The End Is In Sight? Deutsche Bank Claims Victory In Defense Of A Repurchase Claim Based Upon Statute Of Limitations

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A unit of Deutsche Bank won dismissal of a suit brought by mortgage bond investors after a **New York state appeals court** determined the claims for loan repurchase and indemnity were subject to a six-year statute of limitations that began to run when the deal to purchase the loans closed. This decision may limit new suits by investors who allege that their claims don't accrue – and that therefore the statute of limitations does not begin to run – until the claim is discovered or the seller of the loan refuses to repurchase it or provide indemnification.

For years, loan sellers and securitizers have been subject to a flurry of lawsuits claiming repurchase or indemnification for faulty loan underwriting and other breaches of loan purchase and sale agreements. In almost all cases, the common practice for owners of loans or securities has been to wait for loans to become delinquent, and then start searching for violations of representations and warranties with respect to those loans, which would then be used as a basis for demanding that the loans be repurchased by the seller or the securitizer.

That may now change since a four judge appellate panel on December 19th unanimously reversed a May decision which held that the statute of limitations began to run when DB Structured Products failed to cure or repurchase defective mortgage loans from the pool of loans that had been sold to the investors. The four judges instead ruled that the statute runs when the sale or securitization is actually first closed. The plaintiffs have indicated that they plan to appeal.

If the appeals court decision is upheld, it will likely limit actions because many securitizations or loan sale transactions (which are often governed by **New York law**) occurred more than six years ago (i.e., prior to 2008). While the owners of the loans or the securities may now have to be more vigilant about searching for breached representations and warranties, they will have to balance this vigilance against the possibility that removing loans from a securitization could create other consequences or issues. As a result, sellers and securitizers may begin to see the end of the stream of claims and challenges with respect to their older loan origination activities.

The impact of this decision could be far reaching; for example, we expect that many sellers and securitizers may attempt to reconsider or perhaps modify their loan loss reserve calculations and methodologies to take into account the limitation or elimination of liability related to pre-2008 loan origination activities, particularly in situations in which the loans were sold on a “whole loan” servicing released basis. In addition, for companies having extended histories of loan origination activities, the decision may help moderate the perceived risks associated with these legacy loan origination activities for potential investors and buyers of such companies.

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