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## The Second Circuit Holds That Rating Agencies Are Not "Underwriters"

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On May 11, 2011, the United States Court of Appeals for the Second Circuit, in *In re Lehman Brothers Mortgage-Backed Securities Litigation*, affirmed the District Court's dismissal of claims filed against certain credit rating agencies in three matters. The Second Circuit agreed with the District Court that credit rating agencies Standard & Poor's Ratings Service, Moody's Investors Service, Inc., and Fitch, Inc. (collectively, the "Rating Agencies") could not be held liable as "underwriters" within the meaning of Section 11 of the Securities Act of 1933 (the "Securities Act"). Additionally, the Court affirmed the District Court's opinion that the Rating Agencies' alleged activities were insufficient to plead "controlling person" liability under Section 15 of the Securities Act.

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