

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ROBERT MARK, individually and on Behalf of all others similarly situated,)	
)	
Plaintiff,)	Civil Action No. <u>08-CV-8181</u>
)	
-v-)	
)	
GOLDMAN SACHS & CO., JPMORGAN CHASE & CO., and CITIGROUP GLOBAL MARKETS INC.,)	
)	
Defendants.)	
)	

CLASS ACTION COMPLAINT

Plaintiff makes the following allegations, except for paragraph 5 hereof, based upon the investigation by Plaintiff's counsel, which included an analysis of publicly available news articles, reports, public filings made with the Securities and Exchange Commission ("SEC"), securities analysts' reports about Federal Home Loan Mortgage Corporation ("Freddie Mac" or the "Company"), and Defendants Goldman Sachs & Co., JPMorgan Chase & Co. and Citigroup Global Markets Inc. (referred to collectively as "Defendants").

SUMMARY OF ACTION

1. Plaintiff brings this case as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of himself and all others who purchased shares in an initial public offering (the "Offering") of 240,000,000 shares of Freddie Mac 8.375% Fixed to Floating Rate Non-Cumulative Perpetual Preferred Stock (hereinafter the "Z Preferred Stock") pursuant to an Offering Circular and other offering materials on November 29, 2007 at \$25.00 per share, and issued on December 4, 2007. The Preferred Stock trades on the New York Stock Exchange

under the symbol, “FRE-Z.” The named Defendants (and/or their predecessors) were underwriters of the Offering and sold shares of the Preferred Stock to the public in a firm commitment underwriting. Under this form of underwriting, Defendants purchased the Preferred Stock from Freddie Mac and then sold those shares to the public. Defendants (together with other underwriters not named as defendants) received approximately \$90 million in underwriters’ fees.

2. The Offering Circular failed to inform investors of Freddie Mac’s massive exposure to mortgage-related losses, poor underwriting standards and risk management procedures, and the resulting negative impact to its capital adequacy.

3. When the truth about Freddie Mac’s financial condition was finally disclosed during the summer of 2008, the Company’s stock dropped substantially. The Z Preferred Stock, offered at \$25 in December 2007, now trades at roughly \$2 per share.

4. Defendants were negligent in failing to warn Plaintiff and other investors of Freddie Mac’s true financial condition.

JURISDICTION AND VENUE

5. The claim asserted herein arises under and pursuant to Section 12(a)(2) of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. §771(a)(2).

6. Venue is proper in this District because the Defendants are located, and the underlying events took place in, this District.

7. In connection with the untrue statements of material fact and omissions of material fact alleged in this Complaint, Defendants, directly or indirectly, used means and instrumentalities of interstate commerce, including the mails and telephone communications and the facilities of the New York Stock Exchange.

THE PARTIES

8. Plaintiff purchased shares of Z Preferred Stock in or traceable to the Offering from Citigroup Global Markets Inc. (“Citi”).

9. Defendant Goldman Sachs & Co. (“Goldman”) is a New York entity and maintains its principal office at 85 Broad Street, New York, New York 10004. Goldman served as one of the underwriters of the Offering, solicited and sold shares in the Offering and received a portion of the underwriters’ fees in connection therewith.

10. Defendant JPMorgan Chase & Co. (“JPMorgan”) is a Delaware corporation and maintains its principal office at 270 Park Avenue, New York, New York 10017. On or about May 30, 2008, JPMorgan acquired Bear, Stearns & Co. (“Bear Stearns”) and assumed all of its debts and obligations. Bear Stearns served as one of the underwriters of the Offering, solicited and sold shares in the Offering and received a portion of the underwriters’ fees in connection therewith.

11. Defendant Citi is incorporated in Delaware and maintains its principal office at 388 Greenwich Street, New York, New York 10013. Citi served as one of the underwriters of the Offering, solicited and sold shares in the Offering and received a portion of the underwriters’ fees in connection therewith.

CLASS ACTION ALLEGATIONS

12. Plaintiff brings this lawsuit pursuant to Federal Rule of Civil Procedure 23 on behalf of a class (the “Class”) consisting of all persons who purchased shares in the Offering. Excluded from the Class are Freddie Mac, Defendants, any underwriter of the Offering and their directors, officers, employees, parents, affiliates and subsidiaries, successors, agents, legal representatives, heirs and assigns, and any persons controlled by any excluded person.

13. There are hundreds, if not thousands, of members of the Class; accordingly, the Class is so numerous that joinder of all members is impracticable.

14. There are questions of law and fact common to the Class which predominate over any questions affecting only individual Class members. Among the common questions of law and fact are:

a. whether the Offering Circular omitted to state a material fact necessary to make the statements therein not misleading;

b. whether Defendants sold or solicited shares in the Offering within the meaning of Section 12(a)(2).

c. Whether Defendants conducted a reasonable investigation giving them reasonable grounds to believe that at the time of the Offering the Offering Circular did not omit to state a material fact necessary to make the statements therein not misleading; and

d. The extent of injuries sustained by members of the Class and the appropriate measure of damages.

15. Plaintiff's claims are typical of the claims of the Class because Plaintiff's and the Class members' damages arise from and were caused by the same omissions and misleading statements made by or chargeable to Defendants. Plaintiff does not have any interests antagonistic to, or in conflict with, the Class.

i. Plaintiff will fairly and adequately protect the interest of the Class.

Plaintiff has retained competent counsel experienced in class action litigation under federal and state law to further ensure such protection and intends to prosecute this action vigorously.

- ii. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Because of the size of the individual Class members' claims, few, if any, Class members could afford to seek legal redress individually for the wrongs complained of herein. Absent a class action, the Class members will suffer uncompensated loss.

SUBSTANTIVE ALLEGATIONS

Introduction

16. Freddie Mac is a shareholder owned corporation chartered by Congress in 1970 to stabilize the nation's residential mortgage markets and expand opportunities for homeownership and affordable rental housing. In order to serve its mission, Freddie Mac purchases residential mortgages and mortgage-related securities in the secondary mortgages market. While it is chartered by Congress, its business is funded completely with private capital.

Freddie Mac's Operations

17. Over the course of several years Freddie Mac took on massive subprime and other nontraditional, risky loans, in particular "Alt-A" loans, which are given to borrowers with better-than-subprime credit scores but without full documentation. At the same time, the Company failed to maintain an adequate capital cushion, which is a crucial safety net to protect against a downturn in housing prices. As a result, Freddie Mac exposed itself to massive mortgage-related losses and operated with dismal underwriting standards resulting in a negative impact to its capital adequacy.

18. Internal warnings surfaced as early as 2004 that Freddie Mac's shoddy underwriting standards, virtually non-existent risk management procedures and resulting

purchase of low-quality, risky mortgages and mortgage-backed securities had left it exposed to massive losses. Similarly, Freddie Mac's capital base was insufficient.

19. As reported in *The New York Times* on August 5, 2008, Freddie Mac Chief Executive Officer, Richard F. Syron, ignored warning signs as early as 2004. According to the *Times*, Mr. Syron received a memorandum from the Company's former Chief Enterprise Risk Officer, David A. Andrukonis, in mid-2004 advising him "that [Freddie Mac's] underwriting standards were becoming shoddier and the company was becoming exposed to losses." Mr. Andrukonis also briefed the risk oversight committee of the Company's Board of Directors on his memorandum, but the committee failed to act. The *Times* quotes Mr. Andrukonis as saying that the loans "would likely pose an enormous financial and reputational risk to the company and the country."

20. Mr. Syron also received warnings from Freddie Mac's former head of compliance and oversight, Donald Solberg, who advised Mr. Syron that the Company's capital base needed to be replenished. Mr. Solberg was not the only person to advise Mr. Syron that Freddie Mac lacked adequate capital. As reported by *Times*, in 2007 U.S. Treasury Secretary Henry M. Paulson, Jr. and Federal Reserve Chairman Ben S. Bernanke also urged Freddie Mac (and Federal National Mortgage Association ("Fannie Mae")), to raise more money and bolster their balance sheets. Mr. Bernanke even threatened to publicly chastise the companies if they did not raise more cash. Finally, as home prices fell and defaults rose in 2007, advisors at Freddie Mac exhorted Mr. Syron to slow the Company's mortgage purchases.

21. Ignoring these warnings, Freddie Mac increased its risk exposure, degrading its capital position. In 2007 alone, Freddie Mac expanded its retained portfolio by approximately \$17 billion, which increased its mortgage holdings by 2.4%. At the same time, the Company's

underwriting standards and risk management procedures became shoddier, so that more of the loans Freddie Mac added to its portfolio were low quality, high credit risk mortgages. Freddie Mac's capital base also grew weaker as the Company's mortgage-related losses ballooned.

22. This downturn decreased the value of the mortgage-backed securities held by Freddie Mac as the chance of defaults increased. It also increased the likelihood that Freddie Mac would have to make good on its guarantees of mortgage-backed securities held by others. This simultaneous decline in assets and increases in liabilities rendered the Company massively undercapitalized.

Freddie Mac's Need for Capital

23. In the fall of 2007, as a result of the foregoing, Freddie Mac made the decision to raise \$6 billion through the issuance of the Z Preferred Stock. Freddie Mac retained Defendants to underwrite the Offering. According to the Offering Circular:

The capital raised from the sale of the Preferred Stock will be used to bolster our capital base in light of actual and anticipated losses necessitated by GAAP accounting requirements and help us meet the 30% surplus going forward. We expect to deploy such proceeds for the purchase of residential mortgages or mortgage-related securities (subject to regulatory constraints), for the financing of growth in our mortgage guarantee business and for other corporate purposes consistent with evolving business and market conditions.

Offering Circular at 16.

24. The Offering Circular included certain risk factors associated with the Offering of the Z Preferred Stock. These included "markets uncertainty and volatility," an inability to "manage effectively all of the risks to which" the Company is subject, and "material weaknesses and significant deficiencies in our internal controls that require remediation." The Offering Circular also explained that the Company "may consider additional measures in the future such as . . . issuing additional preferred stock."

25. On December 4, 2007, the Z Preferred Stock was issued.

The Offering Circular Was False

26. The Offering Circular was materially false in that it failed to disclose and properly warn Plaintiff and the other members of the Class of the real risks posed to Freddie Mac, namely, that Freddie Mac: (1) was exposed to massive mortgage-related losses; (2) had debilitating deficiencies in its underwriting and risk-management procedures; (3) was and would remain after the Offering woefully undercapitalized; and, most importantly, (4) faced imminent insolvency.

27. On July 30, 2008, only seven months after the Offering, President Bush signed a housing rescue bill which included a Freddie Mac (and Fannie Mae) bail out. It provided Freddie Mac and Fannie Mae with an unlimited line of credit at the U.S. Treasury (increased from \$2.25 billion) and authorized the U.S. Treasury to purchase equity shares in the two entities, if necessary.

28. On September 7, 2008, only nine months after the Offering, and less than two months after providing Freddie Mac with an unlimited line of credit, federal regulators seized control of Freddie Mac and Fannie Mae in order to avert their financial collapse. It is the biggest U.S. government bailout in history.

29. Defendants were negligent in failing to disclose to, and properly warn, Plaintiff and the Class the true financial condition of Freddie Mac.

CLAIM FOR RELIEF

30. Plaintiff repeats and realleges each and every allegation above.

31. This claim is asserted for violation of Section 12(a)(2) of the Securities Act, 15 U.S.C. §771(a)(2), against the Defendants, each of whom offered and sold the Z Preferred Stock or solicited the sale of such stock to the Class in the Offering.

32. The Offering Circular and other offering materials constitute a “prospectus or oral communication” within the meaning of §12(a)(2) of the Securities Act.

33. The Offering Circular and other offering materials omitted to state material facts necessary in order to make the statements, in light of the circumstances in which they were made, not misleading.

34. Plaintiff and the members of the Class did not know, nor could they have known, of the omissions contained in the statements regarding the Offering.

35. Defendants failed to make a reasonable investigation or possess reasonable grounds for the belief that the statements were complete in all material respects and that the Offering Circular for the Offering and other offering materials did not materially mislead Plaintiff and other members of the Class.

36. This claim has been brought within one year after the discovery of the omissions in the Offering Circular and other offering materials and within three years after the Z Preferred Stock was sold to the Class in connection with the Offering.

37. By reason of the misconduct alleged herein, the Defendants named in this Count violated Section 12(a)(2) of the Securities Act and are liable to Plaintiff and the members of the Class who purchased or acquired the Z Preferred Stock in the Offering, each of whom has been damaged as a result of such violations.

38. Plaintiff and the members of the Class who purchased the Z Preferred Stock in the Offering hereby seek rescission of their purchases and hereby tender to Defendants named the Z Preferred Stock, which Plaintiff and other members of the Class continue to own, in return for the consideration paid for those securities, together with interest thereon.

WHEREFORE, Plaintiff prays for judgment and relief as follows:

- A. Declaring this case to be a proper class action;
- B. Awarding Plaintiff and the Class damages pursuant to §12(b) of the Securities Act, consisting of recovery of the compensation paid for the Z Preferred Stock with interest thereon, less the amount of an income received thereon, upon the tender of the Z Preferred Stock, or for damages if either Plaintiff or the other members of the Class no longer own the Z Preferred Stock.
- C. Awarding Plaintiff and the Class the cost and disbursements of the action, including a reasonable allowance for Plaintiff's attorneys' and experts' fees; and
- D. Granting such other and further relief as may be just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: September 23, 2008

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By: _____

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