

SEC Probe Emboldens Duped Investors

Asset-backed investors who were bilked out of \$3 billion by healthcare-finance company **National Century Financial** are hoping a newly launched **SEC** investigation will help them win a series of lawsuits against securitization trustee **J.P. Morgan Chase**.

When J.P. Morgan disclosed in its quarterly report last week that the SEC was looking into its conduct as indenture trustee for National Century's NPF 12 trust, holders of the company's fraudulent bonds immediately latched onto the development as evidence that the bank helped facilitate securitizations of non-existent receivables.

If nothing else, they expect the probe to prompt the Columbus, Ohio, District Court handling their lawsuits to drop motions to dismiss that J.P. Morgan filed last year and again in March. And the plaintiffs plan to move forward with their cases regardless of whether the SEC chooses to take action, said **Kathy Patrick**, an attorney from the law firm of **Gibbs & Bruns** who is representing the bondholders.

Bank One, the original securitization trustee for the NPF 12 deals, was purchased by J.P. Morgan last July. The bank declined to comment.

According to J.P. Morgan's 10-Q filing, the SEC recently notified officials there that it is considering a civil injunctive action against Bank One and a former employee for alleged securities-law violations. The injunctive action would likely take the form of fines and a requirement that J.P. Morgan refrain from similar conduct in the future.

Holders of National Century's bonds have long alleged that Bank One and J.P. Morgan — which sometimes served as trustee for National Century's NPF 6 trust as the former Chase Manhattan — routinely switched funds between various accounts and the two issuing vehicles to disguise losses.

The investors claim that the banks were motivated by fees and the promise of additional business from National Century, including co-manager assignments on the company's securitizations. One of the lawsuits is actually a combination of actions against the issuer, its employees and vendors that the Ohio court combined into a single proceeding a year ago. The other was filed in November. **Gibbs & Bruns** is representing investors in both cases.



For its part, J.P. Morgan has always maintained that it acted on the instructions of the servicer, and should not be expected to detect fraud.

Nonetheless, the SEC investigation could reopen discussions about whether trustees should monitor deals more closely and demand more compensation for doing so, said **Michael B. Thimmig**, a partner at the law firm of **Greenberg Traurig** who isn't involved in the lawsuits.

National Century filed for bankruptcy protection in August 2002, after it was discovered that the company had securitized medical receivables that didn't exist. Several officials at the company have been indicted in the case, which the **FBI** and the **SEC** are continuing to investigate. ❖