

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

1. MidFirst Bank,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
)	JURY TRIAL DEMANDED
1. Keefe, Bruyette and Woods, Inc.,)	
a New York Corporation)	
)	
Defendant.)	

COMPLAINT

Plaintiff, MidFirst Bank, a federally chartered savings association (“MidFirst”), brings this action against the defendant and alleges as follows:

STATEMENT OF THE CASE

1. Wachovia Capital Markets, LLC (“Wachovia”) was the placement agent and defendant Keefe, Bruyette and Woods, Inc. (“KBW”) was a sub-placement agent for certain Trust Certificates relating to the Floating Rate Capital Securities, Series U (the “Trust Certificates”) issued by JPMorgan Chase Capital XXI (the “Chase Issue”) issued by the Fixed Income Pass-Through Trust 2007-B (the “Trust”). The Trust Certificates for the Chase Issue were categorized as either Class A Auction Rate Trust Certificates (“Class A Trust Certificates”) or Class B Leveraged Trust Certificates (“Class B Trust Certificates”). To induce MidFirst to invest in the Class B Trust Certificates, KBW provided materially false information to MidFirst, misrepresented the

terms of the securities being offered and failed to provide disclosures of the terms of the actual securities being sold.

2. In early March, 2007, KBW proposed that MidFirst invest in Class B Trust Certificates from the Chase Issue. In order to review the proposal, MidFirst requested a copy of the Private Placement Memorandum related to the Chase Issue. MidFirst was told that the Private Placement Memorandum for the Chase Issue did not yet exist and probably would not be made available until after the deal traded. Instead of providing the requested Private Placement Memorandum for the securities under consideration, KBW delivered a Private Placement Memorandum related to a \$140,000,000 issue of Class A Money Market Trust Certificates and Class B Leveraged Trust Certificates relating to Floating Rate Subordinated Notes Due December 1, 2026 issued by Merrill Lynch & Co., Inc. (the "Merrill Lynch PPM") and an Indicative Term Sheet issued by Wachovia dated October 31, 2006 describing Subordinated Debt Pass-Through Trust Certificates (the "Wachovia Term Sheet"). Even though KBW expressly represented to MidFirst that (1) the Private Placement Memorandum specific to the Chase Issue (the "Chase PPM") would "look the same" as the Merrill Lynch PPM and (2) the Class B Trust Certificates issued as part of the Chase Issue would have the same rights as the Class B Trust Certificates described in the Merrill Lynch PPM and Wachovia Term Sheet, the rights associated with the Class B Trust Certificates issued as part of the Chase Issue were in fact substantially different than those described in the Merrill Lynch PPM.

3. KBW knew or was extremely reckless in not knowing at the time these representations were made that the Chase PPM and Merrill Lynch PPM would be

materially different, and as a result, the rights of the Class B Trust Certificates in the Chase Issue would be significantly different than the descriptions in the Merrill Lynch PPM.

4. In reliance upon the accuracy of these representations, MidFirst invested \$5,140,500.00 by purchasing Class B Trust Certificates relating to the Chase Issue (the “Class B Certificates”). Despite MidFirst’s request for the Chase PPM, it did not receive it prior to or in connection with its purchase of the Class B Certificates. In addition, MidFirst was not requested to execute and deliver any qualification or acceptance documents in connection with its purchase of the Class B Certificates.

5. Subsequently, the Chase PPM was provided to MidFirst. Upon its review of the Chase PPM, MidFirst discovered that the rights associated with its Class B Certificates were substantially different than those described in the Merrill Lynch PPM.

6. Because MidFirst’s investment was induced by KBW’s fraudulent misrepresentations and omissions, and KBW’s failure to follow appropriate sales practices of delivering to MidFirst the Chase PPM prior to its investment decision, MidFirst seeks rescission or in the alternative, actual damages pursuant to Sections 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated there-under, rescission pursuant to Section 1-509 of the Oklahoma Uniform Securities Act of 2004, 71 Okla. Stat., Sections 1-101 through 1-701 (Supp. 2007) (the “Oklahoma Securities Act”), and actual damages, punitive damages and rescission pursuant to other common law rights of action.

PARTIES

7. MidFirst is a federally chartered savings association organized under the laws of the United States. MidFirst's principal place of business is in Oklahoma City, Oklahoma.

8. KBW is a corporation organized under the laws of the State of New York. KBW's principal place of business is in New York, New York.

JURISDICTION AND VENUE

9. This Court has original jurisdiction over this matter pursuant to Section 27 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), 15 U.S.C §78aa, and 28 U.S.C. §1331 as this is a civil action arising out of Section10(b) of the Exchange Act, 15 U.S.C. §78j(b).

10. This Court also has jurisdiction of this matter pursuant to 28 U.S.C. § 1332(a)(1) because this is a dispute between citizens of different states in which more than \$75,000.00, exclusive of costs and interest, is in controversy.

11. This Court has jurisdiction of the state-law claims pursuant to 28 U.S.C. §1367(a) as the state-law claims are so related to federal security claims in this lawsuit that all claims form part of the same case or controversy.

12. Venue is proper in this district pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because a substantial part of the events giving rise to this controversy occurred in this district, including the distribution by KBW of the Merrill Lynch PPM and Wachovia Term Sheet to MidFirst, as a prospective investor, that was accompanied by false or misleading information.

BACKGROUND FACTS

A. **KBW Provided False and Misleading Information Regarding the Rights Associated with the Class B Certificates to Attract New Investors.**

13. In its capacity as the agent for the placement agent (Wachovia) for the Chase Issue and the seller of the Class B Trust Certificates to MidFirst, KBW is responsible for ensuring that any representations made regarding the Chase Issue were accurate. Upon information and belief, KBW intentionally misled potential investors regarding the rights associated with the Class B Certificates by not providing an accurate Chase PPM.

14. On March 6, 2007, Robert Rogoz with KBW delivered the Merrill Lynch PPM and Wachovia Term Sheet to Erin Stone with MidFirst in Oklahoma City. When Mr. Rogoz sent the Merrill Lynch PPM by e-mail dated March 6, 2007, he explicitly advised Ms. Stone that the Chase PPM “will look the same” as the Merrill Lynch PPM. There were numerous subsequent telephone conversations between Erin Stone and Mr. Rogoz and other representatives of KBW occurring prior to MidFirst’s purchase of the Class B Certificates. In these conversations, KBW represented that the rights of the purchasers of the Class A and Class B Trust Certificates from the Chase Issue would be the same as the rights of the purchasers described in the Merrill Lynch PPM and the Wachovia Term Sheet. Erin Stone and the representatives of KBW specifically discussed the rights of the purchasers of Class A and Class B Trust Certificates in the event of two consecutive failed auctions. Consistent with terms described in the Merrill Lynch PPM and the Wachovia Term Sheet, KBW represented

that in the event of two consecutive failed auctions, Class A Trust Certificate holders would have the right to have their Class A Trust Certificates and a corresponding amount of Class B Trust Certificates redeemed, in which event Class A Trust Certificate holders and Class B Trust Certificate holders would share in any proceeds of the redemption on a pro-rata basis, without preference or priority among the classes. These representations were false.

15. While MidFirst requested the Chase PPM prior to its purchase of the Class B Certificates, it did not receive it until almost four months after the purchase occurred. After receiving the Chase PPM, MidFirst discovered that the rights as described in the Chase PPM are substantially different from the descriptions in the Merrill Lynch PPM and the affirmative representations of KBW. These differences, include, but are not limited to, the following:

- a. The Merrill Lynch PPM specifically provides that in certain designated events (including two consecutive failed auctions) if the Class A Trust Certificate holders request redemption, the proceeds from the sale of the Underlying Securities will be applied pro-rata without preference or priority among the classes.
- b. The Chase PPM provides that in the event of two consecutive failed auctions, the Class A Trust Certificate holders can convert to Class A1 Trust Certificates, ensuring that they receive the “maximum rate” until call or maturity of the

Chase Issue, while Class B Trust Certificate holders receive zero until call or maturity of the Chase Issue. The only option then available to Class B Trust Certificate holders is to liquidate or take delivery of the Chase Issue with priority of proceeds going to Class A Trust Certificate holders. This results in the Class B Trust Certificate holders incurring all market value losses on the Chase Issue.

16. Neither the Merrill Lynch PPM, the Wachovia Term Sheet, nor any other written materials provided to MidFirst prior to MidFirst's purchase of Class B Certificates mentioned or referred a Class A1 Trust Certificates or any rights of Class A Trust Certificate holders to convert to a Class A1 Trust Certificate. Further, prior to MidFirst's purchase of the Class B Certificates, no representative of KBW ever made MidFirst aware that Class A Trust Certificate Holders in the Chase Issue would have the right to convert to Class A1 Trust Certificates, or otherwise have the ability to force Class B Trust Certificate holders to bear market value losses on the Chase Issue.

17. KBW falsely represented and/or failed to adequately disclose the true nature of the rights associated with the Class B Certificates.

18. KBW knew or was extremely reckless in not knowing that the rights of the Class B Trust Certificate holders in the Chase Issue would be significantly different than the rights of the Class B Trust Certificate holders as described in the Merrill Lynch PPM.

19. In addition, KBW had knowledge or was extremely reckless in not knowing that these representations were false when made. KBW was the agent of the placement agent (Wachovia) for the Chase Issue. To fulfill its statutory obligations, KBW was required to be familiar with the terms of the Chase Issue and therefore, knew or was extremely reckless in not knowing that the rights set forth therein were materially different than those set forth in the Merrill Lynch PPM.

B. MidFirst Invests \$5,140,500.00 in the Class B Certificates

20. In reliance upon the accuracy of the information set forth in the Merrill Lynch PPM, and based the representations made by KBW set forth in paragraph 14 above, on April 18, 2007, MidFirst invested \$5,140,500.00 to purchase \$5,000,000.00 par value of Class B Trust Certificates. MidFirst made this investment without executing any investor letters or other documents in connection with this purchase.

21. Moreover, MidFirst did not receive the May 1, 2007 Chase PPM until August 30, 2007. Appendix B to the Chase PPM is a Form of Initial Purchaser's Certificate, which MidFirst did not receive prior to closing and has never signed.

CLAIM I - VIOLATION OF THE EXCHANGE ACT.

22. MidFirst adopts the allegations of paragraph 1 through 21, as though fully set forth herein.

23. The material omissions and untrue statements of material fact listed in the preceding paragraphs are statements that a reasonable investor would consider important in making an investment decision and would regard as significantly altering the total mix of information made available.

24. The representations and omissions set forth in the preceding paragraphs were false when made.

25. KBW knew or was extremely reckless in not knowing that the representations and omissions set forth in the preceding paragraphs were false when made.

26. KBW intended that MidFirst would rely upon the representations and omissions set forth in the preceding paragraphs.

27. KBW utilized the instrumentalities of interstate commerce in connection with the transactions described herein, including the U.S. mail and telephones.

28. MidFirst relied upon the representations and omissions set forth in the preceding paragraphs in making its investment.

29. The representations and omissions set forth in the preceding paragraphs constitute material misstatements in connection with the sale of a security in violation of Sections 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. On information and belief, KBW caused the misrepresentations and omissions to be made in connection with a scheme to attract new investors to the Chase Issue.

30. In addition, these representations and omissions were employed as part of a scheme to defraud MidFirst in violation of Section 10(b) and Rule 10b-5.

31. MidFirst has been damaged as a result of these misrepresentations and omissions.

COUNT II – VIOLATION OF THE OKLAHOMA SECURITIES ACT

32. MidFirst adopts the allegations of paragraph 1 through 31, as though fully set forth herein.

33. As set forth above, KBW, in connection with the offer, sale, or purchase of securities, directly and indirectly: (a) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (b) engaged in an act, practice, or course of business that operated as a fraud or deceit, in violation of Section 1-501 of the Oklahoma Securities Act.

34. As detailed above, KBW knew or should have known that rights of the Class B Trust Certificate holders in the Chase Issue would be substantially different than the rights of the Class B Trust Certificate holders as described in the Merrill Lynch PPM.

35. KBW's misrepresentations and omissions have damaged MidFirst.

36. Based on the forgoing, KBW materially participated in the fraudulent conduct, acts, practices, and course of business, thereby violating the Oklahoma Securities Act.

COUNT III – COMMON LAW FRAUD

37. MidFirst adopts the allegations in paragraphs 1 through 36 as though fully set forth herein.

38. The untrue statements and omissions of material fact set forth in the preceding paragraphs were made by KBW with knowledge that such statements were false and that MidFirst would consider those statements to be material to its decision of

whether to invest in the Chase Issue, with the intention that MidFirst would act on those untrue statements and for the purpose of inducing MidFirst to invest in the Chase Issue.

39. In investing in the Chase Issue, MidFirst acted in reliance on KBW's untrue statements of material fact as set forth in the preceding paragraphs. Had the actual facts been disclosed to MidFirst by KBW, MidFirst would not have purchased the Class B Certificates.

40. As a result of investing in the Chase Issue, MidFirst has been damaged in the amount in excess of \$75,000.00, plus interest thereon.

41. KBW's actions constitute fraudulent inducement to invest in the Chase Issue.

42. By reason of KBW's fraudulent inducement, MidFirst is entitled to rescission of its purchase of the Class B Certificates and restitution paid for the Class B Certificates, which is \$5,140,500.00 plus interest thereon.

43. MidFirst hereby tenders the Class B Certificates to KBW conditioned upon the return of the \$5,140,500.00 plus interest.

44. Because KBW's conduct was knowing and willful, MidFirst is entitled to punitive damages in the amount to be determined at trial.

COUNT IV – NEGLIGENT MISREPRESENTATION

45. MidFirst adopts the allegations in paragraphs 1 through 44 as though fully set forth herein.

46. Even if KBW did not have knowledge of the misrepresentations and omissions set forth in the preceding paragraphs, the publication of such information and approval and authorization of such statements constitutes negligent misrepresentation.

47. As a result of KBW's negligent misrepresentations, MidFirst has been damaged in an amount to be determined at trial.

COUNT V – RESCISSION FOR FAILURE OF CONSIDERATION

48. MidFirst adopts the allegations in paragraphs 1 through 47 as though fully set forth herein.

49. As set forth in the preceding paragraphs, the rights as described in the Chase PPM are materially different from the descriptions in the Merrill Lynch PPM and the affirmative representations of KBW. As a result, the consideration has failed in a material respect and in whole or in part and based on the fault of KBW.

50. Therefore, MidFirst is entitled to rescission of its purchase of the Class B Certificates and restitution paid for the Class B Certificates, which is \$5,140,500.00 plus interest thereon.

51. MidFirst hereby tenders the Class B Certificates to KBW conditioned upon return of the \$5,140,500.00 plus interest.

COUNT VI – RESCISSION BASED ON MUTUAL MISTAKE

52. MidFirst adopts the allegations in paragraphs 1 through 51 as though fully set forth herein.

53. If KBW did not have knowledge of the misrepresentations and omissions set forth in the preceding paragraphs and was simply mistaken in representing

that the rights in the Chase PPM were the same as the rights described in the Merrill Lynch PPM, MidFirst is entitled to rescission of its purchase of the Class B Certificates and restitution paid for the Class B Certificates, which is \$5,140,500.00 plus interest thereon, based on a mutual mistake of fact by the parties.

54. MidFirst hereby tenders the Class B Certificates to KBW conditioned upon the return of the \$5,140,500.00 plus interest.

WHEREFORE, plaintiff demands judgment as follows:

- A. Actual damages in an amount to be determined at trial or in the alternative, for rescission and rescissionary damages in the amount of \$5,140,500.00 plus interest for the First Claim for Relief;
- B. For rescission and rescissionary damages in the amount of \$5,140,500.00 plus interest for the Second Claim for Relief;
- C. For rescission and rescissionary damages in the amount of \$5,140,500.00 plus interest and punitive damages for the Third Claim for Relief;
- D. Actual damages in an amount to be determined at trial for the Fourth Claim for Relief;
- E. For rescission and rescissionary damages in the amount of \$5,140,500.00 plus interest and punitive damages for the Fifth Claim for Relief;

- F. For rescission and rescissionary damages in the amount of \$5,140,500.00 plus interest and punitive damages for the Sixth Claim for Relief;
- G. Costs of this suit, including reasonable attorneys' fee;
- H. Prejudgment and post judgment interest; and
- I. Such other and further relief that the Court deems equitable and proper.

MidFirst requests a jury trial on all issues so triable.

/s/John N. Hermes

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