

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NATIONAL CREDIT UNION ADMINISTRATION :
BOARD, etc., :
                Plaintiff, : 13cv6705 (DLC)
                -v- : 13cv6719 (DLC)
                : 13cv6721 (DLC)
MORGAN STANLEY & CO., et al., : 13cv6726 (DLC)
                : 13cv6727 (DLC)
                Defendants. : 13cv6731 (DLC)
                : 13cv6736 (DLC)
And other NCUA Actions. :
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UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

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NATIONAL CREDIT UNION ADMINISTRATION :
BOARD, etc., :
                Plaintiff, : 11cv2340 (JWL)
                -v- : 11cv2649 (JWL)
                : 12cv2591 (JWL)
RBS SECURITIES, INC., f/k/a GREENWICH : 12cv2631 (JWL)
CAPITAL MARKETS, INC., et al., : 12cv2648 (JWL)
                : 13cv2418 (JWL)
                Defendants. :
                :
And other NCUA Actions. :
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Protocol ("MDP"). NCUA submitted its opposition to Whittemore's motion on June 11, and Whittemore submitted his reply on June 15.

NCUA has sued RBS in each of our districts in connection with thirty-five RMBS. Whittemore was a Senior Vice President and Chief Underwriter at RBS at the time the securities were sold. Since 2011, he has testified four times over the course of five days in unrelated RMBS litigation and government investigations. RBS has provided the transcripts of those depositions to NCUA pursuant to § 10(d) of the MDP. Most of the thirty-five RMBS at issue in our Coordinated Actions were not at issue in the cases and investigations in which Whittemore was previously deposed.

Whittemore argues first that the deposition would be unnecessarily duplicative, cumulative, and unduly burdensome. Whittemore has not shown that a deposition would impose an undue burden, would be cumulative or that his testimony here would be unnecessary. Nonetheless, to assist Whittemore in preparing for this fifth deposition, we require NCUA to provide him with advance notice of the topics on which it intends to examine him.

Whittemore points out that § 10(d) of the MDP requires that NCUA "endeavor to not subject witnesses to the same questioning for which a transcript was previously provided." As our Order of May 13, 2015 explains, § 10(d) is not a "limitation ordered

by the court" for purposes of Federal Rule of Civil Procedure 30(c)(2).

Accordingly, it is hereby

ORDERED that Whittemore's motion to quash is denied.

IT IS FURTHER ORDERED that at least five business days in advance of the deposition NCUA shall provide Whittemore with written notice of the topics upon which it will question him at his deposition. His motion for a protective order is otherwise denied.

IT IS FURTHER ORDERED that the deposition shall occur prior to July 17, 2015. Any dispute regard the scheduling of the deposition shall be presented to our Courts by June 18 pursuant to the procedure provided in § 2 of the MDP.

