

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the matter of the application of

U.S. BANK NATIONAL ASSOCIATION, THE BANK
OF NEW YORK MELLON, THE BANK OF NEW
YORK MELLON TRUST COMPANY, N.A.,
WILMINGTON TRUST, NATIONAL ASSOCIATION,
LAW DEBENTURE TRUST COMPANY OF NEW
YORK, WELLS FARGO BANK, NATIONAL
ASSOCIATION, HSBC BANK USA, N.A., AND
DEUTSCHE BANK NATIONAL TRUST COMPANY
(as trustees under various Pooling and Servicing
Agreements and indenture trustees under various
Indentures),

Petitioners,

for an order, pursuant to CPLR § 7701, seeking judicial
instruction.

Index No. 652382/2014

**THE TRUSTEES' OMNIBUS RESPONSE
TO THE REQUESTS TO INTERVENE**

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TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

ARGUMENT 3

 I. The Trustees Do Not Object to Intervention by Holders..... 3

 II. To the Extent the Court Construes the Letters of Inmates Viola, Mumbower, and
 Brierley as Attempts to Appear in this Proceeding, the Trustees Object..... 3

CONCLUSION..... 5

Petitioners U.S. Bank National Association, The Bank of New York Mellon, The Bank of New York Mellon Trust Company, N.A., Wilmington Trust, National Association, Law Debenture Trust Company of New York, Wells Fargo Bank, National Association, HSBC Bank U.S.A., N.A., and Deutsche Bank National Trust Company, solely in their respective capacities as trustees, indenture trustees, successor trustees, and/or separate trustees (collectively, the “Trustees”) of residential mortgage-securitization trusts (the “Accepting Trusts”), respectfully submit this omnibus response to the various requests submitted by parties who seek to intervene in this action.

PRELIMINARY STATEMENT

The Court’s August 15, 2014 Order to Show Cause (“Order to Show Cause”) provides that, in order to be heard in objection to the Settlement¹, any person must file with the Court “a written notice of intention to appear along with a statement of such person’s objection to any matters before the Court and the grounds therefor, as well as all documents such person desires the Court to consider” on or before November 3, 2014. Order to Show Cause at 4. In advance of the November 3, 2014 deadline, twelve parties (the “Intervenors”) have sought to intervene in this action. Three motions to intervene—by the Institutional Investors on August 5, 2014, the Federal Home Loan Bank of Boston on October 13, 2014, and the Triaxx Entities on October 28, 2014—previously were granted by this Court in an October 28, 2014 order and during a conference call on October 29, 2014. *See* Order Granting Mot. to Intervene Oct. 28, 2014, filed Nov. 3, 2014 (granting the Institutional Investors’ motion to intervene); Ct. Conference Tr. 9:17–10:8 Aug. 29, 2014, filed November 5, 2014 (granting the Federal Home Loan Bank of Boston

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the First Amended Petition filed on October 2, 2014.

and the Triaxx Entities' motions to intervene). The remaining nine requests to intervene or appear (collectively, the "Requests to Intervene") are pending, including:

1. The Order to Show Cause filed by the QVT Funds (as therein defined) on October 31, 2014.
2. The [Proposed] Order to Show Cause Why Brevan Howard Credit Catalysts Master Fund Limited and Brevan Howard Credit Value Master Fund Limited Should Not Be Entitled to Intervene, filed by the DW Funds (as therein defined) on October 31, 2014.
3. The Notice of Intent to Appear and Object filed by the Construction Laborers Pension Trust for Southern California and Laborers Pension Trust Fund for Northern California on November 3, 2014.
4. The [Proposed] Order to Show Cause Why the National Credit Union Administration Board As Liquidating Agent Should Not Be Entitled to Intervene, filed by the Liquidating Agents (as therein defined) on November 3, 2014.
5. The Motion to Intervene filed by Ambac Assurance Corporation and The Segregated Account of Ambac Assurance Corporation on November 3, 2014.
6. The Letter filed by W&L Investments, LLC on November 3, 2014.
7. The Opposition to the Settlement and Notice of Intention to Appear, sent by Anthony L. Viola ID # 32238-160 on October 25, 2014, attached as Exhibit A.
8. The Opposition to the Proposed Settlement, sent by Daniel Mumbower ID # 71014-066 on October 25, 2014, attached as Exhibit B.
9. The Opposition to the Proposed Settlement, sent by Robert C. Brierley ID # 44632-039 on October 25, 2014, attached as Exhibit C.

With the exception of the reservations set forth herein and the prisoner requests (numbers 7-9 above), the Trustees do not oppose the Requests to Intervene. The Trustees do disagree with many of the arguments and assertions in the Requests to Intervene, but the Court need not resolve those issues at this stage of the proceeding.

ARGUMENT

I. The Trustees Do Not Object to Intervention by Holders.

The Trustees do not oppose the Requests to Intervene to the extent that all Intervenors actually have valid beneficial interests in, or hold debt securities issued by, one or more Accepting Trusts. With the exception of the inmate interventions, each of the Intervenors has alleged such interests. The Trustees will seek disclosure of those interests, and proof should be required before the Court considers any objection to the Settlement. Accordingly, the Trustees reserve all rights to challenge the standing, or right, of any party to object to the Settlement should such proof be insufficient. In addition, the Trustees reserve all arguments in opposition to the merits of any objections.

II. To the Extent the Court Construes the Letters of Inmates Viola, Mumbower, and Brierley as Attempts to Appear in this Proceeding, the Trustees Object.

The Trustees do object to the Opposition to the Settlement and Notice of Intention to Appear sent to the Trustees by Anthony L. Viola on October 25, 2014, the Opposition to the Proposed Settlement sent to the Trustees by Daniel Mumbower on October 25, 2014, and the Opposition to the Proposed Settlement sent to the Trustees by Robert C. Brierley on October 25, 2014 (collectively, the “Incarcerated Parties”).² According to their papers, each Incarcerated Party has been convicted of mortgage fraud in connection with multiple properties and has been ordered to pay restitution damages to JPMorgan Chase & Co.

The Incarcerated Parties are not certificateholders in any of the Accepting Trusts and therefore do not have standing to object to the Settlement or to participate in this proceeding. *See*

² It is unclear whether these letters were provided to the Court, as opposed to being sent only to the Trustees in contravention of the intervention and objection procedures set forth in the Court’s August 15 and October 9, 2014 Orders. The Trustees respond to these letters out of an abundance of caution and attach the letters in the event the Court has not have received them.

The Bank of New York Mellon v. Walnut Place LLC, No. 11 Civ. 5988 (WHP), 2011 WL 5843488 (S.D.N.Y. Nov. 18, 2011) (denying intervention in Article 77 proceeding to a group of borrowers whose loans were included in trusts affected by a settlement). The Incarcerated Parties do not allege, nor could they, that they meet the requirements for intervention as of right under CPLR 1012(a)(2) and 1012(a)(3) or for permissive intervention under CPLR 1013. The Incarcerated Parties' submissions largely consist of allegations of wrongdoing against JPMorgan and do not raise any issues in connection with the Trustees' acceptance of the Settlement. Finally, as many courts have held, individuals who are neither parties, nor third-party beneficiaries, to Pooling and Servicing Agreements lack standing to enforce the terms of such agreements or the duties of trustees thereunder. *See, e.g., Rajamin v. Deutsche Bank Nat'l Trust Co.*, 757 F.3d 79, 86-87 (2d Cir. 2014) (collecting cases).

CONCLUSION

The Trustees request that the Court deny the requests of the Incarcerated Parties to intervene. With the foregoing reservations noted, the Trustees consent to the remaining Requests to Intervene and request that the Court enter the attached Omnibus Proposed Order Granting Petitions to Intervene.

Dated: New York, New York
November 17, 2014

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