 Accredited, L.P.  
 Evergreen Private Investment Funds-  
 Absolute Return Fund, Super  
 Accredited L.P.  
 Evergreen Private Investment Funds-  
 Global Multi-Strategy Fund  
 Accredited, L.P.  
 Golden Capital Management, LLC  
 Gs Private Equity Partners Ix Asw  
 Fund, LLC  
 Landmark Equity Partners Xiv Asp  
 Fund, LLC  
 Nb Crossroads Xviii Asp Fund, LLC  
 Pamlico Capital II Asp Fund, LLC  
 Siguler Guff Bric Opportunities II  
 Asw Fund, LLC  
 Siguler Guff Distressed Real Estate  
 Asp Fund, LLC  
 Bluepoint Holdings Limited  
 Bryan, Pendleton, Swats & Mcallister,  
 LLC  
 Capitol Finance Group, Inc.  
 Central Fidelity Capital Trust I  
 Central Fidelity Properties, Inc.  
 Century Bancshares, Inc.  
 Century Capital Trust  
 Wells Fargo Bank, National  
 Association  
 Corestates Holdings, Inc.  
 United Bancshares, Inc  
 Danube Holdings II C.V.  
 Wachovia Finance Ireland Limited  
 Wachovia Netherlands B.V.

Danube Holdings III C.V.  
 Evergreen Ecm Holdings B.V.  
 Ecm Holdings Limited  
 European Credit Management  
 Limited  
 Neckar Financial, LLC  
 Dfg Holdings, LLC  
 Diversified Finance Investments, LLC  
 Partnership Investments S.A.R.L.  
 Preferred Funding S.A.R.L.  
 Preferred Investments S.A.R.L.  
 Partnership Investments S.A.R.L.  
 Preferred Investments S.A.R.L.  
 Edwards Development Corporation  
 Everen Capital Corporation  
 A. G. Edwards Technology Group,  
 Inc.  
 A. G. Edwards Technology Partners  
 Bateman Eichler, Hill Richards Realty  
 Co., Incorporated  
 Behr Housing Investors 1981-1, L.P.  
 Bpl Holdings, Inc.  
 Boettcher Properties, Ltd.  
 Ceres Investment Company, The  
 A. G. Edwards Technology Partners  
 Danube Holdings II C.V.  
 Everen Leasing, LLC  
 Rhine Investment Holdings, LLC  
 Danube Holdings III C.V.  
 Structured Principal Strategies  
 Holdings, LLC  
 Wachovia Securities Financial  
 Holdings, LLC  
 A.G. Edwards & Sons, LLC  
 Danube Holdings III C.V.  
 Fa Recruiting Services, LLC  
 First Clearing, LLC  
 Wachovia Securities Insurance  
 Agency Of Puerto Rico, Inc.

Wells Fargo Advisors Financial  
 Network, LLC  
 Wells Fargo Advisors Insurance  
 Agency, LLC  
 Wells Fargo Advisors, LLC  
 Wachovia Securities (Uruguay) S.A.  
 Wachovia Securities Servicios E  
 Participacoes (Brasil) Ltda.  
 Wells Fargo Advisors (Argentina)  
 LLC  
 Wachovia Securities Servicios E  
 Participacoes (Brasil) Ltda.  
 Wells Fargo Advisors (Chile) LLC  
 Wells Fargo Advisors (Montevideo)  
 Usuaría De Zona Franca S.A.  
 Wells Fargo Securities, LLC  
 Wf Investment Holdings, LLC  
 Acas/Wcm, LLC  
 American Capital/Wachovia Cdo  
 Investor Fund, L.P.  
 Enervest-Wachovia Co-Investment  
 Partnership, L.P.  
 Highland Glen, LLC  
 Landfill Portfolio, LLC  
 Vento Wf, LLC  
 Wachovia Commodities Holdings,  
 Inc.  
 Wells Fargo Commodities, LLC  
 Wachovia Proprietary Equity Trading,  
 LLC  
 Wells Fargo Mortgage Loan Trust,  
 LLC  
 Wih Cdo, LLC  
 Wih Holdings  
 Wachovia Technology Planning &  
 Solutions Private Limited  
 Evergreen Alternative Capital, Inc  
 Fairfax Corporation, The  
 Real Estate Consultants Of The  
 South, Inc.

First Citizens Sc Capital Trust II  
 First Community Capital Trust I  
 First Community Capital Trust II  
 First Community Capital Trust III  
 First Union Capital I  
 First Union Capital II  
 First Union Community Development  
 Corporation  
 Headhouse Retail Associates, L.P.  
 First Union Institutional Capital I  
 First Union Institutional Capital II  
 First Union Title Corporation  
 Wells Fargo Commercial Mortgage  
 Fnl Insurance Company  
 Foothill Group Inc., The  
 Wells Fargo Capital Finance, Inc.  
 Foothill Capital Corporation  
 Monument Peak, LLC  
 Valley Asset Management, Inc.  
 Wells Fargo Cm Funding, LLC  
 Wells Fargo Escrow Company, LLC.  
 Wells Fargo Retail Finance II, LLC  
 Wells Fargo Trade Capital Services,  
 Inc.  
 Forum Capital Markets, LLC  
 Wells Fargo Global Support Ltd.  
 Fpfc Management LLC  
 Eaton Village Associates, Ltd. Co.  
 Func Holdings, Inc.  
 Wachovia Settlement Services Of Al,  
 LLC  
 Wachovia Settlement Services, LLC  
 Omniserve Of Alabama, LLC  
 Greater Bay Bancorp  
 Gbb Capital II  
 Gbb Capital III  
 Gbb Capital IV  
 Gbb Capital VI  
 Gbb Capital VIII



Wells Fargo Bank, National  
 Association  
 Wells Fargo Insurance Services Usa,  
 Inc.  
 H.D. Vest, Inc.  
 H.D. Vest Advisory Services, Inc.  
 H.D. Vest Insurance Agency, LLC  
 H.D. Vest Investment Securities, Inc.  
 Home Services Title Reinsurance  
 Company  
 IJL 2004, LLC  
 Interwest Capital Trust I  
 Island Finance Puerto Rico, Inc.  
 Lowry Hill Investment Advisors, Inc.  
 Macro\*World Research Corporation  
 Macro\*World Research Philippines  
 Inc.  
 Wachovia Technology Planning &  
 Solutions Private Limited  
 Nero Limited, LLC  
 Augustus Ventures, L.L.C.  
 Norwest Limited LP, LLLP  
 Kidron Partners Iv, LP  
 Norwest Equity Partners Ix, LP  
 Nec Ix, LLC  
 Norwest Equity Partners V, A  
 Minnesota Limited Partnership  
 Norwest Equity Partners Vi, LP  
 Norwest Equity Partners Vii, LP  
 Norwest Equity Partners Viii, LP  
 Nec Viii, LLC  
 Norwest Mezzanine Partners I, LP  
 Norwest Mezzanine Partners II, LP  
 Norwest Mezzanine Partners III, LP  
 Norwest Venture Partners Ix, LP  
 Norwest Venture Partners Fvci-  
 Mauritius  
 Norwest Venture Partners Vi, LP  
 Norwest Venture Partners Vi-A, LP  
 Palo Alto Partners, LLC

Norwest Venture Partners Vii, LP  
 Norwest Venture Partners Vii-A, LP  
 Norwest Venture Partners VII-A FII  
 Mauritius  
 Norwest Venture Partners VII-A  
 FVCI Mauritius  
 Norwest Venture Partners VII-A  
 Mauritius  
 Norwest Venture Partners VIII, LP  
 Norwest Venture Partners X, LP  
 Norwest Venture Partners - Mauritius  
 Norwest Venture Partners X -  
 Mauritius  
 Norwest Venture Partners X FII -  
 Mauritius  
 Norwest Venture Partners XI, LP  
 Norwest Venture Partners FII  
 Singapore Private Limited  
 Norwest Venture Partners FVCI  
 Singapore Private Limited  
 Norwest Venture Partners Singapore  
 Private Limited  
 Tiberius Ventures, L.L.C.  
 Norwest Limited LP, Llp  
 Northern Prairie Indemnity Limited  
 Norwest Equity Capital, L.L.C.  
 Norwest Venture Capital  
 Management, Inc.  
 Overland Advisors, LLC  
 Overland Gp LLC  
 Overland Relative Value Master Fund  
 LP  
 Overland Relative Value Master Fund  
 LP  
 Overland Relative Value Fund LLC  
 Overland Relative Value Master Fund  
 LP  
 Pacific Northwest Statutory Trust I  
 Peregrine Capital Management, Inc.  
 Placer Sierra Bancshares

Placer Statutory Trust III  
 Placer Statutory Trust Iv  
 Southwest Community Statutory  
 Trust I  
 Wells Fargo Bank, National  
 Association  
 Primrose Asset Management, Inc.  
 Prn Holdings, Inc.  
 Progress For People, LLC  
 Residential Home Mortgage  
 Investment, L.L.C.  
 Signet Student Loan Corporation  
 Strats, LLC  
 Structured Asset Investors, LLC  
 Structured Credit Partners, LLC  
 Superior Guaranty Insurance  
 Company  
 Age Capital Holding, Inc.  
 Synthetic Fixed-Income Securities,  
 Inc.  
 Trste II, Inc.  
 Trste, Inc.  
 Tryon Management, Inc.  
 Union Hamilton Reinsurance, Ltd.  
 Besso Holdings Limited  
 Besso Limited  
 Besso Risk Solutions Ltd  
 Besso Special Groups Limited  
 Besso Transportation Limited  
 H. Bernstein Insurance Brokers  
 Limited  
 O'sullivan And Associates Limited  
 Besso Operational Support Services  
 Limited  
 Besso Re Limited  
 Cbc Uk Limited  
 Cbc Affinity Groups Limited  
 Global Flying Insurance Services  
 Limited

Union Hamilton Special Purpose  
 Funding 2005-1, LLC  
 Union Hamilton Special Purpose  
 Funding 2005-2, LLC  
 Union Hamilton Special Purpose  
 Funding 2006-1, LLC  
 United Bancorporation Of Wyoming  
 Capital Trust I  
 United Bancorporation Of Wyoming  
 Capital Trust II  
 United Bancorporation Of Wyoming  
 Capital Trust III  
 Wachovia Capital Investments, Inc.  
 Wachovia High Yield Investments  
 Corporation  
 Wachovia International Capital  
 Corporation  
 Wachovia International Servicos,  
 Ltda  
 Wsh Holdings, Ltd  
 Wachovia International Servicos,  
 Ltda  
 Wachovia Capital Investors, Inc.  
 Wachovia Capital Trust I  
 Wachovia Capital Trust II  
 Wachovia Capital Trust III  
 Wachovia Capital Trust IV  
 Wachovia Capital Trust IX  
 Wachovia Capital Trust V  
 Wachovia Capital Trust X  
 Wachovia Community Development  
 Corporation  
 Wachovia Development Corporation  
 Ao Cheng Ltd  
 Az-#3644 Jackson, LLC  
 Flagstone Apartment Property, LLC  
 Fullerton Towers Holdings, LLC  
 Greensboro-Richmond Properties,  
 LLC

Hanover/Fudc Master Limited  
 Partnership  
 Villages At Warner Ranch Pud, LP  
 Jc-Warren Mi, LLC  
 Macom Dekalb II, LLC  
 Meadowmont JV, LLC  
 Oak Haven Senior Living, LLC  
 Oilwell Supply, L.P.  
 Prime Era Investments Limited  
 Pto Holdings, LLC  
 R.B.C. Corporation  
 Real Sincere Group Limited  
 Thm Master Te, LLC  
 Wachovia Caveness Member, LLC  
 Wachovia Century Mill Member,  
 LLC  
 Century Mill Investors LLC  
 Wachovia Kw1, LLC  
 Hokkaido Apartments LLC  
 Wachovia Kw2, LLC  
 Wachovia Ocean View Member, LLC  
 Ocean View Holdco, LLC  
 Wdc 541 N Fairbanks Member, LLC  
 G/Wdc 541 N Fairbanks, LLC  
 Wdc Lake Spivey Member, LLC  
 Lake Spivey Senior Living/Wdc, LLC  
 Wdc Triad Parent, LLC  
 Wdc Triad Member I, LLC  
 Triad Apartment Portfolio, LLC  
 Wdc Union Station, LLC  
 Union Station Holding Company,  
 LLC  
 Wdc Ventures Ltd.  
 Wg-5278 Mo, LLC  
 425 South Tryon Street, LLC  
 Wachovia Investors, Inc.  
 Cmlb 2001, LLC  
 Evergreen Private Investment Funds--  
 Hedged Opportunities Fund,  
 Accredited, L.P.

Jordan Investments Gp  
 Jordan Investments LP  
 Tyree Financing, S.Ar.L.  
 Lynx 2002-I, Ltd.  
 Meridian Venture Partners  
 Mvp Distribution Partners  
 Pamlico Capital I, L.P.  
 Pamlico Capital II, L.P.  
 Wcp Compression, LLC  
 Wcp Compression Holdings, LLC  
 Wachovia Capital Partners 1999, LLC  
 Wachovia Capital Partners 1999-II,  
 LLC  
 Wachovia Capital Partners 2000, LLC  
 Wachovia Capital Partners 2001, LLC  
 Wachovia Capital Partners 2002, LLC  
 Wachovia Capital Partners 2003, LLC  
 Wachovia Capital Partners 2004, LLC  
 Wachovia Capital Partners 2005, LLC  
 Wcp Holdings 2002, LLC  
 Wcp Holdings 2004, LLC  
 Wcp Secondary Fund I Gp, LLC  
 Wachovia Capital Partners Secondary  
 Fund I, L.P.  
 Wheat First Butcher Singer Private  
 Equity Fund, Limited Partnership  
 Wachovia Life Insurance Company  
 Wachovia Preferred Funding Corp.  
 Wachovia Preferred Funding Holding  
 Corp.  
 Wachovia Private Capital, Inc.  
 Wachovia Real Estate Investment  
 Corp.  
 Wachovia Regional Community  
 Development Corporation, Inc.  
 Wachovia Regional Foundation  
 Wachovia Risk Services, Inc.  
 Wachovia Wells Fargo Foundation,  
 Inc., The  
 Wds Holdings, Inc.

Wdsi, LLC  
 Heritage Indemnity Company  
 Heritage Mechanical Breakdown  
 Corporation  
 Wachovia Administrative Services,  
 Inc.  
 Wachovia Management Corporation  
 Wachovia Warranty Corporation  
 Westlake Group Limited, The  
 Westlake Insurance Company  
 (Bermuda), Ltd.  
 Wells Fargo Asia Limited  
 Wells Fargo International  
 Commercial Services Limited  
 Wells Fargo Bank South Central,  
 National Association  
 Greenfield Funding, LLC  
 Scg Funding, LLC  
 Wells Fargo Bank, National  
 Association  
 Ails, Inc.  
 Allison Hill Associates, L.P.  
 Alternative Strategies Brokerage  
 Services, Inc.  
 American House, L.P.  
 American Securities Company  
 American Securities Company Of  
 Missouri  
 American Securities Company Of  
 Nevada  
 American Securities Company Of  
 Utah  
 Amnet Mortgage LLC  
 American Mortgage Network LLC  
 Andalusia Senior Housing, L.P.  
 Arbor Glen L.P.  
 Arbor Village, L.P.  
 Atlanta Housing Equity Fund II, L.P.  
 Atlas - Oci Enhanced Loan Income  
 Fund LLC

Atlas Capital Funding, Ltd.  
 Atlas Loan Funding (Cent I), LLC  
 Atlas Loan Funding (Hartford), LLC  
 Atlas Loan Funding (Navigator), LLC  
 Atlas Loan Funding 2, LLC  
 Bacon Housing L.P.  
 Bank Of Bertrand  
 Barrett Place II Limited Partnership  
 Barrett Place Limited Partnership  
 Beechridge Limited Partnership  
 Biltmore Hills Limited Partnership  
 Biscoe Finance, LLC  
 Bowler Housing L.P.  
 Br Limited Partnership  
 Camellia Court Apartments Limited  
 Partnership  
 Cardinal Holdings LLC  
 Cardinal Finance LLC  
 Cardinal International Leasing  
 Holding Corp.  
 Cardinal International Leasing, LLC  
 Carolina Equity Fund V, LP  
 Charleston Place Limited Partnership  
 City Affordable Housing LLC  
 City First Capital III, LLC  
 City First Capital V, LLC  
 City First Capital Xi, LLC  
 Cnb Investment Trust I  
 Cnb Investment Trust II  
 Colts LLC 2005-1  
 Colts LLC 2005-2  
 Colts LLC 2007-1  
 Consortium America II, LLC  
 Corestates Capital I  
 Corestates Capital II  
 Corestates Capital III  
 Creative Choice Homes IX, L.P.  
 Creative Choice Homes X, L.P.  
 Crocker Properties, Inc.  
 Ct I Limited Partnership

Danube Holdings I C.V.  
 Wachovia International B.V.  
 Wbi Holdings I, LLC  
 Wbi Holdings II, LLC  
 Wbi Holdings III, LLC  
 Wbi Holdings IV, LLC  
 Wbi Holdings V, LLC  
 Wbi Holdings VI, LLC  
 Wells Fargo Bank International  
 Dna Investments Holdings, LLC  
 Eaton Village Associates, Ltd. Co.  
 Epic Funding Corporation  
 Equitable Realty Associates, L.P.  
 Evergreen Asset Management Corp.  
 Evergreen Financing Company, LLC  
 Evergreen Worldwide U.S. Dollar  
 Fund, Ltd.  
 Evergreen Investment Management  
 Company, LLC  
 Evergreen Service Company, LLC  
 Fairfax County Redevelopment And  
 Housing Authority/Hcdc One, L.P.  
 Ffl Services Corporation  
 First Consumer Services, Inc.  
 First Fidelity Urban Investment  
 Corporation  
 First National Properties, Inc.  
 First Penco Realty, Inc.  
 First State Service Corporation  
 First Union Commercial Leasing  
 Group, L.L.C.  
 First Union Holdings, LLC  
 First Union Financial Investments,  
 LLC  
 First Union Rail Corporation  
 Ironbrand Capital, LLC  
 Transportation Equipment Advisors,  
 Inc.  
 Flower Manor Limited Partnership

Fountain Place Associates Limited  
 Partnership  
 Galliard Capital Management, Inc.  
 Gc Finance 2010 LLC  
 Glen Royall Mill Limited Partnership  
 Golden West Savings Association  
 Service Co.  
 Goldenrod Asset Management, Inc.  
 Golfview Apartments L.P.  
 Golfview Associates Limited  
 Partnership  
 Grande Pointe Associates, LP  
 Greater Reading Development  
 Partnership  
 Gs Bridgeport I Cde, LLC  
 Hamilton Manor Limited Partnership  
 Haskell House, LP  
 Hhc Mezzanine D, LLC  
 Horizon Management Services, Inc.  
 Hudson Park Towers Limited  
 Partnership  
 Ironbrand Capital, LLC  
 J. L. Kaplan Associates, LLC  
 Kensington Of Kissimmee Ltd.  
 King Street Apartments Partners L.P.  
 Laurel Pointe Of Salisbury Limited  
 Partnership  
 Lincoln Building Corporation  
 Lott Port Redevelopment Associates  
 L.P.  
 Maa/Ncf Sub-Cde, LLC  
 Madison Street Associates, L.P.  
 Manor Ridge Limited Partnership  
 Martins Landing I Limited  
 Partnership  
 Martins Landing II Limited  
 Partnership  
 Meadow Landing I, L.P.  
 Meridian Mortgage Corporation

Metropolitan West Capital  
 Management, LLC  
 Mid-City Community Cde-Operating  
 Fund, LLC  
 Mid-Peninsula Capital, LLC  
 Model Homes Limited Partnership  
 Monument Street Funding, Inc.  
 Anacuitas Manor, Ltd.  
 Athens Rental Housing, L.P.  
 Atlanta Housing Equity Fund, L.P.  
 Bell Ridge Associates, LLC  
 Brittany Point Apartments Limited  
 Partnership  
 Bull Run Creek Associates LLC  
 Centurion Funding, Inc.  
 Centurion Funding, LLC  
 Monument Street Funding, LLC  
 Monument Street Funding-II, LLC  
 Monument Street International  
 Funding-I, LLC  
 First International Advisors, LLC  
 Monument Street International  
 Funding-II, LLC  
 First International Advisors, LLC  
 Chambers Bridge Urban Renewal  
 Housing, L.P.  
 Cherokee Hills Associates LLC  
 Church Street Senior Housing, L.P.  
 Cimarron Estates, Ltd.  
 Crestmore Village Apartments  
 Limited Partnership  
 Crestmore Village Apartments Phase  
 II, Limited Partnership  
 Delaware Equity Fund I, L.P.  
 Delaware Equity Fund II, L.P.  
 Delaware Valley Equity Fund, L.P.  
 Eastgate Properties, L.P.  
 Evergreen Apartments, L.P.  
 Exchange Building Limited  
 Partnership, The

Florida Housing Tax Credit Fund,  
 L.P.  
 Greystone Of Mcdonough, L.P.  
 Heatherwood Apartments Ltd. Ptshp.  
 Hickory Hollow Senior Apartments  
 Limited Partnership  
 Horace Bushnell Limited Partnership  
 Housing Equity Fund Of Virginia  
 Fund II, L.P.  
 Housing Equity Fund Of Virginia III,  
 L.P.  
 Humboldt-Sweets Urban Renewal  
 Limited Partnership  
 Maryland Housing Equity Fund I,  
 L.P.  
 Maryland Housing Equity Fund II,  
 L.P.  
 Mercy Housing Georgia I, LLLP  
 Monument Street Holding LLC  
 National Equity Fund 1992, L.P.  
 National Equity Fund 1993, L.P.  
 National Equity Fund 1994, L.P.  
 National Equity Fund 1995, L.P.  
 National Equity Fund 1996 Limited  
 Partnership  
 Aliquippa-Franklin Avenue Dev  
 Assoc., LP  
 Artspace Pittsburgh LP  
 Asheboro-North Forest, LLC  
 Bannerman Manor, L.P.  
 Bluff Homes, L.P.  
 Bridgeport Supportive Housing L.P.  
 Buckeye Homes II, L.P.  
 C-D Housing I, L.P.  
 Cascade House At Hope Village L.P.  
 Central Colville Apartments L.P.  
 Corinthian Homes II Urb Rnwl Hsng  
 Co LP  
 Elm Street Community, L.P.  
 Estes Street Apartments, L.P.

Faith Residences 1996, L.P.  
 Famicos Notre Dame Apts. L.P.  
 Fourth Street Access L.P.  
 Frog Hollow Homes, L.P.  
 Glenville Homes, L.P.  
 H.E.L.P. Philadelphia I Assoc., L.P.  
 Hasco-Cedar Street L.P.  
 Heritage Meadows Partners L.P.  
 Izannah Walker Houses L.P.  
 Jhb, L.P.  
 Kellams Marina II, L.P.  
 Lago Vista Apartments, Ltd.  
 Lake Washington L.P.  
 Luverne Family Housing, L.P.  
 M.L King Jr. Blvd Ldha, LP  
 Maple Knoll L.P.  
 Meadow Spring Housing Associates,  
 LLC  
 Mercy Housing Washington III, L.P.  
 Mfc Reclamation - III, L.P.  
 Myrtle Terrace L.P.  
 Phillips Redesign L.P.  
 Pine Central, L.P.  
 Pinehurst Ldha, LP  
 Redwood Apartments, L.P.  
 Reed House Associates, S.R.O., L.P.  
 Refugio De Amor L.P.  
 Securing The Future, L.P.  
 St. Andrews Klahanie, L.P.  
 State Street Bridgeport, L.P.  
 Tabernacle L.P.  
 Targeted Neighborhood Initiative  
 Assoc., L.P.  
 Toledo Homes II, L.P.  
 Twentieth Place L.P.  
 Union Street Cooperative L.P.  
 United Community Village Urb Rnwl  
 Hsg Co L.P.  
 Warren First Homes L.P.  
 Warren Sherman Flats L.P.

Washington Park Revitalization  
 Project, L.P.  
 1928 Loring Place L.P.  
 551 Warren Street I, L.P.  
 New Community Estates Urban  
 Renewal Associates, L.P.  
 New Jersey Housing Opportunity  
 Fund II, L.L.C.  
 Bnh Urban Renewal, LP  
 Carmel House, LP  
 Magill Associates, L.P.  
 Project Home Urban Renewal L.P.  
 Sunrise House, L.P.  
 Urban Renewal Of Elizabethport, LP  
 New Jersey Housing Opportunity  
 Fund, L.P.  
 Old Bridge Urban Renewal, L.P.  
 One South Place, L.P.  
 Overlook At Brook Run Associates,  
 LP  
 Pendleton Pines Associates LLC  
 Pennrose Affordable Housing Fund,  
 L.P.  
 Pennsylvania Housing Opportunity  
 Fund I, L.P.  
 Pennsylvania Housing Opportunity  
 Fund II, L.P.  
 Ridgetop Realty Associates, LLC  
 Rome Rental Housing, L.P.  
 Sable Point Apartments Limited  
 Partnership  
 Sable Point II Apartments Limited  
 Partnership  
 Sandalwood Terrace Of Ludowici  
 L.P.  
 Somerset Apts., L.P.  
 St. Charles Place, L.P.  
 Stoneybrooke Heights Associates,  
 LLC  
 Sundial Apartments, L.P.

Swansgate Apartments II, L.P.  
 Timberleaf Estates Limited  
     Partnership  
 Waterford Manor II, L.P.  
 Waterford Manor, L.P.  
 West Hanover Urban Renewal, L.P.  
 2-4 Potter Place Urban Renewal, L.P.  
 Mulberry Asset Management, Inc.  
 Pelican Asset Management, Inc.  
 Violet Asset Management, Inc.  
 Bitterroot Asset Management, Inc.  
 Sweetroot Funding, LLC  
 Thirty-Eight Hundred Investments  
     Limited  
 Thirty-Eight Hundred Fund, LLC,  
     The  
 Intrawest Asset Management, Inc.  
 Alano Funding, LLC  
 Azalea Asset Management, Inc.  
 Brittlebush Financing, LLC  
 Carnation Asset Management, Inc.  
 Golden Pacific Insurance Company  
 Ruby Asset Management Inc.  
 Peony Asset Management, Inc.  
 Golden Funding Company  
 Mastiff Funding, LP  
 Rigil Funding, LLC  
 Sirius Funding, LLC  
 Falcon Asset Management, Inc.  
 Blue Spirit Insurance Company  
 Harrier Funding, LLC  
 Iapetus Funding, LLC  
 Mastiff Funding, LP  
 Iwic Insurance Company  
 Pheasant Asset Management, Inc.  
 Great Plains Insurance Company  
 Sagebrush Asset Management, Inc.  
 Quail Asset Management, LLC  
 Silver Asset Management, Inc.  
 Wells Fargo International Inc.

Marigold International Limited  
 Saguaro Asset Management, Inc.  
 Topaz Asset Management Inc.  
 Wells Fargo Asset Management  
     Corporation  
 Residential Home Mortgage  
     Investment, L.L.C.  
 Wells Fargo Funding, Inc.  
 Wells Fargo Private Client Funding,  
     Inc.  
 Wells Fargo Structured Lending, LLC  
 Quail Asset Management, LLC  
 Mwi-2002, LLC  
 New Markets Investment Xiii, LLC  
 Nni Bell Street Limited Partnership  
 North Carolina Equity Fund II, L.P.  
 North Carolina Equity Fund, L.P.  
 North Star Mortgage Guaranty  
     Reinsurance Company  
 Oak Bottom II Associates  
 Old Swedish Bank Master Tenant,  
     LLC  
 Omniplus Capital Corporation  
 Tyro Funding, LLC  
 Sparta Gp Holding, LLC  
 Aurora Gp Holding, LLC  
 Salvo Finance Gp  
 Biscoe Finance, LLC  
 Salvo Finance Gp  
 One Apm Plaza Associates  
 Orianna Street Limited Partnership  
 Oxmoor Center, LLC  
 Pass Holding LLC  
 Penn's Common Court Associates  
     Limited Partnership  
 Pooled Auto Securities Shelf, LLC  
 Wachovia Auto Owner Trust 2006-A  
 Prime Direct LLC  
 Project H.O.M.E. Limited Partnership  
 Questpoint L.P., Inc.



Railway Tenant, LLC  
 Redus Properties, Inc.  
 Renaissance Finance II, LLC  
 Reservoir Hill Ix, L.P.  
 Residential Asset Funding  
 Corporation  
 Richmond Community Development  
 Corporation  
 Savings Associations Financial  
 Enterprises, Incorporated  
 Senior Cottages Of Shippensburg,  
 Ltd.  
 Shanghai Commercial Bank Limited  
 Shenandoah Valley Properties L.P.  
 Sixth And Willow Streets Limited  
 Partnership  
 Solution Delivery, LLC  
 South Carolina Equity Fund, L.P.  
 Southtrust Capital Funding  
 Corporation  
 Southtrust Community Reinvestment  
 Company, LLC  
 Southtrust Development Corporation  
 Southtrust Mobile Services Funding  
 Corporation  
 Southtrust Mortgage Corporation  
 Southwest Partners, Inc.  
 Linear Financial, LP  
 Real Estate Lenders  
 Rwf Mortgage Company  
 Southwoods Limited Partnership  
 Spfe, Inc.  
 St. Joseph's Affordable Housing  
 Limited Partnership  
 Statesboro Rental Housing, L.P.  
 Structured Principal Strategies, LLC  
 Summitt Pels Funding LLC  
 Sycamore Row, LLC  
 Tarryhill Associates, L.P.  
 Tattersall Advisory Group, Inc.

Tcig Nc State Credit Fund, LLC  
 Tms Special Holdings, Inc.  
 Tms Student Holdings Inc.  
 Two Apm Plaza, Inc.  
 Tyro Funding, LLC  
 Umbrella Works Associates  
 United California Bank Realty  
 Corporation  
 Universal Master Servicing, LLC  
 Vcp-Alderman Park Partners, Ltd.  
 Vcp-Sb Associates, Ltd.  
 Villanueva Associates, L.P.  
 Wachington Street Limited  
 Partnership  
 Wachovia Affordable Housing  
 Community Development  
 Corporation  
 Wachovia Affordable Housing Corp.  
 Wachovia Asset Securitization  
 Holding Corp.  
 Wachovia Asset Securitization  
 Issuance, LLC  
 Wachovia Asset Securitization  
 Issuance II, LLC  
 Wachovia Capital Partners, Inc.  
 Wachovia Commercial Mortgage  
 Loan Warehouse Corporation  
 Wachovia Community Development  
 Enterprises I, LLC  
 Wachovia Community Development  
 Enterprises II, LLC  
 Wachovia Community Development  
 Enterprises III, LLC  
 Wachovia Community Development  
 Enterprises V, LLC  
 Wachovia Cre Cdo 2006-1 Investor,  
 LLC  
 Wachovia Cre Cdo 2006-1, Ltd.  
 Wachovia Cre Cdo 2006-1, LLC

Wachovia Defeasance 3409 Primm III  
 LLC  
 Wachovia Defeasance 601 Valley III  
 LLC  
 Wachovia Defeasance Alta Mira  
 Shopping Center LLC  
 Wachovia Defeasance Bacm 2000-2  
 LLC  
 Wachovia Defeasance Bacm 2001-1  
 LLC  
 Wachovia Defeasance Bacm 2001-  
 Pb1 III LLC  
 Wachovia Defeasance Bacm 2001-  
 Pb1 LLC  
 Wachovia Defeasance Bacm 2002-2  
 LLC  
 Wachovia Defeasance Bacm 2003-1  
 LLC  
 Wachovia Defeasance Boa-Funb  
 2001-3 Cac V-Crit Portfolio LLC  
 Wachovia Defeasance Boa-Funb  
 2001-3 III LLC  
 Wachovia Defeasance Boa-Funb  
 2001-3 LLC  
 Wachovia Defeasance Bscms 1999-  
 C1 II LLC  
 Wachovia Defeasance Bscms 1999-  
 C1 III LLC  
 Wachovia Defeasance Bscms 1999-  
 C1 LLC  
 Wachovia Defeasance Bscms 1999-  
 Wf2 III LLC  
 Wachovia Defeasance Bscms 1999-  
 Wf2 LLC  
 Wachovia Defeasance Bscms 2000-  
 Wf1 LLC  
 Wachovia Defeasance Bscms 2000-  
 Wf2 LLC  
 Wachovia Defeasance Bscms 2001-  
 Top2 III LLC

Wachovia Defeasance Bscms 2001-  
 Top2 LLC  
 Wachovia Defeasance Bscms 2001-  
 Top4 III LLC  
 Wachovia Defeasance Bscms 2002-  
 Pbw1 LLC  
 Wachovia Defeasance Bscms 2002-  
 Top6 III LLC  
 Wachovia Defeasance Bscms 2002-  
 Top6 LLC  
 Wachovia Defeasance Bscms 2003-  
 Top 10 LLC  
 Wachovia Defeasance Bscms 2003-  
 Top 12 LLC  
 Wachovia Defeasance Bscms 2003-  
 Top10 III LLC  
 Wachovia Defeasance Bscms 2004-  
 Pwr3 LLC  
 Wachovia Defeasance Bscms 2004-  
 Top16 525 Vine Street LLC  
 Wachovia Defeasance Bscms 2004-  
 Top16 III LLC  
 Wachovia Defeasance Bscms 2005-  
 Top18 III LLC  
 Wachovia Defeasance Bscms 2005-  
 Top18 LLC  
 Wachovia Defeasance Bscms 2006-  
 Top24 III LLC  
 Wachovia Defeasance Cfsb 1998-C2  
 LLC  
 Wachovia Defeasance Chase 1997-2  
 LLC  
 Wachovia Defeasance Chase 1999-2  
 II LLC  
 Wachovia Defeasance Chase 1999-2  
 III LLC  
 Wachovia Defeasance Chase 1999-2  
 LLC  
 Wachovia Defeasance Chase 2000-1  
 II LLC

Wachovia Defeasance Chase 2000-1  
 III LLC  
 Wachovia Defeasance Chase 2000-1  
 LLC  
 Wachovia Defeasance Chase 2000-2  
 III LLC  
 Wachovia Defeasance Chase 2000-2  
 LLC  
 Wachovia Defeasance Chase 2000-3  
 III LLC  
 Wachovia Defeasance Chase 2000-3  
 LLC  
 Wachovia Defeasance Chase-Funb  
 1999-1 II Cpt Apartments LLC  
 Wachovia Defeasance Chase-Funb  
 1999-1 II LLC  
 Wachovia Defeasance Chase-Funb  
 1999-1 III LLC  
 Wachovia Defeasance Chase-Funb  
 1999-1 LLC  
 Wachovia Defeasance Chase-Funb  
 1999-1 Mazal LLC  
 Wachovia Defeasance Citigroup  
 2004-C1 Cf West Palm LLC  
 Wachovia Defeasance Citigroup  
 2004-C1 LLC  
 Wachovia Defeasance Citigroup  
 2004-C1 Seaboard Associates LLC  
 Wachovia Defeasance Citigroup  
 2005-C3 LLC  
 Wachovia Defeasance Citigroup  
 2007-C6 III LLC  
 Wachovia Defeasance Cmac 1999-C1  
 LLC  
 Wachovia Defeasance Cmlb 2001-1  
 III LLC  
 Wachovia Defeasance Cmlb 2001-1  
 LLC  
 Wachovia Defeasance Csfb 1997-C1  
 LLC

Wachovia Defeasance Csfb 1997-C2  
 LLC  
 Wachovia Defeasance Csfb 1998-C2  
 II LLC  
 Wachovia Defeasance Csfb 1999-C1  
 LLC  
 Wachovia Defeasance Csfb 2000-C1  
 LLC  
 Wachovia Defeasance Csfb 2001-Cf2  
 LLC  
 Wachovia Defeasance Csfb 2001-Ck1  
 LLC  
 Wachovia Defeasance Csfb 2001-Ck3  
 III LLC  
 Wachovia Defeasance Csfb 2001-Ck3  
 LLC  
 Wachovia Defeasance Csfb 2001-  
 Ckn5 LLC  
 Wachovia Defeasance Csfb 2001-Cp4  
 LLC  
 Wachovia Defeasance Csfb 2002-  
 Ckp1 LLC  
 Wachovia Defeasance Csfb 2002-  
 Cks4 LLC  
 Wachovia Defeasance Csfb 2002-Cp5  
 LLC  
 Wachovia Defeasance Csfb 2003-C3  
 LLC  
 Wachovia Defeasance Csfb 2003-C5  
 LLC  
 Wachovia Defeasance Csfb 2003-Ck2  
 LLC  
 Wachovia Defeasance Csfb 2003-  
 Cpn1 LLC  
 Wachovia Defeasance Csfb 2004-C1  
 LLC  
 Wachovia Defeasance Csfb 2004-C2  
 LLC  
 Wachovia Defeasance Csfb 2004-C3  
 III LLC

Wachovia Defeasance Csfb 2005-C1  
 III LLC  
 Wachovia Defeasance Csfb 2005-C2  
 III LLC  
 Wachovia Defeasance Csfb 2005-C2  
 Penn's Landing LLC  
 Wachovia Defeasance Csfb 2005-C3  
 III LLC  
 Wachovia Defeasance Csfb 2005-C6  
 III LLC  
 Wachovia Defeasance Csfb 2005-C6  
 III-Keycorp LLC  
 Wachovia Defeasance Dljl 1998-Cg1  
 II LLC  
 Wachovia Defeasance Dljl 1998-Cg1  
 III LLC  
 Wachovia Defeasance Dljl 1998-Cg1  
 LLC  
 Wachovia Defeasance Dljl 1999-Cg1  
 II LLC  
 Wachovia Defeasance Dljl 1999-Cg1  
 III LLC  
 Wachovia Defeasance Dljl 1999-Cg1  
 LLC  
 Wachovia Defeasance Dljl 1999-Cg2  
 II LLC  
 Wachovia Defeasance Dljl 1999-Cg2  
 III LLC  
 Wachovia Defeasance Dljl 1999-Cg2  
 LLC  
 Wachovia Defeasance Dljl 1999-Cg3  
 II LLC  
 Wachovia Defeasance Dljl 1999-Cg3  
 III LLC  
 Wachovia Defeasance Dljl 1999-Cg3  
 LLC  
 Wachovia Defeasance Dljl 2000-Cf1  
 LLC  
 Wachovia Defeasance Dljl 2000-Ckpl  
 LLC

Wachovia Defeasance Fu-Lb 1997-C1  
 LLC  
 Wachovia Defeasance Fu-Lb 1997-C2  
 II LLC  
 Wachovia Defeasance Fu-Lb II 1997-  
 C2 LLC  
 Wachovia Defeasance Fu-Lb-Boa  
 1998-C2 LLC  
 Wachovia Defeasance Fucm 1999-C4  
 II LLC  
 Wachovia Defeasance Fucm 1999-C4  
 LLC  
 Wachovia Defeasance Funb 1999-C1  
 II LLC  
 Wachovia Defeasance Funb 1999-C1  
 III LLC  
 Wachovia Defeasance Funb 1999-C1  
 LLC  
 Wachovia Defeasance Funb 1999-C4  
 III LLC  
 Wachovia Defeasance Funb 1999-C4  
 LLC  
 Wachovia Defeasance Funb 1999-C4  
 MI Windsor-MI Hammocks LLC  
 Wachovia Defeasance Funb 2000-C1  
 III LLC  
 Wachovia Defeasance Funb 2000-C1  
 LLC  
 Wachovia Defeasance Funb 2000-C1  
 Pool Sb LLC  
 Wachovia Defeasance Funb 2000-C2  
 II LLC  
 Wachovia Defeasance Funb 2000-C2  
 III LLC  
 Wachovia Defeasance Funb 2000-C2  
 LLC  
 Wachovia Defeasance Funb 2000-C2  
 Phoenix Crowne LLC  
 Wachovia Defeasance Funb 2001-C2  
 III LLC

Wachovia Defeasance Funb 2001-C2  
 LLC  
 Wachovia Defeasance Funb 2001-C3  
 Cac II LLC  
 Wachovia Defeasance Funb 2001-C3  
 III LLC  
 Wachovia Defeasance Funb 2001-C3  
 LLC  
 Wachovia Defeasance Funb 2001-C4  
 Crit Portfolio LLC  
 Wachovia Defeasance Funb 2001-C4  
 Crit-Va Iv LLC  
 Wachovia Defeasance Funb 2001-C4  
 III LLC  
 Wachovia Defeasance Funb 2001-C4  
 LLC  
 Wachovia Defeasance Funb 2002-C1  
 Crit-Va V LLC  
 Wachovia Defeasance Funb 2002-C1  
 III LLC  
 Wachovia Defeasance Funb 2002-C1  
 LLC  
 Wachovia Defeasance Funb 2002-C1  
 Madison Sixty LLC  
 Wachovia Defeasance Funb-Boa  
 2001-C1 (Crit Nc) LLC  
 Wachovia Defeasance Funb-Boa  
 2001-C1 (Crit Va) LLC  
 Wachovia Defeasance Funb-Boa  
 2001-C1 II LLC  
 Wachovia Defeasance Funb-Boa  
 2001-C1 LLC  
 Wachovia Defeasance Funb-Boa  
 2001-C1 Pool Sb LLC  
 Wachovia Defeasance Funb-Chase  
 1999-C2 III LLC  
 Wachovia Defeasance Funb-Chase  
 1999-C2 LLC  
 Wachovia Defeasance Ge 2002-2 183  
 Maidson LLC

Wachovia Defeasance Ge 2002-2 II  
 LLC  
 Wachovia Defeasance Ge 2002-2  
 LLC  
 Wachovia Defeasance Gecc-Subway  
 LLC  
 Wachovia Defeasance Geccmc 2000-  
 1 III LLC  
 Wachovia Defeasance Geccmc 2000-  
 1 LLC  
 Wachovia Defeasance Geccmc 2001-  
 1 II LLC  
 Wachovia Defeasance Geccmc 2001-  
 1 III LLC  
 Wachovia Defeasance Geccmc 2001-  
 1 LLC  
 Wachovia Defeasance Geccmc 2001-  
 2 II LLC  
 Wachovia Defeasance Geccmc 2001-  
 2 III LLC  
 Wachovia Defeasance Geccmc 2001-  
 2 LLC  
 Wachovia Defeasance Geccmc 2001-  
 3 II LLC  
 Wachovia Defeasance Geccmc 2001-  
 3 III LLC  
 Wachovia Defeasance Geccmc 2001-  
 3 LLC  
 Wachovia Defeasance Geccmc 2002-  
 1 Cameron Crossing LLC  
 Wachovia Defeasance Geccmc 2002-  
 1 Culver Center West LLC  
 Wachovia Defeasance Geccmc 2002-  
 1 III LLC  
 Wachovia Defeasance Geccmc 2002-  
 1 LLC  
 Wachovia Defeasance Geccmc 2002-  
 2 III LLC  
 Wachovia Defeasance Geccmc 2002-  
 2 LLC

Wachovia Defeasance Geccmc 2002-  
 2 Wills Group Flp LLC  
 Wachovia Defeasance Geccmc 2002-  
 3 III LLC  
 Wachovia Defeasance Geccmc 2002-  
 3 LLC  
 Wachovia Defeasance Geccmc 2003-  
 C2 Culver Center East LLC  
 Wachovia Defeasance Geccmc 2003-  
 C2 III LLC  
 Wachovia Defeasance Geccmc 2003-  
 C2 LLC  
 Wachovia Defeasance Geccmc 2004-  
 C2 LLC  
 Wachovia Defeasance Geccmc 2004-  
 C2 Pool Sb LLC  
 Wachovia Defeasance Geccmc 2004-  
 C2 Stefan Associates LLC  
 Wachovia Defeasance Geccmc 2005-  
 C1 Pil I LLC  
 Wachovia Defeasance Geccmc 2006-  
 C1 III LLC  
 Wachovia Defeasance Gecmc 2003-  
 C1 LLC  
 Wachovia Defeasance Gecmc 2004-  
 C2 III LLC  
 Wachovia Defeasance Gmac 1997-C2  
 LLC  
 Wachovia Defeasance Gmac 1998-C2  
 LLC  
 Wachovia Defeasance Gmac 1999-C1  
 LLC  
 Wachovia Defeasance Gmac 1999-C2  
 LLC  
 Wachovia Defeasance Gmac 2000-C3  
 LLC  
 Wachovia Defeasance Gmac 2001-C1  
 LLC  
 Wachovia Defeasance Gmac 2001-C2  
 LLC

Wachovia Defeasance Gmac 2002-C1  
 LLC  
 Wachovia Defeasance Gmac 2002-C2  
 LLC  
 Wachovia Defeasance Gmac 2002-C3  
 LLC  
 Wachovia Defeasance Gmac 2003-C1  
 LLC  
 Wachovia Defeasance Gmac 2003-C2  
 LLC  
 Wachovia Defeasance Gmaccm 1997-  
 C1 LLC  
 Wachovia Defeasance Greenwich  
 2002-C1 II LLC  
 Wachovia Defeasance Greenwich  
 2002-C1 III LLC  
 Wachovia Defeasance Greenwich  
 2002-C1 Landmark Iv LLC  
 Wachovia Defeasance Greenwich  
 2002-C1 LLC  
 Wachovia Defeasance Greenwich  
 2003-C1 LLC  
 Wachovia Defeasance Greenwich  
 2003-C2 LLC  
 Wachovia Defeasance Greenwich  
 2004-Gg1 III LLC  
 Wachovia Defeasance Greenwich  
 2004-Gg1 LLC  
 Wachovia Defeasance Greenwich  
 2005-Gg5 III LLC  
 Wachovia Defeasance Gs 1998-C1  
 LLC  
 Wachovia Defeasance Gs 2004-C1  
 LLC  
 Wachovia Defeasance Gmsc II 1999-  
 C1 LLC  
 Wachovia Defeasance Gmsc II 2003-  
 C1 LLC  
 Wachovia Defeasance Gmsc II 2004-  
 Gg2 1410 Broadway LLC

Wachovia Defeasance Gmsc II 2004-  
 Gg2 1441 Broadway LLC  
 Wachovia Defeasance Hf 1999-Ph1 II  
 LLC  
 Wachovia Defeasance Hf 1999-Ph1  
 III LLC  
 Wachovia Defeasance Hf 1999-Ph1  
 LLC  
 Wachovia Defeasance Hf 2000 Ph-1  
 LLC  
 Wachovia Defeasance JPMC 1999-C7  
 LLC  
 Wachovia Defeasance JPMC 1999-  
 Plsi LLC  
 Wachovia Defeasance JPMC 2000-C9  
 LLC  
 Wachovia Defeasance JPMC 2001-C1  
 III LLC  
 Wachovia Defeasance JPMC 2001-C1  
 LLC  
 Wachovia Defeasance JPMC 2001-  
 Cibc1 LLC  
 Wachovia Defeasance JPMC 2001-  
 Cibc2 LLC  
 Wachovia Defeasance JPMC 2001-  
 Cibc3 III LLC  
 Wachovia Defeasance JPMC 2001-  
 Cibc3 LLC  
 Wachovia Defeasance JPMC 2002-C1  
 II LLC  
 Wachovia Defeasance JPMC 2002-C1  
 III LLC  
 Wachovia Defeasance JPMC 2002-C1  
 LLC  
 Wachovia Defeasance JPMC 2002-C2  
 III LLC  
 Wachovia Defeasance JPMC 2002-C2  
 LLC  
 Wachovia Defeasance JPMC 2002-C3  
 LLC

Wachovia Defeasance JPMC 2002-  
 Cibc4 LLC  
 Wachovia Defeasance JPMC 2002-  
 Cibc5 Cp Pembroke Pines LLC  
 Wachovia Defeasance JPMC 2002-  
 Cibc5 III LLC  
 Wachovia Defeasance JPMC 2002-  
 Cibc5 LLC  
 Wachovia Defeasance JPMC 2003-C1  
 LLC  
 Wachovia Defeasance JPMC 2003-  
 Cib6 III LLC  
 Wachovia Defeasance JPMC 2003-  
 Cibc6 Cp Deerfield LLC  
 Wachovia Defeasance JPMC 2003-  
 Cibc6 LLC  
 Wachovia Defeasance JPMC 2003-  
 Cibc7 LLC  
 Wachovia Defeasance JPMC 2003-  
 Ln1 III LLC  
 Wachovia Defeasance JPMC 2003-  
 Ln1 LLC  
 Wachovia Defeasance JPMC 2003-  
 MI1 LLC  
 Wachovia Defeasance JPMC 2003-  
 Pm1 Battery Commercial LLC  
 Wachovia Defeasance JPMC 2003-  
 Pm1 LLC  
 Wachovia Defeasance JPMC 2004-C2  
 LLC  
 Wachovia Defeasance JPMC 2004-C3  
 LLC  
 Wachovia Defeasance JPMC 2004-  
 Cibc10 LLC  
 Wachovia Defeasance JPMC 2005-  
 Ldp1 LLC  
 Wachovia Defeasance JPMC 2005-  
 Ldp2 III LLC  
 Wachovia Defeasance JPMC 2005-  
 Ldp2 LLC

Wachovia Defeasance JPMC 2006-  
Ldp7 III LLC  
Wachovia Defeasance JPMC-2000-  
C10 LLC  
Wachovia Defeasance Lb 1998-C1  
LLC  
Wachovia Defeasance Lb 1998-C4 II  
Ardsley Associates LLC  
Wachovia Defeasance Lb 1998-C4 II  
LLC  
Wachovia Defeasance Lb 1998-C4 III  
LLC  
Wachovia Defeasance Lb 1998-C4  
LLC  
Wachovia Defeasance Lb 1999-C1 II  
LLC  
Wachovia Defeasance Lb 1999-C1 III  
LLC  
Wachovia Defeasance Lb 1999-C1  
LLC  
Wachovia Defeasance Lb 1999-C2 II  
LLC  
Wachovia Defeasance Lb 1999-C2 III  
LLC  
Wachovia Defeasance Lb 1999-C2  
LLC  
Wachovia Defeasance Lb UBS 2002-  
C2 II LLC  
Wachovia Defeasance Lb-UBS 2000-  
C3 II LLC  
Wachovia Defeasance Lb-UBS 2000-  
C3 III LLC  
Wachovia Defeasance Lb-UBS 2000-  
C3 LLC  
Wachovia Defeasance Lb-UBS 2000-  
C4 II LLC  
Wachovia Defeasance Lb-UBS 2000-  
C4 LLC  
Wachovia Defeasance Lb-UBS 2000-  
C5 III LLC

Wachovia Defeasance Lb-UBS 2000-  
C5 LLC  
Wachovia Defeasance Lb-UBS 2001-  
C2 II LLC  
Wachovia Defeasance Lb-UBS 2001-  
C2 III LLC  
Wachovia Defeasance Lb-UBS 2001-  
C2 LLC  
Wachovia Defeasance Lb-UBS 2001-  
C3 1735 North Lynn LLC  
Wachovia Defeasance Lb-UBS 2001-  
C3 II LLC  
Wachovia Defeasance Lb-UBS 2001-  
C3 III LLC  
Wachovia Defeasance Lb-UBS 2001-  
C3 LLC  
Wachovia Defeasance Lb-UBS 2001-  
C7 II LLC  
Wachovia Defeasance Lb-UBS 2001-  
C7 III LLC  
Wachovia Defeasance Lb-UBS 2001-  
C7 LLC  
Wachovia Defeasance Lb-UBS 2002-  
C1 400 Atlantic LLC  
Wachovia Defeasance Lb-UBS 2002-  
C1 II LLC  
Wachovia Defeasance Lb-UBS 2002-  
C1 III LLC  
Wachovia Defeasance Lb-UBS 2002-  
C1 LLC  
Wachovia Defeasance Lb-UBS 2002-  
C2 Hibbs/Woodinville LLC  
Wachovia Defeasance Lb-UBS 2002-  
C2 III LLC  
Wachovia Defeasance Lb-UBS 2002-  
C2 LLC  
Wachovia Defeasance Lb-UBS 2002-  
C4 III LLC  
Wachovia Defeasance Lb-UBS 2002-  
C4 LLC



Wachovia Defeasance Lb-UBS 2002-  
 C7 II LLC  
 Wachovia Defeasance Lb-UBS 2002-  
 C7 III LLC  
 Wachovia Defeasance Lb-UBS 2002-  
 C7 Independence Shoppingtown  
 LLC  
 Wachovia Defeasance Lb-UBS 2002-  
 C7 LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C1 (Clear) LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C1 Franklin Avenue LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C1 II LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C1 III LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C1 LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C3 III LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C3 LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C5 III LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C5 LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C7 (Getty) LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C7 LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C8 III LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C8 LLC  
 Wachovia Defeasance Lb-UBS 2004-  
 C1 LLC  
 Wachovia Defeasance Lb-UBS 2004-  
 C4 III LLC

Wachovia Defeasance Lb-UBS 2004-  
 C4 LLC  
 Wachovia Defeasance Lb-UBS 2004-  
 C6 LLC  
 Wachovia Defeasance Lb-UBS 2004-  
 C7 III LLC  
 Wachovia Defeasance Lb-UBS 2004-  
 C7 LLC  
 Wachovia Defeasance Lb-UBS 2004-  
 C8 III LLC  
 Wachovia Defeasance Lb-UBS 2004-  
 C8 LLC  
 Wachovia Defeasance Lb-UBS 2005-  
 C3 III LLC  
 Wachovia Defeasance Lb-UBS 2005-  
 C5 III LLC  
 Wachovia Defeasance Lb-UBS 2005-  
 C7 Vr Bayou LLC  
 Wachovia Defeasance Lb-UBS 2006-  
 C1 III LLC  
 Wachovia Defeasance Lb-UBS 2008-  
 C1 III LLC  
 Wachovia Defeasance Management -  
 Keycorp III LLC  
 Wachovia Defeasance Csfb 2001-Ck3  
 III LLC  
 Wachovia Defeasance Csfb 2005-C6  
 III-Keycorp LLC  
 Wachovia Defeasance Management -  
 Midland LLC  
 Wachovia Defeasance Cmac 1999-C1  
 LLC  
 Wachovia Defeasance Csfb 2002-  
 Ckp1 LLC  
 Wachovia Defeasance Csfb 2002-Cp5  
 LLC  
 Wachovia Defeasance Csfb 2003-C5  
 LLC  
 Wachovia Defeasance Csfb 2003-  
 Cpn1 LLC

Wachovia Defeasance Dlj 2000-Cf1  
 LLC  
 Wachovia Defeasance Hf 2000 Ph-1  
 LLC  
 Wachovia Defeasance JPMC 1999-C7  
 LLC  
 Wachovia Defeasance JPMC 1999-  
 Plsi LLC  
 Wachovia Defeasance JPMC 2001-C1  
 LLC  
 Wachovia Defeasance JPMC 2001-  
 Cibc2 LLC  
 Wachovia Defeasance JPMC 2002-  
 Cibc4 LLC  
 Wachovia Defeasance JPMC 2003-  
 Cibc7 LLC  
 Wachovia Defeasance JPMC 2003-  
 Pm1 LLC  
 Wachovia Defeasance JPMC 2005-  
 Ldp1 LLC  
 Wachovia Defeasance JPMC-2000-  
 C10 LLC  
 Wachovia Defeasance Mlmi 2005-  
 Mcp1 LLC  
 Wachovia Defeasance Mlmi 2005-  
 Mcp1 Pva III LLC  
 Wachovia Defeasance Pncmac 2000-  
 C1 LLC  
 Wachovia Defeasance Pncmac 2001-  
 C1 LLC  
 Wachovia Defeasance Sbms Vii  
 2000-C3 Wellington Place LLC  
 Wachovia Defeasance Sbms Vii  
 2001-C1 LLC  
 Wachovia Defeasance Sbms Vii  
 2001-C2 LLC  
 Wachovia Defeasance Management II  
 LLC  
 Wachovia Defeasance Alta Mira  
 Shopping Center LLC

Wachovia Defeasance Bacm 2000-2  
 LLC  
 Wachovia Defeasance Bacm 2001-1  
 LLC  
 Wachovia Defeasance Bacm 2001-  
 Pb1 LLC  
 Wachovia Defeasance Bacm 2002-2  
 LLC  
 Wachovia Defeasance Bacm 2003-1  
 LLC  
 Wachovia Defeasance Boa-Funb  
 2001-3 Cac V-Crit Portfolio LLC  
 Wachovia Defeasance Boa-Funb  
 2001-3 LLC  
 Wachovia Defeasance Bscms 1999-  
 C1 II LLC  
 Wachovia Defeasance Bscms 1999-  
 Wf2 LLC  
 Wachovia Defeasance Bscms 2000-  
 Wf1 LLC  
 Wachovia Defeasance Bscms 2000-  
 Wf2 LLC  
 Wachovia Defeasance Bscms 2001-  
 Top2 LLC  
 Wachovia Defeasance Bscms 2002-  
 Pbw1 LLC  
 Wachovia Defeasance Bscms 2002-  
 Top6 LLC  
 Wachovia Defeasance Bscms 2003-  
 Top 10 LLC  
 Wachovia Defeasance Bscms 2003-  
 Top 12 LLC  
 Wachovia Defeasance Bscms 2004-  
 Pwr3 LLC  
 Wachovia Defeasance Bscms 2004-  
 Top16 525 Vine Street LLC  
 Wachovia Defeasance Bscms 2005-  
 Top18 LLC  
 Wachovia Defeasance Chase 1997-2  
 LLC

Wachovia Defeasance Chase 1999-2  
 II LLC  
 Wachovia Defeasance Chase 2000-1  
 II LLC  
 Wachovia Defeasance Chase 2000-2  
 LLC  
 Wachovia Defeasance Chase 2000-3  
 LLC  
 Wachovia Defeasance Chase-Funb  
 1999-1 II Cpt Apartments LLC  
 Wachovia Defeasance Chase-Funb  
 1999-1 II LLC  
 Wachovia Defeasance Chase-Funb  
 1999-1 Mazal LLC  
 Wachovia Defeasance Citigroup  
 2004-C1 Cf West Palm LLC  
 Wachovia Defeasance Citigroup  
 2004-C1 LLC  
 Wachovia Defeasance Citigroup  
 2004-C1 Seaboard Associates LLC  
 Wachovia Defeasance Citigroup  
 2005-C3 LLC  
 Wachovia Defeasance Cmlb 2001-1  
 LLC  
 Wachovia Defeasance Csfb 1997-C1  
 LLC  
 Wachovia Defeasance Csfb 1997-C2  
 LLC  
 Wachovia Defeasance Csfb 1998-C2  
 II LLC  
 Wachovia Defeasance Csfb 1999-C1  
 LLC  
 Wachovia Defeasance Csfb 2000-C1  
 LLC  
 Wachovia Defeasance Csfb 2001-Cf2  
 LLC  
 Wachovia Defeasance Csfb 2001-Cp4  
 LLC  
 Wachovia Defeasance Dlj 1998-Cg1  
 II LLC

Wachovia Defeasance Dlj 1999-Cg1  
 II LLC  
 Wachovia Defeasance Dlj 1999-Cg2  
 II LLC  
 Wachovia Defeasance Dlj 1999-Cg3  
 II LLC  
 Wachovia Defeasance Fu-Lb 1997-C1  
 LLC  
 Wachovia Defeasance Fu-Lb 1997-C2  
 II LLC  
 Wachovia Defeasance Fucm 1999-C4  
 II LLC  
 Wachovia Defeasance Funb 1999-C1  
 II LLC  
 Wachovia Defeasance Funb 1999-C4  
 LLC  
 Wachovia Defeasance Funb 1999-C4  
 Ml Windsor-Ml Hammocks LLC  
 Wachovia Defeasance Funb 2000-C1  
 LLC  
 Wachovia Defeasance Funb 2000-C1  
 Pool Sb LLC  
 Wachovia Defeasance Funb 2000-C2  
 II LLC  
 Wachovia Defeasance Funb 2000-C2  
 Phoenix Crowne LLC  
 Wachovia Defeasance Funb 2001-C2  
 LLC  
 Wachovia Defeasance Funb 2001-C3  
 Cac II LLC  
 Wachovia Defeasance Funb 2001-C3  
 LLC  
 Wachovia Defeasance Funb 2001-C4  
 Crit Portfolio LLC  
 Wachovia Defeasance Funb 2001-C4  
 Crit-Va Iv LLC  
 Wachovia Defeasance Funb 2001-C4  
 LLC  
 Wachovia Defeasance Funb 2002-C1  
 Crit-Va V LLC

Wachovia Defeasance Funb 2002-C1  
 LLC  
 Wachovia Defeasance Funb 2002-C1  
 Madison Sixty LLC  
 Wachovia Defeasance Funb-Boa  
 2001-C1 (Crit Nc) LLC  
 Wachovia Defeasance Funb-Boa  
 2001-C1 (Crit Va) LLC  
 Wachovia Defeasance Funb-Boa  
 2001-C1 II LLC  
 Wachovia Defeasance Funb-Boa  
 2001-C1 Pool Sb LLC  
 Wachovia Defeasance Funb-Chase  
 1999-C2 LLC  
 Wachovia Defeasance Ge 2002-2 183  
 Maidson LLC  
 Wachovia Defeasance Ge 2002-2 II  
 LLC  
 Wachovia Defeasance Gecc-Subway  
 LLC  
 Wachovia Defeasance Geccmc 2000-  
 1 LLC  
 Wachovia Defeasance Geccmc 2001-  
 1 II LLC  
 Wachovia Defeasance Geccmc 2001-  
 2 II LLC  
 Wachovia Defeasance Geccmc 2001-  
 3 II LLC  
 Wachovia Defeasance Geccmc 2002-  
 1 Cameron Crossing LLC  
 Wachovia Defeasance Geccmc 2002-  
 1 Culver Center West LLC  
 Wachovia Defeasance Geccmc 2002-  
 1 LLC  
 Wachovia Defeasance Geccmc 2002-  
 2 LLC  
 Wachovia Defeasance Geccmc 2002-  
 2 Wills Group Flp LLC  
 Wachovia Defeasance Geccmc 2002-  
 3 LLC

Wachovia Defeasance Geccmc 2003-  
 C2 Culver Center East LLC  
 Wachovia Defeasance Geccmc 2003-  
 C2 LLC  
 Wachovia Defeasance Geccmc 2004-  
 C2 LLC  
 Wachovia Defeasance Geccmc 2004-  
 C2 Pool Sb LLC  
 Wachovia Defeasance Geccmc 2004-  
 C2 Stefan Associates LLC  
 Wachovia Defeasance Geccmc 2005-  
 C1 Pil I LLC  
 Wachovia Defeasance Gecmc 2003-  
 C1 LLC  
 Wachovia Defeasance Gmac 1997-C2  
 LLC  
 Wachovia Defeasance Gmac 1998-C2  
 LLC  
 Wachovia Defeasance Gmac 1999-C1  
 LLC  
 Wachovia Defeasance Gmac 1999-C2  
 LLC  
 Wachovia Defeasance Gmac 2000-C3  
 LLC  
 Wachovia Defeasance Gmac 2001-C1  
 LLC  
 Wachovia Defeasance Gmac 2001-C2  
 LLC  
 Wachovia Defeasance Gmac 2002-C1  
 LLC  
 Wachovia Defeasance Gmac 2002-C2  
 LLC  
 Wachovia Defeasance Gmac 2002-C3  
 LLC  
 Wachovia Defeasance Gmac 2003-C1  
 LLC  
 Wachovia Defeasance Gmac 2003-C2  
 LLC  
 Wachovia Defeasance Gmaccm 1997-  
 C1 LLC

Wachovia Defeasance Greenwich  
 2002-C1 II LLC  
 Wachovia Defeasance Greenwich  
 2002-C1 Landmark Iv LLC  
 Wachovia Defeasance Greenwich  
 2003-C1 LLC  
 Wachovia Defeasance Greenwich  
 2003-C2 LLC  
 Wachovia Defeasance Greenwich  
 2004-Gg1 LLC  
 Wachovia Defeasance Gs 1998-C1  
 LLC  
 Wachovia Defeasance Gs 2004-C1  
 LLC  
 Wachovia Defeasance Gsmc II 1999-  
 C1 LLC  
 Wachovia Defeasance Gsmc II 2003-  
 C1 LLC  
 Wachovia Defeasance Gsmc II 2004-  
 Gg2 1410 Broadway LLC  
 Wachovia Defeasance Gsmc II 2004-  
 Gg2 1441 Broadway LLC  
 Wachovia Defeasance Hf 1999-Ph1 II  
 LLC  
 Wachovia Defeasance JPMC 2001-  
 Cibc1 LLC  
 Wachovia Defeasance JPMC 2001-  
 Cibc3 LLC  
 Wachovia Defeasance JPMC 2002-C1  
 II LLC  
 Wachovia Defeasance JPMC 2002-C2  
 LLC  
 Wachovia Defeasance JPMC 2002-C3  
 LLC  
 Wachovia Defeasance JPMC 2002-  
 Cibc5 Cp Pembroke Pines LLC  
 Wachovia Defeasance JPMC 2002-  
 Cibc5 LLC  
 Wachovia Defeasance JPMC 2003-C1  
 LLC

Wachovia Defeasance JPMC 2003-  
 Cibc6 Cp Deerfield LLC  
 Wachovia Defeasance JPMC 2003-  
 Cibc6 LLC  
 Wachovia Defeasance JPMC 2003-  
 Ln1 LLC  
 Wachovia Defeasance JPMC 2003-  
 M11 LLC  
 Wachovia Defeasance JPMC 2003-  
 Pm1 Battery Commercial LLC  
 Wachovia Defeasance JPMC 2004-C2  
 LLC  
 Wachovia Defeasance JPMC 2004-C3  
 LLC  
 Wachovia Defeasance JPMC 2004-  
 Cibc10 LLC  
 Wachovia Defeasance JPMC 2005-  
 Ldp2 LLC  
 Wachovia Defeasance Lb 1998-C1  
 LLC  
 Wachovia Defeasance Lb 1998-C4 II  
 Ardsley Associates LLC  
 Wachovia Defeasance Lb 1998-C4 II  
 LLC  
 Wachovia Defeasance Lb 1999-C1 II  
 LLC  
 Wachovia Defeasance Lb 1999-C2 II  
 LLC  
 Wachovia Defeasance Lb 1999-C2  
 LLC  
 Wachovia Defeasance Lb UBS 2002-  
 C2 II LLC  
 Wachovia Defeasance Lb-UBS 2000-  
 C3 II LLC  
 Wachovia Defeasance Lb-UBS 2000-  
 C5 LLC  
 Wachovia Defeasance Lb-UBS 2001-  
 C2 II LLC  
 Wachovia Defeasance Lb-UBS 2001-  
 C3 1735 North Lynn LLC

Wachovia Defeasance Lb-UBS 2001-  
 C3 II LLC  
 Wachovia Defeasance Lb-UBS 2001-  
 C7 II LLC  
 Wachovia Defeasance Lb-UBS 2002-  
 C1 400 Atlantic LLC  
 Wachovia Defeasance Lb-UBS 2002-  
 C1 II LLC  
 Wachovia Defeasance Lb-UBS 2002-  
 C2 Hibbs/Woodinville LLC  
 Wachovia Defeasance Lb-UBS 2002-  
 C2 LLC  
 Wachovia Defeasance Lb-UBS 2002-  
 C4 LLC  
 Wachovia Defeasance Lb-UBS 2002-  
 C7 II LLC  
 Wachovia Defeasance Lb-UBS 2002-  
 C7 Independence Shoppingtown  
 LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C1 (Clear) LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C1 Franklin Avenue LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C1 II LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C3 LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C5 LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C7 (Getty) LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C7 LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C8 LLC  
 Wachovia Defeasance Lb-UBS 2004-  
 C1 LLC  
 Wachovia Defeasance Lb-UBS 2004-  
 C4 LLC

Wachovia Defeasance Lb-UBS 2004-  
 C6 LLC  
 Wachovia Defeasance Lb-UBS 2004-  
 C7 LLC  
 Wachovia Defeasance Lb-UBS 2004-  
 C8 LLC  
 Wachovia Defeasance Lb-UBS 2005-  
 C7 Vr Bayou LLC  
 Wachovia Defeasance Mcf 1998-Mc3  
 LLC  
 Wachovia Defeasance Mlmi 1998-C2  
 II LLC  
 Wachovia Defeasance Mlmi 1998-C3  
 LLC  
 Wachovia Defeasance Mlmi 2002-  
 Mw1 LLC  
 Wachovia Defeasance Mlmi 2005-  
 Cki1 LLC  
 Wachovia Defeasance Msci 1998-Cf1  
 LLC  
 Wachovia Defeasance Msci 1998-Hf2  
 LLC  
 Wachovia Defeasance Msci 1998-  
 Wf2 LLC  
 Wachovia Defeasance Msci 1999-  
 Fnvi LLC  
 Wachovia Defeasance Msci 1999-  
 Life1 LLC  
 Wachovia Defeasance Msci 1999-  
 Rm1 LLC  
 Wachovia Defeasance Msci 1999-  
 Wf1 LLC  
 Wachovia Defeasance Msci 2003-Iq4  
 LLC  
 Wachovia Defeasance Msci 2003-Iq5  
 LLC  
 Wachovia Defeasance Msci 2003-Iq6  
 LLC  
 Wachovia Defeasance Msci 2003-  
 Top11 LLC

Wachovia Defeasance Msci 2004-  
 Hq3 LLC  
 Wachovia Defeasance Msci 2004-Iq7  
 LLC  
 Wachovia Defeasance Msci 2004-  
 Top15 LLC  
 Wachovia Defeasance Msci 2005-  
 Top19 LLC  
 Wachovia Defeasance Msdwci 2000-  
 Life1 LLC  
 Wachovia Defeasance Msdwci 2000-  
 Life2 LLC  
 Wachovia Defeasance Msdwci 2001-  
 Top5 LLC  
 Wachovia Defeasance Msdwci 2002-  
 Top7 LLC  
 Wachovia Defeasance Msdwci 2003-  
 Hq2 LLC  
 Wachovia Defeasance Pncmac 1999-  
 Cm1 LLC  
 Wachovia Defeasance Pssfc 1999-  
 Nrf1 LLC  
 Wachovia Defeasance Pssfc 2003-  
 Pwr1 LLC  
 Wachovia Defeasance Pssfc 2003-  
 Pwr1 Pal-Med LLC  
 Wachovia Defeasance River Terrace  
 LLC  
 Wachovia Defeasance Sbms 2000-C1  
 LLC  
 Wachovia Defeasance Sbms Vii  
 2000-C3 LLC  
 Wachovia Defeasance Wachovia  
 2002-C1 LLC  
 Wachovia Defeasance Wachovia  
 2002-C2 Lawndale Market Place  
 LLC  
 Wachovia Defeasance Wachovia  
 2002-C2 LLC

Wachovia Defeasance Wachovia  
 2003-C3 Big Trout Lodge LLC  
 Wachovia Defeasance Wachovia  
 2003-C3 Gaddis LLC  
 Wachovia Defeasance Wachovia  
 2003-C3 LLC  
 Wachovia Defeasance Wachovia  
 2003-C4 LLC  
 Wachovia Defeasance Wachovia  
 2003-C5 LLC  
 Wachovia Defeasance Wachovia  
 2003-C6 John & Son's LLC  
 Wachovia Defeasance Wachovia  
 2003-C6 LLC  
 Wachovia Defeasance Wachovia  
 2003-C7 LLC  
 Wachovia Defeasance Wachovia  
 2003-C8 LLC  
 Wachovia Defeasance Wachovia  
 2003-C9 LLC  
 Wachovia Defeasance Wachovia  
 2004-C10 LLC  
 Wachovia Defeasance Wachovia  
 2004-C12 LLC  
 Wachovia Defeasance Wachovia  
 2004-C14 Amstar LLC  
 Wachovia Defeasance Wachovia  
 2004-C14 Lenexa LLC  
 Wachovia Defeasance Wachovia  
 2004-C14 LLC  
 Wachovia Defeasance Wachovia  
 2004-C15 LLC  
 Wachovia Defeasance Wachovia  
 2005-C16 LLC  
 Wachovia Defeasance Wachovia  
 2005-C17 450 Partners LLC  
 Wachovia Defeasance Wachovia  
 2005-C17 LLC  
 Wachovia Defeasance Wachovia  
 2005-C18 LLC

Wachovia Defeasance Wachovia  
 2005-C20 LLC  
 Wachovia Defeasance Wachovia  
 2005-C21 LLC  
 Wachovia Defeasance Management  
 III LLC  
 Wachovia Defeasance 3409 Primm III  
 LLC  
 Wachovia Defeasance 601 Valley III  
 LLC  
 Wachovia Defeasance Bacm 2001-  
 Pb1 III LLC  
 Wachovia Defeasance Boa-Funb  
 2001-3 III LLC  
 Wachovia Defeasance Bscms 1999-  
 C1 III LLC  
 Wachovia Defeasance Bscms 1999-  
 Wf2 III LLC  
 Wachovia Defeasance Bscms 2001-  
 Top2 III LLC  
 Wachovia Defeasance Bscms 2001-  
 Top4 III LLC  
 Wachovia Defeasance Bscms 2002-  
 Top6 III LLC  
 Wachovia Defeasance Bscms 2003-  
 Top10 III LLC  
 Wachovia Defeasance Bscms 2004-  
 Top16 III LLC  
 Wachovia Defeasance Bscms 2005-  
 Top18 III LLC  
 Wachovia Defeasance Bscms 2006-  
 Top24 III LLC  
 Wachovia Defeasance Chase 1999-2  
 III LLC  
 Wachovia Defeasance Chase 2000-1  
 III LLC  
 Wachovia Defeasance Chase 2000-2  
 III LLC  
 Wachovia Defeasance Chase 2000-3  
 III LLC

Wachovia Defeasance Chase-Funb  
 1999-1 III LLC  
 Wachovia Defeasance Citigroup  
 2007-C6 III LLC  
 Wachovia Defeasance Cmlb 2001-1  
 III LLC  
 Wachovia Defeasance Csfb 2005-C1  
 III LLC  
 Wachovia Defeasance Dlj 1998-Cg1  
 III LLC  
 Wachovia Defeasance Dlj 1999-Cg1  
 III LLC  
 Wachovia Defeasance Dlj 1999-Cg2  
 III LLC  
 Wachovia Defeasance Dlj 1999-Cg3  
 III LLC  
 Wachovia Defeasance Funb 1999-C1  
 III LLC  
 Wachovia Defeasance Funb 1999-C4  
 III LLC  
 Wachovia Defeasance Funb 2000-C1  
 III LLC  
 Wachovia Defeasance Funb 2000-C2  
 III LLC  
 Wachovia Defeasance Funb 2001-C2  
 III LLC  
 Wachovia Defeasance Funb 2001-C3  
 III LLC  
 Wachovia Defeasance Funb 2001-C4  
 III LLC  
 Wachovia Defeasance Funb 2002-C1  
 III LLC  
 Wachovia Defeasance Funb-Chase  
 1999-C2 III LLC  
 Wachovia Defeasance Geccmc 2000-  
 1 III LLC  
 Wachovia Defeasance Geccmc 2001-  
 1 III LLC  
 Wachovia Defeasance Geccmc 2001-  
 2 III LLC



Wachovia Defeasance Geccmc 2001-3 III LLC  
 Wachovia Defeasance Geccmc 2002-1 III LLC  
 Wachovia Defeasance Geccmc 2002-2 III LLC  
 Wachovia Defeasance Geccmc 2002-3 III LLC  
 Wachovia Defeasance Geccmc 2003-C2 III LLC  
 Wachovia Defeasance Geccmc 2006-C1 III LLC  
 Wachovia Defeasance Gecmc 2004-C2 III LLC  
 Wachovia Defeasance Greenwich 2002-C1 III LLC  
 Wachovia Defeasance Greenwich 2004-Gg1 III LLC  
 Wachovia Defeasance Greenwich 2005-Gg5 III LLC  
 Wachovia Defeasance Hf 1999-Ph1 III LLC  
 Wachovia Defeasance JPMC 2001-Cibc3 III LLC  
 Wachovia Defeasance JPMC 2002-C1 III LLC  
 Wachovia Defeasance JPMC 2002-C2 III LLC  
 Wachovia Defeasance JPMC 2002-Cibc5 III LLC  
 Wachovia Defeasance JPMC 2003-Cib6 III LLC  
 Wachovia Defeasance JPMC 2003-Ln1 III LLC  
 Wachovia Defeasance JPMC 2005-Ldp2 III LLC  
 Wachovia Defeasance JPMC 2006-Ldp7 III LLC  
 Wachovia Defeasance Lb 1998-C4 III LLC

Wachovia Defeasance Lb 1999-C1 III LLC  
 Wachovia Defeasance Lb 1999-C2 III LLC  
 Wachovia Defeasance Lb-UBS 2000-C3 III LLC  
 Wachovia Defeasance Lb-UBS 2000-C5 III LLC  
 Wachovia Defeasance Lb-UBS 2001-C2 III LLC  
 Wachovia Defeasance Lb-UBS 2001-C3 III LLC  
 Wachovia Defeasance Lb-UBS 2001-C7 III LLC  
 Wachovia Defeasance Lb-UBS 2002-C1 III LLC  
 Wachovia Defeasance Lb-UBS 2002-C2 III LLC  
 Wachovia Defeasance Lb-UBS 2002-C4 III LLC  
 Wachovia Defeasance Lb-UBS 2002-C7 III LLC  
 Wachovia Defeasance Lb-UBS 2003-C1 III LLC  
 Wachovia Defeasance Lb-UBS 2003-C3 III LLC  
 Wachovia Defeasance Lb-UBS 2003-C5 III LLC  
 Wachovia Defeasance Lb-UBS 2003-C8 III LLC  
 Wachovia Defeasance Lb-UBS 2004-C4 III LLC  
 Wachovia Defeasance Lb-UBS 2004-C7 III LLC  
 Wachovia Defeasance Lb-UBS 2004-C8 III LLC  
 Wachovia Defeasance Lb-UBS 2005-C3 III LLC  
 Wachovia Defeasance Lb-UBS 2005-C5 III LLC

Wachovia Defeasance Lb-UBS 2006-  
 C1 III LLC  
 Wachovia Defeasance Lb-UBS 2008-  
 C1 III LLC  
 Wachovia Defeasance Mlmi 1998-C2  
 III LLC  
 Wachovia Defeasance Mlmi 2002-  
 Mw1 III LLC  
 Wachovia Defeasance Mlmi 2005-  
 Cki1 III LLC  
 Wachovia Defeasance Msci 1999-  
 Wf1 III LLC  
 Wachovia Defeasance Msci 2003-  
 Top11 III LLC  
 Wachovia Defeasance Msci 2004-  
 Top13 III LLC  
 Wachovia Defeasance Msci 2004-  
 Top15 III LLC  
 Wachovia Defeasance Msci 2005-  
 Hq7 III LLC  
 Wachovia Defeasance Msci 2006-  
 Hq8 III LLC  
 Wachovia Defeasance Msdwci 2001-  
 Top3 III LLC  
 Wachovia Defeasance Msdwci 2001-  
 Top5 III LLC  
 Wachovia Defeasance Msdwci 2002-  
 Top7 III LLC  
 Wachovia Defeasance Msdwci 2003-  
 Top9 III LLC  
 Wachovia Defeasance Psspc 2003-  
 Pwr1 III LLC  
 Wachovia Defeasance Wachovia  
 2002-C1 III LLC  
 Wachovia Defeasance Wachovia  
 2002-C2 III LLC  
 Wachovia Defeasance Wachovia  
 2003-C3 III LLC  
 Wachovia Defeasance Wachovia  
 2003-C5 III LLC

Wachovia Defeasance Wachovia  
 2003-C6 III LLC  
 Wachovia Defeasance Wachovia  
 2003-C7 III LLC  
 Wachovia Defeasance Wachovia  
 2003-C9 III LLC  
 Wachovia Defeasance Wachovia  
 2004-C10 III LLC  
 Wachovia Defeasance Wachovia  
 2004-C12 III LLC  
 Wachovia Defeasance Wachovia  
 2004-C14 III LLC  
 Wachovia Defeasance Wachovia  
 2004-C15 III LLC  
 Wachovia Defeasance Wachovia  
 2005-C16 III LLC  
 Wachovia Defeasance Wachovia  
 2005-C17 III LLC  
 Wachovia Defeasance Wachovia  
 2005-C20 III LLC  
 Wachovia Defeasance Wachovia  
 2005-C22 III LLC  
 Wachovia Defeasance Wachovia  
 2006-C23 III LLC  
 Wachovia Defeasance Wachovia  
 2006-C24 III LLC  
 Wachovia Defeasance Wachovia  
 2006-C25 III LLC  
 Wachovia Defeasance Wbcmt 2002-  
 C1 III LLC  
 Wachovia Defeasance Management  
 LLC  
 Wachovia Defeasance Bscms 1999-  
 C1 LLC  
 Wachovia Defeasance Cfsb 1998-C2  
 LLC  
 Wachovia Defeasance Chase 1999-2  
 LLC  
 Wachovia Defeasance Chase 2000-1  
 LLC

Wachovia Defeasance Chase-Funb  
 1999-1 LLC  
 Wachovia Defeasance Dlj 1998-Cg1  
 LLC  
 Wachovia Defeasance Dlj 1999-Cg1  
 LLC  
 Wachovia Defeasance Dlj 1999-Cg2  
 LLC  
 Wachovia Defeasance Dlj 1999-Cg3  
 LLC  
 Wachovia Defeasance Fu-Lb II 1997-  
 C2 LLC  
 Wachovia Defeasance Fucm 1999-C4  
 LLC  
 Wachovia Defeasance Funb 1999-C1  
 LLC  
 Wachovia Defeasance Funb 2000-C2  
 LLC  
 Wachovia Defeasance Funb-Boa  
 2001-C1 LLC  
 Wachovia Defeasance Ge 2002-2  
 LLC  
 Wachovia Defeasance Geccmc 2001-  
 1 LLC  
 Wachovia Defeasance Geccmc 2001-  
 2 LLC  
 Wachovia Defeasance Geccmc 2001-  
 3 LLC  
 Wachovia Defeasance Greenwich  
 2002-C1 LLC  
 Wachovia Defeasance Hf 1999-Ph1  
 LLC  
 Wachovia Defeasance JPMC 2002-C1  
 LLC  
 Wachovia Defeasance Lb 1998-C4  
 LLC  
 Wachovia Defeasance Lb 1999-C1  
 LLC  
 Wachovia Defeasance Lb-UBS 2000-  
 C3 LLC

Wachovia Defeasance Lb-UBS 2000-  
 C4 LLC  
 Wachovia Defeasance Lb-UBS 2001-  
 C2 LLC  
 Wachovia Defeasance Lb-UBS 2001-  
 C3 LLC  
 Wachovia Defeasance Lb-UBS 2001-  
 C7 LLC  
 Wachovia Defeasance Lb-UBS 2002-  
 C1 LLC  
 Wachovia Defeasance Lb-UBS 2002-  
 C7 LLC  
 Wachovia Defeasance Lb-UBS 2003-  
 C1 LLC  
 Wachovia Defeasance Mlmi 1998-C2  
 LLC  
 Wachovia Defeasance Management-  
 Keycorp LLC  
 Wachovia Defeasance Csfb 2001-Ck1  
 LLC  
 Wachovia Defeasance Csfb 2001-Ck3  
 LLC  
 Wachovia Defeasance Csfb 2001-  
 Ckn5 LLC  
 Wachovia Defeasance Csfb 2002-  
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 Wachovia Defeasance Csfb 2003-C3  
 LLC  
 Wachovia Defeasance Csfb 2003-Ck2  
 LLC  
 Wachovia Defeasance Csfb 2004-C1  
 LLC  
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 LLC  
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 III LLC  
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 Penn's Landing LLC  
 Wachovia Defeasance Dlj 2000-Ckp1  
 LLC

Wachovia Defeasance Fu-Lb-Boa  
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 Wachovia Defeasance JPMC 2000-C9  
 LLC  
 Wachovia Defeasance Lb-UBS 2000-  
 C4 II LLC  
 Wachovia Defeasance Mlmi 2005-  
 Mkb2 LLC  
 Wachovia Defeasance Mlmt 2004-  
 Mkb1 LLC  
 Wachovia Defeasance Pmac 1999-C1  
 LLC  
 Wachovia Defeasance Pssfc 1998-C1  
 LLC  
 Wachovia Defeasance Management-  
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 Wachovia Defeasance Csfb 2004-C3  
 III LLC  
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 III LLC  
 Wachovia Defeasance JPMC 2001-C1  
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 II LLC  
 Wachovia Defeasance Mlmi 1998-C2  
 III LLC  
 Wachovia Defeasance Mlmi 1998-C2  
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 Wachovia Defeasance Mlmi 1998-C3  
 LLC  
 Wachovia Defeasance Mlmi 2002-  
 Mw1 III LLC  
 Wachovia Defeasance Mlmi 2002-  
 Mw1 LLC  
 Wachovia Defeasance Mlmi 2005-  
 Cki1 III LLC

Wachovia Defeasance Mlmi 2005-  
 Cki1 LLC  
 Wachovia Defeasance Mlmi 2005-  
 Mcp1 LLC  
 Wachovia Defeasance Mlmi 2005-  
 Mcp1 Pva III LLC  
 Wachovia Defeasance Mlmi 2005-  
 Mkb2 LLC  
 Wachovia Defeasance Mlmt 2004-  
 Mkb1 LLC  
 Wachovia Defeasance Msci 1998-Cf1  
 LLC  
 Wachovia Defeasance Msci 1998-Hf2  
 LLC  
 Wachovia Defeasance Msci 1998-  
 Wf2 LLC  
 Wachovia Defeasance Msci 1999-  
 Fnvi LLC  
 Wachovia Defeasance Msci 1999-  
 Life1 LLC  
 Wachovia Defeasance Msci 1999-  
 Rm1 LLC  
 Wachovia Defeasance Msci 1999-  
 Wf1 III LLC  
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 Wachovia Defeasance Msci 2003-  
 Top11 III LLC  
 Wachovia Defeasance Msci 2003-  
 Top11 LLC  
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 Hq3 LLC  
 Wachovia Defeasance Msci 2004-Iq7  
 LLC

Wachovia Defeasance Msci 2004-  
 Top13 III LLC  
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 Top15 LLC  
 Wachovia Defeasance Msci 2005-  
 Hq7 III LLC  
 Wachovia Defeasance Msci 2005-  
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 Wachovia Defeasance Msdwci 2000-  
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 Top9 III LLC  
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 Wachovia Defeasance Pncmac 1999-  
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Wachovia Defeasance Pssfc 1999-  
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 Wachovia Defeasance Wachovia  
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 Wachovia Defeasance Wachovia  
 2002-C2 III LLC  
 Wachovia Defeasance Wachovia  
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 2002-C2 LLC  
 Wachovia Defeasance Wachovia  
 2003-C3 Big Trout Lodge LLC  
 Wachovia Defeasance Wachovia  
 2003-C3 Gaddis LLC  
 Wachovia Defeasance Wachovia  
 2003-C3 III LLC  
 Wachovia Defeasance Wachovia  
 2003-C3 LLC

Wachovia Defeasance Wachovia  
 2003-C4 LLC  
 Wachovia Defeasance Wachovia  
 2003-C5 III LLC  
 Wachovia Defeasance Wachovia  
 2003-C5 LLC  
 Wachovia Defeasance Wachovia  
 2003-C6 III LLC  
 Wachovia Defeasance Wachovia  
 2003-C6 John & Son's LLC  
 Wachovia Defeasance Wachovia  
 2003-C6 LLC  
 Wachovia Defeasance Wachovia  
 2003-C7 III LLC  
 Wachovia Defeasance Wachovia  
 2003-C7 LLC  
 Wachovia Defeasance Wachovia  
 2003-C8 LLC  
 Wachovia Defeasance Wachovia  
 2003-C9 III LLC  
 Wachovia Defeasance Wachovia  
 2003-C9 LLC  
 Wachovia Defeasance Wachovia  
 2004-C10 III LLC  
 Wachovia Defeasance Wachovia  
 2004-C10 LLC  
 Wachovia Defeasance Wachovia  
 2004-C12 III LLC  
 Wachovia Defeasance Wachovia  
 2004-C12 LLC  
 Wachovia Defeasance Wachovia  
 2004-C14 Amstar LLC  
 Wachovia Defeasance Wachovia  
 2004-C14 III LLC  
 Wachovia Defeasance Wachovia  
 2004-C14 Lenexa LLC  
 Wachovia Defeasance Wachovia  
 2004-C14 LLC  
 Wachovia Defeasance Wachovia  
 2004-C15 III LLC

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 Wachovia Defeasance Wachovia  
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 Wachovia Defeasance Wachovia  
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 Wachovia Defeasance Wachovia  
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 Wachovia Defeasance Wbcmt 2002-  
 C1 III LLC  
 Wachovia Education Loan Funding  
 LLC  
 Wachovia Student Loan Trust 2005-1  
 Wachovia Student Loan Trust 2006-1  
 Wachovia Fixed Income Structured  
 Trading Solutions, LLC  
 Wachovia Holdings, Inc.  
 Wachovia Large Loan, Inc.  
 Wachovia Mortgage Corporation  
 Rels, L.L.C.

Advanced Collateral Solutions, LLC  
 C&S Appraisal Services, LLC  
 Prime Valuation Services, LLC  
 Rels Management Company, LLC  
 Accounting Services, LLC  
 Res Direct, LLC  
 Rels Reporting Services, L.L.C.  
 Valuation Information Technology,  
 L.L.C.  
 Wflc Subsidiary, LLC  
 Wachovia Mortgage Loan Trust, LLC  
 Wachovia Netherlands Holdings, Inc.  
 Danube Holdings I C.V.  
 Wells Fargo International Services  
 Private Limited  
 Wachovia Operational Services, LLC  
 Wachovia Preferred Funding Holding  
 Corp.  
 Wachovia Preferred Funding Corp.  
 Wachovia Preferred Realty, LLC  
 Wachovia Real Estate Investment  
 Corp.  
 Wachovia Preferred Realty, LLC  
 Wachovia Re, Inc.  
 Wachovia Residual Interest  
 Securitization, LLC  
 Wachovia Service Corporation  
 Lg-354 Lewisville Tx, LLC  
 Wachovia Shared Resources, LLC  
 Wachovia Trade Finance Corporation  
 Washington Street Limited  
 Partnership  
 Welf Holding LLC  
 Wells Capital Management  
 Incorporated  
 Wells Fargo Asset Securities  
 Corporation  
 Wells Fargo Auto Finance, LLC  
 Wells Fargo Bill Presentment Venture  
 Member, LLC

Wells Fargo Capital Finance, LLC  
 Wells Fargo Distribution Finance,  
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 Wells Fargo Cash Centers, Inc.  
 Wells Fargo Commercial Mortgage  
 Securities, Inc.  
 Wells Fargo Community  
 Development Corporation  
 Wells Fargo Community Investment  
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 Wells Fargo Community  
 Development Enterprises, Inc.  
 Wells Fargo Credit Card Funding  
 LLC  
 Wells Fargo Credit Card Master Note  
 Trust  
 Wells Fargo Dealer Services, Inc  
 Wds Receivables LLC  
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 Westfin Insurance Agency, Inc  
 Wfs Receivables Corporation 3  
 Wfs Web Investments  
 Wells Fargo Delaware Trust  
 Company, National Association  
 Evergreen Investment Management  
 Trust  
 Wells Fargo Equipment Finance, Inc.  
 Tai Title Trust  
 Wells Fargo Exchange Services, LLC  
 P Ranch Royalty Interest, LLC  
 P Ranch Working Interest, LLC

Phh Funding, LLC  
 Ryder Exchange, LLC  
 Wheels Exchange, LLC  
 Wells Fargo Financial Leasing, Inc.  
 Wells Fargo Financial Mississippi 2,  
     Inc.  
 Wells Fargo Financial Mississippi,  
     Inc.  
 Wells Fargo Fund Services, LLC  
 Wells Fargo Housing Advisors, Inc.  
 Wells Fargo Insurance Services  
     Investment Advisors, Inc.  
 First Union Insurance Group Trust I  
 Wells Fargo International Banking  
     Corporation  
 Congress Financial Capital (Us)  
     Corporation  
 Congress Financial Capital Company  
 Evergreen Worldwide Distributors,  
     Ltd.  
 Wachovia Advisors International  
     Limited  
 Wachovia Asia Limited  
 Wells Fargo Real Estate Advisors  
     Private Limited  
 Wachovia Real Estate Korea, Inc  
 Wells Fargo Capital Finance  
     Corporation Canada  
 Wells Fargo India Solutions Private  
     Limited  
 Wells Fargo Real Estate Advisors  
     Private Limited  
 Wells Fargo Securities (Japan) Co.,  
     Ltd.  
 Wells Fargo Securities Asia Limited  
 Wells Fargo Securities International  
     Limited  
 Philadelphia National Limited  
 Wells Fargo Trust Corporation  
     Limited

Wibc Aruba N.V.  
 Wells Fargo International Services  
     Private Limited  
 Wells Fargo Merchant Services,  
     L.L.C.  
 Wells Fargo Preferred Capital, Inc.  
 Wells Fargo Principal Lending, LLC  
 Wells Fargo Real Estate Tax Services,  
     LLC  
 Wells Fargo Student Loans  
     Receivables I, LLC  
 Wells Fargo Trade Capital, LLC  
 Wells Fargo Ventures, LLC  
 Advance Mortgage  
 Advantage Mortgage Partners, LLC  
 Aires Mortgage Solutions, LLC  
 Alliance Group Lending, LLC  
 Alliance Home Mortgage, LLC  
 American Priority Mortgage, LLC  
 American Southern Mortgage  
     Services, LLC  
 Apm Mortgage, LLC  
 Ascent Financial Services, LLC  
 Ashton Woods Mortgage, LLC  
 Bankers Funding Company, LLC  
 Belgravia Mortgage Group, LLC  
 Benefit Mortgage, LLC  
 Berks Mortgage Services, LLC.  
 Bhs Home Loans, LLC  
 California Premiere Lending, LLC  
 Capstone Home Mortgage, LLC  
 Carolina Mortgage/Cdj, LLC  
 Centennial Home Mortgage, LLC  
 Central Federal Mortgage Company  
 Choice Mortgage Servicing, LLC  
 Citylife Lending Group, LLC  
 Colorado Capital Mortgage Co., LLC  
 Colorado Mortgage Alliance, LLC  
 Colorado Professionals Mortgage,  
     LLC



Conway Home Mortgage, LLC  
 De Capital Mortgage, LLC  
 Eaton Mortgage, LLC  
 Edward Jones Mortgage, LLC  
 Entrust Mortgage, LLC  
 Express Financial & Mortgage  
 Services, LLC  
 First Allied Home Mortgage, LLC  
 First Associates Mortgage, LLC  
 First Commonwealth Home  
 Mortgage, LLC  
 First Mortgage Consultants, LLC  
 First Peninsula Mortgage, LLC  
 Five Star Lending, LLC  
 Florida Home Finance Group, LLC  
 Fulton Homes Mortgage, LLC  
 Genesis Mortgage, LLC  
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 LLC  
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 Hallmark Mortgage Group, LLC  
 Heritage Home Mortgage Group,  
 LLC  
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 Illustrated Properties Mortgage  
 Company, LLC  
 Integrity Home Funding, LLC  
 Keller Mortgage, LLC  
 Legacy Mortgage  
 Marben Mortgage, LLC  
 Martha Turner Mortgage, LLC  
 Max Mortgage, LLC  
 Mc Of America, LLC  
 Metro Home Mortgage, LLC  
 Military Family Home Loans, LLC

Mortgage 100, LLC  
 Mortgage One  
 Mortgage Services Professionals,  
 LLC  
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 Nucompass Mortgage Services, LLC  
 Personal Mortgage Group, LLC  
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 Phx Mortgage Advisors, LLC  
 Pinnacle Mortgage Of Nevada, LLC  
 Platinum Residential Mortgage, LLC  
 Pnc Reverse Mortgage, LLC  
 Premia Mortgage, LLC  
 Private Mortgage Advisors, LLC  
 Professional Financial Services Of  
 Arizona, LLC  
 Professional Mortgage Associates,  
 LLC  
 Prosperity Mortgage Company  
 Rainier Mortgage, LLC  
 Real Living Mortgage, LLC  
 Realty Home Mortgage, LLC  
 Residential Mortgage Division, LLC  
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 Southern Ohio Mortgage, LLC  
 Stirling Mortgage Services, LLC  
 Summit National Mortgage, LLC  
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 Town & Country Mortgage Group,  
 LLC  
 Tpg Funding, LLC  
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Village Communities Financial, LLC  
 Wells Fargo Home Mortgage Of  
     Hawaii, LLC  
 WFJV, LLC  
 WFRBD, LLC  
 WFS Mortgage, LLC  
 William Pitt Mortgage, LLC  
 Winmark Financial, LLC  
 1st Capital Mortgage, LLC  
 360 Mortgage Solutions, LLC  
 Wes Holding Corporation  
 Equity Insurance Agency, Inc.  
 Westwood Properties L.P.  
 William Byrd Hotel Associates, L.P.  
 Willis Avenue Housing, L.P.  
 Wlh 2008-1, LLC  
 World Loan Company, LLC  
 World Mortgage Company  
 Wpfc Asset Funding LLC  
 1452 Bedford Avenue Associates,  
     L.P.  
 225 North Centre Street, Ltd  
 349-59 Lenox LLC  
 400 South George Street, L.P.  
 510 Manhattan Affordable Housing  
     L.P.  
 651 Southern Associates, L.P.  
 Wells Fargo Capital Iv  
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 Wells Fargo Capital Xv  
 Wells Fargo Credit, Inc.  
 Wells Fargo Gaming Capital, LLC

Wells Fargo Institutional Securities,  
     LLC  
 Wells Fargo Energy Capital, Inc.  
 Wells Fargo Exchange Services, Inc.  
 Nct Exchange, LLC  
 Riggs Rental Exchange, LLC  
 Ryaccom, LLC  
 Wells Fargo Financial Services, Inc.  
 Wells Fargo Financial, Inc.  
 Alces Funding, LLC  
 Cervus Funding, L.P.  
 Centurion Agency Nevada, Inc.  
 Centurion Casualty Company  
 Centurion Life Insurance Company  
 Aspen Delaware Funding, LLC  
 Sierra Peaks Funding, LP  
 Wapiti Funding, LLC  
 Cervus Funding, L.P.  
 Chestnut Asset Management, Inc.  
 Dial Finance Company, Inc.  
 Dial National Community Benefits,  
     Inc.  
 Ellis Advertising, Inc.  
 Finvercon Usa, Inc.  
 Island Finance Credit Services, Inc.  
 Island Finance New York, Inc.  
 Norwest Financial Canada De, Inc.  
 Havanese Funding, LLC  
 Wells Fargo Financial Corporation  
     Canada  
 Wells Fargo Business Credit Canada  
     Ulc  
 Wells Fargo Equipment Finance  
     Company  
 Wells Fargo Financial Canada  
     Corporation  
 Wells Fargo Financial Retail Services  
     Company Canada  
 Wells Fargo Foothill Canada Ulc

Wells Fargo Financial Hong Kong  
 Limited  
 Norwest Financial Funding, Inc.  
 Hadbo Investments C.V.  
 Island Finance Holding Company,  
 LLC  
 Island Finance Sales Finance  
 Corporation  
 Island Finance Sales Finance Trust  
 Reliable Finance Holding Company  
 Reliable Finance Holding Company,  
 LLC  
 Reliable Finance Holding Company  
 Tai Mo Shan Investments Partnership  
 Tms Funding Limited  
 Wells Fargo Financial Funding B.V.  
 Hadbo Investments C.V.  
 Norwest Financial Investment 1, Inc.  
 Norwest Financial Investment, Inc.  
 Norwest Financial Massachusetts  
 Reliable Financial Services, Inc.  
 Reliable Insurance Services Corp.  
 Sierra Delaware Funding, LLC  
 Sierra Peaks Funding, LP  
 Wells Fargo Financial Agency, Co.  
 Wells Fargo Financial Alabama, Inc.  
 Wells Fargo Financial Alaska, Inc.  
 Wells Fargo Financial America, Inc.  
 Wells Fargo Financial Arizona, Inc.  
 Wells Fargo Financial California, Inc.  
 Victoria Investments, LLC  
 Tai Mo Shan Investments Partnership  
 Wells Fargo Financial Colorado, Inc.  
 Wells Fargo Financial Connecticut,  
 Inc.  
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 Wells Fargo Financial Delaware, Inc.  
 Wells Fargo Financial Florida, Inc.

Wells Fargo Financial System  
 Florida, Inc.  
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 Wells Fargo Financial Hawaii, Inc.  
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 Inc.  
 Wells Fargo Financial Kentucky, Inc.  
 Wells Fargo Financial Louisiana, Inc.  
 Wells Fargo Financial Maine, Inc.  
 Wells Fargo Financial Maryland, Inc.  
 Wells Fargo Financial Massachusetts  
 1, Inc.  
 Wells Fargo Financial Massachusetts,  
 Inc.  
 Wells Fargo Financial Michigan, Inc.  
 Wells Fargo Financial Minnesota, Inc.  
 Wells Fargo Financial Acceptance,  
 LLC  
 Cgt Insurance Company Ltd.  
 Wells Fargo Financial Acceptance  
 America, Inc.  
 Wells Fargo Financial Arkansas, Inc.  
 Wells Fargo Financial Vermont, Inc.  
 Wells Fargo Financial Missouri, Inc.  
 Wells Fargo Financial Montana, Inc.  
 Wells Fargo Financial National Bank  
 Killdeer Capital Company, LLC

Wells Fargo Financial Nebraska, Inc.  
 Wells Fargo Financial Nevada 1, Inc.  
 Wells Fargo Financial Nevada 2, Inc.  
 Wells Fargo Financial Nevada, Inc.  
 Wells Fargo Financial New  
     Hampshire 1, Inc.  
 Wells Fargo Financial New  
     Hampshire, Inc.  
 Wells Fargo Financial New Jersey,  
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 Wells Fargo Financial New Mexico,  
     Inc.  
 Wells Fargo Financial New York, Inc.  
 Wells Fargo Financial North Carolina  
     1, Inc.  
 Wells Fargo Financial North Carolina,  
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 Wells Fargo Financial North Dakota,  
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 Wells Fargo Financial Ohio 1, Inc.  
 Wells Fargo Financial Ohio, Inc.  
 Wells Fargo Financial Oklahoma, Inc.  
 Wells Fargo Financial Oregon, Inc.  
 Wells Fargo Financial Pennsylvania,  
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 Wells Fargo Financial Puerto Rico,  
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 Wells Fargo Financial Resources, Inc.  
 Wells Fargo Financial Retail Credit,  
     Inc.  
 Wells Fargo Financial Retail Services,  
     Inc.  
 Wells Fargo Financial Rhode Island,  
     Inc.  
 Wells Fargo Financial Saipan, Inc.  
 Wells Fargo Financial Security  
     Services, Inc.  
 Wells Fargo Financial Services  
     Virginia, Inc.

Wells Fargo Financial South Carolina,  
     Inc.  
 Wells Fargo Financial South Dakota,  
     Inc.  
 Wells Fargo Financial System  
     Minnesota, Inc.  
 Wells Fargo Financial System  
     Virginia, Inc.  
 Wells Fargo Financial Tennessee 1,  
     LLC  
 Wells Fargo Financial Tennessee, Inc.  
 Wells Fargo Financial Texas, Inc.  
 Wells Fargo Financial Utah, Inc.  
 Wells Fargo Financial Virginia, Inc.  
 Wells Fargo Financial Washington 1,  
     Inc.  
 Wells Fargo Financial Washington,  
     Inc.  
 Wells Fargo Financial West Virginia,  
     Inc.  
 Wells Fargo Financial Wisconsin, Inc.  
 Wells Fargo Financial Wyoming, Inc.  
 Wells Fargo Foundation  
 Wells Fargo Global Soporte Ltd.  
 Wells Fargo Insurance, Inc.  
 H.D. Vest Insurance Agency, L.L.C.  
 H.D. Vest Insurance Agency, L.L.C.  
 Rural Community Insurance Agency,  
     Inc.  
 Rural Community Insurance  
     Company  
 Wells Fargo Insurance Nevada, Inc.  
 Wells Fargo Insurance Wyoming, Inc.  
 Wells Fargo Investment Group, Inc.  
 Nelson Capital Management, LLC  
 Nvp Associates, LLC  
 Norwest Venture Advisors Private  
     Limited  
 Norwest Venture Partners Advisory -  
     Mauritius

NVP Venture Capital India Private  
 Limited  
 NVP Israel Ltd  
 Wachovia Securities Financial  
 Holdings, LLC  
 Wells Fargo Alternative Asset  
 Management, LLC  
 Wells Fargo Funds Distributor, LLC  
 Wells Fargo Funds Management,  
 LLC  
 Wells Fargo Investments, LLC  
 Stagecoach Insurance Services, LLC  
 WFI Insurance Agency Montana, Inc.  
 WFI Insurance Agency Washington,  
 Inc.  
 Wells Fargo Wealth Brokerage  
 Insurance Agency, LLC  
 Professional Direct Agency, Inc.  
 Wells Fargo Properties, Inc.  
 Norwest Properties Holding Company  
 Wells Fargo Relative Value Portfolio  
 Overland Relative Value Fund Ltd.  
 Overland Relative Value Master Fund  
 LP  
 Western Liberty Bancorp  
 WF Deferred Compensation  
 Holdings, Inc.  
 WFC Holdings Corporation  
 Charter Holdings, Inc.  
 Wells Fargo Bank, National  
 Association  
 Ibid, Inc.  
 First Security Capital I  
 Wells Fargo Bank Northwest,  
 National Association  
 Pumi Funding, LLC

Bergamasco Funding, LLC  
 Whippet Funding, LLC  
 Wells Fargo Bank, National  
 Association  
 Wells Fargo Bank, Ltd.  
 Eastdil Secured, L.L.C.  
 Wells Fargo Bank, National  
 Association  
 Wells Fargo Capital A  
 Wells Fargo Capital B  
 Wells Fargo Capital C  
 Wells Fargo Capital Holdings, Inc.  
 Wells Fargo Capital I  
 Wells Fargo Capital II  
 Wells Fargo Central Bank  
 Wells Fargo Central Pacific Holdings,  
 Inc.  
 Rels Title Services, LLC  
 ATI Title Agency Of Ohio, Inc.  
 ATI Title Company Of Alabama,  
 LLC  
 ATI Title Company, LLC  
 Rels Management Company, LLC  
 Wells Fargo Real Estate Capital  
 Investments, LLC  
 Wells Fargo Wind Holdings LLC  
 Wells Fargo Cedar Creek, LLC  
 Wells Fargo Financing Corporation  
 Wells Fargo Capital Holdings, Inc.  
 Wells Fargo Equity Capital, Inc.  
 Wells Fargo Small Business  
 Investment Company, Inc.  
 Wells Fargo India Solutions Private  
 Limited  
 2007 Vento II, LLC

**STATEMENT OF RELATED CASES PURSUANT TO RULE 500.13(A)**

Pursuant to Court of Appeals Rule of Practice 500.13(a), Plaintiffs-Appellants The Royal Bank of Scotland, N.V. (f/k/a ABN AMRO Bank N.V.); BNP Paribas; Credit Agricole Corporate and Investment Bank (f/k/a Calyon); HSBC Bank USA, N.A.; KBC Investment Cayman Islands V Ltd.; Merrill Lynch International; Bank of America, N.A.; Morgan Stanley Capital Services Inc.; Natixis; Natixis Financial Products LLC (f/k/a Natixis Financial Products Inc.); The Royal Bank of Scotland plc; Société Générale; UBS AG, London Branch; and Wachovia Bank, N.A. (“Plaintiffs”); hereby respectfully submit this statement setting forth the status of related litigation.

On June 15, 2009, in response to MBIA’s claim that Plaintiffs could challenge MBIA’s Transformation only in an Article 78 proceeding, Plaintiffs filed a protective Article 78 proceeding, *ABN AMRO Bank N.V., et al. v Dinallo, et al.* (Index No. 601846/09 [Sup Ct, NY County]) (the “*Dinallo* Article 78 Proceeding”). Unlike this action, which asserts claims against MBIA for its separate violations of the DCL and common law, the *Dinallo* Article 78 proceeding directly challenges the Superintendent’s determinations under the Insurance Law on the ground that his approvals were “made in violation of lawful procedure, w[ere] affected by an error of law or w[ere] arbitrary and capricious or an abuse of discretion” (CPLR

7803[3]). On November 24, 2009, MBIA and the NYID filed their Answer, and on March 11, 2011, Plaintiffs filed their Reply and supporting papers.

On October 22, 2010, Plaintiffs filed a separate Article 78 proceeding, *Barclays Bank PLC, et al. v Wrynn, et al.* (Index No. 651811/10 [Sup Ct, NY County]) (the “*Wrynn* Article 78 Proceeding”), in which Plaintiffs challenge as illegal, arbitrary, capricious and an abuse of discretion the actions of the Superintendent in approving, by letter dated June 22, 2010, an accounting maneuver whereby MBIA Illinois reset its “unassigned fund (surplus)” account to zero, a maneuver designed to allow MBIA Illinois to immediately begin dissipating the assets stolen from MBIA Insurance by paying dividends to MBIA Inc. On January 18, 2011, the parties to the *Wrynn* Article 78 Proceeding entered a Stipulation, adjourning the return date to April 19, 2011, and providing that MBIA Illinois would not pay dividends during the period of the adjournment.

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## **PRELIMINARY STATEMENT**

This is an appeal from a decision misapplying, in violation of due process, fundamental principles of preclusion and collateral estoppel. Specifically, in a 3-to-2 decision, the Appellate Division, First Department, held that an administrative agency's private letter approval under one statutory scheme (here, the Insurance Law) bars the entire world—including parties who had no notice of and did not participate in the agency's approval process—from bringing plenary claims under an entirely separate statute (the Debtor and Creditor Law ("DCL")) and the common law against the entity that procured that regulatory approval. Because the majority's unprecedented "collateral attack" theory violates settled law, this Court should reverse and reinstate Plaintiffs' well-pled claims.

On February 17, 2009, after obtaining then-Superintendent of Insurance Eric Dinallo's private letter approval, MBIA Inc.<sup>1</sup> siphoned over \$5 billion out of its insurance subsidiary, MBIA Insurance, and fraudulently conveyed those claims-paying assets to an affiliate, MBIA Illinois. Through its self-described "Transformation," MBIA senior executives split MBIA Insurance into an insolvent, "dying insurer" for Plaintiffs and other structured-finance policyholders (MBIA Insurance) and a well-capitalized, "healthy insurer" for

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<sup>1</sup> "MBIA" refers to Defendants-Respondents MBIA Inc., MBIA Insurance Corporation ("MBIA Insurance") and MBIA Insurance Corp. of Illinois ("MBIA Illinois").

municipal bond policyholders (MBIA Illinois). Thus, MBIA sought to escape the recent financial crisis that engulfed every financial guaranty insurer, by making \$5 billion in assets unavailable to satisfy the massive liabilities that MBIA Insurance owes to Plaintiffs and other beneficiaries of MBIA Insurance policies, including pension funds, public charities, universities and other institutional investors.

In erroneously ruling that “all of Plaintiffs’ allegations in the complaint” are “improper collateral attacks” on the Superintendent’s determinations under the Insurance Law (Order at 15, 18), the Appellate Division majority—impermissibly on a motion to dismiss—(a) disregarded the allegations of Plaintiffs’ detailed, 33-page complaint, and (b) adopted as true MBIA’s false factual assertions in its moving papers.<sup>2</sup> Under the majority’s “collateral attack” theory, Plaintiffs must challenge MBIA’s fraudulent conveyances *exclusively* under the Insurance Law in an Article 78 proceeding, with limited discovery and a deferential standard of review (Order at 15-16). Indeed, because Plaintiffs’ DCL and common law claims *cannot* be brought in an Article 78 proceeding challenging the Superintendent’s determinations (*see* CPLR 7803[3]), the majority stripped Plaintiffs entirely of their DCL and common law rights.

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<sup>2</sup> Citations to “R. \_\_\_” are to the record on appeal. “Order” refers to the Decision and Order of the Appellate Division, First Department, dated January 11, 2011 (R. xix-lii), which erroneously reversed the Decision and Order of the Commercial Division of Supreme Court, New York County (Yates, J.), dated February 24, 2010 (the “Comm. Div. Order” [R. 36-57]).

Tellingly, in announcing its “collateral attack” theory, the Appellate Division majority relied heavily on its own decision in *Fiala v Metropolitan Life Ins. Co.* (6 AD3d 320 [1st Dept 2004]), while ignoring entirely this Court’s controlling decisions in *Capital Tel. Co. v Pattersonville Tel. Co.* (56 NY2d 11 [1982]), and *Richards v Kaskel* (32 NY2d 524 [1973]). But, under these decisions and other settled law, the Appellate Division majority’s unprecedented “collateral attack” theory cannot stand.

*First*, Plaintiffs were *not* parties to the Superintendent’s private process, had no notice of it and had no opportunity to present evidence or argument. They therefore cannot be bound by his letter approvals, particularly in bringing suit against a private party, here MBIA. The Appellate Division majority’s decision directly contradicts *Capital Telephone* (56 NY2d at 23), where this Court rejected the notion that a plaintiff challenging an agency-approved transaction, who had no “full and fair opportunity to litigate the issue” before the agency, was limited “only to an Article 78 proceeding.” Thus, the Commercial Division (Yates, J.) and dissenting Justices Abdus-Salaam and Tom correctly reasoned that the First Department’s *Fiala* decision did not support MBIA’s “collateral attack” theory, because the agency there provided “notice, a hearing and a policyholder vote” (R. 51 [Comm. Div. Order at 15]) (Order at 27-29).

*Second*, the mere fact that the Superintendent provided private regulatory approvals under the *Insurance Law* does not bar claims against a regulated entity such as MBIA from liability under the *DCL or common law*. As this Court expressly held in *Capital Telephone* (56 NY2d at 23), “regulatory agency approval . . . *does not immunize*” a regulated entity from legal challenge under a separate statutory scheme, notwithstanding the availability of Article 78 review of that regulatory approval (emphasis added). And, in *Richards v Kaskel* (32 NY2d at 535 and n 5), this Court likewise held that regulatory approval did not “deprive the court of its traditional equitable jurisdiction to consider claims of illegality” outside of an Article 78 proceeding. In rejecting MBIA’s sweeping “collateral attack” theory, the Commercial Division properly held that “[t]his matter [was] no different than *Kaskel* in all material respects” (R. 52 [Comm. Div. Order at 16]).

*Third*, even if the Appellate Division majority’s “collateral attack” theory had any legal merit—and it does not—the majority opinion impermissibly placed the burden on Plaintiffs of disproving MBIA’s “collateral attack” affirmative defense. Even worse, in going beyond the “four corners” of the Complaint, the majority (i) impermissibly overrode Plaintiffs’ factual allegations, (ii) accepted as true contested documents outside the pleadings, and (iii) erroneously presumed that the Superintendent’s approvals under the Insurance Law

resolved the factual allegations underlying all of Plaintiffs' DCL and common law claims, even though those claims have different elements and different tests.

*Fourth*, beyond its constitutionally flawed “collateral attack” theory, the Appellate Division majority erred in dismissing Plaintiffs’ claims for breach of the implied covenant of good faith and fair dealing. As Justices Abdus-Salaam and Tom correctly held in dissent, the Complaint sufficiently alleges that MBIA, through its fraudulent “Transformation,” purposefully and in bad faith deprived Plaintiffs of the benefits of their insurance contracts, namely (i) to be paid in the event of default, and (ii) credit enhancement.

Finally, as recognized by Justices Abdus-Salaam and Tom, Plaintiffs adequately pled their declaratory judgment claim for veil-piercing, premised on MBIA’s abuse of the corporate form by shifting assets among its affiliates (Order at 32-33). In barring Plaintiffs’ claim as seeking an “advisory opinion,” the Appellate Division majority ignored that the Complaint alleges that MBIA Insurance is currently insolvent and lacks the present ability to meet its policy liabilities to Plaintiffs (*see Prodel v State of New York*, 211 AD2d 966, 967-968 [3d Dept 1995] [“where the practical likelihood is that the future contingency will occur, the [declaratory judgment] action may proceed” and is not an “advisory opinion”]).



## **STATEMENT OF QUESTIONS PRESENTED**

1. Does the so-called “collateral attack” doctrine bar insurance policyholders from asserting DCL and common law claims against an insurance holding company and its insurance subsidiaries simply because the Superintendent of Insurance issued private approvals of the challenged fraudulent restructuring transactions, where policyholders (i) were not parties to the Superintendent’s private approval process, (ii) never had notice of it or any opportunity to be heard, and (iii) the Superintendent did not issue his approvals in a quasi-judicial administrative process?

The Appellate Division majority erred by answering in the affirmative.

2. Do the Superintendent’s privately issued approvals of fraudulent restructuring transactions under narrow provisions of the Insurance Law immunize an insurance holding company and its insurance subsidiaries from distinct claims for violations of the DCL and the common law and strip insurance policyholders of their common law and statutory rights?

The Appellate Division majority erred by answering in the affirmative.

3. In reviewing the denial of a motion to dismiss, may an appellate court consider “facts” outside of the “four corners” of the complaint and resolve disputed

factual issues against Plaintiffs, here, the Appellate Division majority's finding that Plaintiffs' DCL and common law claims "directly conflict" with the Superintendent's approval of MBIA's fraudulent transactions under the Insurance Law?

The Appellate Division majority erred by answering in the affirmative.

4. Does a plaintiff state a claim for breach of the implied covenant of good faith and fair dealing, where the Complaint here alleges that (i) the purpose of MBIA Insurance's financial guarantee insurance contracts was to enhance the credit of insured bonds, and to guarantee payment in the event of default, and (ii) Defendants purposefully and in bad faith undertook a fraudulent restructuring that left the insurer insolvent?

The Appellate Division majority erred by answering in the negative.

5. Does a plaintiff state a declaratory judgment claim for piercing the corporate veil, where, as here, the Complaint details that Defendants exercised complete domination over their insurance subsidiary in executing a fraudulent restructuring to enrich Defendants and to defraud Plaintiffs?

The Appellate Division majority erred by answering in the negative.

## **STATEMENT OF JURISDICTION**

In the Appellate Division, First Department, two justices dissented on the law (Order at 21-33), and the appeal to this Court is taken as of right pursuant to CPLR 5601(a). All arguments raised on this appeal have been made to the courts below and, therefore, are preserved for this Court's review.

## **STATEMENT OF THE NATURE OF THE CASE**

### **A. The MBIA Fraudulent “Transformation”**

Plaintiffs hold financial guarantee insurance policies issued by MBIA Insurance for a wide variety of “structured-finance” products, including mortgage-backed securities. Many of these MBIA Insurance policies cover structured products with terms of 30 years or more, and MBIA Insurance's current payment of claims says nothing about its long-term ability to continue to do so.

These policies, which benefit institutional investors, including pension funds, public charities and educational institutions, were purchased for two reasons: (1) payment certainty: under these policies, MBIA Insurance unconditionally and irrevocably promised to make payments if the obligors on the insured structured-finance products default on their payment obligations; and (2) “credit enhancement”: because MBIA Insurance had a strong “Triple A” credit rating, MBIA Insurance policies enhanced the credit rating and value of the underlying insured products (R. 102-103 [Complaint (“Compl.”) ¶¶ 41, 44]).

During 2008, as a once-in-a-lifetime financial crisis struck the world economy, MBIA Insurance incurred massive losses on its more than \$230 billion in structured-finance policies (R. 93, 94-95, 107-108 [Compl. ¶¶ 1, 5-6, 45, 60-61]). To avoid billions in additional losses, MBIA Inc. senior executives devised a secret plan to divide its principal subsidiary (MBIA Insurance) into a “healthy” insurer of low-risk, public-finance products and a “dying” insurer of toxic structured-finance products. Specifically, these executives proposed diverting over \$5 billion from cash-starved MBIA Insurance to a new, highly capitalized municipal bond insurer, MBIA Illinois (R. 93-97, 106 [Compl. ¶¶ 1, 2, 8-11, 54]).

On February 17, 2009, MBIA executed its “Transformation”:

- MBIA Insurance paid a \$1.147 billion dividend to MBIA Inc. for no consideration (the “Dividend”);
- MBIA Insurance paid another \$938 million, and transferred 100% ownership of MBIA Illinois, to MBIA Inc., to repurchase a portion of its own stock, even though this stock redemption had no value to MBIA Insurance (the “Stock Redemption”);
- MBIA Inc. transferred the cash and assets received from MBIA Insurance to MBIA Illinois;
- MBIA Insurance grossly overpaid \$2.89 billion in cash, along with 78% of future municipal-bond premiums, for a municipal bond reinsurance agreement with MBIA Illinois, even though MBIA Insurance ultimately

would remain liable for any insured municipal bond losses (the “Reinsurance Transaction”); and

- MBIA Insurance transferred all of its future U.S. public bond business, which had far greater prospects than its defunct structured-finance business, to MBIA Illinois for no consideration.

(R. 97, 104-107 [Compl. ¶¶ 12, 46-58].)

Following MBIA’s “Transformation,” public-finance policyholders had access to exactly the same pool of assets for the payment of claims as before the Transformation. But the assets backing MBIA Insurance’s structured-finance insurance policies dropped by over \$5 billion overnight. As MBIA CEO Jay Brown told the financial press, the Transformation created a new insurer that was “totally legally separate” from MBIA Insurance to prevent the transferred assets from “going to pay structured claims” (R. 112 [Compl. ¶ 73]).

These asset-stripping transactions left MBIA Insurance insolvent and in run-off (R. 94, 97, 109-112 [Compl. ¶¶ 4, 12, 63-71]). Right after the announcement of its fraudulent “Transformation,” MBIA Insurance’s credit rating was downgraded “deep into junk territory,” and one analyst observed that MBIA Insurance was left to “wither and die” (R. 94, 106, 109-110 [Compl. ¶¶ 4, 54, 63, 66]). As of March 31, 2009, MBIA reported that the “fair value” of MBIA Insurance’s liabilities was more than double the “fair value” of its assets (R. 111 [Compl. ¶ 69]).

MBIA's fraudulent "Transformation" severely prejudiced Plaintiffs and other MBIA Insurance structured-finance policyholders (R. 93-94, 112-115 [Compl. ¶¶ 2-3, 72-82]). CEO Brown even boasted that, as a result of the Transformation, Plaintiffs would have no choice but to surrender their once-valuable policies at a substantial discount: "I would expect some would be far more interested in commuting. *They will say, 'Oh my God, there is only \$10 billion instead of \$14 or \$15 billion, maybe I better cut a settlement today'*" (R. 112-13 [Compl. ¶ 74] [emphasis added]).

By contrast, MBIA's senior executives have profited handsomely from MBIA's fraudulent restructuring. The same day that the "Transformation" was publicly announced, MBIA CEO Jay Brown received \$5 million of restricted stock, with the number of shares determined by MBIA's stock price *before* the restructuring, and the value of Mr. Brown's stock holdings in MBIA spiked by 30% in a single day (R. 114 [Compl. ¶ 78]). Since MBIA's fraudulent "Transformation," the value of MBIA Inc. stock has tripled, and Mr. Brown's holdings alone have increased in value by tens of millions of dollars.

## **B. The Superintendent's Letter Approval**

After completing its fraudulent restructuring, MBIA posted to its website a February 17, 2009 letter from the Superintendent (the "Approval Letter") (R. 131-40). This 10-page Approval Letter disclosed that, in December 2008,

MBIA had submitted a private application to the Superintendent seeking certain confidential approvals under the Insurance Law in connection with the Transformation (R. 105-06 [Compl. ¶ 53]). Expressly issued “in reliance on the truth of” unspecified information provided in confidence by MBIA (R. 136-40), the Approval Letter did not, as the Appellate Division majority claimed, provide a “comprehensive” analysis of the Transformation (Order at 19 n 3). Rather, the Approval Letter ignored the overall impact of MBIA’s fraudulent “Transformation” on structured policyholders and provided only limited approvals under specific provisions of the Insurance Law. Although certain transactions were approved on February 17, 2009, the approvals were retroactive to January 1, 2009 and relied on MBIA’s September 30, 2008 (and much earlier) financial information—information that was grossly outdated and inaccurate because of the rapidly worsening financial crisis in the fourth quarter of 2008 (R. 107-108 [Compl. ¶¶ 60-61]).

In rendering its decision, the Appellate Division majority misconstrued the Superintendent’s actions and, in the process, impermissibly disregarded the well-pled allegations of Plaintiffs’ Complaint:

- ***Dividend.*** Citing Insurance Law § 4105(a), the Superintendent stated that MBIA Insurance “will retain sufficient surplus to support its obligations and writings *following the payment of the MBIA Corp. Dividend*” (R. 136 [Approval Letter at 6] [emphasis added]). Although

the Approval Letter states that the New York Insurance Department (“NYID”) conducted an “analysis of the MBIA Entities’ financial condition after the effectuation of the Transformation” (*id.*), on its face, this finding was expressly limited to the Dividend itself. And, contrary to the Appellate Division’s erroneous decision (Order at 18-19), the NYID never determined that MBIA Insurance would “remain[] solvent” under the Insurance Law, much less under the DCL.

- ***Stock Redemption.*** Under Insurance Law § 1411(d), the Superintendent found that “the Stock Redemption is reasonable and equitable to MBIA [Insurance]” (R. 136 [Approval Letter at 6]). By its terms, this finding was limited to the Stock Redemption alone.
- ***Reinsurance Transaction.*** Purporting to apply Insurance Law § 1505(e), the Superintendent elected to “not disapprove of the Reinsurance Transaction” after “consider[ing],” among other things, whether that specific transaction—as opposed to the entire “Transformation”—was “fair and equitable” to MBIA Insurance (Order at 18-19).

To secure these approvals and the non-disapproval, MBIA executives defrauded the NYID, misrepresenting MBIA Insurance’s true financial condition, including by severely understating its expected insurance losses and cash “outflows” (R. 107-108, 110-111 [Compl. ¶¶ 60, 68-70]). Shortly after MBIA fraudulently obtained the Superintendent’s approvals, MBIA Insurance’s loss estimates increased by hundreds of millions of dollars and its expected “outflows” spiked a staggering 84% to \$2.16 billion (*id.*). Since then, MBIA Insurance has



continued to bleed cash and its expanding liabilities continue to dwarf its claims-paying ability.

### **C. The Complaint**

The Complaint asserts three statutory claims under the Debtor and Creditor Law, alleging that the Transformation (1) rendered MBIA Insurance insolvent (DCL § 273), (2) left it with unreasonably small capital (DCL § 274), and (3) was intended to hinder, delay or defraud creditors (DCL § 276) (R. 115-118 [Compl. ¶¶ 83-111]). The Complaint also alleges three common-law claims: (1) breach of the implied contractual covenant of good faith and fair dealing, (2) abuse of the corporate form, and (3) unjust enrichment (R. 119-122 [Compl. ¶¶ 112-36]). The Complaint does not name the Superintendent as a party or seek to annul his determinations, but instead challenges MBIA's misconduct.

Specifically, the Complaint alleges that MBIA Insurance's claim "that it is solvent" is "fiction," because it "will be required to pay billions of dollars in claims to its structured-finance policyholders," and the "expected amount of these payments greatly exceed MBIA Insurance's assets" (R. 110-111 [Compl. ¶¶ 67, 69-70]). The Complaint also alleges that MBIA's financial statements are "demonstrably unreliable," and that MBIA has dramatically understated its policy losses (R. 110 [Compl. ¶ 68]). MBIA's own SEC filings reveal that MBIA dramatically reduces the expected insurance losses "based on MBIA Insurance's

risk of non-performance”—*i.e.*, the market’s belief that MBIA Insurance will default. But for this accounting adjustment, MBIA estimated MBIA Insurance’s policy losses to be \$21.7 billion—more than double its post-Transformation assets (R. 111 [Compl. ¶ 69]).

#### **D. The Article 78 Proceeding**

On June 15, 2009, in response to MBIA’s claim that Plaintiffs could challenge the Transformation only in an Article 78 proceeding, Plaintiffs filed a protective Article 78 proceeding, *ABN AMRO Bank N.V., et al. v Dinallo, et al.* (Index No. 601846/09 [Sup Ct, NY County]). Unlike this action, the Article 78 proceeding directly challenges the Superintendent’s determinations under the Insurance Law on the ground that these agency actions were “made in violation of lawful procedure, w[ere] affected by an error of law or [were] arbitrary and capricious or an abuse of discretion” (CPLR 7803[3]).

Because an Article 78 proceeding is a summary proceeding, Plaintiffs have received only limited discovery (*see* CPLR 408). On November 24, 2009, MBIA and the NYID filed their Answer, and on March 11, 2011, Plaintiffs filed their Reply, with the affidavits of four former Superintendents of Insurance, who collectively served for nearly 20 years, and from well-recognized financial and valuation experts. The affidavits and other evidence demonstrate that then-

Superintendent Dinallo's approvals violated the Insurance Law and longstanding NYID policy and practice.

**E. The Commercial Division's Decision**

On February 24, 2010 (R. 36-79), the Commercial Division (Yates, J.) properly denied MBIA's motion to dismiss and rejected MBIA's sweeping "collateral attack" theory. The court held that the "mere fact that there was earlier approval of the MBIA restructuring by the Insurance Department does not immunize [MBIA] from subsequent statutory and common law claims" (R. 50). Emphasizing that "plaintiffs are not asking the Court to examine whether the Superintendent of Insurance correctly interpreted and applied the state Insurance Laws" (R. 50), the court concluded that the Approval Letter did not bar Plaintiffs' claims: "The Superintendent was not called upon to examine whether defendants intended to defraud policyholders or all the other legal or financial consequences of the Transformation upon policy holders" (R. 52).

**F. The Appellate Division's Decision**

On January 11, 2011, a 3-2 panel of the Appellate Division reversed the Commercial Division's denial of MBIA's motion to dismiss, holding that Plaintiffs' claims were "improper collateral attacks" on the Approval Letter (Order at 14-20). The majority never explained the legal foundation for its "collateral attack" theory, or identified any legal rule that might justify giving preclusive

effect to administrative fact-finding other than traditional theories of collateral estoppel or *res judicata*. Instead, the majority premised its holding on a misreading of the First Department’s prior decision in *Fiala v Metropolitan Life Ins. Co.* (6 AD3d 320 [1st Dept 2004]) (Order at 16-17).

Thus, the Appellate Division majority announced its “collateral attack” theory, even though (a) Plaintiffs had no notice or opportunity to be heard regarding the Superintendent’s *ad hoc* executive approval, (b) the legal and factual standards differ under the DCL and Insurance Law, (c) the relevant dates for measuring compliance with the DCL and the Insurance Law were not the same, and (d) the Complaint alleged that MBIA executives misled the NYID to secure the Superintendent’s private approval of the fraudulent Transformation.

Contravening basic rules governing a motion to dismiss, the majority went outside the Complaint to pronounce that the Superintendent made a “broad determination that the restructuring is fair to MBIA Insurance policyholders and that the company remains solvent” (Order at 18-19). The Approval Letter contains no such determination. The majority also relied heavily on the supposed “near simultaneity” of the Superintendent’s approvals and the underlying transactions, but ignored that the February 17, 2009 approvals were issued “as of” January 1, 2009 and were based on stale September 30, 2008 (and earlier) financial data (R. 108 [Compl. ¶ 60]). The majority also declared that Plaintiffs “never claim” that

MBIA misled the Superintendent, when the basis of the Complaint is that MBIA Insurance's claims of solvency are false (R. 110-111 [Compl. ¶¶ 67-70]).

In dissent, Justices Abdus-Salaam and Tom rejected the majority's unprecedented "collateral attack" theory, because (a) Plaintiffs' claims "concern[ed] matters that clearly were not considered by or passed upon by the Superintendent," and (b) Plaintiffs could not be barred without notice or an opportunity to be heard (Order at 24, 27-28). The dissent thus rejected the notion that Plaintiffs "may only bring claims in the article 78 proceeding": "Whether the *Superintendent* had a rational basis for his determination to approve/not disapprove the transactions, based upon the information provided to him by defendants, without any input by plaintiffs, is a distinctly different matter from plaintiffs' allegation in a plenary action that *defendants* committed fraudulent conduct and violated the Debtor and Creditor Law, especially where plaintiffs claim that the Superintendent was intentionally misled by defendants" (Order at 28) (emphasis in original).

#### **G. The *Aurelius* Federal Action**

On March 11, 2009, a separate plaintiff group of investors that own products insured by MBIA Insurance filed a putative class action in federal court alleging similar claims on behalf of investors who, like Plaintiffs, were injured by the Transformation (*see Aurelius Capital Master, Inc. v MBIA Ins. Corp.*, 695 F

Supp 2d 68 [SD NY 2010, Sullivan, J.]). Like the Commercial Division, the federal district court rejected MBIA's sweeping "collateral attack" theory, holding that "plaintiffs cannot be precluded from litigating an issue upon which the Superintendent did not pass" (*Aurelius*, 695 F Supp 2d at 74). The *Aurelius* action has been stayed pending this Court's review of the Appellate Division's decision.

### **STANDARD OF REVIEW**

On a motion to dismiss under CPLR 3211, "the pleadings are necessarily afforded a liberal construction" (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]). Courts must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). Extraneous documents and information—such as the inaccurate NYID press release the Appellate Division relied upon to override Plaintiffs' allegations (Order at 9, 18-19)—cannot be relied on to vary or contradict the allegations of the Complaint (*People v Coventry First LLC*, 13 NY3d 108, 115 [2009]).

## ARGUMENT

### **I. THE APPELLATE DIVISION MAJORITY ERRED IN HOLDING THAT THE SUPERINTENDENT'S PRIVATE LETTER APPROVALS, ISSUED WITHOUT NOTICE AND A HEARING, BAR PLAINTIFFS' DCL AND COMMON LAW CLAIMS.**

Ignoring Plaintiffs' constitutional rights and settled law, the Appellate Division majority erred in holding that the Superintendent's private letter approvals barred Plaintiffs' DCL and common law claims, even though Plaintiffs had no notice of and did not participate in the agency action that led to those approvals. Because the Superintendent did not pass and could not pass on the DCL and common law claims asserted by Plaintiffs, those claims indisputably cannot be brought in an Article 78 proceeding (*see* CPLR 7803[3]). By holding that "[t]he appropriate vehicle . . . is a proceeding brought under CPLR article 78" (Order at 15-16)—a summary proceeding with limited discovery and a deferential standard of review—the Appellate Division majority's decision thus bars Plaintiffs' DCL and common law claims. By giving complete preclusive effect to the Superintendent's *private* letter approval, the Appellate Division majority's open-ended, untethered "collateral attack" theory violates fundamental principles of both preclusion and due process.

#### **A. The So-Called "Collateral Attack" Doctrine Is Governed by Traditional Principles of Collateral Estoppel and *Res Judicata*.**

Under settled law, a plenary legal action is not a "collateral attack" on a prior agency finding unless that finding is legally binding on the plaintiff. In

*Capital Tel. Co. v Pattersonville Tel. Co.* (56 NY2d 11, 17-21 [1982]), this Court applied traditional principles of collateral estoppel in rejecting the claim that a plenary action was “barred by the prior [agency] determination, of which [plaintiffs] should have sought review in an article 78 proceeding.”<sup>3</sup> This Court similarly has treated “collateral attack” as a form of *res judicata*.<sup>4</sup> Indeed, in denying MBIA’s motion to dismiss, the Commercial Division properly treated MBIA’s “collateral attack” defense as one of collateral estoppel (R. 52 [Comm. Div. Order at 16]).

Here, the Appellate Division majority entirely bypassed this essential first step and held that Plaintiffs’ claims were “improper collateral attacks” on the Approval Letter without first determining whether any conclusions in the Superintendent’s Approval Letter bound Plaintiffs under principles of collateral

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<sup>3</sup> (See also, e.g., *Abiele Contr. v New York City School Constr. Auth.*, 91 NY2d 1, 7 [1997] [rejecting application of “collateral attack” defense, where there was no quasi-judicial agency determination and collateral estoppel did not apply]; *Van Wie v Kirk*, 244 AD2d 13, 26 [4th Dept 1998] [claim was not an “impermissible collateral attack,” because “doctrine of collateral estoppel [wa]s inapplicable”]; *ITT Indus., Inc. v Zurich Ins. Co.*, 2001 WL 36209077, \*3-4 [Cal App 2 Dist 2001] [rejecting application of “collateral attack” defense premised on insurance department order, because collateral estoppel did not apply]).

<sup>4</sup> (See *Friedman v State of New York*, 24 NY2d 528, 535 [1969] [“under the doctrine of *res judicata* a matter once judicially decided is finally decided; therefore a litigant will not be heard to attack collaterally a matter which was or could have been determined in the prior litigation”]; see also *Burden v Graves*, 23 AD3d 421, 422 [2d Dept 2005] [treating “collateral attack” as *res judicata*]; *Block v Gainsburg*, 136 NYS2d 726, 727 [1st Dept 1954] [same]; *Travelers Indem. Co v Bailey*, 129 S Ct 2195, 2206 [2009] [same]).



estoppel. Thus, under the Appellate Division majority’s “collateral attack” theory, the separate legal claims of the entire world are automatically barred as “improper collateral attacks,” whenever the claims “challenge[] matters that the [agency] determination necessarily encompasses” (Order at 16).

**B. The Appellate Division Majority Studiously Ignored this Court’s Decisions Applying Administrative Collateral Estoppel.**

**1. The Majority Did Not Apply the Elements of Administrative Collateral Estoppel.**

In the context of an administrative agency determination, this Court has squarely held that collateral estoppel requires (1) “that the issue as to which preclusion is sought be identical with the issue decided in the prior proceeding,” (2) “that the issue have been necessarily decided in the prior proceeding,” and (3) “that the litigant who will be held precluded in the present proceeding have had a full and fair opportunity to litigate the issue in the prior proceeding” (*see Capital Tel.*, 56 NY2d at 17 [prior agency determination did not preclude private antitrust claims]).

The Appellate Division majority entirely ignored this Court’s controlling precedent in *Capital Telephone* and each of the elements necessary to apply collateral estoppel to agency findings. Instead, by ruling that all claims that are “*necessarily encompassed*” within agency findings may be precluded (Order at 16)—a grossly watered-down version of element (2) above for collateral

estoppel—the majority erroneously ruled that agency findings can be preclusive, even if the issues are not “*identical*” (element (1) above), *and* the party bringing suit did not have a “full and fair opportunity to litigate the issue” before the agency (element (3)).

The Appellate Division majority’s sweeping “collateral attack” theory is contrary to decisions of this and other New York courts rejecting attempts to foreclose third-party claims based on agency action (*see e.g. David v Biondo*, 92 NY2d 318, 322 [1998] [patient could bring tort claims against dentist after state agency dismissed allegations of misconduct, because injured patient did not have “a full and fair opportunity to litigate” before the agency]; *McGettigan v New York Cent. R.R. Co.*, 268 NY 66, 72 [1935] [state agency’s approval of placement of railway signal did not insulate railway from tort liability to injured motorist that struck signal base]); *Levine v Tolchin* (239 AD2d 279, 279 [1st Dept 1997] [plaintiff, who “was not a party to the administrative proceeding,” could not be barred from bringing wrongful death action, even though Department of Motor Vehicles found defendant’s license should not be revoked]).

As Justices Abdus-Salaam and Tom recognized in dissent, “none of the cases cited by the majority in which an article 78 was determined to be the sole remedy, involved a situation as the one here, where the agency held no hearing or afforded affected persons an opportunity to be heard or otherwise provide[d] input

regarding the determination” (Order at 27-29).<sup>5</sup> Simply put, preclusion, however styled, does not apply unless a party had notice and an opportunity to be heard.

Indeed, in reversing the Commercial Division’s order, the Appellate Division majority relied heavily on its own precedent in *Fiala v Metropolitan Life Ins. Co.* (6 AD3d 320 [1st Dept 2004]) (Order at 16-17). Yet in *Fiala*, affected policyholders were notified, public hearings were held, and 93% of the policyholders voted in favor of the transaction (*see Shah v Metropolitan Life Ins. Co.*, 2003 WL 728869, \*2, \*4-5, 2003 NY Misc LEXIS 2016, \*13 [Sup Ct, NY County 2003]). In fact, dozens of policyholders (including the named plaintiff Shah) appeared and gave statements at the public hearing; 165 other policyholders submitted written statements; and 2.5 million calls were made to a telephone hotline monitored by the NYID (*see In re MetLife Demutualization Litig.*, 689 F Supp 2d 297, 312-316 [ED NY 2010]). And, even though the agency action in *Fiala* was issued following notice and a public hearing involving plaintiffs, the *Fiala* court still found that legal claims that were not specifically addressed in the

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<sup>5</sup> (See also e.g. *Steen v Quaker State Corp.*, 12 AD3d 989, 990 [3d Dept 2004] [“hearings took place” before DEC issued order]; *Assn. for Community Reform Now v Bloomberg*, 13 Misc 3d 1209[A], 2006 NY Slip Op 51750[U], \*3 [Sup Ct, NY County 2006] [two separate public comment periods and two separate public hearings held]; *Academic Health Prof’ls Ins. Assn. v MQ of N.Y.*, 2003 WL 25668211 [Sup Ct, NY County 2003] [“special meeting [where] more than two-thirds of Academic’s subscribers voted in favor of terminating MQ”]; *see also* Order at 28.)

agency order were *not* precluded (*Fiala*, 6 AD3d at 321, 323). Despite relying on *Fiala*, the majority ignored these aspects of that decision.

The absence of an opportunity to be heard was particularly prejudicial here, because MBIA obtained its regulatory approvals by misrepresenting its financial condition to the NYID. As Justices Abdus-Salaam and Tom emphasized: “The policyholders had no notice or opportunity to contest the ‘truth’ of the MBIA defendants’ submissions to the Superintendent” (Order at 27).

## **2. The Superintendent Did Not Render a Quasi-Judicial Determination.**

Regardless of the labels applied to the Appellate Division majority’s “collateral attack” theory, the Superintendent cannot bind parties through administrative fact-finding unless the findings were “rendered pursuant to the adjudicatory authority of an agency to decide cases brought before its tribunal employing procedures substantially similar to those used in a court of law . . . and [there was] a full and fair opportunity to contest the decision now said to be controlling” (*Staatsburg Water Co. v Staatsburg Fire Dist.*, 72 NY2d 147, 152-153 [1988] [citations omitted]). Thus, in *Abiele* (91 NY2d at 5-6, 8), this Court held that, *even if the other elements of administrative collateral estoppel were present*, a claim was not a “collateral attack” on an agency decision where, as here, the prior

agency decision was not a “quasi-judicial determination.”<sup>6</sup> A “quasi-judicial determination” is one that is “rendered pursuant to the adjudicatory authority of an agency to decide cases brought before its tribunals employing procedures substantially similar to those used in a court of law” (*Matter of Jason B. v Novello*, 12 NY3d 107, 113 [2003]).

The Superintendent indisputably did not render a “quasi-judicial determination;” the Approval Letter was issued after informal, private meetings with MBIA. Indeed, NYID regulations provide a specific framework for adjudicatory proceedings, which indisputably was not utilized here (*see* 11 NYCRR 4.1-4.14 [mandatory notice, hearing and procedural rules applicable to “Adjudicatory Proceedings Before the Insurance Department”]).

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<sup>6</sup> (*See also Village of Elmira Hgts. v Town of Horseheads*, 234 App Div 270, 272 [3d Dept 1931], *affd* 260 NY 507 [1932] [determination of government official could be “attacked collaterally,” because “[h]is determination was not one of a judicial or quasi-judicial tribunal”]; *Murphy v Brooks*, 120 Misc 704, 705 [Sup Ct, Kings County 1923] [same]; *Taylor v New York City Tr. Auth.*, 309 F Supp 785, 791 [ED NY 1970] [“In New York State the determinations of administrative agencies acting in a judicial or quasi-judicial capacity are not open to collateral attack.”])

**C. Because Plaintiffs Did Not Have a “Full and Fair Opportunity” To Participate in the Superintendent’s Secret Approval Process, the Appellate Division Majority’s “Collateral Attack” Theory Violates Due Process.**

**1. Any Theory of Issue Preclusion Must Comply with Due Process.**

Even accepting the Appellate Division majority’s apparent belief that the so-called “collateral attack” doctrine is not a form of administrative collateral estoppel, this separate theory must respect Plaintiffs’ due process rights. The Appellate Division majority nowhere addresses this point, simply assuming (without deciding) that the Approval Letter instantly bound Plaintiffs (and everyone else) immediately upon its issuance. In effect, the Appellate Division majority’s breathtakingly expansive “collateral attack” theory authorizes a successful participant in a secret New York administrative process to assert collateral estoppel against the entire world.

As both the Supreme Court and this Court have made clear: “[i]t is a violation of due process for a judgment to be binding on a litigant who was not a party or a privy and therefore has never had an opportunity to be heard” (*Parklane Hosiery Co., Inc. v Shore*, 439 US 322, 327 n 7 [1979]; *Gilberg v Barbieri*, 53 NY2d 285, 291 [1981] “[d]ue process, of course, would not permit a litigant to be bound by an adverse determination made in a prior proceeding to which he was not

a party or in privity with a party”)].<sup>7</sup> In *Martin v Wilks* (490 US at 761-762), the Supreme Court squarely rejected the application of the so-called “impermissible collateral attack” doctrine to non-parties, emphasizing that such preclusion violated the “principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process” (*id.*).<sup>8</sup>

**2. The Availability of Limited Article 78 Review Does Not Save the Appellate Division Majority’s Constitutionally Flawed “Collateral Attack” Theory.**

In trying to justify their “collateral attack” theory, the Appellate Division majority claimed that “plaintiffs have not been deprived of the opportunity to be heard, since their article 78 proceeding enables them to challenge the Superintendent’s approval and the restructuring” (Order at 17). Yet, since

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<sup>7</sup> (See also *Phillips Petroleum Co. v Shutts*, 472 US 797, 811-812 [1985] [absent party cannot be bound by an adjudication without “minimum procedural due process protection,” including “notice plus an opportunity to be heard and participate in the litigation”].) This conclusion necessarily follows from the fact that “a cause of action is a species of property protected by the Fourteenth Amendment’s Due Process Clause” (*Logan v Zimmerman Brush Co.*, 455 US 422, 428 [1982]). Plaintiffs’ insurance policies also constitute “property” (*Lynch v United States*, 292 US 571, 577-580 [1934] [insurance policies, “being contracts, are property and create vested rights”]; *Patterson v Carey*, 41 NY2d 714, 720 [1977] “[T]he State may not deprive a party to a contract of an essential contractual attribute without due process of law.”)].

<sup>8</sup> (See also *United States v Jefferson County*, 720 F2d 1511, 1518 [11th Cir 1983] [rejecting “impermissible collateral attack” theory, because it would “deprive[] a nonparty . . . of his day in court” and “would create an exception to the limitations we presently place on *res judicata* and collateral estoppel”].)

Plaintiffs cannot bring their DCL and common law claims in an Article 78 proceeding (CPLR 7803[3]), Plaintiffs are entirely stripped of those claims without *any* opportunity to be heard on the merits of those claims—a plain violation of due process (*Parklane*, 439 US at 327 n 7).

Moreover, the Second Circuit has expressly rejected the notion that Plaintiffs’ ability to pursue an after-the-fact Article 78 challenge to a defective agency action based on a truncated record and heightened burden of proof is a sufficient substitute for *prior notice* and a contemporaneous opportunity to be heard: “First, affording notice before the deprivation of property is itself a fundamental requirement of procedural due process. The lack of such notice is in itself a violation of procedural due process. . . . Second, due process ordinarily requires some opportunity to be heard prior to the deprivation of property.” (*RR Village Assn., Inc. v Denver Sewer Corp.*, 826 F2d 1197, 1203-1204 [2d Cir 1987] [citations omitted].)<sup>9</sup>

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<sup>9</sup> “The Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property” (*Zinermon v Burch*, 494 US 113, 132 [1990] [emphasis in original]); *see also Patgin Carriages Co. Inc. v NYC Dept. of Health & Mental Hygiene*, 28 Misc 3d 1229[A], 2010 NY Slip 51540[U], \*9-10 [Sup Ct, NY County 2010] [Article 78 proceeding inadequate for due process where “respondent does not contend that pre-deprivation process was impracticable”]; *New Windsor Volunteer Ambulance Corps, Inc. v Meyers*, 442 F3d 101, 115-116 [2d Cir 2006] [Article 78 review does not satisfy due process]).



The Appellate Division majority’s assertion that its “collateral attack” theory can apply because “the application and approval process for the restructuring did not violate lawful administrative procedure” (Order at 17) entirely misses the point. Whether or not the “administrative procedure” of the NYID required notice and a hearing before the Superintendent approved MBIA’s “Transformation,” basic principles of both preclusion and due process require notice and an opportunity to be heard before claims against a private party may be extinguished.

Even if a statute does not itself require notice, “[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections” (*Mullane v Cent. Hanover Bank & Trust Co.*, 339 US 306, 314 [1950]). And, as this Court has held, “unilateral” agency action taken without “a hearing or [providing] any opportunity to present evidence” violated due process (*People v David W.*, 95 NY2d 130, 139-140 [2000]).

In sum, because Plaintiffs never had a full and fair opportunity to be heard *before* the Superintendent issued his approvals of MBIA’s fraudulent “Transformation,” the Appellate Division’s “collateral attack” theory simply does not satisfy due process and cannot stand.

**II. UNDER SETTLED LAW, THE APPELLATE DIVISION MAJORITY ERRED IN HOLDING THAT PLAINTIFFS MUST BRING THEIR CHALLENGE TO MBIA’S FRAUDULENT “TRANSFORMATION” EXCLUSIVELY IN AN ARTICLE 78 PROCEEDING.**

**A. Article 78 Is Not the Exclusive Form of Relief for Plaintiffs Challenging Private Conduct, Approved by an Agency, Under Separate Statutory Provisions and the Common Law.**

An Article 78 proceeding is not an exclusive form of relief for an aggrieved plaintiff, and its availability does not bar separate statutory or common law claims (*see Koerner v State of N.Y., Pilgrim Psychiatric Ctr.*, 62 NY2d 442, 447 [1984] [Article 78 proceeding is an “alternative form of proceeding” to bringing separate statutory claims]; *May v State of New York*, 86 AD2d 898, 899 [3d Dept 1982] [“the availability of an article 78 proceeding to review the State’s determination does not make the instant actions by claimants inappropriate since an article 78 proceeding is not claimants’ exclusive remedy”]). “[O]ther remedies may be available to the petitioner that will supplement or coexist with Article 78 relief” (Weinstein-Korn-Miller, NY Civ Prac ¶ 7801.04[1], at 78-40 [2d ed]).

In *Capital Telephone* (56 NY2d at 17, 21), this Court squarely rejected the notion that regulatory approval limited plaintiffs to asserting claims “only in an Article 78 proceeding.” There, plaintiff Capital Telephone Company brought antitrust claims against the New York Telephone Company (“NYT”) for discriminatory tariffs, even though the Public Service Commission (“PSC”) had jurisdiction “to accept tariffs for filing and entertain customer complaints of

discrimination,” and the PSC had made a broad determination that the NYT’s activity was “not illegal as a matter of law” (*id.* at 15-16, 19).

In rejecting the argument that Capital Telephone’s plenary antitrust claims were barred by the prior agency determination, this Court held that the issues were not identical, because “it is not the function of the PSC to enforce the antitrust laws” (*id.* at 19, 21-22)—just as here, it is not the function of the Superintendent to enforce the DCL or the common law. All that the regulatory approval “necessarily decided was that the preference admittedly given by the NYT to Pattersonville over plaintiffs was not undue or unreasonable *within the meaning of the Public Service Law*” (*id.* at 20 [emphasis added]). Thus, “regulatory agency approval . . . *does not immunize*” a regulated entity from liability under a separate statutory scheme (*id.* at 23 [emphasis added]).

Likewise, in *Richards v Kaskel* (32 NY2d 524, 535 and n 5 [1973]), this Court rejected the notion that the Attorney General’s approval of a condominium conversion plan barred fraud claims against the sponsor of that plan. The Court held that although the Attorney General’s “determination that the plan has complied with the disclosure requirements of the [GBL Section 352-e] is properly reviewable only in an Article 78 proceeding,” separate disclosure claims were not barred: “there is no basis for assuming that the enactment of section 352-e was intended to deprive the court of its traditional equitable jurisdiction to

consider claims of illegality on the part of the sponsor *apart from non-compliance with that provision*” (*id.* at 535 n 5 [emphasis added]). Although Justice Yates observed that “[t]his matter is no different than *Kaskel* in all material respects,” the Appellate Division majority also ignored *Kaskel* (R. 52 [Comm. Div. Order at 16]).

The reasoning of *Capital Telephone* and *Kaskel* applies squarely to this action and mandates reversal. As the Commercial Division correctly determined: “The mere fact that there was earlier approval of the MBIA restructuring by the Insurance Department does not immunize defendants from subsequent statutory and common law claims” (R. 50 [Comm. Div. Order at 14]). In this plenary action, Plaintiffs do not seek to “invalidate the regulatory approval of the Transformation,” because they “are not asking the Court to examine whether the Superintendent of Insurance correctly interpreted and applied the state Insurance Laws” (*id.*). “Instead, the focus here is on the intent and conduct of defendants in stripping away assets and shielding them from the legitimate claims of a corporate creditor” (*id.*). By the same reasoning, in *Dacus v Spin-Nes Realty & Constr. Co.* (22 NY2d 427, 432 n 3 [1968]), this Court rejected the notion that claims under federal law were a “collateral attack” on an agency’s determination, because “[t]he board was not called upon to consider, and did not decide, whether the plaintiffs had waived their Federal rights.”

The majority decision also cannot be squared with multiple decisions by other states' highest courts rejecting the notion that an insurance regulator's approval of a transaction shields the insurer from civil liability:

- In *Drain v Covenant Life Ins. Co.* (551 Pa 570, 578, 712 A2d 273, 277 [1998]), the Pennsylvania Supreme Court rejected the argument that tort claims challenging an insurer's merger "collaterally attack[ed] the Insurance Commissioner's approval of [the] merger" and his finding that the merger was "not injurious to the interests of policyholders or creditors" (*id.* at 573). The court held that "*the face of the Complaint . . . alleges tort claims that do not involve the consideration of the Insurance Laws*" (*id.* at 580 [emphasis added]).
- In *LaFarge Corp. v Pa. Ins. Dept.* (557 Pa. 544, 735 A2d 74 [1999]), the Insurance Commissioner approved the split of an insurer, leaving one entity holding a volatile book of insurance business, after policyholders were given notice and an extensive opportunity for input. Applying *Drain*, the Pennsylvania Supreme Court held that "no judicial remedies are foreclosed by the [insurance] department's approval of the plan of restructure and division" (*id.* at 551; 77).
- In *Doyle v Union Ins. Co.* (202 Neb 599, 607, 277 NW2d 36, 41 [1979]), the Nebraska Supreme Court held that the Department of Insurance's approval of a reinsurance transaction as "fair and equitable," like one of the Superintendent's determinations here, "does not abrogate the common law duties of corporate directors to policyholders of a . . . insurance company." In other words, "approval of the [reinsurance

transaction] by the Director of Insurance does not insulate the directors of the company from liability for violation of their fiduciary duties” (*id.*).

- In *Rowen v LeMars Mut. Ins. Co.* (230 NW2d 905, 908 [Iowa 1975]), the Iowa Supreme Court upheld policyholders’ claims for breach of fiduciary duty and waste arising out of a transaction subject to administrative approval. The court emphasized: “[t]he fact that the commissioner has power to fashion an administrative remedy based upon part or all of the same activities is not made a substitute for the right to invoke judicial machinery to seek a judicial remedy of a different kind” (*id.* at 911-12).<sup>10</sup>

**B. The Appellate Division Majority Relied on Cases that Do Not Support Its “Collateral Attack” Theory.**

To justify its unprecedented “collateral attack” theory, the Appellate Division majority relied on cases that—unlike *Capital Telephone* and *Kaskel*—did *not* concern claims against *private parties* under *separate statutory provisions* not analyzed by the agency, or separate common law causes of action. For example, in

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<sup>10</sup> (See also *ITT Indus., Inc. v Zurich Ins. Co.*, 2001 WL 36209077, \*3-4 [Cal App 2 Dist 2001] [rejecting argument that fraudulent conveyance claims arising from recapitalization of insurer were a “collateral attack”]; *Ormond v Anthem, Inc.*, 2008 WL 906157, \*22-23, 2008 US Dist LEXIS 30230, \*69-73 [SD Ind 2008] [rejecting argument that common law claims were an “impermissible end run” around insurance commissioner’s order approving demutualization]; *Livingston v Blue Cross & Blue Shield of Conn.*, 1997 WL 739142, \*1-2, 1997 Conn. Super. LEXIS 3058, \*2-3 [1997] [policyholders could challenge agency-approved merger because the insurance department did “not reach the myriad of substantive issues raised”]; accord *Greyhound Leasing & Fin. Corp. v Joiner City Unit*, 444 F2d 439, 440, 445 [10th Cir 1971] [rejecting “collateral attack” argument, because “the fact that the [transaction] . . . had been approved by the Commission did not entitle the defendant to immunity from suit by the plaintiff”].)

*Matter of City of New York (Grand Lafayette Props. LLC)* (6 NY3d 540, 545 [2006]), the claim asserted was “that *the City’s* taking of the entire premises [under the Eminent Domain Procedure Law] in fee simple was excessive *and therefore arbitrary and capricious*” (emphasis added)—the classic formulation for a claim under Article 78.<sup>11</sup> As dissenting Justices Abdus-Salaam and Tom stated, Plaintiffs’ “plenary action . . . does not even seek relief from the Superintendent,” much less attempt to undo the Superintendent’s Insurance Law determinations (Order at 29-30). In short, Plaintiffs assert claims against private parties for private wrongdoing, not claims of agency wrongdoing.

The Appellate Division majority also relied on *Matter of Sohn v State Div. of Hous. and Community Renewal* (78 NY2d 755, 766 [1991]). Yet, *Sohn* concerned an issue of exclusive agency subject matter jurisdiction—a question not at issue here. This Court held that courts do not have “concurrent jurisdiction” over the interpretation of certain provisions of the New York City Rent and Eviction Regulations and the Rent Stabilization Code, because it was “*clear beyond question that the Legislature intended* disputes over a landlord’s right to demolish a regulated building to be adjudicated by the DHCR” (emphasis added)

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<sup>11</sup> Likewise, in *Matter of Lewis Tree Serv. v Fire Dept. of City of N.Y.* (66 NY2d 667, 669 [1985]), the claim asserted that the “Comptroller’s determination, made in accordance with the authority vested in him by Labor Law § 230(8), § 235 and Public Housing Law § 152” was flawed—also a classic Article 78 claim.

(*id.* at 765-766). Unlike in *Sohn*, there is no claim here—none—that the Legislature granted the Superintendent “exclusive original jurisdiction” of separate DCL and common law claims (*cf.* Insurance Law § 109[b] [“Every penalty imposed by this section shall be in addition to any penalty or forfeiture otherwise provided by law.”]).<sup>12</sup>

Without explanation, the Appellate Division majority cited Insurance Law § 326 (Order at 16). But Insurance Law § 326—which merely provides that “any order, regulation or decision of the superintendent is declared to be subject to judicial review” in an Article 78 action—has nothing to do with barring separate statutory or common law claims. In fact, in *Travelers Indem. Co. v State of New York* (33 AD2d 127, 128 [3d Dept 1969], *affd* 28 NY2d 571 [1971]), the Third Department rejected the claim that the statute (formerly codified as Insurance Law § 34) “mandate[s] review of a Superintendent’s determination *solely* by an article 78 proceeding to the exclusion of raising [claims] in [a plenary action].”<sup>13</sup>

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<sup>12</sup> (See *Capital Tel.*, 56 NY2d at 21 [rejecting assertion that “the matter is one over which the PSC has exclusive original jurisdiction reviewable only in an article 78 proceeding” because “it is not the function of the PSC to enforce the antitrust laws”]; *Matter of Rockaway One Co., LLC v Wiggins*, 35 AD3d 36, 41-42 [2d Dept 2006] [rejecting argument that agency had “exclusive original jurisdiction” because “there is nothing in the relevant statutory provisions from which it can be concluded that the Legislature committed the determination . . . to DHCR”].)

<sup>13</sup> Rather, Section 326’s legislative history indicates that this provision was written for a different purpose: “to insure that all and not just some of the



**III. IN ANY EVENT, THIS COURT SHOULD REVERSE, BECAUSE THE APPELLATE DIVISION MAJORITY IMPERMISSIBLY CONSIDERED—AND FOUND—DISPUTED “FACTS” OUTSIDE THE “FOUR CORNERS” OF THE COMPLAINT.**

Beyond the invalidity of the Appellate Division majority’s “collateral attack” theory, the decision below must be reversed, because Plaintiffs’ Complaint, at a minimum, established disputed issues of fact over whether the Superintendent’s approvals “necessarily decided” all of the elements of Plaintiffs’ DCL and common law claims. The Appellate Division neither addressed this issue nor compared the specific elements of Plaintiffs’ DCL and common law to the Superintendent’s Insurance Law findings in the Approval Letter.

Instead, the majority impermissibly imposed on Plaintiffs a burden to plead facts rebutting MBIA’s affirmative defenses, and overrode the allegations of Plaintiffs’ Complaint through reliance on disputed documents outside of the pleadings, but then failed to afford Plaintiffs an opportunity to amend their pleading to meet the standards articulated by the decision. This was error.

**A. The Appellate Division Majority Erroneously Granted MBIA’s Motion to Dismiss Based on an Affirmative Defense Contradicted by the Complaint.**

On a motion to dismiss, the “sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are

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determinations by the [Superintendent] were reviewable by an article 78 proceeding” (*Travelers*, 33 AD2d at 128).

discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail” (*Coventry First*, 13 NY3d at 115). As the federal court in *Aurelius* held, MBIA’s “collateral attack” theory is “a form of preclusion . . . comparable to *res judicata* or collateral estoppel” (*Aurelius*, 695 F Supp 2d at 74), which is necessarily an affirmative defense (CPLR 3018 [b] [preclusion theories are affirmative defenses]). MBIA bears the burden of establishing its affirmative defense that Plaintiffs’ claims were “necessarily decided” by the Superintendent (*Capital Tel.*, 56 NY2d at 18).

As a result, Plaintiffs were not—as the majority erroneously presumed—required to plead facts *in their Complaint* refuting MBIA’s then-unmade “collateral attack” affirmative defense (*see e.g. Tango v Tulevech*, 61 NY2d 34, 42 [1983] [“Plaintiff need not plead or prove” facts rebutting an affirmative defense; “it is for the defendant to establish”]; *see also United States Gypsum Co. v Indiana Gas Co.*, 350 F3d 623, 626 [7th Cir 2003] [“Complaints need not anticipate or attempt to defuse potential defenses”]).

Ignoring the Complaint’s allegations, the Appellate Division majority held that Plaintiffs are bound by the Superintendent’s erroneous conclusions, because “plaintiffs never claim, as the dissent maintains, that defendants

deliberately misled the Superintendent about their finances” (Order at 19).<sup>14</sup> But, as Justices Abdus-Salaam and Tom recognized, “plaintiffs allege that defendants misled the Superintendent regarding defendants’ financial condition and the impact that these transactions would have on MBIA Insurance and its policyholders” (Order at 24-25). In fact, the Complaint alleges that MBIA’s financial statements are “*demonstrably unreliable*,” and “the Fraudulent Restructuring was misleading,” because it was premised on false and outdated data (R. 107-108, 110-111 [Compl. ¶¶ 60, 68-69] [emphasis added]). It is settled that, “where there are allegations of actual fraud” tainting an agency action, a plaintiff is “entitled to bring a plenary action” and is not limited to an Article 78 proceeding (*see Matter of Charles H. Greenthal & Co. v Lefkowitz*, 32 NY2d 457, 463 [1973]).

In any event, the Complaint should not have been dismissed on appeal without affording Plaintiffs an opportunity to re-plead their case. The Transformation approval process was conducted in private meetings between MBIA and the Superintendent. The Complaint (filed only three months after the Transformation) was based on the scant information then publicly available. At a

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<sup>14</sup> The Appellate Division own internal disagreements about the inferences to be drawn from the Complaint was reason enough to conclude that “the facts as alleged fit within any cognizable legal theory” after “accord[ing] plaintiffs the benefit of every possible favorable inference” (*Leon*, 84 NY2d at 87-88).

minimum, Plaintiffs should be granted leave to amend their Complaint, including with the following facts, among others, learned in discovery:

- MBIA misled the NYID through, among other things, the use of (i) grossly outdated and stale financial data from 2007 and mid-2008 *pre-dating* the financial crisis, (ii) undisclosed manual adjustments to the outputs of its loss models, and (iii) a discount rate that violated Insurance Law § 6903(b).
- The NYID did not reach any conclusion that MBIA Insurance would remain solvent after the Transformation, under either the Insurance Law or the DCL.
- Evidencing that the NYID did not conduct any solvency analysis of MBIA Insurance, the Department had a single employee, who described his task as “Mission Impossible,” review MBIA Insurance’s \$233 billion structured-finance portfolio in less than two months (R. 734).
- The NYID employee reviewed only three transactions in any detail—just 1% of MBIA Insurance’s liabilities—and admittedly did not review entire segments of its structured-finance portfolio (*e.g.* R. 730, 734).

**B. On a Motion to Dismiss, the Appellate Division Majority Erred By Making Improper and Incorrect Inferences About the Scope of the Superintendent’s Review of MBIA’s “Transformation.”**

In denying MBIA’s motions to dismiss, both the Commercial Division and the federal court in *Aurelius* properly determined that “[b]ased solely on the approval letter, and without the benefit of any discovery, the scope of the Superintendent’s approval is insufficiently clear for the Court to hold that

Plaintiffs’ claims must fail as a matter of law” (*Aurelius*, 695 F Supp 2d at 75; R. 52 [Comm. Div. Order at 16]).

By contrast, in determining that the Superintendent’s review was allegedly “comprehensive,” presumably as a result of factual assertions in the briefs of MBIA and the NYID, the Appellate Division majority made improper and erroneous inferences against Plaintiffs in ruling on a motion to dismiss:

Appellate Division Statement	Approval Letter Actual Statement	Reason Incorrect
The Superintendent made a “determination, based on an analysis of defendants’ financial condition <i>after the restructuring</i> , that MBIA Insurance would retain ‘sufficient surplus to support its obligations and writings’” (Order at 18 [emphasis added]).	“[T]he Department finds that MBIA [Insurance] will retain sufficient surplus to support its obligations and writings <i>following the payment of the MBIA [Insurance] Dividend . . .</i> under Insurance Law § 4105 (a)” (R. 136 [emphasis added]).	(i) The Superintendent undertook no analyses of MBIA Insurance’s financial condition as of the date of the February 17, 2009 restructuring or thereafter, and (ii) on the face of the Approval Letter, the determination under Insurance Law § 4105(a) was only with respect to the Dividend.
The Superintendent made a “broad determination that the restructuring is fair to MBIA Insurance policyholders” (Order at 18-19).	“[T]he Department does not disapprove of the <i>Reinsurance Transaction</i> pursuant to Insurance Law 1505,” including considering the <i>factor</i> of whether the terms of that Transaction were “fair and equitable” (R. 137-138 [emphasis added]).	The Approval Letter does not include any “broad determination” or any finding by the Superintendent that MBIA’s “restructuring is fair.”
The Superintendent made a “broad determination that . . . the company remains solvent” (Order at 19).	None.	The Superintendent never made a determination that MBIA Insurance would “remain[ ] solvent.”

Thus, the Superintendent never made any solvency determination, and “fair and equitable” was a factor considered only when declining to disapprove the Reinsurance Transaction, not a finding about the entire Transformation (*e.g. Gypsum*, 750 F3d at 629 [“We have searched the agency’s decision in vain for such a finding, however. Although the agency *mentioned* market power as a factor worth consideration, it did not *find* that [defendant] has none.”]). And, even if the Superintendent had reached such a determination, a vague and imprecise conclusion that the Transformation was “fair,” “reasonable,” or “equitable” *under the Insurance Law* is not incompatible with DCL or common law claims at all (*Capital Tel.*, 56 NY2d at 19 [PSC determination that activity was “not illegal as a matter of law” did not bar antitrust claims]; *Doyle*, 202 Neb at 607, 277 NW2d at 41 [finding that reinsurance transaction was “fair and equitable” did not bar fiduciary duty claims]; *Gypsum*, 750 F3d at 629 [agency “finding that ‘X’ is in the public interest’ is compatible with subsequent antitrust litigation”]).

The broader supposed “determinations” cited by the majority nowhere appear in the Approval Letter, but appear to be premised on an inaccurate NYID press release impermissibly introduced by MBIA in its motion to dismiss (R. 141-143; Order at 9). It was error for the Appellate Division majority to resolve disputed facts on appeal by reference to a press release outside the pleadings (*see e.g. Coventry First*, 13 NY3d at 115; *Walker v City of New York*, 46 AD3d 278,

282 [1st Dept 2007] [noting that a court “may not take judicial notice of a ‘fact’ which [i]s controverted”]).

As Justices Abdus-Salaam and Tom correctly observed in dissent, based on the Approval Letter itself, it is entirely *unclear* whether the Superintendent passed on *any* of the issues raised by Plaintiffs’ DCL and common law claims:

While defendants assert that the Superintendent contemplated all of plaintiffs’ allegations in making his determination, defendants have not demonstrated that the Superintendent took into account the issues raised by plaintiffs, especially considering that plaintiffs had no opportunity to be heard by the Superintendent regarding these transactions.

(Order at 27.) As both the Commercial Division and the federal court in *Aurelius* held, the factual overlap between Plaintiffs’ claims and any findings by the Superintendent, at most, raises an issue for summary judgment (*Aurelius*, 695 F Supp 2d at 75; R. 52 [Comm. Div. Order at 16]).

**C. Plaintiffs’ Claims Are Neither Identical to, Nor Were Necessarily Decided by, the Superintendent’s Approval Letter.**

**1. The Superintendent Did Not Assess the Transformation Transactions As of the Date of the Alleged Fraudulent Conveyance as Required by the DCL.**

As rightly stated by the dissent, “no financial determination by the Superintendent would be dispositive of the causes of action pursuant to the Debtor and Creditor Law because the timing of the relevant financial analysis is distinct”

(Order at 24). Under the DCL, the solvency analysis *begins* after the challenged transfers are “actually completed” (*Matter of Granwell*, 20 NY2d 91, 97 [1967]; *see also In re Best Prods. Co., Inc.*, 168 BR 35, 54 [Bankr SD NY 1994] [“the solvency test is to be conducted at the time of the conveyance”]).

The Approval Letter did not purport to make any finding *as of February 17, 2009*, the date the Transformation transactions occurred. Instead, the Superintendent’s determinations were made as of January 1, 2009, and were premised on MBIA’s September 30, 2008 financial statements (which, in turn, rest on data from months earlier) (R. 134, 142, 766-767; R. 108 [Compl. ¶ 60]). Given the rapid deterioration of the financial markets between September 30, 2008 and February 17, 2009 (*see* R. 105 [Compl. ¶¶ 51, 52])—indeed, in the middle of the worst financial crisis since the Great Depression—this difference of almost five months is of vital importance and preclusion cannot apply.<sup>15</sup>

In rejecting this critical distinction, the Appellate Division ignored Plaintiffs’ factual allegations that the Approval Letter was based on outdated financial information. There was no “near-simultaneity” among the relevant

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<sup>15</sup> (*Cf. SEC v First Jersey Sec., Inc.*, 101 F3d 1450, 1464 [2d Cir 1996] [“If the second litigation involved different transactions, and especially subsequent transactions, there generally is no claim preclusion.”].)



events, and the Appellate Division should not have made inferences adverse to Plaintiffs on an appeal from the denial of a motion to dismiss.<sup>16</sup>

## **2. Plaintiffs Contest the Accuracy of MBIA's Financial Statements.**

As recognized by Justices Abdus-Salaam and Tom, a critical difference between the Approval Letter and Plaintiffs' claims is the extent to which they rely on the accuracy of MBIA's published financial statements (Order at 25, 27). The Approval Letter states *eight times* that the approvals were issued "in reliance on the truth of th[e] representations and submissions" of MBIA (R. 136-139; R. 105-106 [Compl. ¶ 53]).

By contrast, the Complaint expressly alleges that MBIA's financial statements and projections were inaccurate and "demonstrably unreliable" (R. 110-111 [Compl. ¶ 68]). Under the DCL, Plaintiffs need not accept the accuracy of MBIA's outdated, self-serving (and fraudulent) financial data (*see Gillman v Scientific Research Prods. Inc. [In re Mama D'Angelo, Inc.]*, 55 F3d 552, 556 [10th Cir 1995] [fact-finder may determine debtor's actual financial condition on

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<sup>16</sup> The Appellate Division apparently based its conjecture on its observation that "MBIA Insurance last supplemented its application on February 16, 2009" (Order at 19). Yet, the MBIA application materials submitted on February 16, 2009 were neither part of Plaintiffs' pleading nor even part of the record on appeal. The Appellate Division majority thus had no basis to infer anything from this supposed application "supplement," which in any event did not update the seriously outdated third-quarter of 2008 and earlier financial data that MBIA provided to the NYID to secure the Superintendent's approval.

transfer date, even if it “took management a few months to ‘discover’ and become ‘aware’ of” data]; *Official Comm. of Asbestos Pers. Injury Claimants v Sealed Air Corp. [In re W.R. Grace & Co.]*, 281 BR 852, 868-869 [Bankr D Del 2002] [courts may correct debtor’s “failure to accurately calculate its actual, then-existing” liability]). Logically, an administrative agency action that assumes the truth of misrepresented financial information cannot “necessarily decide” claims that challenge directly the accuracy of that financial information.

**D. Each of Plaintiffs’ DCL and Common Law Claims Rests on Facts the Superintendent Never Considered or Determined.**

**1. DCL § 276**

Plaintiffs adequately pled their DCL § 276 claim by pleading that MBIA executed the “Transformation” with the “actual intent” to “hinder, delay or defraud either present or future creditors” (DCL § 276; *see* R. 112-13, 117-118 [Compl. ¶¶ 72-75, 99-111]). The Appellate Division majority erred by ruling that any determinations that the Transformation was “fair” and left MBIA Insurance “solvent” would be determinative of Plaintiffs’ DCL § 276 claim. “[S]uch a cause of action may lie even where fair consideration was paid and where the debtor remains solvent” (*Grumman Aerospace Corp. v Rice*, 199 AD2d 365, 366 [2d Dept 1993]; *Pattison v Pattison*, 301 NY 65, 73-74 [1950] [“A conveyance is fraudulent when the grantor, even though solvent, is motivated by an intent to hinder, delay or defraud his creditors.”])).

As the Commercial Division correctly held: “the Superintendent was not called upon to examine whether defendants intended to defraud policyholders” (R. 52 [Comm. Div. Order at 16]). Indeed, whether MBIA and its executives had the *intent* to defraud MBIA Insurance’s creditors is not any technical, regulatory matter appropriately resolved by the Superintendent—rather, it is an area of inquiry that is squarely within the province of the courts.<sup>17</sup>

## **2. DCL § 274**

Plaintiffs adequately stated their DCL § 274 claim by pleading that MBIA Insurance made a transfer, without “fair consideration,” leaving it with “unreasonably small capital” (*see* R. 116-17 [Compl. ¶¶ 91-98]). “[U]nreasonably small capital” is “a financial condition *short of equitable insolvency*,” where “the transferor is technically solvent but doomed to fail” (*Geron v Schulman [In re Manshul Constr. Corp.]*, 2000 WL 1228866, \*54, 2000 US Dist LEXIS 12576, \*154 [SD NY 2000] [citations omitted, emphasis added]). Because a claim under DCL § 274, like a claim under DCL § 276, does not require any showing of insolvency, the Appellate Division majority’s erroneous assertion that the

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<sup>17</sup> Moreover, Plaintiffs’ DCL § 276 claim alleges an “actual fraud” on creditors and Plaintiffs, therefore, “are entitled to bring a plenary action” on that basis (*see Greenthal*, 32 NY2d at 463; *McGee v Lepow*, 82 AD2d 746 [1st Dept 1981]; 747; 50 CJS, Judgments § 511, at 65 [notwithstanding “collateral attack” rule a “creditor whose rights or claims would be injuriously affected by enforcement of a judgment against his debtor may impeach it for fraud”]; R. 118 [Compl. ¶ 107]).

Superintendent found that MBIA would “remain[] solvent” (Order at 19) is irrelevant. Moreover, the Approval Letter does not discuss any of the many factors courts consider in assessing DCL § 274 claims, such as debt-to-equity ratio, access to cash and future cash flows, and whether the company’s financial projections leave a reasonable margin for error.<sup>18</sup>

In addition, to assess whether a company has unreasonably small capital, “reliance on historical data alone is not enough. To a degree, parties must also account for difficulties that are likely to arise, including interest rate fluctuations and general economic downturns, and otherwise incorporate some margin for error” (*Moody v Sec. Pac. Bus. Credit, Inc.*, 971 F2d 1056, 1073 [3d Cir 1992]). Here, in the midst of a financial crisis, the Superintendent relied on outdated and false historical information (R. 110-111 [Compl. ¶¶ 67-68]).

### **3. DCL § 273**

To state a DCL § 273 claim, Plaintiffs need plead only that (1) transfers were made by MBIA Insurance, (2) while “insolvent” as defined in DCL § 271, and (3) without “fair consideration” (R. 111, 115-116 [Compl. ¶¶ 69,

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<sup>18</sup> (See *Geron*, 2000 WL 1228866, \*54, 2000 US Dist LEXIS 12576, \*154; *Brandt v Hicks, Muse & Co. [In re Healthco Int’l, Inc.]*, 208 BR 288, 302 [Bankr D Mass 1997]; *Best Prods.*, 168 BR at 54-55.)

83-90)).<sup>19</sup> None of the Insurance Law findings in the Approval Letter is determinative of Plaintiffs' DCL § 273 claim.

*First*, as stated above, the Superintendent never reached any conclusion of solvency, thus Plaintiffs' DCL § 273 claim cannot be foreclosed.

*Second*, in unrelated litigation, the NYID itself expressly acknowledged that the Insurance Law solvency standards have “*no determinative impact*” on solvency under the DCL (R. 155-179). The NYID also recognized, correctly, that the solvency standards of the DCL are “*far more stringent*” than the Insurance Law (*id.*).

*Third*, the insolvency tests under the Insurance Law and the DCL are, in fact, entirely different. Whereas the Superintendent relied on MBIA's “statutory accounting,” the DCL employs fair-value measures rather than accounting conventions.<sup>20</sup> MBIA's own SEC filings, for instance, report that the “fair value”

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<sup>19</sup> The first and third elements of DCL § 273 are unquestionably satisfied because assets were transferred by MBIA Insurance related parties (*see* R. 106-107 [Compl. ¶¶ 55-57]; *Klein v CAVI Acquisition, Inc.*, 57 AD3d 376, 378 [1st Dept 2008] [transfer to corporate insider “cannot be found, as a matter of law, to have been made for fair consideration”]; *Farm Stores v School Feeding Corp.*, 102 AD2d 249, 253 [2d Dept 1984], *affd* 64 NY2d 1065 [1985]).

<sup>20</sup> (*See Hirsch v Gersten [In re Centennial Textiles, Inc.]*, 220 BR 165, 175 [Bankr SD NY 1998] [under DCL, courts may “modify balance sheet entries . . . in order to more accurately reflect the financial condition of the Debtor”]; *see also e.g. Covey v Commercial Natl. Bank*, 960 F2d 657, 660 [7th Cir 1992] [solvency analysis “departs from accounting conventions”].)

of MBIA Insurance’s liabilities were more than twice its assets (R. 111 [Compl. ¶ 69]).

#### **4. Plaintiffs’ Common Law Claims**

Although the First Department majority purported to find that Plaintiffs’ common law claims were inadequately pled, the majority also sweepingly suggests that “all of plaintiffs’ allegations” are “improper collateral attacks” (Order at 18-19). Not so.

With respect to Plaintiffs’ claim for breach of implied covenant and good faith and fair dealing, “[i]t is well settled that a CPLR article 78 proceeding is not the proper vehicle to resolve contractual rights” (*Matter of Hertz v Rozzi*, 148 AD2d 535, 536 [2d Dept 1989]; *Matter of R.W. Granger & Sons v Comptroller of State of N.Y.*, 220 AD2d 945, 946 [3d Dept 1995] [same]). In *Abiele* (91 NY2d at 7-8), this Court squarely rejected the argument that a breach of contract claim was “nothing more than a collateral attack” on an agency decision. In rejecting that argument, the Court held that “where the language of the complaint asserts violations of a plaintiff’s rights under a contract”—including, as here, a “violation of the implied obligations of good faith [and] fair dealing”—a “plenary action sounding in contract is the appropriate remedy” (*id.*).

Likewise, nothing in the Approval Letter remotely touches on Plaintiffs’ veil-piercing claim, which concerns the corporate governance of the

MBIA entities. Although the Appellate Division majority wrongly stated that the Superintendent's alleged determination that the MBIA Insurance would "remain[] solvent" conflicts with "all of plaintiffs' allegations" (Order at 18-19), "insolvency has never been a requirement" of a veil-piercing claim (*Peltz Boxing Promotions, Inc. v The Big Fights, Inc.*, 2004 WL 2137823, \*1 n, 2004 US Dist LEXIS 19333, \*1 n [ED Pa 2004]).

**E. The Remedies Sought Are Different.**

As Justices Abdus-Salaam and Tom stressed in dissent, Plaintiffs' claims also are not subject to Article 78, because the remedies sought "clearly were not considered by or passed upon by the Superintendent, and may be outside the scope of any review that would be undertaken by the Superintendent" (Order at 24). Indeed, "the availability of an article 78 proceeding to review the rationality of a State official's actions does not preclude the [court] from exercising jurisdiction over a claim for money damages created by the Legislature" (*Dominick Dan Alonzo, Inc. v State of New York*, 73 AD2d 760, 761 [3d Dept 1979]; *see also Rowen*, 230 NW2d at 911 [tort claims not barred, because the insurance commissioner is not "authorized to award damages"]).

The Appellate Division majority erred in finding that Plaintiffs' plenary claims are "improper collateral attacks" by reasoning that those claims "seek to reverse" MBIA's Transformation (Order at 18)—that is only one of

Plaintiffs' alternative forms of relief. In this action, Plaintiffs also seek: (1) that the Court declare the MBIA entities jointly and severally liable to Plaintiffs under Plaintiffs' insurance policies, and (2) money damages (R. 122-123).

*First*, under DCL § 279(d), a court may enter “*any order* which the circumstances of the case may require” concerning “a creditor whose claim has not matured,” such as Plaintiffs (emphasis added) (*see e.g. Marine Midland Bank v Zurich Ins. Co.*, 263 AD2d 382, 383 [1st Dept 1999] [reinstating plaintiff’s demand for constructive trust in DCL suit against insurer]).

*Second*, Plaintiffs’ request for a declaration of joint and several liability is proper. Although the Appellate Division majority does not explain the basis for rejecting this remedy, presumably the majority disregarded it for the same impermissible reason that it rejected Plaintiffs’ veil-piercing claim (*see* Section V, *infra*).

*Third*, Plaintiffs’ remedy for monetary damages is proper. “The New York Court of Appeals has made it clear that the pertinent provisions of the New York Debtor and Creditor Law provide a creditor’s remedy for money damages against parties who participate in the fraudulent transfer of a debtor’s property and are transferees of the assets and beneficiaries of the conveyances” (*Stochastic Decisions, Inc. v DiDomenico*, 995 F2d 1158, 1172 [2d Cir 1993]).



#### **IV. THE APPELLATE DIVISION MAJORITY ERRED IN DISMISSING PLAINTIFFS' WELL-PLED CLAIM FOR THE BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING.**

“Implicit in all contracts is a covenant of good faith and fair dealing in the course of contract performance” (*Dalton v Educational Testing Serv.*, 87 NY2d 384, 389 [1995] [citations omitted]). This Court has explained that the implied covenant “embraces a pledge that ‘neither party shall do anything which will have the effect of destroying or injuring the right of the of the other party to receive the fruits of the contract’” (*id.* [citations omitted]; Restatement [Second] of Contracts § 205 [breach of implied covenant occurs where party engages in “[s]ubterfuges and evasions” in contravention of the “justified expectations of the other party”]).

Here, Plaintiffs adequately pled a breach of the implied covenant by alleging that MBIA’s “Transformation” was purposefully designed to deprive Plaintiffs of the benefits of their insurance policy contracts (R. 95-120 [Compl. ¶¶ 6, 13, 44-45, 62, 115-116, 118-120].) As alleged in the Complaint, MBIA knew that the diversion of assets would weaken MBIA Insurance, harm Plaintiffs, and hopefully force them to “cut a settlement today” (R. 112-113 [Compl. ¶ 74]).

Because of the fraudulent “Transformation,” MBIA Insurance’s credit rating plummeted “deep into junk territory”—*eight steps below what this critical rating was before the Transformation* (R. 94,109 [Compl. ¶¶ 4, 63]). As the federal court in *Aurelius* held, the implied covenant was breached when “the

Defendants undertook their reorganization knowing the deleterious effect that it would have on their credit rating” (*Aurelius*, 695 F Supp 2d at 76). Indeed, there is no question that Plaintiffs would not have entered into any such contracts with MBIA Insurance had Plaintiffs known that MBIA would undertake its fraudulent restructuring, or otherwise seek to eliminate MBIA Insurance’s ability to pay its claims—some of which will not be paid for 30 or more years.<sup>21</sup>

Moreover, as this Court has stated with respect to the implied covenant of good faith in insurance contracts, “[c]ertainly, a reasonable insured would understand that the insurer promises to . . . pay covered claims” (*New York Univ. v Cont’l Ins. Co.*, 87 NY2d 308, 318 [1995]). Yet, the Transformation rendered MBIA Insurance insolvent and unable to pay Plaintiffs and other policyholders (R. 94, 97, 109-112 [Compl. ¶¶ 4, 12, 63-71]). As a New York court recently recognized in a case *brought by MBIA*, allegations that a contracting party “unfairly shifted the risks of default and delinquencies” to its counterparty adequately state a breach of implied covenant claim (*MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2009 NY Slip Op 31527[U], \*19 [Sup Ct, NY County 2009] [emphasis added]).

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<sup>21</sup> (See *Bank of China v Chan*, 937 F2d 780, 789 [2d Cir 1991] [“A party’s actions may implicate the implied covenant of good faith when it acts so directly to impair the value of the contract for another party that it may be assumed that they are inconsistent with the intent of the parties.”].)

The Appellate Division majority stated that because credit enhancement was an “alleged purpose [that] is nowhere reflected in the policies, it cannot serve as the basis for a claim of breach of contract or breach of the implied covenant of good faith and fair dealing” (Order at 12). This factual assertion is puzzling, because no policies were included in the record on the appeal. The Appellate Division’s foundation for this dismissal is, like its “collateral attack” theory, improperly based on a bare speculative inference against Plaintiffs on a motion to dismiss (*see Leon*, 84 NY2d at 87-88).

Moreover, it is black-letter law that, in analyzing the expected benefits from a contract, the court is not limited solely to examining the contract itself (*see* 23 Lord, Williston on Contracts § 63:22, at 506-507 [4th ed] [“a court must examine not only the express language of the parties’ contract, *but also any course of performance or course of dealing that may exist between the parties.*”] [emphasis added]).<sup>22</sup> And, although the majority assumed—contrary to the Complaint—that credit enhancement was not a purpose of Plaintiffs’ contracts, MBIA has long marketed its bond insurance as providing “credit enhancement.”<sup>23</sup>

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<sup>22</sup> (*See also e.g. St. Benedict’s Dev. Co. v St. Benedict’s Hosp.*, 160 Utah Adv. Rep. 11, 15, 811 P.2d 194, 200 [1991]; *Allapattah Servs., Inc. v Exxon Corp.*, 61 F Supp 2d 1300, 1304 [SD Fla 1999].)

<sup>23</sup> (*See e.g.* MBIA “Structured Finance Overview,” [http://www.mbia.com/strufin/strufin\\_overview.html](http://www.mbia.com/strufin/strufin_overview.html) [accessed Mar. 11, 2011] [“MBIA Insurance Corporation has experience in a broad spectrum of sectors and a tradition of

The Appellate Division majority also dismissed this claim, because “no default has occurred and no monetary damages are claimed, [thus] no breach of a specific contractual provision has been made out” (Order at 12-13). Yet, “New York courts have repeatedly affirmed that a party may be in breach of an implied duty of good faith and fair dealing, even if it is not in breach of its express contractual obligations” (*Gross v Empire Healthchoice Assurance, Inc.*, 16 Misc 3d 1112[A], 2007 NY Slip Op 51390[U], \*4 [Sup Ct, NY County 2007]).<sup>24</sup> Whether or not MBIA has *yet* breached an express term of its contract (payment of claims), Plaintiffs have pled that MBIA, in undertaking its Transformation scheme, *has breached* the implied covenant by intentionally rendering itself incapable of honoring the 30-year commitments in its insurance contracts.

The Appellate Division majority’s assertion that “no monetary damages are claimed” (Order at 13) is wrong (R. 120 [Compl. ¶ 121]). And, as this Court has held: “When it is certain that damages have been caused by a breach of contract, and the only uncertainty is as to their amount, there can rarely be a good reason for refusing, on account of such uncertainty, any damages

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innovation in credit enhancement.”]; Duyn and Bullock, *MBIA’s New Group to Focus on US Municipal Bonds*, FT.com, Feb. 19, 2009 [noting that bond insurance market is based on “demand for credit enhancement”].)

<sup>24</sup> (See also *Chase Manhattan Bank, N.A. v Keystone Distribs.*, 873 F Supp 808, 815 [SD NY 1994]; *EBC I, Inc. v Goldman Sachs & Co.*, 7 AD3d 418, 420 [1st Dept 2004].)

whatever for the breach” (*Randall-Smith, Inc. v 43rd St. Estates Corp.*, 17 NY2d 99, 106 [1966]).

**V. THE APPELLATE DIVISION MAJORITY ERRED IN DISMISSING PLAINTIFFS’ WELL-PLED VEIL-PIERCING CLAIM.**

In dismissing Plaintiffs’ cause of action seeking a declaratory judgment piercing the corporate veil, the Appellate Division majority ignored that, as alleged in the Complaint (R. 120-121 [Compl. ¶¶ 122-130]), the corporate veil may be pierced when: “(1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) . . . such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff’s injury” (*Matter of Morris v New York State Dept. of Taxation & Fin.*, 82 NY2d 135, 141 [1993]). As Justices Abdus-Salaam and Tom properly recognized, “[v]eil-piercing is a fact-laden claim that is not well suited for summary judgment resolution,’ much less for resolution on a pre-answer, pre-discovery motion” (Order at 33-34, quoting *First Bank of the Ams. v Motor Car Funding*, 257 AD2d 287, 294 [1st Dept 1999]).

The corporate form of an insurer is abused where, as here, its shareholder diverts assets to another entity, “depriv[ing the insurer] of the funds needed to meet its . . . obligations” (*Serio v Ardra Ins. Co.*, 304 AD2d 362, 362-363 [1st Dept 2003]). Here, as the dissenting justices found, Plaintiffs have more than adequately pled this claim (which is subject to notice-pleading standards) by

pleading, *inter alia*, that: (1) MBIA Inc. moved assets between its subsidiaries for no consideration; (2) MBIA Inc. intended to avoid “cross liability” among its subsidiaries; (3) MBIA Inc.’s management controlled both subsidiaries; (4) the Transformation depleted MBIA Insurance’s assets for the benefit of MBIA Inc. and its senior executives; and (5) Plaintiffs were injured (R. 93-121 [Compl. ¶¶ 1, 3 8, 34-36, 73-82, 118, 124-128]; Order at 32-33).<sup>25</sup>

Once a veil-piercing claim is adequately pled, as here, “it furnishes a means for a complainant to reach a second corporation or individual upon a cause of action that otherwise would have existed only against the first corporation” (1 Fletcher, *Cyclopedia of Corporations* § 41.28, at 174 [Rev ed]). Plaintiffs’ DCL and breach of implied covenant claims serve as proper bases for a veil-piercing claim. As Justices Abdus-Salaam and Tom stated, this claim is not premature or an “advisory opinion,” because it is not “necessary that an unsatisfied judgment first be obtained to pierce the corporate veil” (Order at 32, quoting *Chase Manhattan Bank*, 174 AD2d at 505).

In addition, Plaintiffs seek a declaratory judgment finding that MBIA Inc. and MBIA Insurance to be jointly and severally liable under Plaintiffs’

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<sup>25</sup> (See *Grad v Roberts*, 14 NY2d 70, 76 [1964]; *Matter of EAC of N.Y., Inc. v Capri 400, Inc.*, 49 AD3d 1006, 1008 [3d Dept 2008]; *Rebh v Rotterdam Ventures*, 252 AD2d 609, 610-611 [3d Dept 1998]; *Chase Manhattan Bank [N.A.] v 264 Water St. Assoc.*, 174 AD2d 504, 504 [1st Dept 1991].)

insurance policies (R. 121 [Compl. ¶ 130]). In dismissing this aspect of Plaintiffs' veil-piercing claim, the Appellate Division majority asserted that Plaintiffs sought an "advisory opinion premised on future events that are beyond defendants' control and are thus speculative," purportedly because "obligors under the[] insured securities" may not "default in the future" (Order at 13). In doing so, the majority ignored settled law holding that "where the practical likelihood is that the future contingency will occur, the action [for declaratory judgment] may proceed" and is not an "advisory opinion" (*Prodell*, 211 AD2d at 967; *see also* Weinstein-Korn-Miller, NY Civ Prac ¶ 3001.09 [b] [2d ed]).<sup>26</sup>

Here, the Complaint pleads that the Transformation rendered MBIA Insurance insolvent (R. 94, 97, 109-112 [Compl. ¶¶ 4, 12, 63-71]). This claim does not depend on uncertain future events, but on events that already occurred. The Appellate Division majority's observation that MBIA Insurance has thus far "paid . . . its obligations under the insurance policies" (Order at 13) is irrelevant, and says nothing about its ability to meet its multi-billion dollar obligations on policies where large payments are not due until more than 30 years in the future.<sup>27</sup>

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<sup>26</sup> (See also *Assoc. Indem. Corp. v Fairchild Indus., Inc.*, 961 F2d 32, 35 [2d Cir 1992] ["litigation over insurance coverage has become the paradigm for asserting jurisdiction despite 'future contingencies that will determine whether a controversy every actually becomes real'"] [citations omitted].)

<sup>27</sup> Indeed, years from now, MBIA presumably will contend that any attempt to reach assets at MBIA Illinois or MBIA Inc. premised on the Transformation is

“[T]he primary purpose of declaratory judgments is to adjudicate the parties’ rights before a ‘wrong’ actually occurs in the hope that later litigation will be unnecessary” (*Klostermann v Cuomo*, 61 NY2d 525, 538 [1984]). In any event, “insolvency has never been a requirement” of a veil-piercing claim (*Peltz Boxing Promotions, Inc.*, 2004 WL 2137823, \*1 n, 2004 US Dist LEXIS 19333, \*1 n). “Siphoning of corporate funds by the dominant shareholder, even while the corporation is solvent, can be an independent basis for piercing the corporate veil if equity so requires” (*id.*).

As the dissent made clear, “the alleged domination of the corporation and abuse of the corporate form has already occurred here” (Order at 31-32). Plaintiffs have valid claims because they are “insured[s] under the polic[ies] issued by the defendants” and the value of those policies plummeted as a result of MBIA’s bad faith and its fraudulent “Transformation” (*Five Star Elec. Corp. v Zurich Am. Ins. Co.*, 2010 NY Slip Op 33002[U], \*5-6 [Sup Ct, Queens County 2010] [citations omitted]).

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barred by the statute of limitations (to the extent that those fraudulently transferred assets were not already depleted).



## CONCLUSION

For the foregoing reasons, this Court should reverse the Appellate Division's decision granting MBIA's motion to dismiss and reinstate the Complaint.

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