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OCT 07 2008

PLAINTIFFS: CHERYL STRONG and WILLIAM BERMAN, on behalf of themselves and all others similarly situated
DEFENDANTS: WACHOVIA CAPITAL MARKETS, LLC and WACHOVIA SECURITIES, LLC

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER): MILBERG LLP, One Pennsylvania Plaza, New York, NY 10119-0165 (212) 594-5300
ATTORNEYS (IF KNOWN):

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE) (DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Section 12(a)2 of the Securities Act of 1933, 15 U.S.C. § 771(a)2

Has this or a similar case been previously filed in SDNY at any time? No [x] Yes [ ] Judge Previously Assigned

If yes, was this case Vol. [ ] Invol. [ ] Dismissed. No [ ] Yes [ ] If yes, give date & Case No.

(PLACE AN [x] IN ONE BOX ONLY) NATURE OF SUIT

Table with columns: TORTS, ACTIONS UNDER STATUTES, CONTRACT, PERSONAL INJURY, FORFEITURE/PENALTY, BANKRUPTCY, OTHER STATUTES, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FEDERAL TAX SUITS. Includes checkboxes for various legal categories.

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Check if demanded in complaint:

[x] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ OTHER JUDGE Gerard E. Lynch DOCKET NUMBER 08-CV-7831

Check YES only if demanded in complaint JURY DEMAND: [x] YES [ ] NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CHERYL STRONG and WILLIAM BERMAN,  
on behalf of themselves and all others similarly  
situated,

Plaintiffs,

vs.

WACHOVIA CAPITAL MARKETS, LLC, and  
WACHOVIA SECURITIES, LLC

Defendants.

**08 CIV 8551**  
Civ. No.

**COMPLAINT**

FILED  
U.S. DISTRICT COURT  
2008 OCT -7 PM 2:58  
S.D. OF N.Y.

Plaintiffs, Cheryl Strong and William Berman, make the following allegations for their complaint. Paragraph 7 is based upon Plaintiffs' personal knowledge. Other allegations are based upon information and belief and the investigation by Plaintiffs' counsel, which included, among other things, review of public documents, filing, and statements by Wachovia Capital Markets, LLC and/or Wachovia Securities, LLC ("Wachovia" or "Defendants") or its representatives; public information concerning Federal National Mortgage Association ("Fannie Mae" or "FNMA"); and media reports. Plaintiffs believe that upon further discovery, substantial additional evidentiary support will be uncovered which will support the allegations set forth herein.

**SUMMARY**

1. Plaintiffs bring this class action on behalf of all persons who were offered or sold shares of Fannie Mae 8.25% Non-Cumulative Preferred stock Series T (the "Series T Preferred"), by Defendants as part of the "Offering" made pursuant to an Offering Circular and other offering materials dated May 13, 2008. Defendants underwrote the Offering pursuant to a firm commitment underwriting agreement Wachovia had with Fannie Mae. A total of some 89 million shares of the Series T Preferred were sold in the Offering at a price of \$25.00

share. Wachovia was underwriter for 14,176,000 of those shares. Wachovia Securities, LLC was a selling broker-dealer. The Series T Preferred shares trade at approximately \$2.00 per share as of October 6, 2008.

2. The Offering Circular disseminated in connection with the Offering failed to warn investors that Fannie Mae would likely be required to raise an additional \$46 billion in capital to remain “adequately capitalized,” as that term is used by the Office of Federal Housing Enterprise Oversight, as a result of new provisions of SFAS 140, an accounting rule that was in the process of amendment by the Financial Accounting Standards Board (“FASB”) at the time of the Offering.

### **JURISDICTION AND VENUE**

3. The claims asserted herein arise under and pursuant to Section 12(a)2 of the Securities Act of 1933, 15 U.S.C. §§77l(a)2.

4. This Court has jurisdiction of this action pursuant to Section 22 of the Securities Act, 15 U.S.C. §77v, and 28 U.S.C. §§1331 and 1337.

5. Venue is proper in this district pursuant to Section 22 of the Securities Act, as many of the acts charged herein occurred in substantial part in this District. Venue is also proper in this district pursuant to 28 U.S.C. §1391 because many of the acts alleged and complained of occurred here.

6. In connection with the acts and conduct alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, *inter alia*, the mails and telephonic communications and the facilities of the NYSE, a national securities exchange.

**PARTIES**

7. Plaintiff Cheryl Strong resides in Arizona. Plaintiff William Berman resides in Texas. Plaintiffs purchased Fannie Mae Series T Preferred Stock, as set forth in the certifications attached hereto and incorporated herein by reference, from Defendants pursuant to the Offering, and were damaged thereby. Plaintiffs bring this action on behalf of a Class of those who purchased or otherwise acquired Fannie Mae Series T Preferred stock from Defendants pursuant to the Offering.

8. Wachovia Capital Markets, LLC has headquarters in Charlotte, North Carolina.

9. Wachovia Securities, LLC has headquarters in St. Louis, Missouri.

10. Wachovia Capital Markets, LLC and Wachovia Securities, LLC are referred to collectively as “Wachovia” or “Defendants” throughout this complaint. Each of the Defendants acted as the agent of the other with regard to the Offering, as further described herein.

**PLAINTIFFS’ CLASS ACTION ALLEGATIONS**

11. Plaintiffs bring this action individually and as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of all persons who purchased or otherwise acquired Fannie Mae Series T Preferred shares from Wachovia in the Offering. Excluded from the Class are Wachovia and its affiliates; any person who signed the Offering documents; and representatives, agents, successors or assigns of any such excluded party.

12. The members of the Class are so numerous that joinder of all members is impracticable. The exact number of Class members is unknown to Plaintiffs but must at least be in the thousands, based on the number of shares underwritten and sold by Wachovia. The names and addresses of the Class members can be ascertained from the books and records of Wachovia and of Fannie Mae or its transfer agent. Notice can be provided to such record owners by a combination of published notice and first-class mail using techniques and a form

of notice similar to those customarily used in class actions arising under the federal securities laws.

13. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Plaintiffs have retained competent counsel highly experienced in class action litigation under the federal securities laws to further ensure such protection, and intend to prosecute this action vigorously.

14. Plaintiffs' claims are typical of the claims of the other members of the Class because Plaintiffs' and Class members' damages arise from the same false and misleading representations and omissions attributable to Defendants. Plaintiffs do not have any interests antagonistic to or in conflict with other members of the Class.

15. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages suffered by individual Class members may be relatively small, the expense and burden of litigation would make it impracticable for the Class members to seek redress individually. Plaintiffs are not aware of any practical difficulty in managing this case as a class action.

16. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- (i) Whether the federal securities laws were violated by Defendants' acts as alleged herein;
- (ii) Whether the Offering Circular omitted or misrepresented material facts; and

(iii) Whether members of the Class suffered damages as a proximate result of Defendants' violations as alleged herein, and the appropriate measure of such damages.

### **SUBSTANTIVE ALLEGATIONS**

#### **Fannie Mae's Business and Operations**

17. Fannie Mae is a government sponsored enterprise created by Congress with the mandate to provide liquidity and stability to the secondary mortgage market and to help make home ownership affordable for low- and middle-income citizens.

18. One aspect of Fannie Mae's operations is the securitization of mortgages, often through "lender swap transactions," in which other mortgage lenders deliver pools of loans to Fannie Mae in exchange for Fannie Mae mortgage-backed securities ("Fannie Mae MBSs").

19. Fannie Mae creates MBSs by pooling mortgage loans it owns and placing them into trusts of which it is the trustee. These trusts are separate from Fannie Mae's assets. In its capacity as trustee, Fannie Mae passes the mortgage payments from the borrowers on to the holders of the MBSs, keeping a portion as compensation for its work. Fannie Mae MBSs include a guarantee that Fannie Mae will make up shortfalls when underlying borrowers default on their loans.

20. As of December 31, 2007, there were over \$2.3 trillion of Fannie Mae MBSs outstanding, of which Fannie Mae still held \$180.2 billion. Neither the MBSs held by Fannie Mae nor the trusts used to create them are reflected on Fannie Mae's balance sheet. Instead, the trusts are accounted for as Qualified Special Purpose Entities ("QSPEs"), which purportedly allowed Fannie Mae to treat them as if they had been sold, despite its obligation to guarantee against shortfalls resulting from borrower defaults.

**Applicable Regulatory and Accounting Rules**

21. Fannie Mae is subject to minimum capital requirements imposed upon it by its regulator, the Office of Federal Housing Enterprise Oversight (“OFHEO”). Fannie Mae’s strategic, business and investment decisions are significantly impacted by those capital requirements. For example, Fannie Mae may sell certain assets or refrain from making certain investments in order to maintain its compliance with the minimum capital requirements.

22. Fannie Mae is also subject to the accounting standards of the Financial Accounting Standards Board (“FASB”), which promulgates Statement of Financial Accounting Standards (“SFAS”) in an effort to provide transparency to investors.

23. In April 2008, FASB voted to change FAS 140, the rule that had purportedly allowed Fannie Mae to use QSPEs to avoid including its liabilities related to MBSs on its balance sheet. Specifically, FASB voted to eliminate the use of QSPEs and to modify another standard. If those changes to FAS 140 become final, they will force Fannie Mae to include its liabilities relating to its MBS-related trusts on its balance sheet, which in turn will cause Fannie Mae to violate OFHEO’s capital requirements. Fannie Mae could then be required by OFHEO to raise as much as \$46 billion in additional capital.

**The Offering**

24. On May 6, 2008, Fannie Mae announced its intention to seek to raise another \$6 billion in new capital by issuing a combination of preferred, convertible, and common stock. According to the announcement, the new capital was to allow Fannie Mae “to maintain a strong balance sheet,” to enhance long-term shareholder value, and to provide stability to the secondary mortgage market.

25. Fannie Mae also stated that OFHEO would reduce Fannie Mae's capital requirements upon successful completion of the offerings, and that the capital surplus requirements would be further reduced if Fannie Mae remained capitalized above a certain point and remained in compliance with regulatory rules.

26. Fannie Mae filed a Form 8-K with the SEC with respect to the offering, which included an exhibit titled "Fannie Mae Capital Raise Roadshow." The exhibit stated that one "Rationale for the Transaction" was to enable Fannie Mae to "maintain a prudent capital cushion in a volatile and challenging market." The statement that the offering proceeds would allow Fannie Mae to "maintain a prudent capital cushion" was materially false and misleading, because under amended FAS 140, Fannie Mae did not have a "prudent capital cushion" to maintain and would not have one even after the completion of the offering.

27. Referring to SFAS 140, the "Capital Raise Roadshow" document also stated that "[i]mplementation and adoption of new accounting should have the effect of reducing market-related impact on capital." That statement was materially false and misleading because the implementation of new accounting standards increased Fannie Mae's need for capital in the event of market deterioration.

28. On May 13, 2008, Fannie Mae and the Series T offering underwriters, including Wachovia, released the Offering Circular for the offering. The Offering Circular stated that as of March 31, 2008, Fannie Mae "exceed[ed] the statutory minimum capital requirement by \$11.3 billion, and exceed[ed] the statutory minimum capital requirement plus the 20% ... capital surplus requirement by \$5.1 billion." The Offering Circular stated that OFHEO would reduce Fannie Mae's capital surplus requirement from 20% to 15% upon successful completion of the capital raising plan, and that OFHEO would reduce the capital surplus

requirement another 5% in September 2008 “based upon [Fannie Mae’s] continued maintenance of excess capital well above OFHEO’s regulatory requirement, and no material adverse change to [Fannie Mae’s] ongoing regulatory compliance.”

29. The Offering Circular referred investors to Note 1 of the Consolidated Financial Statements in Fannie Mae’s 2007 Form 10-K for information concerning “Significant Accounting Policies.” Note 1 stated that Fannie Mae “account[s] for portfolio securitizations in accordance with Statement of Financial Accounting Standards (“SFAS”) No. 140 . . . which requires that we evaluate a transfer of financial assets to determine if the transfer qualifies as a sale.” Note 1 and the Offering Circular did not state that FASB had voted to amend SFAS 140 a month earlier, in a way that would critically affect Fannie Mae’s balance sheet.

30. The “Risks” section of the Offering Circular stated that “OFHEO has directed that we maintain a capital surplus over our statutory minimum capital requirement” and directed investors to the “Regulatory Capital Matters” section of the Offering Circular for further information. The “Regulatory Capital Matters” section reiterated OFHEO requirements regarding capital and stated that “OFHEO has informed us that it . . . will reduce the current OFHEO-directed capital surplus requirement from 20% to 15% upon the successful completion of our capital raising plan” and that “OFHEO also indicated its intention to reduce the capital surplus requirement by an additional 5 percentage points to a 10% surplus requirement in September 2008, based upon our continued maintenance of excess capital well above OFHEO’s regulatory requirement and no material adverse change to our ongoing regulatory compliance.” The “Regulatory Capital Matters” section of the Offering Circular did not state that Fannie Mae would not be in compliance with OFHEO’s capital requirements once SFAS-140 was amended.

31. The Offering Circular and the other offering materials, included the exhibit to the 8-K described above, were materially false and misleading because they failed to disclose that the proposed change to SFAS 140, which the FASB had already voted to approve, could require Fannie Mae to raise substantial additional capital -- as much as \$46 billion -- in order to remain in compliance with OFHEO's regulations.

32. On May 13, 2008, the underwriters, including Wachovia, completed the sale of 89,000,000 shares of Series T Preferred stock at a price of \$25.00 per share in the offering.

33. In the course of the Offering, Wachovia Capital Markets, LLC underwrote 14,176,000 shares of the Series T stock. Wachovia Capital Markets, LLC, acting on its own behalf and that of Wachovia Securities, LLC, solicited the sale of these shares pursuant to the Offering Circular, in order to further its own monetary interests as well as those of Wachovia Securities, LLC. Such solicitation included Wachovia Capital Markets, LLC's participation in the creation of the Offering Circular, as well as its distribution of that document to its customers and to the customers of Wachovia Securities, LLC.

34. Wachovia Securities, LLC, acting on its own behalf and that of Wachovia Capital Markets, LLC, solicited the purchase of, and sold, shares of the Company to Plaintiffs and the Class, in order to further its own monetary interests, as well as those of Wachovia Capital Markets, LLC. Wachovia Securities, LLC's solicitation included the distribution of the Offering Circular to its customers. Wachovia Securities, LLC's sale of shares in the Company included the transfer of title of the shares from itself or from Wachovia Capital Markets, LLC to Plaintiffs and the Class.

35. The sales of shares resulting from Defendants' solicitations benefited each of them in that they each received monetary compensation for the shares they sold.

**The Truth Is Revealed**

36. On July 7, 2008, two Lehman Brothers analysts issued a report stating that FASB's change to SFAS 140 could require Fannie Mae to raise an additional \$46 billion in capital. The market price of Series T Preferred shares declined from the opening price of \$24.04 on July 7 to the closing price on July 8 of \$23.10, and then continued to decline on heavy trading volume, closing on July 15 at \$14.00. The average daily trading volume from July 7 to July 15 was 1,046,000 shares, which was very high by historical standards.

37. The implications of the new provisions of SFAS 140 had further repercussions for Fannie Mae. Its lack of operating capital hindered its ability to fulfill its obligations relating to credit default swap transactions it had entered into, raising the prospect that Fannie Mae would have to issue debt securities to improve its cash position. On July 10, former St. Louis Federal Reserve Board President William Poole stated publicly that Fannie Mae was "technically insolvent."

38. On July 13, Secretary of the Treasury Paulson announced a plan for the Treasury to provide Fannie Mae with funds to allow it to continue its operations. Fannie Mae's stock declined a further \$0.57 from the previous day's close on that news. On July 30, President Bush signed a housing rescue bill including the much-publicized "bailout" of Fannie Mae.

39. On August 8, Fannie Mae issued a press release describing its second quarter results, including a net loss of approximately \$2.3 billion.

40. On Sunday, September 7, 2008, the federal government seized control of Fannie Mae's operations indefinitely. The following day, Series T Preferred shares closed at \$3.00. On September 26, the shares closed at \$2.67.

**NO SAFE HARBOR**

41. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as “forward-looking statements” when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, neither the speaker nor the Defendants held a reasonable ground for belief in such statements.

**FIRST CLAIM****VIOLATION OF SECTION 12(a)2 OF THE SECURITIES ACT**

42. Plaintiffs repeat and reallege the allegations set forth above as if set forth fully herein.

43. This Claim is brought pursuant to Section 12(a)2 of the Securities Act, 15 U.S.C. § 77l(a)(2), on behalf of Plaintiffs and other members of the Class who were offered or sold Fannie Mae Series T Preferred shares from Wachovia and were damaged thereby.

44. As set forth above, the Offering Circular, which is a prospectus within the meaning of Section 12(a)2 of the Securities Act, and which was used by Wachovia to solicit purchases of Fannie Mae Series T Preferred shares, contained false statements of material fact

and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading.

45. Wachovia did not make a reasonable investigation or possess reasonable grounds for a belief that the statements contained in the Offering Documents were true and without omissions of any material facts and were not materially misleading.

46. By virtue of the foregoing, Plaintiffs and other members of the Class who purchased or otherwise acquired the Company's Series T Preferred stock from Defendants are entitled to damages pursuant to Section 12(a)2.

47. This claim is brought within one year after discovery of the false statements and omissions in the Offering Documents, or after such discovery should have been made by the exercise of reasonable diligence, and within three years after the Company's Series T Preferred shares were first bona fide offered to the public.

48. At the times they purchased Fannie Mae Series T Preferred shares, Plaintiffs and other members of the Class did not have knowledge of the facts concerning the false statements and omissions alleged herein and could not have reasonably discovered those facts.

49. Plaintiffs and members of the Class who still hold Fannie Mae Series T Preferred shares hereby tender their shares to Wachovia.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs demand judgment as follows:

(i) declaring this action to be a class action properly maintained pursuant to FRCP Rule 23(a) and (b)(3);

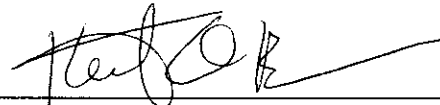
- (ii) awarding rescission to Plaintiffs and other members of the Class who still hold Fannie Mae Series T Preferred shares;
- (iii) awarding damages, including interest thereon, to Plaintiffs and other members of the class who have sold their Fannie Mae Series T Preferred shares;
- (iv) awarding costs and expenses of this litigation, including reasonable attorneys' fees, accountants' fees, experts' fees, and other costs and disbursements; and
- (v) awarding such other and further relief as may be just and proper under the circumstances.

Plaintiffs hereby demand a trial by jury on the issues so triable.

Dated: October 7, 2008

Respectfully submitted,

MILBERG LLP

By:  \_\_\_\_\_

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*Attorneys for Plaintiffs*

**CERTIFICATION OF NAMED PLAINTIFF**

I, Cheryl Strong, certify that:

1. I have reviewed the complaint, authorized its filing, and authorize Milberg LLP to act on my behalf in this matter for all purposes.
2. I did not acquire the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in this private action or any other litigation under the federal securities laws.
3. I am willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. I represent and warrant that I am authorized to execute this Certification on behalf of the purchasers of the subject securities described herein (including, as the case may be, myself, any co-owners, any corporations or other entities, and/or any beneficial owners).
5. I will not accept any payments for serving as a representative party on behalf of the class beyond the purchaser's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.
6. I understand that this is not a claim form, and that my ability to share in any recovery as a member of the class is unaffected by my decision to serve as a representative party or Lead Plaintiff.
7. I have listed below all my purchases of Fannie Mae 8.25% Non-Cumulative Preferred Stock, Series T (NYSE: FNMprt) from Wachovia on the offering on or about May 13, 2008, as well as all sales of FNMprt through the date of this certification:

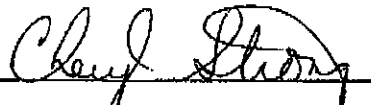
Type of Security (Common stock, Preferred Stock, Calls, Puts or Bonds)	Purchase/Acquisition or Sale/Disposition	Quantity	Trade Date (mm/dd/yy)	Price per Share/Security (\$)
Preferred Stock	Purchase	200	5/13/08	25.00

(\* List additional transactions on separate sheet, if necessary)

8. During the three years prior to the date of this Certification, I have not sought to serve and I have not served as a representative party for a class in an action filed under the federal securities laws.

I declare under penalty of perjury, under the laws of the United States, that the information entered is accurate.

Executed this 30 day of September, 2008



Cheryl Strong

**CERTIFICATION OF NAMED PLAINTIFF**

I, William Berman, certify that:

1. I have reviewed the complaint, authorized its filing, and authorize Milberg LLP to act on my behalf in this matter for all purposes.
2. I did not acquire the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in this private action or any other litigation under the federal securities laws.
3. I am willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. I represent and warrant that I am authorized to execute this Certification on behalf of the purchasers of the subject securities described herein (including, as the case may be, myself, any co-owners, any corporations or other entities, and/or any beneficial owners).
5. I will not accept any payments for serving as a representative party on behalf of the class beyond the purchaser's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.
6. I understand that this is not a claim form, and that my ability to share in any recovery as a member of the class is unaffected by my decision to serve as a representative party or Lead Plaintiff.
7. I have listed below all my purchases of Fannie Mae 8.25% Non-Cumulative Preferred Stock, Series T (NYSE: FNMprt) from Wachovia on the offering on or about May 13, 2008, as well as all sales of FNMprt through the date of this certification:

Type of Security (Common stock, Preferred Stock, Calls, Puts or Bonds)	Purchase/Acquisition or Sale/Disposition	Quantity	Trade Date (mm/dd/yy)	Price per Share/Security (\$)
Preferred Stock	Purchase	300	5/13/08	25.00
Preferred Stock	Purchase	200	5/14/08	25.00

(\* List additional transactions on separate sheet, if necessary)

8. During the three years prior to the date of this Certification, I have not sought to serve and I have not served as a representative party for a class in an action filed under the federal securities laws.

I declare under penalty of perjury, under the laws of the United States, that the information entered is accurate.

Executed this 10-1-08 day of \_\_\_\_\_, 2008

  
 William Berman