**Hon. Anthony J. Carpinello (Ret.)**
**3 Huntswood Lane**
**East Greenbush, New York 12061**

June 20, 2014

To: The Bank of New York Mellon; The Bank of New York Mellon Trust Company, N.A.; Deutsche Bank National Trust Company; HSBC Bank USA National Association; Law Debenture Trust Company of New York; U.S. Bank National Association; Wells Fargo Bank, N.A.; and Wilmington Trust, National Association, each solely in their capacity as Trustees for the Trusts as defined below (the "Trustees")

Re: Proposed RMBS Trust Settlement Agreement (the "Proposed Settlement Agreement") dated November 15, 2013 by and among JP Morgan Chase & Co. and its direct and indirect subsidiaries and certain institutional investors, relating to certain RMBS trusts (the "Trusts")

I have previously been retained by the Trustees above named to provide an analysis of certain legal issues relating to a Proposed Settlement Agreement dated November 15, 2013, between JP Morgan Chase & Co. and the purchasers of interests in certain real estate mortgage backed securities trusts (hereinafter the "Trusts"). The claims which are the subject of the Settlement Agreement arise from the securitization of pools of residential mortgage loans by JP Morgan Chase (or its subsidiaries or predecessors in interest). These mortgage loans were transferred to the Trusts, which in turn issued certificates that were sold to investors. The certificates represented beneficial ownership interests in the trusts, the value of which ultimately depended in part on the quality of the underlying mortgage loans themselves because the principal and interest payments from the mortgage loans were intended to provide the cash flow for

the payments due to the investors. These transactions were effectuated through a series of interrelated agreements (hereinafter referred to as the operative documents) which included Mortgage Loan Purchase Agreements (MLPA's) and Pooling and Servicing Agreements (PSA's). It was principally in these documents that JP Morgan Chase made representations and warranties respecting the mortgage loans, including, without limitation, their compliance with certain underwriting standards. Under certain circumstances, in the event of a breach of these representations and warranties JPMorgan Chase was required to cure the breach or repurchase the nonconforming loans. The gist of the claims encompassed by the Settlement Agreement relates to allegations by the investors that JP Morgan Chase breached these contractual obligations.

My earlier opinions addressed the applicable Statute of Limitations for the claims to be released by the Settlement Agreement and the effect thereon of certain Tolling Agreements which had been entered into by the parties. I have now been asked to supplement those opinions by addressing the interplay between the applicable Statute of Limitations for these claims and the requirement in many PSA's that JP Morgan Chase be on notice of and be given the opportunity to cure breaches of representations and warranties prior to the filing of suit asserting such repurchase claims. Prior to rendering this opinion and all prior opinions, I have conducted my own independent legal research. It has been and continues to be my understanding that the Trustees and their professional advisors, both legal and financial, will rely on my opinions in their evaluation of the propriety of the Proposed Settlement.

Many of the PSA's in the Trusts governed by the Settlement Agreement provide that upon discovery of a breach of a representation or warranty contained in the MLPA's or PSA's, the party discovering same shall give prompt written notice thereof to the other parties, including JP Morgan Chase. JP Morgan Chase then, upon receipt of such notice, has an additional period of time, often 90 days or 120 days to cure the breach or repurchase the nonconforming loans. This contractually agreed-upon notice requirement and the following "cure period" have been construed by New York courts to be a "condition precedent" to suit (see ACE Sec. Corp. v DB Structured Prods., Inc., 112 AD3d 522 [1st Dept.

2013]). That is, a failure to give the agreed-upon notice and a failure to allow the agreed-upon cure period to lapse before filing suit will act as a bar to the suit.

Courts have devoted considerable effort to distinguishing between Statutes of Limitations and conditions precedent. The former have been described as a suspension of the remedy for a cause of action such as the breach of contract claims implicated in the Settlement Agreement (see Yonkers Contracting Co., Inc. v Port Auth. Trans-Hudson Corp., 93 NY2d 375 [1999]). Conditions precedent to suit, on the other hand, have been described as "a part of the cause of action itself " (Romano v Romano, 19 NY2d 444, 446 [1967]) resulting in the substantive defeat of the claim if not fully complied with. The practical differences between a claim for which the remedy is "suspended" by virtue of the expiration of the Statute of Limitations and a claim which is "substantively extinguished" because an essential element of the claim, fulfillment of a condition precedent has not been met, are few. Both claims will suffer court dismissal. There are some procedural differences however. A plaintiff must plead and has the burden of proving compliance with a condition precedent. Conversely, expiration of the Statute of Limitations must be raised by the defendant, and if it fails to do so in a timely fashion, it can be waived (see Weinstein, Korn, Miller, New York Civil Practice, CPLR, 2nd edition, para. 201.05[1]).

How then do these two time triggered concepts interrelate in the claims which are the subject of the Settlement Agreement? The simple answer is that they don't truly "interrelate." They each operate independently of each other. It just so happens that any legal enforcement of the claims which are the subject of the Settlement Agreement implicates these two time triggered potential barriers to suit. As opined previously, while the New York Court of Appeals has not yet directly ruled on the issue, other New York courts have held that the six-year Statute of Limitations for breaches of the representations and warranties contained in the MLPA's accrues, or begins to run, on the date of the closing of each trust. That Statute of limitations expires six years after that date (unless extended by the Tolling Agreements). Therefore, unless suit is commenced with six years of the closing date (or again as further extended by the Tolling

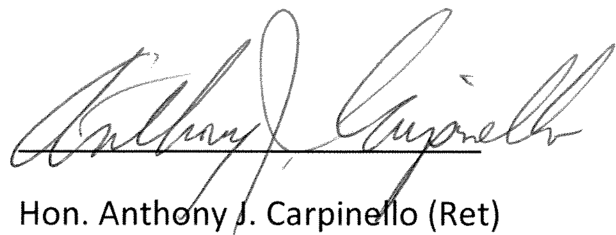
Agreements), Courts would likely dismiss the suit and deny any court awarded remedy for the breaches.

Quite independent of the time period for the expiration of the Statute of Limitations is the condition precedent requirement of the expiration of the "cure period" after notice to the Sponsor. Because the "cure period" (typically 90 or 120 days) has been found to be a condition precedent to suit, any suit commenced before the requisite notice is given and before the agreed-upon cure period expires would also likely be dismissed as having been prematurely filed (see ACE Sec. Corp. supra), because expiration of the cure period has been found to be a required element for enforcement of breach of warranty claims.

There are therefore two independently operating time periods. Suit must be commenced within six years of the closing date of the applicable Trusts (unless extended by the Tolling Agreements) or be subject to the defense by JP Morgan Chase that the Statute of Limitations has expired. Similarly, suits for breach of warranty cannot be filed until the requisite notice of breach is given and the cure period (again typically 90 or 120 days) has expired. Any suit filed prior to the expiration of the agreed upon cure period will likely be dismissed as not having met the required condition precedent. To the extent that these two different time periods have any "interplay" at all, it is when the six year Statute of Limitations is about to expire. In this situation, suit must be filed before the six year Statute of Limitations expires but after the notice and cure periods have expired. If the cure period has not expired but suit has been filed because the six year Statute of Limitations is about to expire, say within 30 days, the suit will nonetheless likely suffer dismissal because of the failure to meet the condition precedent of the expiration of the cure period. That is the holding of ACE Securities. As noted in earlier opinions, however, the New York Court of Appeals, has yet to rule on this precise issue, and while there is considerable Court of Appeals decisional law on conditions precedent generally, no opinion on the current state of the law as it implicates the Trusts can be proffered with any degree of absolute certainty until such a ruling.

One last observation should be made. The language of some PSA's provide that "[u]pon discovery by any of the parties hereto of a breach of a representation or warranty...the party discovering such breach shall give prompt written notice thereof to the other parties." Courts have observed that since the Sponsor is a "party" to the agreement an allegation that the Sponsor knew of or self-discovered the breaches of the representations and warranties would obviate the need for notice by any of the other parties and start the running of the cure period from the time the Sponsor had such knowledge. A party finding itself on the eve of the expiration of the Statute of Limitations might be able to avoid the fate of dismissal for failure to comply with the condition precedent of notice and an opportunity to cure if the language of its PSA requires repurchase upon discovery by "any party" and there is a good faith factual basis to support the allegation that the Sponsor had such knowledge (see, e.g. SACO I Trust 2006-5 v. EMC Mortgage LLC, Index No. 651820/2012 (Bransten, J.) [Slip Op. May 29, 2014], Deutsche Alt-A Securities Mortgage Loan Trust v DB Structured Products, Inc., 958 F. Supp. 2d 488 [S.D.N.Y. 2013] and Ace Securities Corp. Home Equity Loan Trust, Series 2007-HE3, by HSBC Bank USA v DB Structured Products Inc., Case 1:13-cv-01869-AJN [S.D.N.Y. March 20, 2014]; holding that the repurchase protocol may be triggered by a Sponsor's own knowledge of alleged breach of representations and warranties regardless of notice by any other party).

In conclusion then, breach of warranty claims may be barred from suit because of the expiration of the six-year Statute of Limitations (as may be extended by the Tolling Agreements). Such claims also may be barred by the failure to give notice to the Sponsor (if required) and the failure to allow the applicable cure period to run prior to the expiration of the Statute of Limitations.



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