Structured Finance & Derivatives Litigation

Quinn Emanuel has the world's preeminent structured finance litigation practice. The structured finance group has more than 150 partners and associates located in New York, Los Angeles, Washington, D.C., and London working on these matters. The firm first became renowned as the global leader in structured finance litigation in the period following the financial crisis during which we successfully recovered over $10 billion dollars for our clients related to losses on residential mortgage-backed securities. Our experience extends far beyond any one type of product, however, and possess deep expertise in litigating disputes arising from investments in many forms of financial instruments, including:

- Collateralized debt obligations
- Collateralized loan obligations
- Credit default swaps
- Commercial mortgage-backed securities
- Structured currency derivatives
- Structured notes
- Equity derivatives
- Barrier options
- Basket options
- Knock in and knock out options

Litigating cases involving these complex financial products requires an in-depth understanding of the transaction documents and market practices. Quinn Emanuel has the expertise and experience to analyze these complex products and go toe-to-toe with the law firms for major financial institutions.

We are one of the few top-tier firms that can be adverse to major financial institutions such as Bank of America, Deutsche Bank, Goldman Sachs, UBS, J.P. Morgan Chase, Credit Suisse, Citigroup, and Barclays. Because we have no transactional department, we have no deal business to protect. Nor do we have "business conflicts." To date, Quinn Emanuel's structured finance litigation practice has secured over $20 billion in settlements and awards from these global financial giants.

We are equally adept at defending cases where these financial instruments are involved.

Our clients include banks, insurers, reinsurers, hedge funds, corporations, and other market participants, as well as the federal government.

Examples of currently pending cases and past achievements follow.

REPRESENTATIVE MATTERS

- We are proud to have represented Ibiza-based **Palladium Hotel Group** – a majority family-owned and operated entertainment and hospitality business – in their long-running High Court claim against Deutsche Bank regarding the alleged fraudulent mis-selling of complex FX derivatives which is alleged to have caused at least €500 million in losses. The parties have agreed a settlement, the terms of which are confidential, and the proceedings have thus concluded.

- We represent the litigation trustee for **Zohar Litigation Trust-A** in the U.S. Bankruptcy Court for the District of Delaware asserting claims originally brought by CLO issuers, the Zohar Funds, and by the insurer of certain notes that the Zohar Funds issued, MBIA Insurance Corp., against the Zohar Funds' former collateral manager, Lynn Tilton, and her affiliated entities alleging various claims arising from the mismanagement of the Zohar Funds and the portfolio company collateral that the Zohar Funds own.

- In predecessor litigation, we won a major victory for Zohar II 2005-1, Ltd. and Zohar III, Ltd. in a dispute with Ms. Tilton over the legal and beneficial ownership of three portfolio companies and an election of new directors. The Delaware Court of Chancery issued an opinion finding for the Zohar Funds on all counts. The Court confirmed the Zohar Funds' appointees as the rightful directors of the subject companies and rejected Tilton's claims as "not credible" and based upon "hindsight observations" the Court characterized as "revisionist."

- In litigation arising from the same investments, we defended **MBIA Inc.** and **MBIA Insurance Corp.** in a case involving allegations of fraud brought by Ms. Tilton and secured a successful settlement in the clients' favor.

- We represent the **Federal Deposit Insurance Corporation** in a claim commenced before the English Court to recover losses suffered by a number of closed U.S. banks and thrifts as a result of the alleged suppression of USD LIBOR by a number of UK and European LIBOR Panel Banks. In a recent judgment, the Court dismissed an application by one of the Defendants, UBS, to strike out the FDIC's claim on limitation grounds.

- We represent a large group of investors in Switzerland's Federal Administrative Court, challenging Switzerland's Financial Market Supervisory Authority's order for Credit Suisse to write-down approximately 16 billion CHF of AT1 bonds as part of its merger with UBS. These ongoing claims, which form part of a wider set of actions targeted at obtaining redress for the bondholder group, are being managed across Quinn Emanuel's offices in London, Zurich, and New York.

- We have commenced proceedings in London against Credit Suisse for a wrongful margin call made under complex prime brokerage arrangements, which involved a significant synthetic position held under an ISDA-governed total return swap. Credit Suisse wrongfully closed-out the prime brokerage agreement, and, as a consequence, thereafter wrongfully sold shares held as collateral—worth US $100 million—via an opaque off-market block trade.

- We represent **Computershare Trust Company** in a breach of warranty action against Natixis Real Estate Capital concerning warranties Natixis made about loans backing a residential mortgage-backed securitization trust in New York state court. Computershare acts as a separate Securities Administrator on behalf of the trust, and Natixis moved to dismiss, arguing (among other things) that only the trustee could bring the suit. The lower court held that Computershare had standing to bring the suit and, in an issue of first impression, the First Department affirmed. The appellate court's ruling creates new precedent that non-trustees may have standing to bring suits on behalf of securitization trusts. The case is ongoing.

- We represent the monoline insurer **CIFG Assurance North America** in its pursuit of damages against Goldman Sachs for fraud in connection with a collateralized debt obligation as to which CIFG provided insurance and in which CIFG invested. In arbitrating CIFG's claim relating to its investment, we prevailed and successfully obtained a finding of fraud against Goldman and an order to pay substantial damages. CIFG then prosecuted the remainder of its claims in state court, where Goldman is collaterally estopped from challenging the fraud finding, which resulted in a substantial settlement payment from Goldman to CIFG.

- We serve as co-lead in the ***In re Interest Rate Swaps Antitrust Litigation*** **(S.D.N.Y.)**, where the court cited, among other things, Quinn Emanuel's "impressive records of experience and success," "deep knowledge" of class action law, procedure, and antitrust law, and a "commitment to dedicating its resources to representing the interests of the class" in confirming our appointment as counsel. This high-profile case against a dozen international banks and several co-conspirators challenges anticompetitive conduct in the market for interest rate swaps. In June 2017, the court issued an order denying in part and granting in part Defendants' motion to dismiss, finding that the case had pled a plausible conspiracy for the time period of 2012 onwards. Well over 100 depositions were taken during fact discovery. Plaintiffs have moved for class certification, and the case remains ongoing.

- We represent **Acis Capital Management, LP** ("ACM"), a collateral manager for several CLO funds called the Acis CLOs, in defending against a series of lawsuits brought by investors affiliated with ACM's former owner, James Dondero. Mr. Dondero was removed from control of ACM in an involuntary bankruptcy proceeding, and since that removal Mr. Dondero, through affiliates, has repeatedly sued ACM and its new leadership for alleged mismanagement of the Acis CLOs' assets. In responding to an S.D.N.Y. lawsuit filed by Dondero-affiliated NexPoint Diversified Real Estate Trust ("NexPoint"), Quinn Emanuel has achieved a series of successes for ACM. Most notably, Quinn Emanuel filed a successful motion before the Texas bankruptcy court seeking an order that NexPoint's New York lawsuit violated a bankruptcy injunction prohibiting investors in the Acis CLOs from suing ACM for conduct that predated confirmation of ACM's bankruptcy plan in February 2019. This victory forced NexPoint to substantially revise and trim down the allegations in the New York lawsuit. Quinn Emanuel then successfully argued that NexPoint lacked a private right of action to pursue its remaining claims under the Investment Advisors Act, resulting in full dismissal of the New York lawsuit. On September 7, 2023, the Second Circuit unanimously affirmed the Southern District's ruling and held that the noteholder had failed to allege that the portfolio management agreement required Acis to engage in conduct

prohibited by the Advisers Act. Certain of the noteholder's other claims continue to be litigated and the case is in discovery.

- We represent a CRE CDO issuer, **CWCapital Cobalt Vr Ltd.**, in litigation against its collateral manager and investment adviser seeking over $500 million for breaches of contractual and fiduciary duties related to the collateral manager's failure to monetize Cobalt's controlling class investments in CMBS trusts, abuse of fair-value purchase options controlled by Cobalt through its CMBS investments, improper use of affiliated brokers to sell CMBS assets held by Cobalt-controlled trusts, and settlement of litigation related to the Stuyvesant Town apartment complex in New York City in a manner that dramatically reduced returns on certain of Cobalt's CMBS investments. After three separate motions to dismiss and an appeal to New York's Appellate Division, First Department, which reinstated certain claims originally dismissed as time-barred under the continuing obligations doctrine, all substantive claims survived. Cobalt also successfully struck a defense of champerty, which has become an increasingly common defense raised in matters brought by CDO issuers and related investors. The case is currently in discovery.

- We represent **a leading commodities trading firm** in an approximately $150 million dispute arising out of a complex series of swap transactions and hedge contracts referencing energy prices affected by Winter Storm Uri. We achieved a complete recovery through negotiations outside of litigation, and have filed a pending dispositive motion to bring a final resolution to the dispute.

- We represent **NextEra Energy Marketing** in a $57 million force majeure dispute arising out of an ISDA Master Agreement with Macquarie Energy, pending in the Southern District of New York. The parties are engaged in limited discovery in connection with a mediation process.

- We have been engaged to represent Fiesta Hotels and Resorts and three of its affiliates within the **Palladium Hotel Group** in connection with a very significant claim in London's High Court for loss and damage against Deustche Bank arising out of the mis-selling of hundreds of highly complex, structured FX and interest rate derivatives over a period of over 5 years. The claim raises novel English law questions concerning the scope of a bank's duty to explain the products it is selling to a client, as well as involving questions of the Luxembourg law of capacity to contract in relation to speculative financial instruments. This matter is also related to DB's widely reported "Project Teal" investigation, which concerns the mis-selling of FX derivatives over many years by DB in Spain. The claim is scheduled for trial in early 2025.

- We represented the co-founder and chief technology officer of an early-stage AI company in a fraud case involving convertible notes and equity derivatives brought by an investor and obtained a jury verdict in our client's favor on all counts.

- We acted for a claimant group, including **Palladian Partners, HBK Master Fund, Hirsh Group** and **Virtual Emerald International**, that hold warrants issued by Argentina, under which Argentina's obligation to make payments is linked to its GDP performance, including GDP growth. The claim concerns Argentina's failure to make

payments under the warrants in 2013 in circumstances where it appeared the GDP growth condition was satisfied. The High Court ruled in favor of the investors and ordered Argentina to pay nearly $1.5 billion plus interest to be calculated from December 2014.

- On behalf of **Koch Industries**, we successfully resolved an approximately $300 million dispute with Vistra Corp. arising out of an asset purchase agreement and an ISDA Master Agreement governing natural gas transactions. The complex dispute spanned three forums. After Vistra sued for declaratory judgment in Texas, seeking to avoid obligations under an asset purchase agreement, we secured a TRO in Delaware against the Texas proceedings, then filed dispositive motions to dismiss Vistra's claims and enforce Koch's rights. When a Vistra affiliate countersued in New York, we filed a series of partial dispositive motions that virtually eliminated Vistra's claims and resulted in the first-ever judicial decision interpreting the ISDA North American Gas Annex. All three litigations were successfully resolved shortly before the Delaware court was to decide Koch's pending dispositive motions.

- We have commenced proceedings in London against Credit Suisse for a wrongful margin call made under complex prime brokerage arrangements, which involved a significant synthetic position held under an ISDA-governed total return swap. Credit Suisse wrongfully closed-out the prime brokerage agreement, and, as a consequence, thereafter wrongfully sold shares held as collateral—worth US $100 million—via an opaque off-market block trade.

- We obtained a historic recovery for our client **Ambac Assurance** in its RMBS putback action against Bank of America arising from Ambac's insurance of approximately $25 billion in securitizations based on loans originated by Countrywide. After five weeks of trial, Quinn Emanuel secured a $1.84 billion settlement for Ambac—the largest recovery ever in any RMBS putback case.

- We represented **an Eastern European bank** in defending two parallel claims brought against it by the Trustee in respect of overdue and unpaid Eurobonds of the Bank. We were successful in persuading the Tribunal that the bonds were tainted by illegality and that, as a result, the Bank should not be required to make payments in respect of the interests of noteholders shown to have been involved in such illegality.

- We represented **Hildene Opportunities Master Fund II Ltd.** and **EJF Capital LLC** in successfully opposing an involuntary chapter 11 petition filed against Taberna Preferred Funding IV, a CDO that had been forced into bankruptcy by three senior noteholders. After five days of trial, the Court granted our motion for judgment as a matter of law and dismissed the involuntary petition on two independent grounds: (1) that the petitioning creditors were ineligible to file because they held secured nonrecourse claims and (2) that "cause" existed for dismissal because the case did not serve a legitimate bankruptcy purpose.

- We obtained a complete victory following a three-week trial for our client **the Rescap Liquidating Trust**, on whose behalf we asserted contractual indemnification claims

relating to hundreds of mortgage loans that the defendant sold to ResCap in breach of its representations and warranties, and which ResCap then securitized into RMBS trusts. The Court's 202-page decision awarded ResCap its entire damages request. This victory is the capstone of QE's 6.5-year engagement for ResCap, on whose behalf the firm has recovered nearly $1.3 billion.

- We also represented the **ResCap Liquidating Trust** in a case involving indemnity claims arising out of the sale of mortgages by Home Loan Center Inc. ("HLC") to ResCap's predecessor, Residential Funding Company, LLC ("RFC"). After winning a jury trial, the Trust will be awarded a final judgment in the total amount of $68.5 million, reflecting the $28.7 million jury verdict, $16.7 million in interest, and an award of attorney's fees of $23.1 million, which the Court and our adversaries both characterized as "unprecedented."

- We won summary judgment on behalf of an **RMBS-investor client** in a trust instruction proceeding in California state court concerning whether the servicer of seven legacy RMBS trusts was required to include over $150 million in deferred principal amounts in the calculation of the termination price owed by the servicer. The servicer contended that the governing agreements required that this calculation should be made without reference to deferred principal—amounts which are due at the maturity of the loan but do not bear interest. A group of investors, which included Quinn Emanuel's client, took the opposite position. The Court agreed with the investors and granted summary judgment. This ruling was the first definitive statement on the merits among a number of similar cases that are currently proceeding in parallel across several jurisdictions on the same issue, and will impact the price at which billions of dollars of legacy RMBS trusts can be terminated.

- We obtained settlements of over $500 million against the defendants in our **ISDAfix** case, which concerned the rigging of a financial benchmark used to determine the settlement value of certain financial derivatives. The case was brought on behalf of investors such as insurance companies, pension funds, hedge funds, and other sophisticated actors. We built the case from the ground-up after noticing anomalies in the data, before the government even acted. The successful settlement and then certification of the class was the result of years of dogged, groundbreaking work. We had to find traders explicitly admitting they were interested in manipulating the benchmark. We then had to match that admission to an actual trade by the right person, at the right time, in the right direction. We then had to demonstrate we could show that those acts damaged class members, some of whom may have only traded hours or even days later. The Court said that this was the "the most complicated case" he ever faced, and that he could "not really imagine" how much more complicated "it would have been if I didn't have counsel who had done as admirable a job in briefing it and arguing it as" we did.

- We represented **National Australia Bank** against Goldman Sachs & Co. in FINRA arbitration alleging fraud and unjust enrichment arising from the sale of collateralized debt obligations. Following a three-week hearing, the FINRA panel awarded National Australia Bank over $100 million, including the full $80 million it had invested in the Goldman CDOs at issue in the arbitration hearing along with interest over an eight-year period. This award constituted one of the largest amounts ever awarded by a FINRA panel and drew

widespread press coverage, including a Wall Street Journal article under the banner "Goldman Punished."

- We represented **Solus Alternative Asset Management LP** against GSO Capital Partners ("GSO") and Hovnanian Enterprises Inc. ("Hovnanian), in a suit arising from GSO's agreement with Hovnanian to trigger a credit event requiring Solus to pay millions of dollars in payments and yielding GSO millions in CDS payments. Solus alleged that this agreement violated Sections 10(b) and 14(e) of the Securities Exchange Act, and that GSO tortiously interfered with Solus's prospective economic advantage. The case settled and required Hovnanian to cure the agreed-upon default to avoid the threatened credit event.

- We represented **South Tryon** in a lawsuit in the U.S. District Court for the Southern District of New York seeking to force the collateral manager of Triaxx Prime CDO 2006-1, Ltd. ("Triaxx") to sell over $500 million in defaulted collateral in accordance with the requirements of the Indenture. South Tryon moved for summary judgment at the outset of the case arguing that the Indenture unambiguously required the Collateral Manager to sell. The District Court ruled in South Tryon's favor on that motion and ordered the Collateral Manager to liquidate the defaulted collateral. The district court, and then the U.S. Court of Appeals for the Second Circuit, denied the Collateral Manager's attempt to stay the judgment. The Second Circuit then affirmed the district court's decision in its entirety.

- We represented **UMB Bank, N.A.** as trustee on behalf of noteholders, in a case against Airplanes Limited and Airplanes U.S. Trust that involved a dispute over the improper reserving by Airplanes of $190 million that otherwise would have gone to noteholders. We obtained a favorable judgment on the pleadings with the Court finding that the $190 million reserve was improper and in violation of the indenture.

- We represented **Bank of New York Mellon** ("BNY"), as Securities Administrator of a Residential Mortgage-Backed Securities ("RMBS") trust of 6,510 loans with a face value of about $1.275 billion, in a contract lawsuit against the loans' originator, their seller to the trust, and their servicer, based on breaches of representations and warranties made regarding the credit quality of the loans. The action was commenced by BNY through other counsel, and the court dismissed the case in its entirety. Quinn Emanuel was retained for the appeal, and obtained the reversal of the lower court's dismissal of claims (1) against the loan seller for failure to backstop the loan originator's failure to repurchase loans which breached the representations and warranties by repurchasing the loans itself, and (2) against the loan servicer, for failing to notify BNY and the trustee when it discovered that the loans breached the representations and warranties. This ruling permits RMBS suits against parties with such "backstop" repurchase duties even where, as here, claims against the originator itself are deemed barred by the statute of limitations. And it further opened an additional area of RMBS litigation against servicers for failure to give notice of breaching loans, by confirming that such claims against servicers are not barred by the standard contractual limitations on remedies in RMBS contracts.

- On behalf of client **CIFG**, now known as Assured Guaranty, we successfully argued for a New York state appellate court to modify the lower court's dismissal of a misrepresentation claim with prejudice to a dismissal without prejudice, thus allowing CIFG to replead the

claim in its effort to recover from Bear Stearns for inducing CIFG to issue financial guaranty insurance regarding collateralized debt obligation vehicles that Bear Stearns had loaded with risky assets.

- We represented **House of Europe Funding I** and **Erste Abwicklungsanstalt** in a suit seeking over $200 million in damages against Wells Fargo, as CDO trustee, and Collineo Asset Management, as collateral manager, for breaching investment concentration limits under the CDO agreements, which resulted in a favorable settlement.