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Securities Litigation Update

by Jerry Phillips, Partner and Eugene Licker, Partner

The summer may feel like a more leisurely time of year, but not in securities litigation news. Here are some of the more significant headlines:

- According to Royal Bank of Scotland strategists, credit market liquidity has fallen by approximately 70 percent in recent years - and it is still falling. RBS is concerned that the global financial system is becoming even more unstable. Regulators are taking notice.
- In more bad news for rating agencies (and good news for plaintiffs' lawyers), the SEC is considering an enforcement action against Standard & Poor's for its ratings of six commercial mortgage-backed securities deals. S&P already is defending a \$5 billion lawsuit brought against it by the U.S. Department of Justice over its credit ratings. In that litigation, S&P is accused of helping fuel the financial crisis and causing losses suffered by banks and credit unions by inflating ratings to boost fees from issuers and being too slow to downgrade failing mortgage debt. Several states also have filed similar lawsuits against S&P.
- FINRA has proposed a rule, approved by the SEC, that would prohibit brokers from including in arbitration settlements a requirement that the claimant agree to expunge the dispute from the brokers' public records. SIFMA supports the rule.
- Experts seem to think that falling mortgage bond prices indicate that investors are losing interest in higher-yield investments. At the same time, because market volatility and liquidity are down, investors are looking for higher returns and are taking on more risk. One result is that so-called private label mortgage bonds are making a comeback! The industry is working on standard language for these new securities in an attempt to overcome investor distrust in the product that began with the 2008 financial crisis.
- Another increasingly popular investment vehicle, alternative mutual funds, has come to the attention of SEC examiners. Such funds utilize typical hedge fund investment strategies, including investing in private debt and shorting assets, as opposed to stock and bond investments made by more traditional mutual funds. Increased fees charged by alternative mutual funds likely will be one of the aspects in which SEC examiners will have particular interest.

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- FINRA's proposal to prohibit securities veterans from acting as public arbitrators is now being opposed by investors' lawyers - the same group that originally supported the plan. This group's flip-flop is the result of SIFMA's suggestion that attorneys who have a history of representing claimants also should be banned from acting as arbitrators.

If you have questions or would like more information about any of these issues, please contact [Jerry Phillips](#) and [Eugene Licker](#) or any member of the Loeb & Loeb Securities Litigation practice.

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