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# S&P Considers Settlement with DOJ After Two Years of Legal Fighting

By Omer Selamoglu, LL.M. Candidate 2015 | January 29, 2015

Following the collapse of the subprime mortgage market in 2008, which led to the worst financial crisis since the Great Depression, the government took serious measures against banks and financial institutions that - according to the government - caused the crisis with false and misrepresented risk measurements pertaining to subprime mortgages.

On February 5, 2013, the Department of Justice (DOJ) filed a civil lawsuit against S&P, claiming that its ratings on mortgage-based collateralized debt obligations (CDOs) - a pool of cash generating financial products - between March and October 2007 were manipulated and misrepresented to investors.

As stated by U.S. Attorney General Eric Holder in his press release on the commencement of case, *"To date, we have identified more than $5 billion in such losses, resulting from CDOs that were rated by [Standard & Poor's] between March and October 2007. During this period, nearly every single mortgage-backed CDO that was rated by S&P not only underperformed – but failed."*

In response, S&P described the lawsuit as meritless and unjustified. Moreover, S&P claimed that the lawsuit is retaliation for downgrading the credit note of the USA from AAA to AA+. S&P filed a motion to compel the government to produce documents relevant to this claim, but DOJ has firmly rejected that allegation.

The court granted S&P access to unedited copies of former Treasury Secretary Timothy Cook's notes for his book, in which he allegedly makes unpleasant comments about S&P. And in an earlier ruling, the court enjoined the DOJ in providing government officials' e-mails in which they make statements about the downgrade.

Regardless of those allegations, S&P faces questions about its actions on subprime mortgage ratings. As stated in the report of the Senate Permanent Subcommittee on Investigations: "In the end, Moody's and S&P provided AAA ratings to tens of thousands of high risk RMBS and CDO securities and then, when those products began to incur losses, issued mass downgrades that shocked the financial markets, hammered the value of the mortgage related securities, and helped trigger the financial crisis."

S&P is considering settling with the DOJ for $1 billion. In addition to having the reputation as one of the leading actors of the financial crisis, S&P faces the risk of weathering $5 billion at the end of a trial – not to mention attorney fees amounting to millions of dollars. Further, a state appellate court in San Francisco allowed a $800 million lawsuit by the California Public Employees' Retirement System to proceed against S&P.