Sweeping regulatory changes, aggressive enforcement tactics, and the ongoing fallout from the credit crisis have raised the stakes in securities and finance matters around the world. Financial industry reform law in the US and elsewhere will have far-reaching implications for how companies are supervised and regulated, though the full impact of these changes will be unclear for some time. Other recent regulatory changes in Europe, Asia, and Australia have led to increases in class action litigation across the globe. Meanwhile, the financial markets continue to evolve and those tasked with enforcing them endeavor to keep pace, as the stakes remain high in this complex and turbulent economic environment.

For over half a century, NERA experts have been central to client success in some of the world’s highest-profile cases related to litigation, regulation, and business challenges. NERA is widely recognized as a leading firm in the economics of securities, finance, and commerce. Our experts apply their skills in these areas to assist clients in securities litigation, commercial disputes, and risk management. Our economists employ economic theory and robust and supportable quantitative techniques, grounded in a thorough understanding of market facts, to provide practical approaches to, strategies for, and analyses of the challenges facing our clients. Our expert insights build on experience gained in academia, business, and the regulatory agencies.
NERA's Securities and Finance Practice

NERA economists provide answers to difficult questions arising in areas including:

- Accounting Disclosure Litigation
- Bankruptcy and Financial Distress Litigation
- Broker/Customer Disputes
- Complex Commercial Disputes
- Credit Crisis Litigation
- D&O and Other Coverage Litigation
- Derivative Suits
- ERISA Actions
- Financial Asset and Business Valuation
- Financial Institutions and Banking
- Financial Investigations and Forensic Accounting
- Financial Risk Management
- Lost Profit Analyses
- Mutual Fund and Investment Company Act Litigation
- Securities-Based Regulatory and Criminal Actions
- Securities Class Actions
- Structured Products and Complex Financial Instruments
- Trading Behavior
- White Collar Criminal Litigation, Investigations, and Compliance

With over 20 testifying experts, a tremendous support staff, and numerous academic and industry affiliates, NERA’s Securities and Finance Practice is widely recognized as a leader in the field. The members of our Global Securities and Finance Practice bring to bear a thorough understanding of securities, the markets in which they trade, and the regulatory institutions that govern them. Our insights build on experience gained as officers at major global institutions; economists at the Federal Reserve, the Securities and Exchange Commission (SEC), the Commodities Futures Trading Commission (CFTC), and the Council of Economic Advisers; faculty at top universities; and industry arbitrators. Clients hire us for advisory services because of the high level of sophistication and accuracy for which our work, often rigorously tested in a litigation setting, is known.

We assist clients in all stages of securities litigation, including pretrial discovery, depositions, fact analysis, strategy planning, development of economic and financial damage models, critique of damage reports by opposing experts, and preparation of well-documented reports, exhibits, and testimony.

We are grounded in a set of core principles that have always guided our pioneering efforts: focus, independence, defensibility, and clarity.
Areas of Focus

NERA experts’ hands-on experience and deep understanding of how markets work span the range of industries and capabilities that are critical to our clients’ success. We are grounded in a set of core principles that have always guided our efforts: focus, independence, defensibility, and clarity. In the field of securities and finance, our areas of focus include:

Securities Class Actions
Economists are often used as consultants and expert witnesses in matters involving securities fraud. However, our work often begins well before a case makes its way into the courtroom. When engaged early on and throughout the life of a case, economists can be important members of the team crafting appropriate legal strategy. Even before the case gets underway, clients often ask us to estimate the exposure and the amount that defendants are likely to pay if the case settles. Using our knowledge of plaintiff-style damage calculation methodologies and our proprietary database of information on hundreds of prior shareholder class action settlements, NERA provides estimates for both of these figures to help counsel better assess the magnitude of the case. NERA also helps clients deal with the early phases of arguments about whether a case should proceed. Specifically, if there is a class action, we provide the information about whether the market in which securities traded was efficient and on the extent of conflicts among class members. Depending on the case, we may also be able to point out economic arguments in favor of or against defendant liability: we assess reliance, materiality, falsity, loss causation, and scienter. This information can be used in discussions with opposing parties. If the case does proceed, NERA provides additional arguments on liability and performs more refined damage analyses used in settlement negotiations or at trial. We are often asked to critique opposing expert reports and analyses, pointing out their strong and weak points, any methodological errors and, when appropriate, to help counsel prepare Daubert motions to exclude opposing testimony.

Tracking Trends in Securities Class Actions around the World
NERA has been analyzing trends in securities class actions for more than 20 years. We publish annual reports on US trends and have also produced studies of class action trends in Japan, Canada, Italy, and Australia. This research provides a much sought after source of information for risk managers, plaintiff and defense counsel, insurers, policymakers, and other interested parties to assess likely exposures and the likelihood and magnitude of settlements. Policymakers also use these results to draw conclusions about the efficacy of litigation reform measures.
Broker-Customer Disputes
Brokers and investment advisors have duties under the law to know their customers’ investment needs and tolerance for risk. Often when investors lose money, they consider whether investments made by their advisor or recommendations made by their broker were appropriate. For more than two decades, our economists have been called upon to render opinions in disputes between investors and their broker-dealers, investment advisors, and fund managers. NERA experts have provided analyses supporting investors and brokers for use in arbitration and the courtroom. Our work has focused both on liability, examining allegations such as unsuitability and churning, and damages, measuring how much investors might have earned under an alternative investment strategy. Our expertise with financial theory and experience with various trading strategies and instruments gives us deep insight into the perspectives of each party while the investment decisions were being made, in order to better focus on whether the trading practices at issue were appropriate.

Financial Institutions and Banking
Financial market participants are operating in a changed landscape. For example, new legislation including the US financial industry reform law has far-reaching implications for how financial services firms are supervised and regulated. The full impact of financial reform initiatives around the world will be unclear for some time, as regulatory agencies move forward with the rule-making and implementation process. Complying with these new regulations requires significant changes in the way financial services firms do business. NERA has assembled a deep and experienced team of expert economists with experience in government (including the Federal Reserve Board, the CFTC, the SEC, the Federal Trade Commission (FTC), and the President’s Council of Economic Advisers) and the financial services industry (including Barclays, Banque Paribas, Morgan Stanley, and CS First Boston). Each member of our team brings an outstanding set of skills, experience, and expertise to bear on the challenges raised by regulatory changes and the other critical issues facing the financial services sector today. We provide advice and training, including design and implementation of models needed to comply with rules and regulations, assessments of business lines and functions before regulatory examinations, and assistance to firms in responding to examinations.
Bankruptcy and Financial Distress Litigation
In bankruptcy and financial distress matters we combine expertise in economics, finance, accounting, and valuation with specific industry knowledge. Our experts provide economic analysis of securities disputes and corporate governance, valuation of companies, portfolios including assets and derivatives, and professional compensation. We assist clients in disputes over plan confirmation; preference and fraudulent conveyance claims; alleged breaches of fiduciary duty by directors and officers of distressed companies; lender liability claims; and the feasibility of alternative restructuring plans. We are also frequently retained by litigation counsel to provide expert testimony involving these and other claims in bankruptcy adversary proceedings. Our capabilities include expert testimony on liability and damages; solvency and capital adequacy analysis in fraudulent conveyance and bankruptcy; valuation of assets, including enterprises and intangible assets; valuation of derivatives and complex securities; assessment of the reasonableness of certain assumptions used in valuation, using market indicators such as credit default swaps; cash flow analysis of the effect of transfers on the solvency and capital adequacy of the debtor; and valuation, at the time of transfer, of long-tailed liabilities or other disputed claims.

ERISA Actions
In the last quarter century, employee benefit plans, especially 401(k) defined-contribution retirement plans, have become increasingly important as a means for saving for retirement and other purposes. Historically, litigation has arisen when stock or bond market fluctuations have imposed losses on these plans. The current financial crisis is no exception, and ERISA litigation over losses in these plans is once again on the rise. These losses typically relate to retirement plans containing employer stock in companies hit hard by the crisis. Shareholders may also pursue litigation over other poorly performing investments in 401(k) plans. In addition, crisis-related retirement plan disputes have arisen over such issues as the investment of cash collateral held in securities-lending programs. Experts in NERA’s Securities and Finance Practice have deep expertise in addressing the financial questions at issue in ERISA litigation, including prudence and reasonableness of decisions by fiduciaries, disclosure of information to plan participants, and estimation of losses to a plan or to its participants from alleged wrongdoing. In some cases, allegations are closely related to allegations in parallel shareholder class actions. In other cases, the allegations center on the retention of employer stock as an investment despite events (such as imminent bankruptcy) that heightened the risk of that stock. NERA’s experts have also analyzed issues of allegedly excessive fees in 401(k) plans.

“[The NERA expert’s] regression analysis in this area was sound and supported her conclusion.”
Judge Jack B. Weinstein, US District Court
“[The NERA expert] explains that he conducted an event study; a statistical method of measuring the effect of an event on a stock price. … Plaintiffs have not rebutted the accuracy of [the NERA expert]’s opinion … and because Defendants have successfully rebutted the fraud-on-the-market presumption of reliance, Defendants are entitled to summary judgment.”

Judge Sim Lake, US District Court

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**White Collar Criminal Litigation, Investigations, and Compliance**

We have deep and relevant experience in applying quantitative economic analysis in white collar investigations and litigation. Our expertise enables us to support firms in all economic aspects of white collar matters, including responding to market abuse investigations, defending enforcement actions, providing expert testimony, and quantifying regulatory impacts and risks. We frequently assist clients in responding to formal investigations and requests for data and analyses from regulatory entities, such as the Division of Enforcement at the SEC, the DOJ, offices of State Attorneys General, and self-regulatory organizations such as FINRA. Our capabilities include the construction and analysis of large and complex transaction databases, analysis and implementation of computerized surveillance procedures, and preparation of summary materials in response to regulators’ requests. Our experts’ analysis of damages and disgorgement measures aids clients in negotiating settlement agreements. We can also assist clients facing issues arising under the Foreign Corrupt Practices Act (FCPA) and other anti-bribery and anti-corruption laws by offering a more sophisticated economic approach to determining the true “value” of an alleged bribe. We have supported clients in matters covering a variety of products and services, including agricultural commodities and natural resources, capital equipment, transportation and fuel surcharges, industrial inputs, and consumer goods and services. In addition, NERA has worked with specialist firms involved in civil and criminal proceedings. Our experts have extensive experience analyzing data, reports, and algorithms used in automated surveillance of specialists’ trading and exchange rules for equities and options.

**Accounting Disclosure Litigation**

Our accounting experts combine a unique blend of skills and industry experience to address financial disclosures, auditing and control, and tax compliance issues related to criminal and civil allegations of securities fraud; accounting fraud and professional negligence; post-acquisition disputes; allegations of misrepresentations in financial disclosures; and notional valuations for reporting purposes. We offer specialized knowledge and investigative skills, combining statistical and econometric expertise with an in-depth understanding of the nature of, and possible flaws in, the underlying financial data. The synergies between our accounting expertise and our securities litigation, financial investigation, and business and securities valuation practices allows us to provide clients with integrated, robust analyses. We are frequently asked to provide consulting and expert testimony. Our team includes former partners of major accounting firms and leading academics in the areas of financial accounting and reporting, cost accounting, forensic accounting, derivatives, risk management, tax matters, and accounting rule-making.
Financial Investigation and Forensic Accounting

Tracing funds and activities within companies and across jurisdictions presents complex challenges to which our experts apply their forensic investigative abilities. we provide financial investigative expertise for class actions, civil litigations, regulatory enforcement proceedings, and white collar criminal matters. Our experts have been retained by executives, companies and their professional advisors, governments, and regulators to provide advice and testimony. We provide our clients with advice and expertise in relation to patterns of conduct and financial paper trails in relation to allegations of fraud; loss causation analyses and damage quantification for complex civil litigation and class actions; assessments of economic materiality for class action, regulatory and criminal matters; and financial statement presentation and disclosures in relation to Generally Accepted Accounting Principles (GAAP), International Financial Reporting Standards (IFRS), and other comprehensive bases of accounting, for tax reporting purposes, and in relation to Generally Accepted Auditing Standards (GAAS). In addition to NERA’s team of experts in economics, our experts include specialists in investigative and forensic accounting, Certified Fraud Examiners, Certified Public Accountants, Chartered Accountants, and Chartered Financial Analysts.

Credit Crisis Litigation

Over the past few years, credit markets contracted quickly, as several economic factors caused the credit boom to stop and a meltdown to start. These factors include the rise in short-term and long-term interest rates and the decrease in the rate of home price appreciation, as well as declines in home prices. The credit crisis affected all areas of subprime lending, including auto loans and credit cards, and spilled over into prime lending. Problems in the lending market affect a broad array of stakeholders. Examples of disputes that have arisen include allegations of predatory lending, misrepresentation and omissions related to the valuation of the loans and the profits from selling or servicing them, suitability of investments, breach of contract related to loan servicing, and fraudulent conveyance issues. Resolving these issues requires a deep understanding of the economic foundations and roles of each stakeholder in the subprime lending market; an understanding of how that market performed over time; and a broad, objective analysis of the events that caused the meltdown. NERA experts have substantial background in the subprime lending market and experience with litigation among the stakeholders in that market, including our work in the previous subprime market crash in 1998. We are working with clients to better understand and navigate the fallout from the dramatic collapse of the subprime lending industry. Our expertise in this area includes: bankruptcy issues, portfolio performance analysis, securities fraud class actions, complex commercial disputes, and accounting.
Lost Profit Analyses
There are many scenarios in which a business’s ability to earn profits has allegedly been compromised by another party’s actions. While one can always get a quick feel for the change by comparing the level of profits before and after the relevant actions, NERA economists go beyond such simple comparisons and bring economic, statistical, and accounting expertise to bear on such questions. Depending on the situation, it is often possible to develop more sophisticated analyses that account for changes in the industry as well as pre-existing projections or trends that would have led to a change in profits even in the absence of any outside influence. When feasible, statistical analyses can help one draw an inference about whether a change in profits was so unusual as to be of a magnitude that would be unlikely to be caused by normal fluctuations in the business in the absence of some form of material outside influence.

Financial Risk Management
As risk management has become a critical part of strategic planning, businesses are recognizing the need to evaluate the “risk landscape” of their firm in the aggregate, rather than just measuring and managing individual risks one at a time. With extensive professional experience in risk analysis and risk management techniques, NERA’s financial risk management experts are well versed in modeling, analyzing, and communicating the effects of combined risks to financial and non-financial institutions. Our experts assist clients in measuring individual risk exposures and aggregating these risks across risk factors and business units, taking into account correlations and diversification effects, to measure their combined effect on performance measures such as earnings-at-risk or cash-flow-at-risk. Clients benefit by having an improved quantification of the risks they face, a better assessment of the impact of their risk transfer activities—hedging and insurance—on their overall risk, more precise contingency planning, and more accurate budgeting and financial planning. NERA experts are recognized as thought leaders in the field of risk management, and have a distinct ability to evaluate the trends that are likely to represent the best practices of tomorrow. NERA’s experts have assisted various industry bodies, such as the Group of Thirty, the International Swaps and Derivatives Association, and the Treasury Management Association, in developing risk management principles and evaluating best practices.
Mutual Fund and Investment Company Act Litigation

The wave of litigation surrounding trading in mutual funds has created a need for sophisticated economic and statistical analyses on how to detect and measure the effects of practices such as market timing and late trading. NERA has developed tools to investigate whether market timing was present using both overall fund flow data and data on trading by individual investors. We have also analyzed how different behaviors by investors and funds influence the losses that non-timing investors suffered. More broadly, NERA economists have worked on numerous cases where the actions of investors and investment advisors have been at issue. Our work in valuation and litigation also allows us to quickly develop tools to meet the needs of new litigation, such as questions about how securities should have been valued in calculating the net asset value of a portfolio. We have also investigated the appropriateness of fees charged by mutual fund companies.

Trading Behavior

There are many instances in which an examination of how investors traded securities can shed insight on a dispute. Sometimes, the question is how certain trades may have affected prices, specifically when there are claims of market manipulation through certain trading behavior. Other times, there are questions about whether the trading itself was reasonable, such as when there are allegations of churning by brokers or in understanding the trades by a fund or investment manager accused of running a Ponzi or similar scheme. There are also situations in which one wants to draw information from non-fraudulent trading, such as estimating the number of shares that may be damaged in a shareholder class action or determining whether potential class members’ shares can be traced back to a particular offering. NERA economists bring their background and experience in understanding trading behavior to all of these analyses. Our work has included examinations of aggregate market data reported by trading markets like exchanges, as well as individual-level data from clients, brokerage houses, and entities like the Depository Trust Clearing Corporation and Omgeo. Our experience in working with these data can be helpful in understanding where to locate different forms of data and in understanding what needs to be requested from the producing party in order for later analyses to be useful.
Case and Project Profiles

NERA’s experts bring to bear a passion for finding the right answer. The following case profiles illustrate the breadth of our securities and finance experience.

Hedge Fund Litigation: Weavering Capital (UK) Ltd. and Anr v. Peterson and Ors

Weavering Capital (UK) Limited (“WCUK”) was a London-based investment manager that acted as the investment adviser to the Weavering Macro Fixed Income Fund Limited (the “Macro Fund”). WCUK and the Macro Fund collapsed in 2009 amidst allegations of fraud. WCUK’s liquidators sued the company’s former Chief Executive and Managing Director, Mr. Magnus Peterson, and three other WCUK directors and employees, seeking compensation for the hundreds of millions of dollars in losses incurred by investors in the Macro Fund. The civil case, brought before London’s High Court of Justice – Chancery Division, focused on interest rate swap agreements with a reported value of more than $600 million between the Macro Fund and British Virgin Islands-based Weavering Capital Fund (“WCF”), a company majority owned and entirely controlled by Mr. Peterson. WCUK’s liquidators claimed that the interest rate swap agreements were “sham” transactions used by Mr. Peterson to manipulate the Macro Fund’s reported asset values and to give investors the impression that the fund was performing well. NERA provided expert economic analysis and testimony on behalf of WCUK’s liquidators. NERA’s analysis demonstrated that the cash flows exchanged between the Macro Fund and WCF in relation to the interest rate swaps were not consistent with the economic value of the transactions. NERA provided evidence that the valuations ascribed to the interest rate swaps were incorrect and did not take account of the counterparty risk associated with WCF. High Court Justice Sonia Proudman cited NERA’s analysis in her decision as “the opposite of superficial, dealing with all relevant matters in considerable detail and great clarity.” On 30 May 2012, Justice Proudman issued a judgment on behalf of the liquidators, terming the interest rate swaps “shams” and finding Mr. Peterson liable for fraud and the other three defendants liable for negligence. All four defendants were also found to be in breach of their duties to WCUK. Justice Proudman awarded damages of $450 million against the defendants.

The SEC filed charges alleging insider trading in credit default swap contracts (CDS) against defendants Mr. Rorech, a high-yield bond salesperson at Deutsche Bank, and Mr. Negrin, a portfolio manager for the hedge fund Millenium Partners, LP. The CDS at issue referenced bonds issued by VNU N.V. (VNU), a Dutch media holding company. Defendants disputed that CDS were within the jurisdiction of the SEC as the CDS in question were not “security-based swap agreements” and thus were not covered by section 10(b) and Rule 10b-5’s antifraud provisions. NERA was asked by the SEC to examine the relationship between bond spreads and CDS spreads for VNU. The results of NERA’s analysis were presented in an expert report and subsequent trial testimony. The report analyzed available data on VNU bonds and CDS-referencing VNU bonds, demonstrating that the relationship between bond spreads and CDS spreads for VNU was consistent with that predicted by academic theory and found in previous empirical work (i.e., that bond spreads and CDS spreads tend to move together). The report also showed that VNU’s bond spreads contributed to price discovery in the CDS market. The SEC prevailed on jurisdiction but lost on the insider trading allegations. The US District Court, Southern District of New York, extensively cited the results of the statistical work performed by NERA in its opinion.


NERA provided analysis and testimony on behalf of the defendant in a CompuDyne PIPE case. The SEC alleged that John F. Mangan, Jr. intended to fraudulently take advantage of material non-public information concerning a PIPE transaction by selling short pre-announcement. The SEC’s expert testified that the close-to-close price drop from $17.38 on the day Mr. Mangan arranged to purchase shares at the $12 discounted offering price to $14.25 the following day, when he placed a sell order before the open, sold soon thereafter, and the PIPE transaction was subsequently announced, was statistically significant. NERA was retained as the defendant’s expert on materiality. NERA conducted a battery of event studies covering the one-day window examined by the SEC’s expert and found the evidence to be mixed and therefore insufficient to conclude that the $3.13 drop was statistically significant. The NERA expert also presented intraday event studies, opining that these were more germane, and concluded that the PIPE news was not material when publicly disclosed. On 20 August 2008, the Hon. Judge Graham C. Mullen of the US District Court for the Western District of North Carolina, Charlotte Division, granted Mr. Mangan’s motion for summary judgment. Judge Mullen ruled that the relevant time for assessing materiality was when the defendant traded. Citing NERA’s deposition testimony that the relevant event window for such an assessment extended from the trade time to the same-day close and that the $14.33 to $14.25 price drop over that interval was immaterial, he ruled that the market did not devalue CompuDyne stock after the trade at issue.
Advisory Services: Credit Ratings for Structured Products
Moody’s Investors Service awarded a contract to NERA to conduct a study on aspects of the ratings process for structured products. The study compared the meaning of structured finance ratings from different rating agencies and the performance of rated structured finance products. The purpose of the analysis was to inform the rating agencies’ “notching” methodologies. “Notching” refers to the industry practice whereby one agency adjusts ratings of structured finance collateral from other agencies (1) to bring them in line with ratings it would have likely assigned to the same collateral, and (2) to adjust for uncertainty and differences in monitoring practices. The study has provided NERA with substantial expertise and understanding of the credit rating process that is useful in understanding both how credit agencies are likely to behave going forward and the processes they followed during periods such as the credit crisis.

In a complaint filed in April 2009, plaintiffs Fishman Haygood Phelps Walmsley Willis & Swanson, LLP brought action against State Street Corporation alleging that the defendants had breached their duties of prudence and loyalty by engaging in a securities lending program as part of their administration of a trust fund in which plaintiffs were investors. Plaintiffs alleged that State Street reinvested cash collateral in “long-term, high-risk instruments” leading to realized and unrealized losses, rather than making more “prudent” investments in money market funds or Treasury securities. In response, State Street filed a motion to dismiss on the grounds that the plaintiffs lacked Article III standing under ERISA, as they had not suffered any actual injury. NERA provided expert analysis on behalf of State Street Corporation, demonstrating that the plaintiffs had not suffered a direct injury from unrealized losses and that any future injury was not imminent. In addition, the NERA expert noted that the plaintiffs did not face any restriction on redemptions; that there was sufficient liquidity in cash collateral pools; and that none of the securities held by the cash collateral pools had defaulted or was impaired. As such, the plaintiffs’ unrealized losses did not establish injury for the purposes of Article III. In a decision announced on 25 March 2010, US District Court Judge Patti Saris allowed the motion to dismiss, citing at length NERA’s testimony and analysis for the defense affirming the lack of plaintiff injury and breach of fiduciary duties. This case is noteworthy as it demonstrates that unrealized losses caused by mark-to-market values being below par do not automatically lead to investor injury.
Ponzi Scheme: Stanford Investment Bank

In March 2012, R. Allen Stanford was convicted of running a $7 billion Ponzi scheme. Prior to the criminal trial, the US District Court for the Southern District of Texas was asked to determine whether Certain Underwriters at Lloyd's of London and Arch Specialty Insurance Co. (the “Underwriters”) were entitled to deny coverage for the defense costs of Mr. Stanford and other executives of the Stanford Financial Group (SFG) pursuant to an exclusion clause under the D&O insurance policy. SFG consisted of more than 140 separate legal entities, including Stanford International Bank Limited (SIBL)—an Antiguan-domiciled bank, which was principally in the business of selling various types of certificates of deposit to investors. NERA was asked by counsel for the Underwriters to examine the financial nature and economic substance of certain activities of, and representations made by, the plaintiffs and SIBL to determine whether these activities and representations would trigger the application of the exclusion clause of the D&O policy. The NERA team conducted a financial investigation and economic and accounting analyses of internal documents, emails, regulatory filings, and other public disclosures of SFG and SIBL, and produced an expert report and provided expert testimony at trial. In ruling in favor of the Underwriters and effectively denying insurance coverage for the executives of SIBL, the court, relying in part on the testimony of the NERA expert, found that Mr. Stanford and his executives knowingly prepared and approved false financial reports and facilitated the concealment and transfer of the bank’s funds through related companies without disclosure to investors or regulators. As such, the exclusion clause was found to apply and the Underwriters were entitled to deny coverage and seek reimbursement of payments previously made.

Credit Crisis Litigation: Analysis of the Performance of Subprime Portfolios in Servicing and Breach of Contract Litigation

One of the largest subprime loan servicers was involved in multiple litigations over the performance of subprime loan portfolios after a transfer of servicing rights. Parts of the portfolios were securitized. A NERA team provided analytical support to the client. The analysis included a detailed evaluation of the loss forecasting models, examination of the performance metrics over time, and static pool analysis for the securitized and non-securitized loans. In addition, NERA provided rebuttal analysis to the damage models presented by the opposing expert, illustrated the bias in the loss models used, and developed an alternative method of evaluating the performance of the loans based on subprime loan indices. The proposed method allowed for identifying the market conditions as well as the idiosyncratic components that affect the performance of the loans under the particular servicing agreement. Based on NERA’s findings as well as the rebuttal analysis of the performance of the loans, the parties reached a settlement agreement that was consistent with NERA’s estimates.

“The Court credits the testimony and analysis of Underwriters’ expert [from NERA]... that [Stanford International Bank Limited’s] year end asset values totaling more than $8 billion were not possible without the artificially inflated... value of the real estate in issue.”

US District Court for the Southern District of Texas, Houston Division
**Regulatory Inquiries and Private Investigations: Commodity Futures Trading Commission (CFTC)**

NERA provided analysis and reports on behalf of an international commodity dealer who was under a CFTC investigation regarding trading in commodities markets. The CFTC was concerned by a variety of trading behaviors including certain trading in EFP instruments, concentrated trading in after-hours markets, concentrated intraday trading over short time periods, and trading during the particularly volatile markets in September and October of 2008. The CFTC notified the dealer of several specific days for which it requested independent analysis of the trader’s conduct. NERA examined the intraday trading data and the dealer’s transactions, and presented its independent findings to the CFTC. Having accepted NERA’s explanations, the CFTC asked NERA to address the tendency of the dealer to “sell on the downtick,” or execute consecutive sales at successively lower pricing, sometimes coinciding with larger price movements. NERA explained the economics of the tendencies that the CFTC observed, drawing on knowledge of the liquidity facilitation function that commodity dealers carry out and the inventory risk management practices of market-makers. NERA also performed a detailed data analysis of comparables using the futures market trade register to show that the dealer’s tendencies were observed widely across the marketplace by many other trading accounts. NERA issued a written report to the CFTC detailing its economic analyses and quantitative measures.

**Valuation: Omnicom Securities Litigation**

Omnicom Group, Inc. was sued on behalf of investors in a shareholder class action, who alleged that Omnicom had overvalued its ownership interest in many publicly traded and privately held assets. Plaintiffs further alleged that the decline in the assets’ values was “other than temporary,” an accounting term of art that would have required that an impairment charge be taken. Plaintiffs challenged the valuation of those assets, prepared by the Murray Devine valuation firm, upon which Omnicom relied. A NERA expert reviewed the Murray Devine analysis and found it to be reasonable, both in terms of its methodologies and conclusions. In addition, the NERA expert performed his own analyses and found that the publicly traded companies in which Omnicom held a stake did not trade in efficient markets, providing a basis for the company to value them at something other than their market prices. The NERA expert also critiqued the report of plaintiff’s valuation expert on its conclusions with regard to market efficiency and valuation. On 10 August 2007, the magistrate judge found that the NERA expert “notes that the Murray Devine approach is consistent with professional standards, and points out (without contradiction in the current record) that plaintiffs’ expert misstates certain key facts and fails to follow all steps of the approach that he purports to apply and that courts have approved as appropriate for these purposes. In sum, this record supports the reasonableness of defendants’ position that the impairment of the e-service assets was not ‘other than temporary’ under governing professional standards.” (Internal citations to the NERA expert’s rebuttal report omitted.) The judge further noted that “[d]efendants’ economic and valuation experts offer not only specific and seemingly cogent justifications for their respective findings, but also specific and persuasive rebuttals of most of plaintiffs’ experts’ contentions.” On 29 January 2008, the Court dismissed the case. On 9 March 2010, the Second Circuit rejected plaintiffs’ appeal of the district court’s grant of summary judgment.
Bankruptcy: Fraudulent Conveyance Analysis in Lyondell

On 16 July 2007, Lyondell Chemical Company (“Lyondell”), a chemicals manufacturer and petroleum refiner, and Basell AF S.C.A. (“Basell”) entered into a merger agreement. When the all-cash merger closed on 20 December 2007, Lyondell became a wholly owned indirect subsidiary of LyondellBasell Industries AF S.C.A. (“LBI”), creating one of the world’s largest polymers, petrochemicals, and fuels companies. In order to facilitate the merger, Lyondell and some of its affiliates and subsidiaries (the “Debtors”) entered into debt facilities representing a maximum of $22.6 billion in financing. On 6 January 2009, Lyondell and certain of its affiliates and subsidiaries filed for Chapter 11 protection in the Bankruptcy Court in the Southern District of New York. On 24 April 2009, LBI was added to the Debtors’ Chapter 11 filing. Following the bankruptcy, the plaintiff, the Official Committee of Unsecured Creditors (the “Committee”), filed a fraudulent conveyance lawsuit against, among others, LBI and its financing parties alleging that, at the time of the merger, (i) LBI was insolvent because the stated value of its liabilities exceeded the fair value of its assets; (ii) LBI was insufficiently capitalized to fund its operations through a downturn; and (iii) the bankruptcy was foreseeable. NERA was retained by LBI to conduct an independent review of the Committee’s claims and to conduct an independent evaluation of the findings detailed in affirmative and rebuttal expert reports filed by the plaintiff’s and defendants’ experts. Specifically, NERA was asked to evaluate: the reasonableness of EBITDA projections offered by Basell and Lyondell management for the period 2007-2011 and relied upon at the time of the merger; the solvency and capital adequacy of LBI at the time of the merger; and the foreseeability of certain global economic, market, industry, and LBI-specific events that preceded LBI’s January 2009 bankruptcy. The NERA team conducted economic research to address the first issue, and performed a study of capital markets’ reactions to the LBO from its announcement through the actual closing. On 2 December 2009, NERA’s experts presented their findings to LBI. Ultimately, NERA submitted two declarations to the US Bankruptcy Court, Southern District of New York and provided deposition testimony in February 2010. On 16 February 2010, LBI announced that it had agreed to settlement terms with the Committee to pave the way to LBI’s emergence from Chapter 11. NERA’s work aided LBI substantially in consensually resolving a major dispute in one of the most contentious recent Chapter 11 cases.

Criminal Case: United States vs. Martha Stewart and Peter Bacanovic

NERA assisted the US Attorney’s Office for the Southern District of New York in prosecuting securities fraud and other related charges by analyzing the materiality of statements made by Martha Stewart. Our experts reviewed stock price movements surrounding each of Ms. Stewart’s misstatements, as well as the impact on the stock price of news revealing the alleged securities fraud. NERA’s team provided background on the financial expert designated by the defense, and prepared cross-examination material. NERA also assisted the prosecution with analysis and exhibits used at trial to prosecute on the other related charges. After a NERA expert was identified as a potential rebuttal witness, the defense elected not to call its financial expert. The securities fraud charge was later dismissed, and Ms. Stewart was found guilty on the other related charges.

“He/She/They gave testimony at trial, which I found to be highly credible, to the effect that the two pricing models are commonly used ...”

Judge Ira Gammerman, New York State Supreme Court
Market Efficiency: *In re PolyMedica Securities Litigation*

At the class certification stage of the PolyMedica Securities Litigation, the parties debated whether the company’s stock traded in an efficient market throughout the alleged class period. Plaintiffs’ expert purportedly relied on a review of the Cammer factors to conclude that the market was efficient, emphasizing that news had been released to the market on the days with the five largest price declines. Defendants and NERA’s expert argued that the appropriate test was not that the stock price moved on news days, but that it reacted quickly and fully to news. Given extraordinarily high costs of shorting and a reported inability of market participants to find shares to short, NERA’s expert argued that PolyMedica’s stock price did not trade in an informationally efficient market. The district court ruled that an efficient market was "not one in which a stock price rapidly reflects all publicly available material information. Rather, the 'efficient' market required for 'fraud on the market' presumption of reliance is simply one in which 'market professionals generally consider most publicly announced material statements about companies, thereby affecting stock market prices.'" Defendants appealed this ruling to the First Circuit Court of Appeals, which found the district court’s ruling to be in error. The Court of Appeals for the First Circuit held that "an efficient market is one in which the market price of the stock fully reflects all publicly available information," a corner piece of the academic definition of market efficiency put forth by NERA’s expert. The First Circuit Court of Appeals found that the district court had erred in using a less rigorous definition of market efficiency, vacated class certification based on that definition, and remanded the case back for reanalysis based on its ruling.

Credit Crisis Litigation: *Imperial Credit Industries, Inc. Securities Litigation*

Imperial Credit Industries, Inc. (ICII) was sued on behalf of investors in a shareholder class action. The principal allegation was that ICII’s stock price was inflated due to undisclosed losses at a subprime lender in which ICII had an ownership stake of over 40 percent. NERA was retained to respond to the report of Plaintiffs’ expert in this matter. NERA’s expert noted in his report that Plaintiffs’ expert’s analysis did not contain an event study to properly measure the effect of any alleged fraud on the stock price. Based on its analysis of how the valuation of a subprime lender would interact with market conditions, NERA argued that plaintiffs had significantly overestimated the damages that would be due to plaintiffs if liability were found because there would have been no inflation on all but approximately a dozen days in the alleged class period. Plaintiffs’ expert’s analysis did not contain an event study to properly measure the effect of any alleged fraud on the stock price. Based on its analysis of how the valuation of a subprime lender would interact with market conditions, NERA argued that plaintiffs had significantly overestimated the damages that would be due to plaintiffs if liability were found because there would have been no inflation on all but approximately a dozen days in the alleged class period. Plaintiffs’ expert’s testimony was struck on Daubert grounds when the judge found that his analysis “is deficient for failure to provide an ‘event study’ or similar analysis.” In part because plaintiffs had no evidence of loss causation or of damages once the analysis of their expert was struck, Defendants’ motion for summary judgment was granted.
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