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Insider Trading Claims Cut For Ex-Countrywide Execs

By **Jessica Dye**

Law360, New York (April 08, 2009) -- A judge has dismissed allegations of insider trading against three former executives of mortgage lender Countrywide Financial Corp., but allowed the claims to stand against ex-CEO Angelo Mozilo, in a shareholder suit accusing the executives of profiting from inflated share prices while the company suffered significant losses.

Judge Mariana Pfaelzer of the U.S. District Court for the Central District of California issued rulings Monday regarding a slew of motions in the shareholder class action against Countrywide, several former directors, stock offering underwriters and outside auditing firm KPMG LLP.

The motions sought to dismiss charges that the defendants perpetrated an intricate scheme to misreport financial information about risky mortgages, leaving shareholders on the hook as insiders allegedly reaped \$867 million in stock sales.

Judge Pfaelzer dropped charges of insider trading against former chief operating officer Stanford Kurland, former president and chief operating officer David Sambol and former executive managing director and chief financial officer Eric P. Sieracki, while allowing other claims of false corporate reporting to go forward.

Mozilo's motion to dismiss the claims against him was denied in full, however.

Judge Pfaelzer's ruling cited an "unusual" modification to Mozilo's automatic stock sale plan, which took effect in October 2006. She ruled that any transactions before then would be exempt from the suit.

According to the complaint, Mozilo personally took in more than \$450 million in Countrywide stock sales during the class period.

Judge Pfaelzer also reinstated claims from a former consolidated amended complaint, re-presented in the plaintiffs' second amended complaint, against KPMG, in which the plaintiffs claimed that the auditor "acted with deliberate recklessness" in violation of the generally accepted auditing standards, by ignoring various risk factors in Countrywide's financial practices.

Joel Bernstein of Labaton Sucharow LLP, who represents the plaintiffs, said that while certain charges were dismissed, he was pleased with what Judge Pfaelzer left standing in — and added to — the complaint.

"From the point of view of the plaintiffs, this is a major victory," Bernstein said. "The case has in fact expanded as a result of Monday's decision."

The complaint contends that Countrywide, along with certain former executives, directors and associates, violated the Securities Act of 1933 and Securities Exchange Act of 1934 between March 12, 2004, and March 7, 2008, by misrepresenting the creditworthiness of its borrowers, underwriting and loan origination practices, issuing false and misleading statements on public financial filings and mislabeling high-risk mortgage loans as prime.

Lead plaintiff Thomas P. DiNapoli, New York state comptroller, brought the consolidated shareholder class action in November 2007 on behalf of several New York-based public pension funds that held Countrywide shares, seeking a review of financial information, which plaintiffs claim led to deliberately inflated stock prices that left them on the hook when stock prices plummeted 87 percent between July 2007 and March 2008, from \$34 to \$4 a share.

Plaintiffs further held that the defendants made more than \$867 million by selling Countrywide shares based on their material inside knowledge of the company's financial health, while Countrywide's market capitalization declined more than \$25 billion.

Judge Pfaelzer partially dismissed the plaintiffs' first consolidated complaint in December. Plaintiffs then filed a second amended complaint in January.

In January 2008, Bank of America Corp. agreed to buy Countrywide for \$4.1 billion in stock, rescuing the mortgage-lending giant from crippling financial losses as the subprime mortgage-lending industry collapsed.

Shirely Norton, a spokesman for Bank of America, said the company had no comment.

The plaintiffs are represented by Labaton Sucharow LLP, among others.

Countrywide is represented by Goodwin Procter LLP, among others.

The case is In re: Countrywide Financial Corp. Securities Litigation, case number 07-CV-05295, in the U.S. District Court for the Central District of California.