

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

In the matter of the application of

THE BANK OF NEW YORK MELLON, (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), BlackRock Financial Management Inc. (intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, LLC (intervenor), Metropolitan Life Insurance Company (intervenor), Trust Company of the West and affiliated companies controlled by The TCW Group, Inc. (intervenor), Neuberger Berman Europe Limited (intervenor), Pacific Investment Management Company LLC (intervenor), Goldman Sachs Asset Management, L.P. (intervenor), Teachers Insurance and Annuity Association of America (intervenor), Invesco Advisors, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), Landesbank Baden-Wuerttemberg (intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING Bank fsb (intervenor), ING Capital LLC (intervenor), ING Investment Management LLC (intervenor), Nationwide Mutual Insurance Company and its affiliated companies (intervenor), AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, and Western Reserve Life Assurance Co. of Ohio (intervenor), Federal Home Loan Bank of Atlanta (intervenor), Bayerische Landesbank (intervenor), Prudential Investment Management, Inc. (intervenor), and Western Asset Management Company (intervenor),

Petitioners,

for an order, pursuant to C.P.L.R. § 7701, seeking judicial instructions and approval of a proposed settlement.

Index No. 651786-2011

Kapnick, J.

**STIPULATION AND
ORDER**

WHEREAS, in November 2011, certain Intervenor-Respondents and Objectors requested the production of 1,000 loan files from each of the 530 Covered Trusts in a subpoena addressed to Bank of America Corporation ("Bank of America"), and such subpoena has been a subject of conferences with the Court on May 8, 2012 and June 14, 2012, resulting in a proposal endorsed by the Court that 150 loan files be produced on the bases referred to in such conferences;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Steering Committee of the Intervenor-Respondents and Objectors (the "Steering

Committee")¹, The Bank of New York Mellon (the "Trustee"), the Institutional Investors, nonparties Countrywide Financial Corporation and Countrywide Home Loans, Inc. (together "Countrywide"), and nonparty Bank of America (each referred to herein as a "party" for purposes of this Stipulation and Order, although Bank of America and Countrywide are nonparties to this action), through their undersigned counsel of record, as follows:

1. Bank of America and Countrywide shall produce on a rolling basis certain loan materials for 150 loans selected by the Steering Committee (the "Subject Loans"). The loan materials for the Subject Loans, which shall not include privileged documents,² shall hereinafter be referred to as "Loan Materials." Such production will be made to Reilly Pozner LLP, care of Michael Rollin ("Steering Committee Designee").

2. The Loan Materials shall consist of, for each Subject Loan, (i) the loan origination documents, including, but not limited to, the credit reports, underwriting work sheets, underwriting exceptions granted, appraisal or valuation results, title commitment and policy, final AUS findings, loan approval, loan application (Form 1008 and all supporting documents), mortgage note, mortgage or deed of trust, mortgage insurance certificate and HUD1; (ii) closing loan tapes, to the extent not publicly available; (iii) loan servicing records, including, but not limited to, call notes, foreclosure files including communications with borrowers, loan

¹ The Steering Committee consists of the law firms Reilly Pozner LLP, Keller Rohrback LLP, and Miller & Wrubel P.C. The Steering Committee signs this Stipulation and Proposed Order on behalf of the Intervenor-Respondents and Objectors (the "Respondents"), except the following entities: the Delaware Department of Justice; the New York State Office of the Attorney General; the Federal Housing Finance Agency; the National Credit Union Administration Board; the Maine State Retirement System; Pension Trust Fund for Operating Engineers; Vermont Pension Investment Committee; the Washington State Plumbing and Pipefitting Pension Trust; the Knights of Columbus and the other clients represented by Talcott Franklin P.C.; Cranberry Park LLC; Cranberry Park II LLC; City of Grand Rapids General Retirement System; City of Grand Rapids Police and Fire Retirement System; Retirement Board of the Policemen's Annuity and Benefit Fund of the City Of Chicago; and The Westmoreland County Employee Retirement System.

² The Steering Committee does not concede that any of the Loan Materials may properly be withheld from production because they are privileged and reserves the right to move to compel production of documents that Bank of America and Countrywide designate as privileged.

modifications, and loss mitigation files; and (iv) entries from the PAT/CLAIMS System reflecting external communications relating to a mortgage-insurance claim denial and/or a repurchase demand on the Subject Loans.³ In connection with production of Loan Materials pursuant to this paragraph 2, Bank of America and Countrywide will not be required to search email accounts of individual persons. It is understood and agreed that the description of the contents of Loan Materials in this paragraph 2, including the enumeration of documents in each subparagraph, is solely descriptive of the types of documents that Bank of America and Countrywide are searching for, and that nothing in this Stipulation and Order is a statement or admission that any particular document can or should be found in any particular location or file or is currently in existence, or that the documents enumerated herein have any legal or other significance.

3. Bank of America and Countrywide shall produce to the Steering Committee Designee the underwriting guidelines for the loan types represented in the Subject Loans, which were in effect from the earliest date of origination of a Subject Loan to the latest date of origination of a Subject Loan.

4. Bank of America and Countrywide shall produce (a) electronically-stored loan origination documents, as described above in paragraph 2(i), except for records stored in the Exceptions Processing System ("EPS"), and (b) information from the closing loan tapes, as described above in paragraph 2(ii) within thirty (30) calendar days of the date that the parties sign this Stipulation and Order, and shall produce the remainder of the production contemplated

³ Bank of America and Countrywide consider the above definition of Loan Materials to include materials not typically produced in response to loan-file requests in other litigations and to extend beyond the typical definition of loan files understood and employed by Bank of America and Countrywide in their business practices, and reserves its position that such definition does not and ought not apply to any other production in this or any other proceeding. In addition, Bank of America and Countrywide have agreed to this Stipulation and Order based upon the Steering Committee's statements (including in open court) that the Subject Loans are not a statistically significant sample.

by paragraphs 2 and 3 (including records stored in EPS) within ninety (90) calendar days of the date that the parties sign this Stipulation and Order. It is understood and agreed that these timeframes for production of documents are solely limited to the production contemplated by this Stipulation and Order and will not be argued to apply to the production of any other loan materials or other documents, including for additional loans in the Covered Trusts. It is further understood and agreed that the production contemplated hereunder is subject to and without waiver of the Responses and Objections of Non-Party Bank of America Corporation to Intervenor/Objectors' Subpoena, and that no privilege log will be provided for foreclosure files, provided, however that if documents from foreclosure files are withheld from production on the basis of privilege, a statement to that effect will be provided to the Steering Committee Designee. Bank of America and Countrywide reserve the right to supplement the production made pursuant to this Stipulation and Order, including after the ninety (90)-day period provided for in this paragraph 4, in the event that additional responsive documents are located, it being understood that the timeframes for production set forth in this paragraph reflect reasonable best efforts to substantially complete production in those timeframes. Counsel for Bank of America will update the Steering Committee Designee of the status of the production on a weekly basis.

5. Respondents shall not be obliged to pay the costs associated with the collection and production of the Loan Materials contemplated by this Stipulation and Order.

6. In the event that the Respondents, Bank of America, Countrywide, the Trustee or the Institutional Investors determine to provide information to the Court that is based on the work of expert reunderwriting or analysis of the Loan Materials ("Expert Loan Materials Analysis"), the party that intends to present such information shall provide notice to the other parties at least ten (10) business days in advance of such information being provided to the

Court. The notice shall identify each Subject Loan for which information based on Expert Loan Materials Analysis will be provided to the Court, and, for each such Subject Loan, any provision of the Pooling and Servicing Agreement that the expert concluded the Subject Loan did not comply with, and any basis for that conclusion that will be presented to the Court. In the event that any other party, in response, intends to provide information to the Court related to Loan Materials, such information shall first be provided to the other parties at least three (3) business days in advance of any such information being provided to the Court; provided that in all instances any party may seek additional time from the Court to respond to a submission made or contemplated by any other party.

7. Respondents do not object to Bank of America's (and Countrywide's) participation in this proceeding for all matters relating to the Loan Materials, including in any hearing or communication with the Court with respect thereto, by submission of any papers with respect thereto, or in any discovery with respect thereto (including of any person or entity who any party may offer as an expert or other witness in this action to present evidence related to the Loan Materials (a "Loan Materials Witness")), in each case without the need for nonparty subpoena or other process other than appropriate notices under the CPLR.

8. Any loan files or other loan materials that Respondents obtain in other litigations relating to the loans in the Covered Trusts other than the Loan Materials will not be used in this proceeding, unless and until permission therefor is granted by the Court upon application on reasonable notice to all parties.


9. It is understood and agreed that the parties reserve all rights, including under applicable law; that the obligations to collect and produce Loan Materials provided hereunder, and the use to be made by any party of such Loan Materials, shall conform with applicable legal

requirements (including without limitation the requirements of the Gramm Leach Bliley Act and its implementing regulations), and be subject to the Protective Order in this proceeding, entered June 14, 2012; and that nothing in this Stipulation and Order is intended to subject any party to any greater obligations with respect to such matters than would otherwise apply under applicable law.

10. Entry of this Stipulation and Order by the Court shall be binding on all parties to these proceedings, including, but not limited to, the Intervenor-Respondents and Objectors that are not represented by the Steering Committee.

Dated: July 27, 2012

WACHTELL, LIPTON, ROSEN & KATZ

By: 

Theodore N. Mirvis
Elaine P. Golin
Carrie M. Reilly
51 West 52nd Street
New York, New York 10019-6150
(212) 403-1000

Attorneys for Bank of America Corporation

Dated: July __, 2012

GOODWIN PROCTER LLP

By: _____

Mark Holland
The New York Times Building
620 Eighth Avenue
New York, New York 10018
(212) 813-8800

Brian E. Pastuszenski
John J. Falvey, Jr.
Exchange Place, 53 State Street
Boston, Massachusetts 02109
(617) 570-1000

Attorneys for Countrywide

Dated: July __, 2012

MAYER BROWN LLP

By: _____

Matthew D. Ingber
Christopher J. Houpt
1675 Broadway
New York, New York 10019
(212) 755-0100

Attorneys for The Bank of New York Mellon

Dated: July __, 2012

GIBBS & BRUNS LLP

By: _____


Kathy D. Patrick
Robert J. Madden
Scott A. Humphries
Kate Kaufman Shih
1100 Louisiana, Suite 5300
Houston, Texas 77002
(713) 650-8805

Attorneys for the Institutional Investors

Dated: July 17, 2012

WACHTELL, LIPTON, ROSEN & KATZ

By:



Theodore N. Mirvis
Elaine P. Golin
Carrie M. Reilly
51 West 52nd Street
New York, New York 10019-6150
(212) 403-1000

Attorneys for Bank of America Corporation

Dated: July 27, 2012

GOODWIN PROCTER I.L.P.

By:


Mark Holland
The New York Times Building
620 Eighth Avenue
New York, New York 10018
(212) 813-8800

Brian E. Pastuszenski
John J. Falvey, Jr.
Exchange Place, 53 State Street
Boston, Massachusetts 02109
(617) 570-1000

Attorneys for Countrywide

Dated: July __, 2012

MAYER BROWN LLP

By:

Matthew D. Ingber
Christopher J. Houpt
1675 Broadway
New York, New York 10019
(212) 755-0100

Attorneys for The Bank of New York Mellon

Dated: July __, 2012

GIBBS & BRUNS LLP

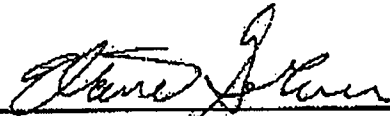
By:

Kathy D. Patrick
Robert J. Madden
Scott A. Humphries
Kate Kaufman Shih
1100 Louisiana, Suite 5300
Houston, Texas 77002
(713) 650-8805

Attorneys for the Institutional Investors

Dated: July 27, 2012

WACHTELL, LIPTON, ROSEN & KATZ

By: 

Theodore N. Mirvis
Elaine P. Golin
Carrie M. Reilly
51 West 52nd Street
New York, New York 10019-6150
(212) 403-1000

Attorneys for Bank of America Corporation

Dated: July __, 2012

GOODWIN PROCTER LLP

By: _____

Mark Holland
The New York Times Building
620 Eighth Avenue
New York, New York 10018
(212) 813-8800

Brian E. Pastuszewski
John J. Falvey, Jr.
Exchange Place, 53 State Street
Boston, Massachusetts 02109
(617) 570-1000

Attorneys for Countrywide

Dated: July __, 2012

MAYER BROWN LLP

By: 

Matthew B. Ingber
Christopher J. Haupt
1675 Broadway
New York, New York 10019
(212) 755-0100

Attorneys for The Bank of New York Mellon

Dated: July __, 2012

GIBBS & BRUNS LLP

By: _____

Kathy D. Patrick
Robert J. Madden
Scott A. Humphries
Kate Kaufman Shih
1100 Louisiana, Suite 5300
Houston, Texas 77002
(713) 650-8805

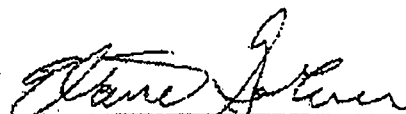
Attorneys for the Institutional Investors

Dated: July 27 2012

Dated: July __, 2012

WACHTELL, LIPTON, ROSEN & KATZ

GOODWIN PROCTER LLP

By: 

By: _____

Theodore N. Mirvis
Elaine P. Golin
Carrie M. Reilly
51 West 52nd Street
New York, New York 10019-6150
(212) 403-1000

Mark Holland
The New York Times Building
620 Eighth Avenue
New York, New York 10018
(212) 813-8800

Attorneys for Bank of America Corporation

Brian E. Pastuszynski
John J. Falvey, Jr.
Exchange Place, 53 State Street
Boston, Massachusetts 02109
(617) 570-1000

Attorneys for Countrywide

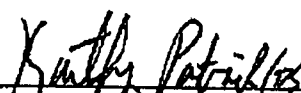
Dated: July __, 2012

Dated: July 27 2012

MAYER BROWN LLP

GIBBS & BRUNS LLP

By: _____

By: 

Matthew D. Ingber
Christopher J. Houpt
1675 Broadway
New York, New York 10019
(212) 755-0100

Kathy D. Patriok
Robert J. Madden
Scott A. Humphries
Kate Kaufman Shih
1100 Louisiana, Suite 5300
Houston, Texas 77002
(713) 650-8805

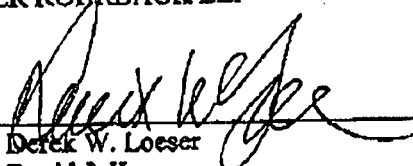
Attorneys for The Bank of New York Mellon

Attorneys for the Institutional Investors

Dated: July 26, 2012

KELLER ROHRBACK LLP

By:




Derek W. Loeser
David J. Ko
1201 Third Avenue, Suite 3200
Seattle, Washington 98101
(206) 623-1900

*Attorneys for Federal Home Loan Banks
of Boston, Chicago, and Indianapolis*

Dated: July __, 2012

REILLY POZNER LLP

By:



Daniel Reilly
Michael Rollin
1900 Sixteenth St., Ste. 1700
Denver, Colorado 80202
(303) 893-6100

Attorneys for AIG Entities

Dated: July __, 2012


MILLER & WRUBEL P.C.

By:


John G. Moon
Clare L. Huene
570 Lexington Avenue
New York, New York 10022
(212) 336-3500

Attorneys for the Triaxx Entities

So Ordered:


Hon. Barbara R. Kapnick

Dated: _____, 2012

Dated: July __, 2012

Dated: July __, 2012

KELLER ROHRBACK LLP

REILLY POZNER LLP

By: _____

By: _____

Derek W. Loeser
David J. Ko
1201 Third Avenue, Suite 3200
Seattle, Washington 98101
(206) 623-1900

Daniel Reilly
Michael Rollin
1900 Sixteenth St., Ste. 1700
Denver, Colorado 80202
(303) 893-6100

*Attorneys for Federal Home Loan Banks
of Boston, Chicago, and Indianapolis*

Attorneys for AIG Entities

Dated: July 27 2012

MILLER & WRUBEL P.C.

By:  _____

John G. Moon
Clare L. Huene
370 Lexington Avenue
New York, New York 10022
(212) 336-3500

Attorneys for the Triaxx Entities

So Ordered:

Hon. Barbara R. Kapnick

Dated: _____, 2012

Dated: July __, 2012

KELLER ROHRBACK LLP

By: _____

Derek W. Loeser
David J. Ko
1201 Third Avenue, Suite 3200
Seattle, Washington 98101
(206) 623-1900

*Attorneys for Federal Home Loan Banks
of Boston, Chicago, and Indianapolis*

Dated: July 27, 2012

REILLY POZNER LLP

By:  _____

Daniel Reilly
Michael Rollin
1900 Sixteenth St., Ste. 1700
Denver, Colorado 80202
(303) 893-6100

Attorneys for AIG Entities

Dated: July __, 2012

MILLER & WRUBEL P.C.

By: _____

John G. Moon
Clare L. Huene
570 Lexington Avenue
New York, New York 10022
(212) 336-3500

Attorneys for the Triaxx Entities

So Ordered:



Hon. Barbara R. Kappnick

BARBARA R. KAPNICK
J.S.C.

Dated: 8/8, 2012