

Nomura To Pay Ambac \$140M To End RMBS Dispute

By **Lauren Berg**

Law360 (January 3, 2023, 8:21 PM EST) -- Ambac Financial Group announced Tuesday that Nomura Credit & Capital Inc. has agreed to pay \$140 million to resolve claims that it lied about the quality of its residential mortgage-backed securities.

The two companies entered into the agreement on Dec. 29, ending litigation that began in 2013 when Ambac Assurance Corp. first accused the Japanese bank of lying about the quality of the securitized mortgages Ambac was insuring, which had required the insurer to pay claims of more than \$100 million as of mid-2014.

"Ambac is very pleased to have reached this settlement with Nomura, which ... successfully brings closure to all of Ambac's legacy RMBS representation and warranty litigation," Ambac President and CEO Claude LeBlanc said in a statement Tuesday.

Counsel for Nomura did not immediately respond to a request for comment.

Ambac said it estimates that, with respect to the settlement, it will record a gain of about \$43 million.

Ambac first sued Nomura in April 2013 in New York State Supreme Court before filing an amended complaint in September 2014, which alleged claims of fraudulent inducement and breach of contract related to Nomura's "egregious misrepresentations ... concerning the securitization of mortgage loans that were ultimately sold to two residential mortgage-backed securities trusts."

To get Ambac to insure those transactions, Nomura made misrepresentations to the company about the characteristics of the loans, the underwriting guidelines and the purported due diligence conducted to avoid defective loans from entering the securitizations, according to the 2014 complaint.

When Nomura provided numerous contractual representations and warranties to Ambac about the qualities of the loans, the bank "knew — or recklessly disregarded — that these pre-closing representations and contractual warranties, going to the very premise of the securitizations, were false and misleading when made," the complaint states.

Nomura wanted to get Ambac's insurance policies "in order to decrease the risk to investors from a shortfall in mortgage loan payments to the [RMBS] trusts," making the insured certificates more marketable to those investors, Ambac said.

"Accordingly, [Nomura] misleadingly portrayed to Ambac that the transactions presented manageable, insurable risk," the complaint states. "[Nomura's] false statements enabled it to sell loans to the trusts that presented a materially greater risk of default than loans conforming to the mortgage loan representations."

At the time of the complaint, Ambac said about half of the loans in the pools for which it provided insurance had defaulted or become "severely delinquent." As of June 2014, the insurer said it paid more than \$100 million in claims under the policies and accrued another \$90 million in additional claims.

But Ambac said Nomura had refused to buy back a single loan.

Before Ambac filed its amended complaint, Nomura in 2013 argued that the suit **should be thrown out** because the insurer didn't have standing to sue. Nomura said that even though Ambac was a third-party beneficiary to the contracts between Nomura and the investors that governed the securities Ambac insured, it couldn't seek additional contractual rights beyond the few it was explicitly granted in the contract.

Ambac is represented by Peter W. Tomlinson, David Kleban, Henry J. Ricardo, Alexander Shapiro, Jason Vitullo, Alvin Li, Isaac Weingram and Charlotte Allyn of Patterson Belknap Webb & Tyler LLP.

Nomura is represented by Matthew L. Craner, Jeff Hoschander and Daniel Kahn of Shearman & Sterling LLP.

The case is Ambac Assurance Corp. et al. v. Nomura Credit & Capital Inc. et al., index number 651359/2013 in Supreme Court of the State of New York, County of New York.

--Editing by John C. Davenport.