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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FEDERAL HOME LOAN BANK OF SAN FRANCISCO,)	Case No. 10-3039 SC
)	Case No. 10-3045 SC
)	
Plaintiff,)	<u>ORDER GRANTING MOTIONS TO</u>
)	<u>REMAND</u>
v.)	
)	
DEUTSCHE BANK SECURITIES, INC., et al.,)	
)	
Defendants.)	
<hr/>		
)	
FEDERAL HOME LOAN BANK OF SAN FRANCISCO,)	
)	
Plaintiff,)	
)	
v.)	
)	
CREDIT SUISSE SECURITIES (USA), LLC, et al.,)	
)	
Defendants.)	
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I. INTRODUCTION

These two related cases concern the Federal Home Loan Bank of San Francisco's ("Plaintiff" or "the FHLB-SF") purchase of certificates in securitization trusts backed by residential

United States District Court
For the Northern District of California

1 mortgage loans.¹ Plaintiff alleges that Defendants made untrue
2 statements or omitted important information about the mortgage
3 loans that backed up the securitization trusts. Deutsche Bank
4 Action, ECF No. 1 ("DB Notice of Removal") Ex. A ("DB FAC"); Credit
5 Suisse Action, ECF No. 1 ("CS Notice of Removal") Ex. A ("CS FAC").
6 Defendants removed these cases from state court.²

7 In the Deutsche Bank Action, Plaintiff filed a Motion to
8 Remand. ECF No. 71 ("DB Mot. to Remand"). Defendants UBS and MAST
9 filed an Opposition, ECF No. 88 ("UBS and MAST DB Opp'n"), and the
10 other Defendants filed an Omnibus Opposition, ECF No. 90 ("DB
11 Omnibus Opp'n"). Plaintiff filed an Omnibus Reply, ECF No. 118
12 ("DB Omnibus Reply"), a Reply to the UBS and MAST Opposition, ECF
13 No. 119 ("DB Supp. Reply"), and a Corrected Omnibus Reply, ECF No.
14 121 ("DB Corrected Omnibus Reply").

15 In the Credit Suisse Action, Plaintiff also filed a Motion to
16 Remand. ECF Nos. 68 ("CS Mot. to Remand"), 77 ("CS Corrected Mot.
17 to Remand"). Defendants UBS and MAST filed an Opposition. ECF No.
18 89 ("UBS and MAST CS Opp'n"). The other Defendants filed an
19 Omnibus Opposition. ECF No. 91 ("CS Omnibus Opp'n"). Plaintiff
20 filed an Omnibus Reply, ECF No. 119 ("CS Omnibus Reply"), a Reply
21 to the UBS and MAST Opposition, ECF No. 120 ("CS Supp. Reply"), and
22

23 ¹ The Court related the two cases on July 28, 2010. The Court will
24 refer to Case No. 10-3039 as the "Deutsche Bank Action" and Case
No. 10-3045 as the "Credit Suisse Action."

25 ² In the Deutsche Bank Action, Defendants UBS Securities, LLC
26 ("UBS"), and Mortgage Asset Securitization Transactions, Inc.
("MAST") filed the Notice of Removal. The other Defendants
27 consented to and joined in the removal of the action. In the
Credit Suisse Action, Defendants Deutsche Bank Securities, Inc.,
28 and Deutsche Alt-A Securities, Inc. filed the Notice of Removal.
The other Defendants consented to and joined in the removal of the
action.

1 a corrected Omnibus Reply, ECF No. 122 ("CS Corrected Omnibus
2 Reply").

3 Having considered all the papers submitted, and for the
4 reasons explained below, the Court GRANTS the motions to remand
5 filed in the Deutsche Bank Action and the Credit Suisse Action.
6

7 **II. BACKGROUND**

8 The FHLB-SF filed these two actions in California Superior
9 Court for the City and County of San Francisco. The FHLB-SF is a
10 bank created by the Federal Home Loan Bank Act. 12 U.S.C. §§ 1421-
11 49. It is one of twelve regional Federal Home Loan Banks in the
12 Federal Home Loan Bank System, which Congress created in 1932 to
13 provide a reliable source of funds to homebuyers. See id. The
14 FHLB-SF seeks rescission of, and/or damages for, its purchase from
15 Defendants of certificates backed by residential mortgage loans. DB
16 FAC ¶¶ 120-68; CS FAC ¶¶ 123-70.

17 The certificates at issue are mortgage-backed securities,
18 created in a process known as securitization. DB FAC ¶¶ 28-41; CS
19 FAC ¶¶ 29-42. Securitization begins with loans secured by
20 mortgages on residential properties. Id. The originators of these
21 loans receive monthly payments from the borrowers, which is
22 referred to as the cash flow from the loans. Id. In a
23 securitization, a large number of loans are grouped into a
24 collateral pool. Id. The originators sell them to a trust, which
25 then receives the cash flow from the loans. Id. The trusts pay
26 the originators by selling bonds, usually called certificates, to
27 investors such as the FHLB-SF. Id. Each certificate entitles its
28

1 holder to an agreed part of the cash flow from the loans in the
2 collateral pool. Id.

3 In the Deutsche Bank Action, Plaintiff alleges it purchased
4 forty-one certificates in thirty-eight securitization trusts, and
5 that it paid more than \$5.9 billion for the certificates. DB FAC ¶
6 1. In the Credit Suisse Action, Plaintiff alleges it purchased
7 ninety-five certificates in seventy-eight securitization trusts,
8 and that it paid more than \$13.5 billion for the certificates. CS
9 FAC ¶ 1.

10 Plaintiff alleges that when Defendants sold the certificates
11 they made untrue statements or omitted important information about
12 the certificates and the credit quality of the mortgage loans that
13 backed them. Plaintiffs allege that Defendants made false or
14 misleading statements about the percentage of equity that borrowers
15 had in their homes, as reflected in the loan-to-value ratio, the
16 number of borrowers who actually lived in the houses that secured
17 their loans, and the business practices of the originators of the
18 loans. DB FAC ¶¶ 44-119; CS FAC ¶¶ 45-122.

19 Plaintiff alleges Defendants violated sections 25401 and 25501
20 of the California Corporations Code, which prohibit the sale of
21 securities by means of communications containing false statements.
22 DB FAC ¶¶ 120-24; CS FAC ¶¶ 123-27. The complaints plead three
23 claims under the federal Securities Act of 1933: under sections 11
24 and 12(a)(2) against the issuers and sellers of the certificates,
25 and under section 15 against the control persons of the issuers.
26 DB FAC ¶¶ 125-54; CS FAC ¶¶ 128-56. Plaintiff accuses Defendants
27 of negligent misrepresentation, and seeks rescission of the
28 certificate purchases. DB FAC ¶¶ 155-68; CS FAC ¶¶ 157-70.

1 As grounds for removal, Defendants contend that: (i) this
2 action is related to ongoing bankruptcy proceedings; (ii) this
3 Court has original jurisdiction under the charter of the FHLB-SF;
4 and (iii) this Court has original jurisdiction because the FHLB-SF
5 is an agency of the United States. See DB Notice of Removal; CS
6 Notice of Removal.

7
8 **III. LEGAL STANDARD**

9 Federal courts are courts of limited jurisdiction, and a cause
10 of action is presumed to lie outside this limited jurisdiction
11 until the party asserting jurisdiction establishes the contrary.
12 Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377
13 (1994). A defendant may remove an action from state court if it
14 could have originally been brought in federal court. 28 U.S.C. §
15 1441. The defendant has the burden of establishing that removal is
16 proper. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

17
18 **IV. DISCUSSION**

19 **A. Related-To Bankruptcy Jurisdiction**

20 Under 28 U.S.C. § 1452, a party may remove a claim to the
21 district court for the district where the claim is pending if the
22 district court has jurisdiction under 28 U.S.C. § 1334. See 28
23 U.S.C. § 1452. Section 1334 establishes original jurisdiction for
24 claims that are "related to cases under title 11." 28 U.S.C. §
25 1334. A proceeding is related to a bankruptcy case when

26 [T]he outcome of the proceeding could
27 conceivably have any effect on the estate being
28 administered in bankruptcy . . . An action is
related to bankruptcy if the outcome could
alter the debtor's rights, liabilities,

1 options, or freedom of action (either
2 positively or negatively) and which in any way
3 impacts upon the handling and administration of
the bankrupt estate.

4 In re Fietz, 852 F.2d 455, 457 (9th Cir. 1988) (quoting Pacor, Inc.
5 v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984)). This broad
6 interpretation of related-to bankruptcy jurisdiction is in accord
7 with the Supreme Court's instruction that "Congress intended to
8 grant comprehensive jurisdiction to the bankruptcy courts so that
9 they might deal efficiently and expeditiously with all matters
10 connected with the bankruptcy estate." Celotex Corp. v. Edwards,
11 514 U.S. 300, 308 (1995) (quoting Pacor, 743 F.2d at 994).

12 A number of courts dealing with litigation concerning
13 mortgage-backed securities have recently determined that claims for
14 contractual indemnity against an entity in bankruptcy gives rise to
15 related-to bankruptcy jurisdiction. See Lone Star Fund V (U.S.),
16 L.P. v. Barclays Bank PLC, 594 F.3d 383, 386-87 (5th Cir. 2010) (in
17 action against seller of mortgage-backed securities, bankrupt loan
18 originators' agreement to indemnify seller gives rise to related-to
19 bankruptcy jurisdiction); Fed. Home Loan Bank of Seattle v.
20 Deutsche Bank Sec., No. 10-140, --- F. Supp. 2d ----, 2010 WL
21 3512503, at *6 (W.D. Wash. Sept. 1, 2010) ("FHLB Seattle I")
22 (defendants' indemnification agreements with American Home Mortgage
23 Corporation gives rise to related-to bankruptcy jurisdiction); Fed.
24 Home Loan Bank of Seattle v. Barclays Capital, Inc., No. 10-0139,
25 2010 WL 3662345, at 6 (W.D. Wash. Sept. 1, 2010) ("FHLB Seattle
26 II") (contractual indemnity agreements with IndyMac gives rise to
27 related-to bankruptcy jurisdiction); City of Ann Arbor Emps.' Ret.
28 Sys. v. Citigroup Mortg. Loan Trust Inc., 572 F. Supp. 2d 314, 318-

1 19 (E.D.N.Y. 2008) (contractual indemnity claims between defendants
2 and AHM gives rise to related-to bankruptcy jurisdiction); Mass.
3 Bricklayers and Masons Trust Funds v. Deutsche Alt-A Sec., Inc.,
4 399 B.R. 119, 121, 123 (E.D.N.Y. 2009) (same).

5 Defendants contend the Court has related-to bankruptcy
6 jurisdiction over both the Deutsche Bank Action and the Credit
7 Suisse Action because some of the entities that originated the
8 mortgage loans in the trusts at issue are either currently in
9 bankruptcy, or are related to entities in bankruptcy, and
10 Defendants had indemnification agreements with these originators.

11 For example, American Home Mortgage Corporation ("AHM") has
12 filed for bankruptcy. See In re Am. Home Mortg. Holdings, No. 07-
13 11047 (Bankr. D. Del.). Many of the Defendants in both the
14 Deutsche Bank Action and at least one Defendant in the Credit
15 Suisse Action purchased loans from AHM, and AHM agreed to indemnify
16 them from the types of claims brought here by the FHLB-SF. See,
17 e.g., Turner Decl. ¶¶ 5-6, Ex. 4 ("Indemnification Agreement
18 between AHM and Greenwich Capital Acceptance, Inc.");³ Rogovitz
19 Decl. ¶¶ 3-4, Ex. 1 ("Master Mortgage Loan Purchase and Interim
20 Servicing Agreement ("MLPA") between AHM and DB Structured
21 Products, Inc.") §§ 7.04, 12A.04, Ex. 2 ("MLPA between AHM and
22
23
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25 _____
26 ³ Alan C. Turner ("Turner"), counsel for RBS Securities Inc.,
27 f/k/a Greenwich Capital Markets, Inc., RBS Acceptance Inc., f/k/a
28 Greenwich Capital Acceptance, Inc., and RBS Holdings USA Inc.,
f/k/a Greenwich Capital Holdings, Inc., filed a declaration in
opposition to Plaintiff's motions to remand. Deutsche Bank Action,
ECF No. 91; Credit Suisse Action, ECF No. 94.

1 Deutsche Alt-A Securities, Inc.");⁴ Robins Decl. ¶ 5, Ex. 2
2 ("Selling and Servicing Contract between AHM and WaMu") § 3.⁵

3 Many of the Defendants issued or underwrote mortgage-backed
4 securities that included as collateral mortgage loans originated by
5 IndyMac Bank F.S.B. ("IndyMac"). The Federal Deposit Insurance
6 Corporation ("FDIC") was appointed as IndyMac's receiver in July
7 2008, and later in the same month, its parent holdings company,
8 IndyMac Bancorp, Inc. ("IndyMac Bancorp") filed for bankruptcy. In
9 re IndyMac Bancorp, Inc., No. 08-21752 (Bankr. C.D. Cal.). Many of
10 these Defendants purchased loans from IndyMac, which agreed to
11 indemnify them for the type of claims that the FHLB-SF brings here.
12 See, e.g., Turner Decl. ¶¶ 3-4, Ex. 2 ("Indemnification Agreement
13 between IndyMac, Greenwich Capital Financial Products, Inc. and
14 Greenwich Capital Acceptance, Inc."); Kaiserman Decl. ¶ 3, Exs. 2,
15 4, 6, 8, 10, 12, 14 ("Credit Suisse Indemnification and
16 Contribution Agreements");⁶ Parniawski Decl. ¶¶ 3-5, Exs. 3, 4
17 ("MLPAs between IndyMac and UBS Real Estate Securities, Inc.").⁷

18 _____
19 ⁴ Owen Rogovitz ("Rogovitz"), a contract finance associate
20 employed by Deutsche Bank Securities, Inc., filed a declaration in
21 opposition to Plaintiff's motions to remand. Deutsche Bank Action,
22 ECF No. 92; Credit Suisse Action, ECF No. 92.

23 ⁵ Theo J. Robins ("Robins"), counsel for the Defendants J.P.
24 Morgan Securities, Inc., Structured Assets Mortgage Investments II,
25 Inc., The Bear Stearns Companies, LLC, WaMu Capital Corp., and
26 Washington Mutual Mortgage Securities Corp., filed a declaration in
27 opposition to Plaintiff's motions to remand. Deutsche Bank Action,
28 ECF Nos. 95, 100; Credit Suisse Action, ECF No. 96.

⁶ Bruce Kaiserman ("Kaiserman"), a managing director employed by
Credit Suisse Securities (USA), LLC, filed a declaration in
opposition to Plaintiff's motions to remand. Deutsche Bank Action,
ECF No. 113; Credit Suisse Action, ECF No. 114.

⁷ Michael Parniawski ("Parniawski"), collateral analyst at UBS,
filed a declaration in opposition to Plaintiff's motions to remand.
Deutsche Bank Action, ECF No. 89; Credit Suisse Action, ECF No. 90.

1 Defendants in both actions have indemnification agreements
2 with Alliance Bancorp ("Alliance"), an entity that is also in
3 bankruptcy. See In re Alliance Bancorp, No. 07-10942 (Bankr. D.
4 Del.); Rogovitz Decl ¶¶ 3, 5, Ex. 3 ("MLPA between Alliance and DB
5 Structured Products, Inc.").⁸

6 Defendants in the Deutsche Bank Action issued or underwrote
7 mortgage-backed securities that included as collateral mortgage
8 loans originated by SouthStar Funding, LLC ("SouthStar"), Aegis
9 Mortgage Corporation ("Aegis"), ComUnity Lending, Inc.
10 ("ComUnity"), First Magnus Financial Corporation ("First Magnus"),
11 and Loan Link Financial Services ("Loan Link"). Deutsche Bank
12 Action, ECF No. 18 ("J.P. Morgan Joinder in Notice of Removal"); DB
13 Omnibus Opp'n at 5-7.

14 These loan originators filed for bankruptcy. In re SouthStar
15 Funding, LLC, No. 07-65842 (Bankr. N.D. Ga.); In re Aegis Mortg.
16 Corp., No. 07-11119 (Bankr. D. Del.); In re ComUnity Lending, Inc.,
17 No. 08-50030 (Bankr. N.D. Cal.); In re First Magnus Fin. Corp., No.
18 07-01578 (Bankr. D. Ariz.); In re Loan Link Fin. Servs., Inc., No.
19 10-11777 (Bankr. C.D. Cal.). Defendants had indemnification
20 agreements with these loan originators. See Robins Decl. Ex. 5
21 ("South Star Indemnification Agreement"), Ex. 6 ("Aegis
22 Indemnification Agreement"), Ex. 8 ("ComUnity Indemnification
23 Agreement"), Ex. 10 ("First Magnus Indemnification Agreement"), Ex.
24 11 ("Loan Link Indemnification Agreement").

25 As a result of these indemnification agreements, this Court
26 has related-to bankruptcy jurisdiction over the Deutsche Bank

28 ⁸ Loans purchased by DB Structured Products, Inc. were transferred
to Deutsche Bank Alt-A Securities, Inc. Rogovitz Decl. ¶ 6.

1 Action and the Credit Suisse Action. Courts in the Ninth Circuit
2 construe related-to bankruptcy jurisdiction broadly. Because of
3 these indemnification agreements, the outcome of the Deutsche Bank
4 Action and the Credit Suisse Action could conceivably have an
5 effect on estates being administered in bankruptcy. However, only
6 a small fraction of the loans at issue in these two cases were
7 originated by entities in bankruptcy. While the Court has related-
8 to bankruptcy jurisdiction, the remote relationship between these
9 two cases and bankruptcy proceedings supports remanding these cases
10 to state court. See Part IV.E, infra.

11 **B. Section 22(a) of the Securities Act**

12 Plaintiff contends that under section 22(a) of the Securities
13 Act of 1933, removal was improper. DB Mot. to Remand at 4; CS
14 Corrected Mot. to Remand at 4. Section 22(a) provides, in relevant
15 part, that "no case arising under this subchapter and brought in
16 any State court of competent jurisdiction shall be removed to any
17 court of the United States." 15 U.S.C. § 77v(a). Plaintiff
18 contends that this specific statute takes precedence over more
19 general removal statutes like section 1452(a). DB Mot. to Remand
20 at 6; CS Mot. to Remand at 6.

21 Under 28 U.S.C. § 1452(a), a party may remove a claim if the
22 district court has jurisdiction under 28 U.S.C. § 1334. See 28
23 U.S.C. § 1452. Section 1334 establishes original jurisdiction for
24 claims that are "related to cases under title 11." 28 U.S.C. §
25 1334(b).

26 There is certainly a conflict between section 22(a) of the
27 Securities Act, which prohibits removal, and section 1452(a), which
28 allows cases to be removed when they are related to bankruptcy

1 proceedings. Two district courts in other circuits have held that
2 section 22(a) prohibits removal under section 1452. See City of
3 Birmingham Ret. & Relief Fund v. Citigroup, No. 03-0994, 2003 WL
4 22697225, at *3 (N.D. Ala. Aug. 12, 2003); Tennessee Consol. Ret.
5 Sys. v. Citigroup, No. 03-0128, 2003 WL 22190841, at *3 (M.D. Tenn.
6 May 9, 2003).

7 However, the Second Circuit Court of Appeals and two district
8 courts within the Ninth Circuit have determined that section 22(a)
9 does not bar removal of cases where there is related-to bankruptcy
10 jurisdiction. See California Pub. Emps.' Ret. Sys. v. WorldCom,
11 Inc., 368 F.3d 86, 102 (2d Cir. 2004) ("we hold that generally
12 nonremovable claims brought under the Securities Act of 1933 may be
13 removed to federal court if they come within the purview of 28
14 U.S.C. § 1452(a)"); Carpenters Pension Trust for Southern
15 California v. Ebbers, No. 03-04878, 299 B.R. 610, 613-15 (C.D. Cal.
16 Sept. 9, 2003) (finding that bankruptcy removal provision, as the
17 more recent enactment, controlled over conflicting jurisdictional
18 provision of the Securities Act); Pacific Life Ins. Co. v. J.P.
19 Morgan Chase & Co., No. 03-813, 2003 WL 22025158, at *3 (C.D. Cal.
20 June 30, 2003) ("Section 22(a) proscribes removal based on federal
21 question jurisdiction under 28 U.S.C. section 1441(a), but does not
22 prevent removal based on other grounds.").

23 Plaintiff's reliance on Luther v. Countrywide Home Loans
24 Servicing LP, 533 F.3d 1031 (9th Cir. 2008), is misplaced. See DB
25 Mot. to Remand at 6; CS Corrected Mot. to Remand at 6. That case
26 does not discuss the relationship between section 22(a) and section
27 1452(a); instead, it focuses on the relationship between section
28 22(a) and the Class Action Fairness Act ("CAFA"). Id. at 1034.

1 Relying on the principle of statutory construction that a statute
2 dealing with a specific subject is not submerged by a later, more
3 general statute, the Ninth Circuit Court of Appeals held that
4 "CAFA's general grant of the right of removal of high-dollar class
5 actions does not trump § 22(a)'s specific bar to removal of cases
6 arising under the Securities Act of 1933." Id.

7 However, the Ninth Circuit's holding in Luther is of little
8 relevance here, where the issue is whether section 22(a) trumps the
9 Court's related-to bankruptcy jurisdiction. The Court agrees with
10 the reasoning of the Second Circuit, the only Court of Appeals to
11 address this precise issue. See California Pub. Emps.' Ret. Sys.,
12 368 F.3d at 102. Both section 22(a) and section 1452(a) apply to a
13 defined class of claims, and the class of claims covered by section
14 22(a) is no more specific than the class of claims covered by
15 section 1452(a):

16 Section 22(a) does not cover only a subset of
17 the claims covered by Section 1452(a). By the
18 same token, Section 1452(a) does not cover only
19 a subset of the claims covered by Section
20 22(a). Rather, just as Section 1452(a) applies
21 to many claims that are not brought under the
22 1933 Act, Section 22(a) applies to many claims
23 that are not 'related to' a bankruptcy.

24 Id.

25 Furthermore, the Court agrees with the Second Circuit that
26 construing section 22(a) to trump section 1452(a) could interfere
27 with the operation of the Bankruptcy Code. Id. at 103-04. As
28 noted earlier, when Congress enacted section 1452(a), it intended
"to grant comprehensive jurisdiction to bankruptcy courts so that
they might deal efficiently and expeditiously with all matters
connected with the bankruptcy estate." Celotex Corp., 514 U.S. at

1 308. Congress crafted section 1452(a) to permit removal of matters
2 related to bankruptcy proceedings, and the Court will not construe
3 section 22(a) in a way that would unduly interfere with its
4 operation. Therefore, the Court finds that section 22(a) does not
5 trump the Court's related-to bankruptcy jurisdiction.

6 **C. The Bank's Charter**

7 The FHLB-SF is a Federal Home Loan Bank created by the Federal
8 Home Loan Bank Act, 12 U.S.C. §§ 1421-1449. Defendants contend its
9 charter confers federal jurisdiction. DB Omnibus Opp'n at 16-20;
10 CS Omnibus Opp'n at 16-20. Each Federal Home Loan Bank shares a
11 common federal charter, which empowers each Bank's director "to sue
12 and be sued, to complain and to defend, in any court of competent
13 jurisdiction, State or Federal." 12 U.S.C. § 1432(a).

14 In moving to remand, Plaintiff focuses on the words "in any
15 court of competent jurisdiction." See DB Mot. to Remand at 6-11;
16 CS Corrected Mot. to Remand at 7-12. In opposing the motion,
17 Defendants focus on the word "Federal." See DB Omnibus Opp'n at
18 16-20; CS Omnibus Opp'n at 16-20. Plaintiff contends that the
19 charter does not itself create subject-matter jurisdiction;
20 instead, the words "in any court of competent jurisdiction"
21 indicate there must be an independent source of jurisdiction
22 because otherwise the words would be meaningless. Defendants
23 respond that because the provision explicitly mentions federal
24 courts, it confers federal jurisdiction.

25 Defendants rely on American National Red Cross v. Solicitor
26 General, in which the Supreme Court held that a charter authorizing
27 the Red Cross "to sue and be sued in courts of law and equity,
28 State or Federal," conferred federal jurisdiction. 505 U.S. 247,

1 251, 255 (1992) ("Red Cross"). As noted by Plaintiff, Red Cross
2 does not address the meaning of a sue-and-be-sued provision that
3 contains the phrase "any court of competent jurisdiction."
4 However, in Pirelli Armstrong Tire Corp. Retiree Medical Benefits
5 Trust v. Raines, the D.C. Circuit applied Red Cross to hold that
6 Fannie Mae's charter, which does contain a "competent jurisdiction"
7 clause, confers federal jurisdiction. 534 F.3d 779, 784 (D.C. Cir.
8 2008) ("Pirelli").

9 Pirelli is not binding on this Court, and Pirelli suggests
10 that express reference to federal courts in a sue-and-be-sued
11 clause is both necessary and sufficient to confer jurisdiction.
12 534 F.3 at 784. In Red Cross, the Supreme Court stated "a
13 congressional charter's 'sue and be sued' provision may be read to
14 confer federal court jurisdiction if, but only if, it specifically
15 mentions the federal courts." 505 U.S. at 255 (emphasis added).
16 The Supreme Court did not state that a sue-and-be-sued provision
17 that mentions the federal courts must be read as conferring
18 jurisdiction. Therefore, this Court reads Red Cross as providing
19 that express reference to federal courts in a sue-and-be-sued
20 clause is necessary, but not sufficient, to confer jurisdiction.

21 The FHLB-SF charter empowers it to sue or be sued "in any
22 court of competent jurisdiction, State or Federal." The charter
23 distinguishes between state and federal courts that possess
24 competent jurisdiction and those that do not. State and federal
25 courts possess competent jurisdiction if there is an independent
26 basis for jurisdiction. The "competent jurisdiction" clause would
27 be superfluous if it did not necessitate a separate jurisdictional
28 grant. FHLB Seattle I, 2010 WL 3512503 at *2; FHLB Seattle II,

1 2010 WL 3662345 at *2; Rincon Del Sol, LLC v. Lloyd's of London,
2 709 F. Supp. 2d 517, 524-25 (S.D. Tex. 2010); Knuckles v. RBMG,
3 Inc., 481 F. Supp. 2d 559, 563 (S.D. W.Va. 2007); Fed. Nat'l Mortg.
4 Ass'n v. Sealed, 457 F. Supp. 2d 41, 46-47 (D.D.C. 2006).

5 In a case concerning the Indian Child Welfare Act, the Ninth
6 Circuit Court of Appeals concluded that the phrase "any court of
7 competent jurisdiction" did not alone create subject-matter
8 jurisdiction, and the Court went on to determine whether the
9 district court had jurisdiction from an independent source. Doe v.
10 Mann, 415 F.3d 1038, 1045 (9th Cir. 2005).

11 The Ninth Circuit's interpretation of the phrase "any court of
12 competent jurisdiction" supports requiring an independent basis for
13 federal jurisdiction. Based on this Court's reading of Red Cross,
14 which implies that a reference to federal courts is necessary, but
15 not sufficient, to confer federal jurisdiction, and the Court's
16 reading of Doe v. Mann, which interprets "competent jurisdiction"
17 clauses as requiring an independent source of jurisdiction, the
18 Court cannot interpret the FHLB-SF charter as conferring federal
19 jurisdiction.

20 Defendants point out that the Federal Home Loan Bank of Des
21 Moines, which has an identical charter, has argued in other cases
22 that its charter confers federal jurisdiction. See Ewing v. Fed.
23 Home Loan Bank of Des Moines, 645 F. Supp. 2d 707, 709 (S.D. Iowa
24 2009); O'Connor Enter. Group v. Spindustry Sys. Inc., No. 09-1483
25 (S.D. Tex. May 18, 2009). Defendants contend it would be unfair to
26 allow Plaintiff to take a contradictory position here. DB Omnibus
27 Opp'n at 20; CS Omnibus Opp'n at 20.

28

1 This argument is of no moment because Federal Home Loan Banks
2 are separate commercial entities. While each Federal Home Loan
3 Bank shares a common federal charter, each has its own "organizing
4 certificate" establishing its zone of operation in one of twelve
5 multi-state districts. See 12 U.S.C. §§ 1423, 1432(a). There is
6 no legal support for Defendants' suggestion that the FHLB-SF should
7 be bound by a contrary position taken by the Federal Home Loan Bank
8 of Des Moines in unrelated lawsuits. Having reviewed the
9 authorities discussing sue-and-be-sued provisions, the Court finds
10 that the charter of the FHLB-SF does not, by itself, confer
11 jurisdiction over this action.

12 **D. Whether the Bank is an Agency of the United States**

13 Section 1345 of Title 28 of the United States Code provides
14 that "the district courts shall have original jurisdiction of all
15 civil actions . . . commenced by the United States, or by any
16 agency or officer thereof" Defendants contend that the
17 FHLB-SF is an agency of the United States, and therefore section
18 1345 creates federal jurisdiction. DB Omnibus Opp'n at 21; CS
19 Omnibus Opp'n at 21. Plaintiff contends it is not a federal
20 agency.

21 Defendants rely on Fahey v. O'Melveny & Myers, a case in which
22 the Ninth Circuit Court of Appeals held that "all Federal Home Loan
23 Banks within the System are, and operate as, public agencies and
24 instrumentalities of the federal government." 200 F.2d 420, 446-47
25 (9th Cir. 1952). Plaintiff points out that in the years since
26 Fahey was decided, Congress has reduced federal control over the
27 management and operations of the Federal Home Loan Banks. DB Mot.
28 to Remand at 12; CS Corrected Mot. to Remand at 13.

1 Plaintiffs rely on Hoag Ranches v. Stockton Production Credit
2 Association, where the Ninth Circuit Court of Appeals articulated a
3 six-factor test to determine when a party is a federal agency for
4 purposes of statutes like 28 U.S.C. § 1345. 846 F.2d 1225, 1227-28
5 (9th Cir. 1988) ("In re Hoag"). The Ninth Circuit noted that
6 "[m]any financial institutions are federally chartered and
7 regulated and are considered federal instrumentalities, without
8 attaining the status of government agencies within the meaning of
9 federal procedural rules." Id. Applying the six-factor test, and
10 taking into account the history of the government's reduced
11 involvement in Production Credit Agencies ("PCAs"), the Ninth
12 Circuit held that PCAs are not government agencies. Id. at 1228-
13 29.

14 Recently, in two cases similar to the ones before this Court,
15 Judge Martinez in the Western District of Washington ruled that
16 Fahey was inapposite, and applying the six-factor In re Hoag test,
17 he determined that the Federal Home Loan Bank of Seattle was not a
18 government agency. FHLB Seattle I, 2010 WL 3512503 at *2-4; FHLB
19 Seattle II, 2010 WL 3662345 at *2-4.

20 The Court agrees with Judge Martinez that Fahey does not
21 address the question of an entity's agency status for purposes of
22 section 1345, and so it does not apply here. In Fahey, the Ninth
23 Circuit reversed the trial court's award of attorneys' fees to
24 counsel for the former Federal Home Loan Bank of Los Angeles. 200
25 F.2d at 481. The Ninth Circuit rejected the argument that
26 eliminating the Bank of Los Angeles was a confiscation of private
27 property interests. Id. at 446-47. The court's focus was the
28 "private versus public character of Federal Home Loan Banks." Id.

1 at 446. As public entities, members had no proprietary right to
2 the continued existence of any Home Loan Bank eliminated by the
3 Board. Id. at 444-47.

4 Since the Ninth Circuit's statement in Fahey that Federal Home
5 Loan Banks are public agencies and instrumentalities, it is clear
6 that Congress has reduced government control of the management and
7 operations of Federal Home Loan Banks. In 1986, the Ninth Circuit
8 Court of Appeals made the following statement concerning the FHLB-
9 SF:

10 [T]he Bank is privately owned and privately
11 funded. It receives no government money, and
12 its consolidated obligations are not guaranteed
13 by the government. It is engaged in the
14 business of making loans, which must be sound
so that its obligations will be marketable. Its
employees are not in the civil service, and it
does not perform regulatory functions.

15 Fidelity Fin. Corp. v. Fed. Home Loan Bank of San Francisco, 792
16 F.2d 1432, 1435 (9th Cir. 1986). In 1989, Congress removed the
17 power of Federal Home Loan Banks to serve as agents of the federal
18 government in supervising federal savings and loan institutions.
19 Financial Institutions Reform, Recovery, and Enforcement Act of
20 1989, Pub. L. 101-73 (Aug. 9, 1989); see also H.R. Conf. Rep. 101-
21 222, reprinted at 1989 U.S.C.C.A.N. 432, 1989 WL 168167 at *11
22 ("This Title abolishes the Federal Home Loan Bank Board . . . and
23 the position of the Chairman of the Bank Board as the chief
24 regulator of the savings and loan industry."). In 1999, Congress
25 provided that members of the Federal Home Loan Banks "shall own the
26 retained earnings, surplus, undivided profits and equity reserves,
27 if any, of the bank." Gramm-Leach-Bliley Act, Pub. L. No. 106-102
28 § 608 (Nov. 12, 1999) (codified at 12 U.S.C. § 1426(h)). In 2008,

1 Congress eliminated the government's power to appoint directors of
2 a Federal Home Loan Bank. Housing and Economic Recovery Act, Pub.
3 L. No. 110-289 (July 30, 2008) §§ 1202, 1204.

4 In light of this history of reduced government control, the
5 Court must apply the In re Hoag factors to determine if the FHLB-SF
6 is a federal agency. The Court must consider:

7 (1) the extent to which the alleged agency
8 performs a governmental function; (2) the scope
9 of government involvement in the organization's
10 management; (3) whether its operations are
11 financed by the government; (4) whether persons
12 other than the government have a proprietary
13 interest in the alleged agency and whether the
14 government's interest is merely custodial or
15 incidental; (5) whether the organization is
16 referred to as an agency in other statutes; and
17 (6) whether the organization is treated as an
18 arm of the government for other purposes, such
19 as amenability to suit under the Federal Tort
20 Claims Act.

21 In re Hoag, 846 F.2d at 1227-28. Applying this test, the Court
22 finds that the FHLB-SF is not a federal agency.

23 The first factor favors neither Plaintiff nor Defendants. It
24 is clear that the Federal Home Loan Bank System was created by
25 Congress to provide a reliable source of funds to homebuyers. 12
26 U.S.C. §§ 1421-1449. On the other hand, as noted by the Ninth
27 Circuit, "[t]he fact that a business is subject to extensive and
28 detailed regulation does not alone render its actions
governmental." Fidelity Fin. Corp., 792 F.2d at 1435. The Bank
does not perform regulatory functions. Id. Indeed, the Ninth
Circuit stated it was "questionable" whether the FHLB-SF's actions
could be deemed governmental. Id.

While this first factor is neutral, most of the others tip in
favor of a finding that the FHLB-SF is not a federal agency. With

1 regard to the second factor, the government has very little
2 involvement in the FHLB-SF's management. The Board of Directors of
3 each Federal Home Loan Bank, not the government, has the exclusive
4 authority to manage its operations. 12 U.S.C. § 1427. Indeed,
5 while some of the directors used to be appointed by the Federal
6 Housing Finance Board, that no longer occurs. Id. § 1427(g).

7 With regard to whether its operations are government-financed,
8 "the Bank is privately owned and privately funded. It receives no
9 government money" Fidelity Fin. Corp., 792 F.2d at 1435.
10 Defendants point to the FHLB-SF's tax-exempt status under 12 U.S.C.
11 § 1443, and they cite Reagan v. Taxation with Representation of
12 Washington, 461 U.S. 540, 544 (1983) for the proposition that tax
13 exemptions are tantamount to federal financing. DB Omnibus Opp'n
14 at 23-24; CS Omnibus Opp'n at 23-24. However, the Court doubts
15 that Congress intends for every organization receiving tax
16 exemptions to be considered a government agency.

17 With regard to whether the government's interest in the FHLB-
18 SF is proprietary, or merely custodial or incidental, this fourth
19 factor tips in favor of the Plaintiff. The Bank is privately owned
20 and capitalized only by its members. Fidelity Fin. Corp., 792 F.2d
21 at 1435. Defendants rely on Acron Investments, Inc. v. Federal
22 Savings & Loan Insurance Corp., where the Ninth Circuit Court of
23 Appeals found that the Federal Savings & Loan Insurance Corporation
24 was a federal agency, even though there was no outstanding stock to
25 be owned. 363 F.2d 236, 240 (9th Cir. 1966). In Acron, however,
26 all of the corporation's stock had been retired. See id. Here, it
27 is all privately owned. Also, Defendants have not shown that the
28 federal government's control over the Federal Home Loan Banks is

1 more than custodial or incidental. Defendants point to 12 U.S.C. §
2 1427, but in fact the Federal Housing Finance Board has less
3 control than it once had because it no longer has to the power to
4 designate the chairman and vice-chairman of the board of directors
5 of each Bank. 12 U.S.C. § 1427(g).

6 Defendants point out that Congress has the authority to
7 reorganize or eliminate the FHLB-SF, but Congress has the same
8 power with respect to Federal Reserve Banks, and the Eighth Circuit
9 Court of Appeals has held that Federal Reserve Banks are not
10 federal agencies. See Scott v. Fed. Reserve Bank of Kansas City,
11 406 F.3d 532, 538 (8th Cir. 2005) ("[E]ach Federal Reserve Bank is
12 owned by the commercial banks within its district. Accordingly,
13 although the government may have a substantial interest in the
14 operation of the Federal Reserve Banks, it does not have a
15 proprietary interest in them."). Indeed, the corporate structure
16 of Federal Home Loan Banks is quite similar to the corporate
17 structure of Federal Reserve Banks. See FHLB of Seattle I, 2010 WL
18 3662345 at *4. Especially in light of the fact that the FHLB-SF is
19 privately owned, the Court finds that the government's interest is
20 not proprietary.

21 With regard to the fifth factor, Defendants offer only 12
22 C.F.R. § 201.108(b), which lists Federal Home Loan Bank notes and
23 bonds as one among a list of twenty "agency obligations eligible as
24 collateral for advances." This oblique reference in one regulation
25 to Federal Home Loan Banks as agencies, and the absence of any
26 reference to the Banks as agencies in any statute, undermines
27 rather than supports Defendants' contention that the FHLB-SF is an
28 agency.

1 The final In re Hoag factor considers whether the organization
2 is treated as an arm of the government for other purposes, such as
3 amenability to suit under the Federal Tort Claims Act. This factor
4 is neutral. In Fidelity Financial Corp. v. Federal Home Loan Bank
5 of San Francisco, the district court held that the FHLB-SF was a
6 government agency for purposes of the Administrative Procedure Act.
7 589 F. Supp. 885, 894 (N.D. Cal. 1983). However, in Rheams v.
8 Bankston, Wright & Greenhill, the district court held that the FHLB
9 of Dallas was not a government agency for the purposes of the
10 Federal Tort Claims Act. 756 F. Supp. 1004, 1008 (W.D. Tex. 1991).

11 Overall, the Court finds that the first and sixth factors are
12 neutral, but the other four factors tip in Plaintiff's favor.
13 Therefore, FHLB-SF is not a government agency for the purposes of
14 section 1345.

15 **E. Equitable Remand**

16 Section 1452(b) of Title 28 of the United States Code provides
17 that a court to which a claim is removed pursuant to Section 1334
18 "may remand such claim . . . on any equitable ground." Here, the
19 only valid basis for removal is the Court's related-to bankruptcy
20 jurisdiction. Courts typically consider seven factors in
21 determining whether to remand a related-to bankruptcy case on
22 equitable grounds:

- 23 (1) The effect of the action on the
24 administration of the bankruptcy estate; (2)
25 the extent to which issues of state law
26 predominate; (3) the difficulty of applicable
27 state law; (4) comity; (5) the relatedness or
28 remoteness of the action to the bankruptcy
estate; (6) the existence of a right to a jury
trial; and (7) prejudice to the party
involuntarily removed from state court.

1 Hopkins v. Plant Insulation Co., 349 B.R. 805, 813 (N.D. Cal. 2006)
2 (citing Williams v. Shell Oil Co., 169 B.R. 684, 692-93 (S.D. Cal.
3 1994)).

4 The Court agrees with Plaintiff that the equities favor
5 remand. It is clear to this Court that these two cases have only a
6 remote connection to bankruptcy proceedings. In the Credit Suisse
7 Action, no more than six of the seventy-eight trusts had loans from
8 originators that are bankrupt.⁹ In four of these trusts, the
9 percentage of loans originated by bankrupt originators was too
10 small for those originators to be disclosed in the prospectus
11 supplements for the trusts. See CS Mot. to Remand at 17; CS
12 Corrected Omnibus Reply at 16. With regard to the fifth trust,
13 MASTR 2005-6, and as discussed further below, IndyMac is not itself
14 in bankruptcy. Therefore, the Court's related-to bankruptcy
15 jurisdiction in the Credit Suisse Action derives in large part from
16 the sixth trust, DBALT 2005-6, where AHM originated 56.53% of the
17 loans. See Rogovitz Decl. ¶ 3.c. However, this trust is only one
18 of seventy-eight trusts at issue in the case. Based on the very
19 small number of loans in the trusts at issue that have bankrupt
20 originators, the Court finds that the Credit Suisse Action has a
21 very remote connection to bankruptcy proceedings.¹⁰

22 _____
23 ⁹ These six trusts are DBALT 2007-2, DBALT 2005-6, DBALT 2005-5,
24 MASTR 2005-6, BALTA 2004-12, and SAMI 2007-AR 5. See CS Notice of
25 Removal; CS FAC Schedules 12, 15, 16 and 49; ECF No. 14 ("UBS
Joinder in Notice of Removal"); CS Omnibus Opp'n at 3-7; CS
Corrected Omnibus Reply at 16 n.9.

26 ¹⁰ Plaintiff represents that it will not present evidence in the
27 Credit Suisse Action that Deutsche Bank or UBS made untrue or
28 misleading statements about any loans originated by AHM, IndyMac,
or Alliance. CS Mot. to Remand at 18; CS Omnibus Reply at 17.
Going forward, Plaintiff is bound by that representation in the
Credit Suisse Action.

1 In the Deutsche Bank Action, IndyMac -- the loan originator or
2 depositor for at least sixteen of the trusts at issue¹¹ -- is not
3 itself in bankruptcy. Instead, IndyMac's parent company, IndyMac
4 Bancorp, is in bankruptcy. See In re IndyMac Bancorp, Inc., No.
5 08-21752 (Bankr. C.D. Cal.). IndyMac, the subsidiary, was shut
6 down by the FDIC on July 11, 2008, and the FDIC was appointed as
7 its receiver. DB Mot. to Remand at 17. On November 19, 2009, the
8 FDIC determined that "the assets of IndyMac Bank are insufficient
9 to make any distribution on general unsecured claims and therefore,
10 such claims, asserted or unasserted, will recover nothing and have
11 no value." FDIC Notice, 74 F.R. 59540-01, 2009 WL 3832288 at
12 *59540 (F.R. Nov. 19, 2009).

13 Plaintiff contends that this FDIC Notice shows there are no
14 assets of IndyMac that will be returned to the estate of IndyMac
15 Bancorp, and as a result, this action can have no effect on the
16 IndyMac Bancorp bankruptcy proceeding. DB Mot. to Remand at 17-18.

17 Defendants respond by pointing out that the FDIC, as receiver
18 for IndyMac, intervened in an action against IndyMac's directors
19 and officers to recover for injuries to IndyMac. DB Omnibus Opp'n
20 at 11 n. 15; Falzone Decl. ¶ 6, Ex. 5.¹² However, in December
21

22 ¹¹ Defendants' chart indicates that IndyMac was the only originator
23 or depositor for the following trusts: INDX 2004-AR13; INDX 2007-
24 AR21IP; INDX 2007 AR19; INDX 2007-AR5; INDX 2006 AR41; INDX 2006-
25 AR33; INDX 2006-R1 A1; INDX 2004-AR15; INDX 2005-AR21; INDX 2005-
26 AR7; INDX 2005-AR5; INDX 2007-FLX6; INDX 2007-FLX5; and INDX 2005-
AR3. For HVMLT 2004-7, IndyMac was the originator for
approximately twenty four percent of the loans, and for MASTR 2005-
6, the prospectus does not specify how many loans were originated
by IndyMac. See DB Omnibus Opp'n at 3-7.

27 ¹² John M. Falzone ("Falzone"), attorney for Deutsche Bank
28 Securities, Inc., Deutsche Alt-A Securities, Inc. and DB Structured
Products, Inc., filed a declaration in opposition to Plaintiff's

1 2009, the FDIC stated IndyMac's liabilities exceeded its assets by
2 almost \$13 billion. DB Omnibus Reply at 17. Hence, even if the
3 FDIC recovers money as an intervenor, it is very unlikely this
4 recovery will flow back to the bankrupt parent. While it is
5 conceivable that the Deutsche Bank action could have an effect on
6 the IndyMac Bancorp bankruptcy, that outcome is unlikely. The
7 remote connection between this case and the IndyMac Bancorp
8 bankruptcy favors remanding the case to state court.

9 In the Deutsche Bank Action, AHM originated all of the loans
10 in two of the trusts at issue,¹³ thirty-nine percent of the loans
11 in a third trust,¹⁴ and for one other trust, AHM was not a
12 principal originator,¹⁵ which means it originated less than ten
13 percent of the loans. There are thirty-eight trusts at issue in
14 the Deutsche Bank Action. DB FAC ¶¶ 1-3. AHM did not originate
15 any loans in most of them, and it originated all of the loans in
16 only two of them. Unlike IndyMac, AHM is in bankruptcy. However,
17 given that AHM originated a very small fraction of the loans in the
18 trusts at issue, the relationship between the Deutsche Bank Action
19 and the AHM bankruptcy proceeding is remote.

20 In the Deutsche Bank Action, Defendants also rely on the
21 bankruptcy filings of Alliance, SouthStar, ComUnity, First Magnus,
22 Loan Link, and Aegis Mortgage as a basis for establishing related-
23 to bankruptcy jurisdiction. DB Omnibus Opp'n at 3-7. Based on

24
25 motions to remand. Deutsche Bank Action, ECF No. 94; Credit Suisse
26 Action, ECF No. 93.

27 ¹³ HVMLT 2006-7 and HVMLT 2007-5.

28 ¹⁴ DBALT 2007-AR2.

¹⁵ WMALT 2005-8.

1 indemnification agreements between Defendants and these entities,
2 this action could conceivably have an effect on these bankruptcy
3 proceedings. However, these entities originated a very small
4 fraction of the loans in only six of the trusts at issue.¹⁶ As
5 such, the relationship between this case and these entities'
6 bankruptcy proceedings is remote. These tenuous relationships to
7 bankruptcy proceedings warrant remanding the Deutsche Bank Action
8 to state court.

9 In arguing that there is no equitable basis for remand,
10 Defendants point out that Plaintiff asserts state and federal law
11 claims. DB Omnibus Opp'n at 14; CS Omnibus Opp'n at 14-15.
12 However, the only federal law claims are ones that Congress has
13 provided are not removable if brought in state court. See 15
14 U.S.C. § 77v(a). Accordingly, the interests of comity warrant
15 remanding this case to state court.

16 Section 1452(b) affords "an unusually broad grant of
17 authority." In re Roman Catholic Bishop of San Diego, 374 B.R.
18 756, 761. (Bankr. S. D. Cal. 2007). Here, the vast majority of the
19 mortgage loans in the trusts at issue were underwritten by entities
20 that are not in bankruptcy. While both the Credit Suisse Action
21 and the Deutsche Bank Action are related to a number of bankruptcy
22 proceedings based on the effect they could have on those

23
24 ¹⁶ Alliance originated approximately three percent of the loans in
25 DBALT 2007-AR2, and it was not a principal originator of the loans
26 in WMALT 2006-1 and WMALT 2006-3. SouthStar originated
27 approximately twenty-four percent of the loans in SAMI 2007-AR2,
28 and ComUnity was not a principal originator in this trust. First
Magnus was not a principal originator in WMALT 2005-5; WMALT 2005-
8; WMALT 2006-1; and WMALT 2006-3. Loan Link was not a principal
originator in WMALT 2006-1 and WMALT 2006-3. Aegis was a principal
originator in WMALT 2005-5; WMALT 2005-8; WMALT 2006-1; and WMALT
2006-3.

1 proceedings, that relationship is remote because it concerns only a
2 small fraction of the loans in the trusts at issue. The Court
3 finds that the equities favor remand to state court.

4 **F. Section 1441(c)**

5 As well as joining in the opposition of the other Defendants,
6 UBS and MAST filed separate opposition briefs, contending that the
7 entire action is removable under 28 U.S.C. § 1441(c). See UBS and
8 MAST DB Opp'n; UBS and MAST CS Opp'n. This statute provides:

9 Whenever a separate and independent claim or
10 cause of action within the jurisdiction
11 conferred by section 1331 of this title is
12 joined with one or more otherwise non-removable
13 claims or causes of action, the entire case may
be removed and the district court may determine
all issues therein, or, in its discretion, may
remand all matters in which State law
predominates.

14 28 U.S.C. § 1441(c). Section 1331 provides that "[t]he district
15 courts shall have original jurisdiction of all civil actions
16 arising under the Constitution, laws, or treaties of the United
17 States." UBS and MAST contend that the causes of action brought
18 against them in the Deutsche Bank Action -- the first and fifth
19 causes of action -- are separate and independent from the non-
20 removal claims in these cases. UBS and Mast DB Opp'n at 4.

21 In the Deutsche Bank Action, the first cause of action alleges
22 violation of the California Corporations Code and the fifth cause
23 of action alleges negligent misrepresentation. See DB FAC ¶¶ 120-
24 24, 155-62. Neither cause of action falls within the scope of the
25 federal question or "arising under" jurisdiction conferred by
26 Section 1331. Therefore, Section 1441(c) -- which permits an
27 entire action to be removed whenever a separate and independent
28

1 claim within the jurisdiction conferred by Section 1331 is joined
2 with otherwise non-removable claims -- simply does not apply.

3 UBS and MAST also contend that there is federal question
4 jurisdiction because of the FHLB-SF's charter and because the FHLB-
5 SF is a federal agency. UBS and MAST Opp'n at 5. Plaintiff
6 disputes whether the charter or its agency status can be a basis
7 for jurisdiction under Section 1331. DB Supp. Reply at 4. As
8 explained above, see Part IV.C and D, supra, the charter does not
9 confer jurisdiction, and FHLB-SF is not a federal agency. Hence,
10 the Court does not need to resolve the question of whether there is
11 federal question jurisdiction based on the charter or the FHLB-SF's
12 agency status.

13
14 **V. CONCLUSION**

15 While the Court has related-to bankruptcy jurisdiction over
16 the Deutsche Bank Action and the Credit Suisse Action, the Court
17 concludes that the equities favor remand. It is true, as
18 Defendants contend, that section 22(a) of the Securities Act of
19 1933 does not bar removal. However, the charter of the FHLB-SF
20 does not confer federal jurisdiction, and the FHLB-SF is not a
21 federal agency. Related-to bankruptcy jurisdiction is the only
22 basis for removing these two cases to federal court, but the
23 relationship between these cases and bankruptcy proceedings is
24 remote. As such, the Court exercises its authority to remand
25 these cases to state court. The Court GRANTS the motions to
26 remand filed by Plaintiff Federal Home Loan Bank of San Francisco
27 in Case No. 10-3039 and in Case No. 10-3045.

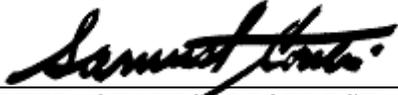
28 The Court DENIES as moot Plaintiff's Motion for Leave to File

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a Second Amended Complaint in Case No. 10-3045. These two cases are remanded to the California Superior Court for the City and County of San Francisco.

IT IS SO ORDERED.

Dated: December 20, 2010


UNITED STATES DISTRICT JUDGE