

No. 75779-2-1

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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FEDERAL HOME LOAN BANK OF SEATTLE,

Appellant,

v.

CREDIT SUISSE SECURITIES (USA) LLC, f/k/a CREDIT SUISSE  
FIRST BOSTON LLC, CREDIT SUISSE FIRST BOSTON MORTGAGE  
SECURITIES CORP., and CREDIT SUISSE MANAGEMENT LLC,  
f/k/a CREDIT SUISSE FIRST BOSTON MANAGEMENT LLC,

Respondents.

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**APPELLANT'S OPENING BRIEF**

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## I. INTRODUCTION

This is one of hundreds of actions by investors in residential mortgage-backed securities, or RMBS, against the investment banks that created and sold trillions of dollars of such securities in the few years immediately before the financial crisis of 2008. Defendants-appellees, all subsidiaries of the investment bank Credit Suisse, sold four RMBS to plaintiff-appellant, Federal Home Loan Bank of Seattle (Seattle Bank). CP 4386–4390. Credit Suisse sold those securities to investors like Seattle Bank by means of various communications, culminating in a final offering document called a prospectus supplement, which federal law required Credit Suisse to file with the United States Securities and Exchange Commission and to deliver to investors either before or when it delivered the securities to them.<sup>1</sup> Documents filed with the SEC become immediately available to the public on the SEC’s website, so it was possible to deliver a prospectus supplement to an investor by filing it with the SEC.

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<sup>1</sup> Section 5(b)(2) of the Securities Act of 1933 makes it “unlawful for any person, directly or indirectly – ... to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of section 10” of that Act.

Seattle Bank brought this action against Credit Suisse in December 2009 for violation of the Washington State Securities Act, RCW 21.20.010(2), which makes it “unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly ... [t]o make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.” CP 53, 86–87, 108–109. Seattle Bank’s complaint alleged that Credit Suisse made untrue or misleading statements in both preliminary communications before it filed the prospectus supplements with the SEC and in the prospectus supplements themselves. CP 9–10, 13–15, 21–22, 26–31, 35–51, 54–61, 67–76, 79–85, 4004.

The trial court granted summary judgment to Credit Suisse on two of the four RMBS based solely on the anomaly that Credit Suisse filed the prospectus supplements for these two securities after it delivered the securities to Seattle Bank and Seattle Bank paid for them. CP 3311–3315, 4386–4390; SCP 10460–10464. The prospectus supplement for one of the RMBS was available on EDGAR (the SEC’s system for public filings) three hours after, and for the other, two days after, Credit Suisse delivered the securities and Seattle Bank paid for them. CP 3276–3277, 3281–3282, 3286; SCP 9852, 10364. The trial court held that a plaintiff in an action

under the WSSA must prove that it relied on the untrue or misleading statement in deciding to buy the security, even though the WSSA says nothing about any such requirement. CP 3311–3315; SCP 10460–10464. And, because Seattle Bank could not prove that it received the prospectus supplements before it paid for the two securities, the trial court concluded that Seattle Bank could not prove that it relied on the statements in those prospectus supplements. CP 3311–3315; SCP 10460–10464.

In reading a reliance requirement into the WSSA, the trial court followed a decision by a previous panel of this Court, *Stewart v. Estate of Steiner*, 122 Wn. App. 258, 261, 264 & n. 7 (2004) (plaintiff must prove “that the seller and/or others made material misrepresentations or omissions about the security, and the purchaser relied on those misrepresentations or omissions.”).<sup>2</sup> *Stewart* in turn relied on the earlier decision in *Guarino v. Interactive Objects, Inc.*, 122 Wn. App. 95, 109 (2004) (“The WSSA also requires reliance upon the alleged misrepresentations or omissions.”). *Guarino* and *Stewart* both were based on the statement of the Washington Supreme Court in *Hines v. Data Line Systems, Inc.*, 114 Wn.2d 127, 134 (1990) that, in cases under RCW 21.20.010, “investors need only show that the misrepresentations were

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<sup>2</sup> The trial court first ruled that Seattle Bank had to prove reliance when it denied defendants’ motions to dismiss in 2011. CP 2467.

material and that they relied on the misrepresentations in connection with the sale of the securities.”

Respectfully, the decisions of the other panels in *Guarino* and *Stewart* misinterpreted the WSSA. This panel is not required to follow those decisions<sup>3</sup> and should decline to do so for at least the following reasons:

1. The Legislature intended liability under the WSSA to be strict, with no requirement to prove elements of common-law fraud such as reliance. The decisions in *Guarino* and *Stewart* contradict that intent.

2. The WSSA requires, and the Washington Supreme Court has long held, that the WSSA is to be interpreted consistently with the similar statutes that nearly all sister states have adopted. At least 20 other states have rejected any requirement to prove reliance in actions under their counterparts of the WSSA. In nine of those 20, that result was reached by the state’s supreme court. Only one or possibly two states require proof of reliance; in neither state was that result reached by the state’s supreme court.

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<sup>3</sup> In *Grisby v. Herzog*, 190 Wn. App. 786, 806–811 (2015), this Court concluded that one panel of the Court is not required to follow the decision of an earlier panel.

3. The Washington Supreme Court and this Court have long held that the WSSA is to be interpreted to protect investors.<sup>4</sup> The decisions in *Guarino* and *Stewart* thwart investors by allowing an investment bank to escape liability for making untrue or misleading statements in connection with selling securities to investors in Washington simply by taking the investor's money before the investment bank files the required prospectus supplement with the SEC.

4. The statement in *Hines v. Data Line Systems*, on which the panels in *Guarino* and *Stewart* relied, was dictum only. Those panels were not required to follow that dictum and should not have done so.

## II. ASSIGNMENT OF ERROR

The trial court erred by holding that, in an action under RCW 21.20.010(2), a plaintiff must prove that it relied on the untrue or misleading statement of a material fact that the defendant made in connection with its sale of a security to the plaintiff.

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<sup>4</sup> *Go2Net, Inc. v. Freeyellow.com, Inc.*, 158 Wn.2d 247, 253 (2006) (“When interpreting this remedial legislation, the court is guided by the principle that remedial statutes are liberally construed to suppress the evil and advance the remedy.”) (internal citation omitted); *Hines*, 114 Wn.2d at 145 (“[T]he State Securities Act is to be broadly construed in order to maximize protection for the investing public.”); *Hoffer v. State*, 113 Wn.2d 148, 152 (1989) (“[T]he WSSA . . . endeavors to protect investors, not just the integrity of the marketplace.”).

### III. STATEMENT OF THE CASE

#### A. THE UNTRUE OR MISLEADING STATEMENTS OF MATERIAL FACT THAT CREDIT SUISSE MADE IN CONNECTION WITH ITS SALE OF RMBS TO SEATTLE BANK

Credit Suisse sold four RMBS to Seattle Bank. CP 4386–4390.

RMBS are not backed by the promise of an entity such as a corporation to pay interest and repay principal to bondholders. Rather, they are backed only by payments that borrowers make on discrete groups of mortgage loans. CP 2657–2660, 2793–2796. If those borrowers fall behind in their mortgage payments and their payments are not enough to make the promised payments to investors in an RMBS, then those investors may suffer losses, because no entity is required to make good the shortfall. CP 2666–2668, 2800–2802. Sellers of RMBS make detailed statements in their offering documents about the credit quality of the mortgage loans that back the securities. CP 2665, 2688–2689, 2799, 2817–2825, 2914–2923, 3152–3201, 3202–3249. These statements are material to investors in RMBS because payments on the mortgage loans are the sole source of payments to investors. CP 3038, 3043–3044, 3127–3130.

The process of creating and selling an RMBS takes several weeks. CP 3888–3892.<sup>5</sup> The investment bank that is creating the RMBS chooses

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<sup>5</sup> For a more detailed overview of the process, *see* CP 3001–3004.

the mortgage loans that are to back the RMBS and devises various technical aspects of the RMBS, such as the relative rights of different RMBS that are being sold in the same transaction. CP 3890. The investment bank then solicits investors like Seattle Bank to purchase the forthcoming RMBS. CP 3891. The investment bank sends potential investors various preliminary offering documents, such as term sheets, which describe the mortgage loans that will back the RMBS (such as, for example, which lenders made how many of the mortgage loans, the amount of equity that the borrowers have in their homes, etc.). CP 3152–3201, 3202–3249, 3828–3838, 3891. Based on the information in these preliminary offering documents, an investor makes a preliminary decision whether to purchase the offered RMBS. CP 3828–3838. While this process is taking place, the investment bank drafts the final offering document for the RMBS, the prospectus supplement that it will deliver to investors and file with the SEC. CP 3891.

The content of offering documents for RMBS is closely prescribed by a long and detailed regulation of the SEC, Regulation AB.<sup>6</sup> Offering documents for RMBS are very similar to each other except in their descriptions of the group of loans that will back a particular RMBS. For

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<sup>6</sup> 17 C.F.R. § 229.1100 *et seq.*

example, in addition to the prospectus supplements for the two RMBS on which it granted Credit Suisse summary judgment, the trial court had before it excerpts from prospectus supplements that Credit Suisse filed with the SEC in 22 similar transactions that preceded its sale of the second RMBS to Seattle Bank in 2007. Appendix A and CP 4007–4014. But for their description of the particular mortgage loans that back the RMBS, all these prospectus supplements were very similar to each other.

Regulation AB required sellers of RMBS to give a “description of the solicitation, credit-granting or underwriting criteria used to originate or purchase the pool assets [the mortgage loans], including, to the extent known, any changes in such criteria and the extent to which such policies and criteria are or could be overridden.” 17 C.F.R. § 229.1111(a)(3).<sup>7</sup> To satisfy this provision, prospectus supplements identified the lenders that made the mortgage loans and stated that those lenders made the loans in compliance with their internal guidelines. Such statements are material to investors because the credit quality of mortgage loans—and therefore the safety of an RMBS that they back—depends on whether the lenders followed their own guidelines in making the loans.

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<sup>7</sup> The SEC released Regulation AB on December 22, 2004, and compliance became mandatory on January 1, 2006.

The two RMBS on which the trial court granted summary judgment were ARMT 2005-10 6-A-2-1, which was backed by payments on a pool of 646 mortgage loans and for which Seattle Bank paid Credit Suisse \$100,000,000 on September 30, 2005 (CP 2657; SCP 9852), and ARMT 2007-2 2-A-1, which was backed by payments on a pool of 1,413 mortgage loans and for which Seattle Bank paid Credit Suisse \$45,000,000 on May 30, 2007 (CP 2793; SCP 10364). In the prospectus supplements for both securities, Credit Suisse identified the lenders that made the underlying mortgage loans and stated that those lenders complied with their own guidelines in doing so. In the prospectus supplement for ARMT 2005-10 6-A-2-1, Credit Suisse stated:

The mortgage loans either have been originated by the sellers or purchased by the sellers from various banks, savings and loan associations, mortgage bankers (which may or may not be affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein.

CP 2688.

And in the prospectus supplement for ARMT 2007-2 2-A-1, Credit Suisse similarly stated:

The mortgage loans originated or acquired by Countrywide Home Loans, DLJ Mortgage Capital and Credit Suisse Financial Corporation were originated generally in accordance with the underwriting criteria set forth herein under “Countrywide Home Loans Underwriting Standards,” “DLJ Mortgage Capital Underwriting Standards” and “Credit Suisse Financial Corporation Underwriting Standards,” respectively. The other mortgage loans were originated generally in accordance with the underwriting criteria described herein.

CP 2817.

As shown in Appendix A, Credit Suisse made similar statements in 22 other prospectus supplements that it filed for transactions in its “ARMT” series before it sold ARMT 2007-2 2-A-1 to Seattle Bank on May 30, 2007.

Regulation AB also required offering documents for RMBS to disclose the ratio of the amount of the mortgage loans to the value of the properties that secure those loans (the so-called loan-to-value ratio), which tells investors how much equity borrowers have in their homes. 17 C.F.R. § 229.1111(b)(7)(iii). Regulation AB required offering documents to disclose not just those ratios, but also “the methodology used in determining or calculating” them. 17 C.F.R. § 1111(b). An appraisal of the value of a mortgaged property is an important part of the methodology of

determining the loan-to-value ratio; indeed, it provides the denominator in that ratio.<sup>8</sup> In its prospectus supplements for both ARMT 2005-10 6-A-2-1 and ARMT 2007-2 2-A-1, Credit Suisse stated that the appraisals of the mortgaged properties were made in compliance with the Uniform Standards of Professional Appraisal Practice, the national standards of the appraisal profession. CP 2689, 2818. As shown in Appendix A, Credit Suisse made similar statements in 22 other prospectus supplements that it filed for ARMT transactions before it sold ARMT 2007-2 2-A-1 to Seattle Bank on May 30, 2007. Such statements are material to investors in RMBS because they assure investors that the denominators in loan-to-value ratios, a critical factor in the credit quality of mortgage loans, were reached in accordance with professional standards.

**B. SEATTLE BANK'S ACTION AGAINST CREDIT SUISSE UNDER THE WSSA**

Seattle Bank sued Credit Suisse under the WSSA, which provides in RCW 21.20.010(2) that “[i]t is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly: ... [t]o make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light

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<sup>8</sup> If a property is being purchased (rather than a mortgage loan being refinanced), the purchase price will be the denominator if it is lower than the appraised value.

of the circumstances under which they are made, not misleading.” Credit Suisse admits that it offered each security for sale “by means of a publicly filed prospectus supplement” (CP 2636), so it is indisputable that Credit Suisse made statements in the prospectus supplements for ARMT 2005-10 6-A-2-1 and ARMT 2007-2 2-A-1 “in connection with the offer [or] sale” of those securities. Seattle Bank alleged that many mortgage loans that backed the two RMBS did not comply with the guidelines of the lenders that made the loans and that many appraisals that determined the loan-to-value ratios did not comply with the Uniform Standards. CP 21–22, 26–29, 35–51, 67–69, 79–85. Thus, if any of Credit Suisse’s statements about either of those securities was untrue or misleading—which Credit Suisse did not dispute for purposes of its motion for summary judgment on ARMT 2005-10 6-A-2-1 and ARMT 2007-2 2-A-1—then Credit Suisse violated the plain language of RCW 21.20.010(2).

#### IV. ARGUMENT AND AUTHORITY

The earlier panels of the Court in *Guarino* and *Stewart* misinterpreted the WSSA for at least four reasons.<sup>9</sup>

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<sup>9</sup> The trial court held that a claim under RCW 21.20.010(2) requires proof of reliance. CP 2467, 3311–3315; SCP 10460–10464. Like all questions of law, a trial court’s interpretation of a statute is reviewed *de novo*. *State v. Engel*, 166 Wn.2d 572, 576 (2009); *Hartson P’ship v. Goodwin*, 99 Wn. App. 227, 231 (2000).

**A. IN THE WSSA, THE LEGISLATURE INTENDED TO ELIMINATE, NOT TO IMPOSE, REQUIREMENTS TO PROVE ELEMENTS OF COMMON-LAW FRAUD LIKE RELIANCE.**

**(a)**

When the Legislature enacted the WSSA in 1959, there had already been for a quarter-century two separate and distinct remedies for making an untrue or misleading statement of a material fact in connection with the sale of a security. One, grounded in the federal Securities Act of 1933, was a strict-liability remedy. The plaintiff was required to prove only that the defendant made an untrue or misleading statement in connection with the sale of a security, but not that it relied on that statement in deciding to buy the security. The other remedy, grounded in the federal Securities Exchange Act of 1934, was a fraud-based remedy. The plaintiff had to prove the elements of the tort of fraud, including that it relied on the untrue or misleading statement. In the WSSA, the Legislature intended to preserve the strict-liability remedy and to broaden the fraud-based remedy by omitting the common-law requirements that apply to actions under the 1934 Act. Thus, the decisions in *Guarino* and *Stewart* erred in grafting the reliance requirement from the federal fraud-based statute onto the WSSA, a strict-liability statute.

(b)

The strict-liability remedy was created by section 12(2) of the Securities Act of 1933 (later renumbered section 12(a)(2)). Congress provided that:

Any person who –

...

(2) offers or sells a security ... by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission) and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable ... to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less than the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

Section 12(a)(2) expressly creates a private right of action for the purchaser of a security. Moreover, under section 12(a)(2), liability is strict. The plaintiff must prove only that the defendant sold the security by means of one or more untrue or misleading statements of material fact. A plaintiff need not prove any element of fraud other than falsity. In

particular, the courts are unanimous and always have been that under section 12(a)(2), a plaintiff need not prove that it relied on the untrue or misleading statement. The Supreme Court of the United States and the federal Courts of Appeals for the First, Second, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits have all so held.<sup>10</sup>

The fraud-based remedy was created by section 10(b) of the Securities Exchange Act of 1934. It states:

It shall be unlawful for any person, directly or indirectly, ...

(b) To use or employ, in connection with the purchase or sale of any security ... any manipulative or deceptive device or contrivance in contravention of [SEC] rules.

In 1942, the SEC adopted its Rule 10b-5 under section 10(b). Rule 10b-5 states:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

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<sup>10</sup> *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561 (1995); *Shaw v. Digital Equip. Corp.*, 82 F.3d 1194 (1st Cir. 1996); *Tongue v. Sanofi*, 816 F.3d 199 (2d Cir. 2016); *Caviness v. Derand Res. Corp.*, 983 F.2d 1295 (4th Cir. 1993); *Rosenzweig v. Azurix Corp.*, 332 F.3d 854 (5th Cir. 2003); *Wright v. Nat'l Warranty Co., L.P.*, 953 F.2d 256 (6th Cir. 1992); *In re NationsMart Corp. Secs. Litig.*, 130 F.3d 309 (8th Cir. 1997); *Miller v. Thane Int'l, Inc.*, 519 F.3d 879 (9th Cir. 2007); *United Food and Commercial Workers Union Local 880 Pension Fund v. Chesapeake Energy Corp.*, 774 F.3d 1229 (10th Cir. 2014); *Currie v. Cayman Res. Corp.*, 835 F.2d 780 (11th Cir. 1988).

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

Unlike section 12(a)(2) of the 1933 Act, section 10(b) of the 1934 Act does not expressly create a private right of action. Starting in 1946, however, courts began to imply a private right of action under section 10(b) and Rule 10b-5.<sup>11</sup> Liability under section 10(b) and Rule 10b-5 is not strict. In *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 197, 212–13 (1976), the Supreme Court held that, because section 10(b) uses the terms “manipulative” and “deceptive,” that section (and Rule 10b-5, which cannot be broader than the section that authorized the SEC to promulgate it) proscribes only “knowing or intentional misconduct.” In succeeding years, the Supreme Court “has drawn on the common-law action of deceit to identify six elements a private plaintiff must prove” in an action under

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<sup>11</sup> See *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 730 (1975).

section 10(b) or Rule 10b-5.<sup>12</sup> “Reliance upon [the] ... misrepresentation or omission” is one of those elements.

(c)

In 1956, the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Securities Act (which, with some changes, the Legislature adopted as the WSSA in 1959). The Act maintained the two separate and independent remedies—one strict-liability, the other fraud-based—for making an untrue or misleading statement of a material fact in connection with the sale of a security. Section 410(a) of the Uniform Act is the counterpart of section 12(a)(2) of the 1933 Act and provides the strict-liability remedy.<sup>13</sup> Section 101 is the

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<sup>12</sup> *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, n. 1 (2014). Those elements are: “(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.” *Id.* (internal citations omitted).

<sup>13</sup> Section 410(a) states:

Any person who ... (2) offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to the person buying the security from him, who may sue either at law or

counterpart of section 10(b) of the 1934 Act and Rule 10b-5 and provides the fraud-based remedy.<sup>14</sup>

(d)

The Legislature treated liability for untrue or misleading statements in two sections of the WSSA:

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in equity to recover the consideration paid for the security, together with interest at (x) percent per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security and any income received on it, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at (x) percent per year from the date of disposition.

<sup>14</sup> Section 101 states:

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly

(1) to employ any device, scheme, or artifice to defraud,

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

**RCW 21.20.010 Unlawful offers, sales, purchases.**

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

(1) To employ any device, scheme, or artifice to defraud;

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

**RCW 21.20.430 Civil liabilities – ....**

(1) Any person, who offers or sells a security in violation of any provisions of RCW 21.20.010 ... is liable to the person buying the security from him or her, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at eight percent per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer owns the security. Damages are the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at eight percent per annum from the date of disposition.

Credit Suisse may argue that, because RCW 21.20.010 is identical to SEC Rule 10b-5, the Legislature intended to provide only the fraud-based remedy for untrue or misleading statements found in the 1934 Act and to omit the strict-liability remedy of the 1933 Act. But that argument is wrong for at least three reasons.

First, the Washington Supreme Court has held repeatedly that these sections of the WSSA are based not only on section 10(b) of the 1934 Act and SEC Rule 10b-5, but also on section 12(a)(2) of the 1933 Act and the Uniform Securities Act, both of which provide for strict liability.<sup>15</sup>

Second, the language of RCW 21.20.010(2) (and of Rule 10b-5(b) and section 101(2) of the Uniform Securities Act) is identical to the language of section 12(a)(2) of the 1933 Act.

Section 12(a)(2) of the 1933 Act	RCW 21.20.010(2); Rule 10b-5(b) <sup>16</sup> ; Section 101(2) of the Uniform Securities Act
Any person who – ... offers or sells a security ... by means of a prospectus or oral communication, which includes	It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly ...

<sup>15</sup> See *Kinney v. Cook*, 159 Wn.2d 837, 843 (2007) (1934 Act); *Go2Net*, 158 Wn.2d at 257 (Uniform Securities Act); *Cellular Eng'g, Ltd. v. O'Neill*, 118 Wn.2d 16, 23–24 (1991) (same); *Hoffer*, 113 Wn.2d at 151–52 (section 12(a)(2) of the 1933 Act); *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 125 (1987) (section 12(a)(2) of the 1933 Act and section 410 of the Uniform Securities Act); *Clausing v. DeHart*, 83 Wn.2d 70, 72 (1973) (1934 Act).

<sup>16</sup> The quoted text in the chart above is from RCW 21.20.010(2) and Section 101(2) of the Uniform Securities Act. The very minor differences between SEC Rule 10b-5(b) and the language quoted in the chart are immaterial to this motion.

<p>an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading ... shall be liable ... to the person purchasing such security from him ....</p>	<p>[t]o make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.</p>
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The Legislature used this language only once not because it intended to provide only a fraud-based remedy, but rather because it intended to make clear that there was a private right of action for the violation of all three subparts of RCW 21.20.010, not just RCW 21.20.010(2), which is the counterpart of section 12(a)(2). As the Legislature provided in RCW 21.20.430(1): “Any person, who offers or sells a security in violation of *any* provisions of RCW 21.20.010 ... is liable to the person buying the security from him or her ...” (emphasis added). Thus, it was not necessary to use the language quoted above in two separate sections, one that created a private right of action and a second that did not.

Third and most important, the Legislature actually did the opposite of omitting the strict-liability remedy in favor of a fraud-based remedy. It turned the fraud-based remedy of section 10(b) and Rule 10b-5 into a strict-liability remedy by omitting requirements based on the common law of fraud, such as scienter, reliance, causation, and loss. In *Ludwig v.*

*Mutual Real Estate Investors*, 18 Wn. App. 33, 40–41 (1977), Division Two held on the strength of the United States Supreme Court’s decision in *Ernst & Ernst v. Hochfelder* that the WSSA prohibits common-law fraud and thus that all elements of common-law fraud, including scienter, are also elements of claims under the WSSA. The Washington Supreme Court overruled *Ludwig* in *Kittilson v. Ford*, 93 Wn.2d 223, 225–27 (1980). The rationale of *Hochfelder*, it noted, was that the terms “manipulative” and “deceptive” in section 10(b) of the 1934 Act limit the scope of SEC Rule 10b-5 thereunder to “knowing or intentional misconduct.” *Hochfelder*, 425 U.S. at 197. But the WSSA contains no counterpart to section 10(b), so the scope of RCW 21.20.010 is not so limited.

We believe the holding in *Ernst & Ernst v. Hochfelder*, supra, inapplicable to our Securities Act. First, the “manipulative or deceptive” language of section 10(b) of the 1934 act is not included in the Washington act. Secondly, in contrast to the federal scheme, the language of Rule 10b-5 is not derivative but is the statute in Washington.

*Kittilson*, 93 Wn.2d at 226.

Since the decision in *Kittilson*, the Washington Supreme Court has held that various other elements of common-law fraud, such as loss and causation, do not apply in actions under any section of the WSSA. Ironically, one of these decisions is *Hines v. Data Line Systems*, on which

the earlier panels of this Court relied in their decisions in *Guarino* and *Stewart*. What the Supreme Court actually decided in *Hines* was that the common-law requirements of loss and causation do not apply to actions under the WSSA. 114 Wn.2d at 134–35. Despite the brief dictum on which the earlier panels in *Guarino* and *Stewart* relied, it makes little sense to think that *Hines* embraced the common-law requirement to prove reliance in the same decision in which it rejected the common-law requirements of loss and causation. In an opinion after the 2004 decisions in *Guarino* and *Stewart*, the Supreme Court again rejected the imposition of common-law requirements on actions under the WSSA. In *Go2Net*, it wrote that “[t]he Act thus requires only proof of the seller’s material, preclosing misrepresentation or omission.” 158 Wn.2d at 253. It said nothing about any requirement to prove reliance. On the contrary, the Supreme Court held that the common-law elements of intent to defraud, loss, and causation have no place in actions under the WSSA. Rather, it held, the Legislature intended “to hold violators strictly accountable.” *Id.* at 254 (internal quotation marks omitted).

**B. THE VAST MAJORITY OF STATES REJECT ANY REQUIREMENT TO PROVE RELIANCE IN ACTIONS UNDER THEIR SECURITIES LAWS. THE DECISIONS IN *GUARINO* AND *STEWART* CONTRADICT THE SETTLED LAW THAT THE WSSA SHOULD BE INTERPRETED CONSISTENTLY WITH THE LAWS OF SISTER STATES.**

At least 21 states have rejected a reliance requirement under their counterparts to the WSSA; only two states impose that requirement. The supreme courts of California,<sup>17</sup> Connecticut,<sup>18</sup> Massachusetts,<sup>19</sup> Nebraska,<sup>20</sup> New Jersey,<sup>21</sup> South Carolina,<sup>22</sup> Tennessee,<sup>23</sup> Utah,<sup>24</sup> and Wisconsin<sup>25</sup> all have rejected any requirement to prove reliance in actions under the counterpart statutes of the WSSA in their states. Intermediate state appellate courts and federal courts have decided the same under the

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<sup>17</sup> *Diamond Multimedia Sys., Inc. v. Superior Ct. of Santa Clara Cnty.*, 968 P.2d 539 (Cal. 1999).

<sup>18</sup> *Conn. Nat'l Bank v. Giacomi*, 699 A.2d 101 (Conn. 1997).

<sup>19</sup> *Marram v. Kobrick Offshore Fund, Ltd.*, 809 N.E.2d 1017 (Mass. 2004).

<sup>20</sup> *DMK Biodiesel, LLC v. McCoy*, 859 N.W.2d 867 (Neb. 2015).

<sup>21</sup> *Kaufman v. i-Stat Corp.*, 754 A.2d 1188 (N.J. 2000).

<sup>22</sup> *Bradley v. Hullander*, 249 S.E.2d 486 (S.C. 1978).

<sup>23</sup> *Green v. Green*, 293 S.W.3d 493 (Tenn. 2009). Interestingly, the Tennessee Supreme Court criticized the decision of a lower court that had relied on *Guarino* to hold that there is a reliance requirement. *Green v. Green*, No. M2006-02119-COA-R3-CV, 2008 WL 624860 (Tenn. Ct. App. Mar. 5, 2008), *aff'd*, 293 S.W.3d 493 (Tenn. 2009).

<sup>24</sup> *Gohler v. Wood*, 919 P.2d 561 (Utah 1996).

<sup>25</sup> *Esser Distrib. Co., Inc. v. Steidl*, 437 N.W.2d 884 (Wis. 1989).

laws of Arizona,<sup>26</sup> Colorado,<sup>27</sup> Illinois,<sup>28</sup> Indiana,<sup>29</sup> Kentucky,<sup>30</sup>  
Missouri,<sup>31</sup> Ohio,<sup>32</sup> Oklahoma,<sup>33</sup> Oregon,<sup>34</sup> Pennsylvania,<sup>35</sup> Texas,<sup>36</sup> and

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<sup>26</sup> *Rose v. Dobras*, 128 Ariz. 209 (1981); *Facciola v. Greenberg Traurig LLP*, 281 F.R.D. 363 (D. Ariz. 2012).

<sup>27</sup> *Fed. Deposit Ins. Corp. as Receiver for United Western Bank, F.S.B. v. Countrywide Fin. Corp.*, Nos. 11–ML–02265–MRP (MANx), 11–CV–10400–MRP (MANx), 2013 WL 49727 (C.D. Cal. Jan. 3, 2013). *Rosenthal v. Dean Witter Reynolds, Inc.*, 908 P.2d 1095 (Colo. 1995), which was relied on in *Huffman v. Westmoreland Coal Co.*, 205 P.3d 501 (Colo. Ct. App. 2009), is not to the contrary for the reasons explained in *FDIC v. Countrywide Fin. Corp.*

<sup>28</sup> *Nat'l Credit Union Admin. Bd. v. RBS Secs. Inc.*, 112 F. Supp. 3d 61 (S.D.N.Y. 2015); *JJR, LLC v. Turner*, No. 1–14–3051, 2016 WL 3569867 (Ill. App. Ct. June 30, 2016).

<sup>29</sup> *Arnold v. Dirrim*, 398 N.E.2d 426 (Ind. Ct. App. 1979); *Wisconics Eng'g, Inc. v. Fisher*, 466 N.E.2d 745 (Ind. Ct. App. 1984); *Landeen v. PhoneBILLit, Inc.*, 519 F. Supp. 2d 844 (S.D. Ind. 2007); *Supernova Sys., Inc. v. Great American Broadband, Inc.*, Cause No. 1:10–CV–319, 2012 WL 860408 (N.D. Ind. Mar. 12, 2012).

<sup>30</sup> *Carothers v. Rice*, 633 F.2d 7 (6th Cir. 1980).

<sup>31</sup> *Alton Box Board Co. v. Goldman, Sachs & Co.*, 560 F.2d 916 (8th Cir. 1977).

<sup>32</sup> *Murphy v. Stargate Defense Sys. Corp.*, 498 F.3d 386 (6th Cir. 2007); *Stuckey v. Online Res. Corp.*, 909 F. Supp. 2d 912 (S.D. Ohio 2012).

<sup>33</sup> *Midamerica Fed. Sav. & Loan Ass'n v. Shearson/American Express Inc.*, 886 F.2d 1249 (10th Cir. 1989).

<sup>34</sup> *Everts v. Holtmann*, 667 P.2d 1028 (Or. Ct. App. 1983).

<sup>35</sup> *Kronenberg v. Katz*, 872 A.2d 568 (Del. Ch. 2004); *Gilliland v. Hergert*, No. 2:05-cv-01059, 2008 WL 2682587 (W.D. Pa. July 1, 2008); *Fulton Fin. Advisors v. NatCity Invs., Inc.*, Civil Action No. 09–4855, 2013 WL 5635977 (E.D. Pa. Oct. 15, 2013).

<sup>36</sup> *Wood v. Combustion Eng'g, Inc.*, 643 F.2d 339 (5th Cir. 1981); *Granader v. McBee*, 23 F.3d 120 (5th Cir. 1994); *Weatherly v. Deloitte & Touche*, 905 S.W.2d 642 (Tex. Ct. App. 1995), *abrogated on other grounds by Tracker Marine, L.P. v. Ogle*, 108 S.W.3d 349 (Tex. Ct. App. 2003); *Hendricks v. Thornton*, 973 S.W.2d 348 (Tex. Ct. App. 1998); *Geodyne Energy Income Prod. P'ship I-E v. The Newton Corp.*, 97 S.W.3d 779 (Tex. Ct. App. 2003), *rev'd in part on other grounds*, 161 S.W.3d 482 (Tex. 2005).

Virginia.<sup>37</sup> Other than Washington (as its law was interpreted by the earlier panels in *Guarino* and *Stewart*), only Georgia<sup>38</sup> and North Carolina<sup>39</sup> law require a plaintiff to prove reliance, and those interpretations were reached not by the supreme courts of those states but by an intermediate appellate court and federal district courts.

RCW 21.20.900 provides that “[t]his chapter [the WSSA] shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this chapter with the related federal regulation.” The Washington Supreme Court has often done just that. *Kinney*, 159 Wn.2d at 843; *Cellular Engineering*, 118 Wn.2d at 23–24; *Kittilson*, 93 Wn.2d at 227. By putting Washington in the tiny minority of states that imposes a reliance requirement, the decisions in *Guarino* and *Stewart* did the opposite.

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<sup>37</sup> *Dunn v. Borta*, 369 F.3d 421 (4th Cir. 2004); *Kin-Sing Au. M.D. v. ADSI, Inc.*, 74 Va. Cir. 219 (2007).

<sup>38</sup> *Patel v. Patel*, 761 F. Supp. 2d 1375 (N.D. Ga. 2011); *Keogler v. Krasnoff*, 601 S.E.2d 788 (Ga. Ct. App. 2004); *GCA Strategic Inv. Fund, Ltd. v. Joseph Charles & Assocs., Inc.*, 537 S.E.2d 677 (Ga. Ct. App. 2000).

<sup>39</sup> *Jadoff v. Gleason*, 140 F.R.D. 330 (M.D.N.C. 1991).

**C. THE DECISION OF THE TRIAL COURT VIOLATES THE LONG-STANDING JURISPRUDENCE OF THE WASHINGTON SUPREME COURT AND THIS COURT THAT THE WSSA IS TO BE INTERPRETED TO PROTECT INVESTORS.**

The most fundamental principle in the jurisprudence of the WSSA is that the Act is to be interpreted to protect investors. *See FutureSelect Portfolio Management, Inc. v. Tremont Group Holdings, Inc.*, 180 Wn.2d 954, 970–71 (2014) (collecting authorities). By imposing a reliance requirement that is nowhere to be found in the WSSA itself, *Guarino* and *Stewart* do not protect investors, but rather burden them with a requirement that the Legislature intended not to impose.

**D. THE STATEMENT IN *HINES V. DATA LINE SYSTEMS* WAS DICTUM, WHICH THE PREVIOUS PANELS OF THIS COURT WERE NOT REQUIRED TO FOLLOW AND SHOULD NOT HAVE FOLLOWED.**

The decisions of the previous panels of this Court in *Guarino* and *Stewart* rest entirely on the following sentence in the opinion of the Washington Supreme Court in *Hines*: “The investors need only show that the misrepresentations were material and that they relied on the misrepresentations in connection with the sale of the securities.” 114 Wn.2d at 134. This statement was dictum only. The quoted sentence was neither necessary to decide the case, nor relevant to the issues before the Supreme Court. “Statements in a case that do not relate to an issue before

the court and are unnecessary to decide the case constitute obiter dictum, and need not be followed.” *In re Domingo*, 155 Wn.2d 356, 366 (2005) (internal citation omitted). Indeed, as was argued above, what the Supreme Court actually decided in *Hines* was inconsistent with any requirement to prove reliance in an action under the WSSA.

## V. CONCLUSION

For the reasons argued above, this Court should decline to follow the decisions of the earlier panels in *Guarino* and *Stewart*, restore Washington law to the mainstream, and reverse the judgment of the court below.

Dated: January 12, 2017.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

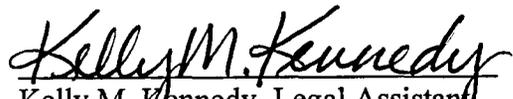
The undersigned hereby certifies that on this date, I caused a copy of the foregoing Appellant's Opening Brief to be served *via email and U.S. Mail* upon the attorneys of record listed below:

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I hereby certify, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED: January 12, 2017 at Seattle, Washington.

  
Kelly M. Kennedy, Legal Assistant

## APPENDIX A

\*

### **Adjustable Rate Mortgage Trust 2004-1:**

The mortgage loans either have been originated by a seller or purchased by a seller from various banks, savings and loan associations, mortgage bankers (which may or may not be affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4023)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4025)

*Pages describing underwriting guidelines: CP 4022-4025*

### **Adjustable Rate Mortgage Trust 2004-2:**

The mortgage loans either have been originated by a seller or purchased by a seller from various banks, savings and loan associations, mortgage bankers (which may or may not be affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4028)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4029)

*Pages describing underwriting guidelines: CP 4028-4030*

### **Adjustable Rate Mortgage Trust 2004-3:**

The mortgage loans either have been originated by a seller or purchased by a seller from various banks, savings and loan associations, mortgage bankers (which may or may not be affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4034)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4035)

*Pages describing underwriting guidelines: CP 4033-4036*

#### **Adjustable Rate Mortgage Trust 2004-4:**

The mortgage loans either have been originated by a seller or purchased by a seller from various banks, savings and loan associations, mortgage bankers (which may or may not be affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4040)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4041)

*Pages describing underwriting guidelines: CP 4039-4042*

#### **Adjustable Rate Mortgage Trust 2004-5:**

The mortgage loans either have been originated by the seller or purchased by the seller from various banks, savings and loan associations, mortgage bankers (which may or may not be affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4046)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4047)

*Pages describing underwriting guidelines: CP 4045-4049*

#### **Adjustable Rate Mortgage Trust 2005-1:**

The mortgage loans either have been originated by the seller or purchased by the seller from various banks, savings and loan associations, mortgage bankers (which may or may not be affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4052)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4054)

*Pages describing underwriting guidelines: CP 4052-4055*

#### **Adjustable Rate Mortgage Trust 2005-2:**

The mortgage loans either have been originated by the seller or purchased by the seller from various banks, savings and loan associations, mortgage bankers (which may or may not be

affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4058-4059)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4060)

*Pages describing underwriting guidelines: CP 4058-4061*

**Adjustable Rate Mortgage Trust 2005-3:**

The mortgage loans either have been originated by the seller or purchased by the seller from various banks, savings and loan associations, mortgage bankers (which may or may not be affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4065)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4066)

*Pages describing underwriting guidelines: CP 4064-4067*

**Adjustable Rate Mortgage Trust 2005-4:**

The mortgage loans either have been originated by the seller or purchased by the seller from various banks, savings and loan associations, mortgage bankers (which may or may not be affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4071)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4073)

*Pages describing underwriting guidelines: CP 4070-4074*

**Adjustable Rate Mortgage Trust 2005-5:**

The mortgage loans either have been originated by the seller or purchased by the seller from various banks, savings and loan associations, mortgage bankers (which may or may not be affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4077)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4078)

*Pages describing underwriting guidelines: CP 4077-4079*

**Adjustable Rate Mortgage Trust 2005-6A:**

The mortgage loans either have been originated by the seller or purchased by the seller from various banks, savings and loan associations, mortgage bankers (which may or may not be affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4082-4083)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4084)

*Pages describing underwriting guidelines: CP 4082-4087*

**Adjustable Rate Mortgage Trust 2005-7:**

The mortgage loans either have been originated by the seller or purchased by the seller from various banks, savings and loan associations, mortgage bankers (which may or may not be affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4090)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4092)

*Pages describing underwriting guidelines: CP 4090-4093*

**Adjustable Rate Mortgage Trust 2005-8:**

The mortgage loans either have been originated by the seller or purchased by the seller from various banks, savings and loan associations, mortgage bankers (which may or may not be affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4096)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4097)

*Pages describing underwriting guidelines: CP 4096-4099*

### **Adjustable Rate Mortgage Trust 2005-9:**

The mortgage loans either have been originated by the seller or purchased by the seller from various banks, savings and loan associations, mortgage bankers (which may or may not be affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4103)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4104)

*Pages describing underwriting guidelines: CP 4102-4105*

### **Adjustable Rate Mortgage Trust 2005-10:**

The mortgage loans either have been originated by the sellers or purchased by the sellers from various banks, savings and loan associations, mortgage bankers (which may or may not be affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4109)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4110-4111)

*Pages describing underwriting guidelines: CP 4108-4111*

### **Adjustable Rate Mortgage Trust 2005-11:**

The mortgage loans either have been originated by the seller or purchased by the seller from various banks, savings and loan associations, mortgage bankers (which may or may not be affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4115)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4116)

*Pages describing underwriting guidelines: CP 4114-4117*

### **Adjustable Rate Mortgage Trust 2005-12:**

The mortgage loans either have been originated by the seller or purchased by the seller from various banks, savings and loan associations, mortgage bankers (which may or may not be

affiliated with that seller) and other mortgage loan originators and purchasers of mortgage loans in the secondary market, and were originated generally in accordance with the underwriting criteria described herein. (CP 4120)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4121)

*Pages describing underwriting guidelines: CP 4120-4123*

**Adjustable Rate Mortgage Trust 2006-1:**

The mortgage loans originated or acquired by Wells Fargo Bank were originated generally in accordance with the underwriting criteria set forth herein under “Wells Fargo Bank, N.A.--Mortgage Loan Underwriting.” The other mortgage loans were originated generally in accordance with the underwriting criteria described herein. (CP 4127)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4128)

*Pages describing underwriting guidelines: CP 4126-4137*

**Adjustable Rate Mortgage Trust 2006-2:**

The mortgage loans originated or acquired by Wells Fargo Bank, N.A., Countrywide Home Loans, Inc., DLJ Mortgage Capital and Credit Suisse Financial Corporation were originated generally in accordance with the underwriting criteria set forth herein under “Wells Fargo Bank, N.A.—Mortgage Loan Underwriting,” “Countrywide Home Loans Underwriting Standards,” “DLJ Mortgage Capital Underwriting Standards” and “Credit Suisse Financial Corporation Underwriting Standards,” respectively. The other mortgage loans were originated generally in accordance with the underwriting criteria described herein. (CP 4141)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4143)

*Pages describing underwriting guidelines: CP 4140-4174*

**Adjustable Rate Mortgage Trust 2006-2A:**

The mortgage loans originated or acquired by Wells Fargo Bank, N.A., Countrywide Home Loans, Inc., DLJ Mortgage Capital and Credit Suisse Financial Corporation were originated generally in accordance with the underwriting criteria set forth herein under “Wells Fargo Bank, N.A.—Mortgage Loan Underwriting,” “Countrywide Home Loans Underwriting Standards,” “DLJ Mortgage Capital Underwriting Standards” and “Credit Suisse Financial Corporation

Underwriting Standards,” respectively. The other mortgage loans were originated generally in accordance with the underwriting criteria described herein. (CP 4177-4178)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4179)

*Pages describing underwriting guidelines: CP 4177-4225*

**Adjustable Rate Mortgage Trust 2006-3:**

The mortgage loans originated or acquired by Countrywide Home Loans, Inc., DLJ Mortgage Capital and Credit Suisse Financial Corporation were originated generally in accordance with the underwriting criteria set forth herein under “Countrywide Home Loans Underwriting Standards,” “DLJ Mortgage Capital Underwriting Standards” and “Credit Suisse Financial Corporation Underwriting Standards,” respectively. The other mortgage loans were originated generally in accordance with the underwriting criteria described herein. (CP 4228)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4230)

*Pages describing underwriting guidelines: CP 4228-4244*

**Adjustable Rate Mortgage Trust 2007-1:**

The mortgage loans originated or acquired by Countrywide Home Loans, DLJ Mortgage Capital and Credit Suisse Financial Corporation were originated generally in accordance with the underwriting criteria set forth herein under “Countrywide Home Loans Underwriting Standards,” “DLJ Mortgage Capital Underwriting Standards” and “Credit Suisse Financial Corporation Underwriting Standards,” respectively. The other mortgage loans were originated generally in accordance with the underwriting criteria described herein. (CP 4247)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4248)

*Pages describing underwriting guidelines: CP 4247-4261*

**Adjustable Rate Mortgage Trust 2007-2:**

The mortgage loans originated or acquired by Countrywide Home Loans, DLJ Mortgage Capital and Credit Suisse Financial Corporation were originated generally in accordance with the underwriting criteria set forth herein under “Countrywide Home Loans Underwriting Standards,” “DLJ Mortgage Capital Underwriting Standards” and “Credit Suisse Financial Corporation Underwriting Standards,” respectively. The other mortgage loans were originated generally in accordance with the underwriting criteria described herein. (CP 4267)

All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. (CP 4268)

*Pages describing underwriting guidelines: CP 4264-4275*