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Fannie Mae Sues Global Banks for Libor Manipulation

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Fannie Mae has filed suit against nine banks alleging it sustained \$800 million in damages through systematic “Libor suppression” by banks involved in setting the reference rate. *Federal National Mortgage Association v. Barclays Bank PLC et al.*, No. 1:13-cv-07720-NRB, (S.D.N.Y. October 31, 2013) (“*Barclays*”). The suit names Barclays Bank plc, UBS AG, The Royal Bank of Scotland plc, Deutsche Bank AG, Credit Suisse Group AG, Bank of America, N.A., Citigroup, N.A., J.P. Morgan Chase Bank, N.A., and Cooperative Centrale Raiffeisen-Boerenleenbank B.A. (known as Rabobank) as bank defendants. Fannie Mae also joined the British Bankers Association and BBA Libor, Ltd., responsible for setting and publishing Libor reference rates. Alleged manipulation of Libor by Libor panel members was previously reported on in *Capital* (Fall 2012).

Fannie Mae dealt directly with the defendant banks through swap contracts, primarily involving interest rate swaps which Fannie Mae entered into to hedge interest rate risks on fixed-rate mortgage portfolios. The complaint offers a detailed story line, liberally quoting public investigative records released by bank regulators in the United States and abroad in conjunction with enforcement cases against bank defendants Barclays, UBS, RBS, and Rabobank. Fannie Mae alleges that starting in 2008, “the Libor Panel Defendants, with active assistance from each other and the BBA, wrongfully suppressed Libor” for US dollar-denominated transactions. *Barclays*, Second Amended Complaint, I.4. The defendant banks were allegedly motivated by a desire to bolster industry perception of their own financial stability and to profit from Libor-indexed rate trades, including Fannie Mae swaps.

Previous investor suits filed against global banks in the wake of the Libor rate-fixing scandal have been dismissed or narrowed by federal courts, due in part to standing issues presented by antitrust law. In *Barclays*, Fannie Mae omits antitrust causes of action, pleading simply breach of contract, violation of duties of good faith and fair dealing, fraud, and conspiracy to defraud, arising out of Fannie Mae’s direct contracts and dealings with the defendant banks. Several bank defendants have previously settled Fannie Mae breach of warranty claims over sales of defective mortgage portfolios. Prior settlements apparently did not resolve Libor-based claims.

Barclays follows Freddie Mac’s 2013 lawsuit on Libor rigging, alleging concerted action of banks violating the Sherman Act as well as breach of contract, fraud, and tortious interference with contract. See *The Federal Home Loan Mortgage Corporation v. Bank of America Corp. et al.*, No. 1:13CV342 TSE/IDD (E.D. Va. March 14, 2013).

Both Fannie Mae and Freddie Mac have operated in federal conservatorship since September 6, 2008. The U.S. Treasury bore operating losses of both through purchases of securities issued by the entities. In late 2012, the enterprises’ oversight agency, the Federal Housing Finance Agency, received an investigation report by the Office of Inspector General with an estimate of \$3 billion in losses caused by Libor manipulation through depressed payments by banks on Libor-based interest rate swaps settled during the agencies’ conservatorships, 2008-2010. The OIG investigation report urged FHFA to “[p]romptly consider options for appropriate legal action if warranted. If the existing accusations of Libor manipulation prove well founded then, in light of its obligations as their conservator, FHFA should have in place a plan by which to affect full recovery of any Enterprise funds lost and deter further malfeasance” Memorandum from Timothy Lee, David P. Bloch, and Simon Z. Wu, Office of the Inspector General, to Steve A. Linick, Inspector General, re: Potential Losses to Fannie Mae and Freddie Mac due to LIBOR Manipulation (October 12, 2012).