Exhibit E

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BY EMAIL

TO: Counsel Identified in the Attached Service List

Re: *In the Matter of the U.S. Bank National Association, et al., for an order, pursuant to CPLR § 7710, seeking judicial instruction and approval of a proposed settlement*, N.Y. Supreme Court Index No. 652382/2014 (Friedman, J.)

Dear Counsel:

This letter sets forth the Institutional Investors' views on various pending discovery issues to facilitate the meet and confer process.

Scope of Discovery

"[D]iscovery sought must relate to 'facts bearing on the controversy which will assist preparation for trial by sharpening issues and reducing delay and prolixity. The test is one of usefulness and reason.' *In short, it must be relevant to the issue or issues in controversy.*"[1] Here, the issue in controversy is the Trustees' request for a judicial finding that they acted within the scope of their reasonable discretion in entering into the Settlement on behalf of the Accepting Trusts. In this proceeding, the Court: (i) is to apply a deferential standard of review that focuses on the reasonableness of the Trustees' decision making process; and (ii) is not to inquire into the merits of the settled claims, or the "correctness" of the opinions of expert advisors relied on by the Trustees in making their decision.[2]

In this summary, Article 77 proceeding, the Court has made clear that discovery should not—and will not—involve efforts by objectors to litigate the underlying merits of the settled claims.[3] That is precisely why we oppose the objectors' efforts to re-litigate loan by loan repurchase allegations made in other cases—including cases that do not involve *any* of the

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[1] *Stephan-Leedom Carpet Co., Inc. v. Arkwright-Boston Mfrs. Mut. Ins. Co.*, 101 A.D.2d 574, 577 (1st Dep't 1984) (*quoting Allen v. Crowell-Collier Pub. Co.*, 21 N.Y.2d 403, 406 (1968)) (emphasis added).

[2] *See* The Institutional Investors' Memorandum of Law on the Scope of Discovery (Doc. No. 230).

[3] "[T]he ultimate hearing of this matter is not going to be a minitrial on the merits of the repurchase claims." Transcript of December 16, 2015 Hearing at 80:13-15.

settled trusts. Your efforts to convert this into plenary litigation of repurchase and servicing claims for hundreds of trusts (including trusts where the objectors do not even have holdings) go *far beyond* the discovery that was permitted in either Countrywide or ResCap.

There are $4.5 billion, and beneficial servicing remedies, at stake in this settlement. With the exception of QVT and Ambac,[4] the Objectors' discovery responses make plain that none of them urged the Trustees to pursue these claims until *after* the Trustees accepted the settlement.[5] The Objectors' belated efforts to "litigate" these claims now—in the guise of purported settlement objections—are costing Trust certificateholders hundreds of thousands of dollars every day the settlement's implementation is delayed. We urge you to scale back your requests to those documents that are truly relevant in this proceeding.

Discovery Master

The Court has asked the parties to consider whether a discovery master would be useful in resolving the outstanding discovery disputes. The Institutional Investors do not believe a discovery master can serve that function in a useful way, at least not at this time. Most if not all of the parties' discovery disputes rest on fundamental disagreements about the appropriate standard of review in this proceeding. Once the Court decides the standard of review, that ruling will define the appropriate scope of discovery and will narrow—or, perhaps, eliminate—most of the discovery disputes. In that way, the summary nature of an Article 77 proceeding will be preserved.

We are, of course, mindful of the Court's concern with staffing issues and the burden on its resources that arise from the pending discovery disputes. But help from a discovery master who did not have the benefit of a Court ruling on the standard of review would be illusory: rulings based simply on burdensomeness will be unsupportable and go beyond anything we have seen required in other similar cases. And since the reference to the special master will be to "hear and report," this approach will simply result in a second tier of argument, and further delay, when the discovery master's recommendation is appealed to this Court, which will then have to decide the issues *de novo*. In sum, involvement of a discovery master in that situation will necessarily extend, rather than abbreviate, the resolution of the discovery disputes at issue.

Discovery of Certificateholder Holdings

We have agreed to exchange detailed holdings information for the Institutional Investors and the objecting certificateholders, as of certain relevant dates relating to the Trustees' announcement and acceptance of the Settlement, following the entry of an appropriate protective

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[4] It appears that QVT sought to litigate for one trust, but did so only *after* the settlement had already been announced.

[5] Indeed, though we have sought this information during discovery, most objectors have declined to produce it.

order. In addition to these agreements, Objector Triaxx has requested that the Institutional Investors disclose their holdings in the Accepting Trusts in 2008 and 2009, over 5 years before the Trustees' acceptance of the Settlement Agreement. The Institutional Investors have objected to this request as calling for information that has no relevance to the sole question before the Court: whether the Trustees acted within the scope of their reasonable discretion in entering into the Settlement.

Discovery Regarding Objector Communications with the Trustees

As you are aware, before the Trustees accepted the Settlement on behalf of the Accepting Trusts, they gave notice to certificateholders of the proposed settlement and its terms, advised certificateholders of the process the Trustees had undertaken to evaluate the settlement, provided certificateholders with the expert reports on which the Trustees intended to rely in making their decision, and advised certificateholders of the recommendations of their advisors on a trust-by-trust, and loan group-by-loan group, basis. Each objecting certificateholder had the opportunity, before the Trustees accepted the Settlement, to raise with the Trustees any issues that an objecting certificateholder believed were likely to be overlooked or misevaluated as a result of the Trustees' announced process for evaluating the settlement.

The Institutional Investors requested discovery from the objecting certificateholders concerning whether—before the Trustees accepted the settlement—the Objectors communicated with the Trustees or informed them of any of the issues they have now raised in their objections.

Objecting certificateholders Ambac, the Federal Home Loan Bank Boston, and QVT have provided, or have agreed to provide, the requested discovery. Objecting certificateholders Triaxx, Brevan Howard, and the National Credit Union Administration Board have refused to provide the requested discovery, claiming it is irrelevant. This discovery is highly relevant. Stated plainly, the Court can and should consider whether belated objections are meritorious if, rather than raising them with the Trustees *before* they accepted the settlement, Objectors lay behind the log and chose to assert their objections only *after* the settlement had been accepted. This discovery bears directly on both the reasonableness of the Trustees' process and the legitimacy and weight of the objections asserted, for two reasons: first, the PSAs specifically prohibit certificateholders from purporting to invoke rights that arise from the PSAs in a manner calculated to gain an individual advantage at the expense of all certificateholders; second, this is an equitable proceeding, so inequitable conduct—such as opportunistic purchases for the purpose of lodging an objection—are relevant issues. The Institutional Investors intend to move to compel this discovery if responses to it are not forthcoming.

Discovery Regarding W&L Investments' Waterfall Objection

Section 3.06 of the Settlement Agreement provides that settlement proceeds shall be treated as a "subsequent recovery" of principal – or, alternatively, as "scheduled" principal -- for purposes of the existing contractual payment waterfall in the Accepting Trusts' governing agreements. This is the same classification that was included in the ResCap and Countrywide

settlement agreements. W&L Investments has objected to this provision of the Settlement Agreement.

The Institutional Investors served discovery on W&L Investments asking it to explain: (i) how and why it believes section 3.06 of the Settlement Agreement is inconsistent with the terms of the governing agreements, and (ii) how W&L Investments contends settlement proceeds should be classified for purposes of the governing agreements' payment waterfall. W&L Investments has refused to respond to this request for discovery, other than to simply assert that the governing agreements "do not specify the manner in which the subject payment must be distributed to and among certificateholders." That is unresponsive and a tautology: the point is that there *is* a settlement and, *if* W&L Investments *genuinely* believes Section 3.06 inaccurately classifies the settlement proceeds for purposes of the payment waterfall, presumably it has some *other* classification it can point to that is anchored in the governing agreements. W&L Investments, however, refuses to say what, if anything, is wrong with the classification method provided for in the settlement agreement. W&L Investments should be compelled to provide this discovery and the Institutional Investors will move to compel it to do so, if amended responses are not forthcoming.

Discovery Regarding Settlement Communications

The Objecting certificateholders served discovery on the Institutional Investors seeking settlement communications between JPMorgan and the Institutional Investors. The Objectors are each aware of the following, undisputed facts:

- The Trustees did not participate in the negotiations that led to the settlement;
- The Trustees did not receive any information about those negotiations;[6]
- The Trustees did not rely on any information about the negotiations in their decision to accept the settlement; and,
- The Trustees do not seek *any* finding in this proceeding concerning the settlement negotiations.

These undisputed facts establish that the contents of the settlement communications between the Institutional Investors and JPMorgan had nothing whatsoever to do with the Trustees' decision-making process, which is the Court's focus in this Article 77 proceeding, and thus are irrelevant to the reasonableness of that process.[7]

In addition, the Institutional Investors have objected to producing settlement communications on the grounds that: (i) they are privileged and confidential mediation

[6] Trustees' expert, Professor Dan Fischel, noted the *lack* of any information provided to the Trustees about the negotiations in his report concerning the settlement.

[7] Again, if it is your claim that the trustees acted *unreasonably* by accepting the settlement without information about how it was negotiated, you have everything you need to make that argument by virtue of Professor Fischel's report.

communications, exchanged pursuant to a confidential mediation agreement, controlled by California law, before a California mediator, which are protected from discovery under California law; and (ii) are subject to confidentiality or nondisclosure agreements with JPMorgan, and are thus not discoverable under New York law.

We made you aware of these positions several months ago. We had heard nothing further from any of you on this topic until one objector—W&L Investments—alluded to settlement negotiations in our February 24 teleconference with the Court. If, in fact, you are still seeking this information we are prepared to meet and confer with you about it. We note, however, that you had not (until this week's telephone conference with the Court) indicated any intention to pursue this discovery after you were informed of our objections to it.

As it pertains to W&L Investments' separate request for settlement communications concerning the negotiation and/or analysis of the effect of the classification of settlement proceeds for purposes of the waterfall provisions of the governing agreements (discussed above), the same arguments would apply. The Institutional Investors have objected to this request because the Trustees did not participate in any such communications, receive any such materials from the Institutional Investors, or otherwise rely on any information or analysis from the Institutional Investors on this issue in deciding to accept the Settlement Agreement.

The contents of these documents and communications are therefore irrelevant to the sole question at issue in this proceeding; namely, the reasonableness of the Trustees' decision making process. If, rather than requesting settlement communications, W&L Investments is seeking the Institutional Investors' internal analyses of the relevant waterfall provisions, the Institutional Investors have objected to producing such documents on the grounds that: (i) the requests call for privileged and confidential attorney/client, work product, common interest, and mediation communications.

You have not advised us of any legitimate basis on which these privileges could or would be breached, so we did not understand you intended to pursue this discovery further. If you do, we invite you to meet and confer with us about it, so as to avoid unnecessary motion practice.

We ask for your detailed and prompt response, so the meet and confer process can move forward productively.

Sincerely,

Kathy Patrick
Counsel for the Institutional Investors

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Discovery Requested By Objectors From Institutional Investors	
Discovery Requested By Objectors as a Group	**Institutional Investors' Position**
Institutional Investors' holdings in the trusts on several dates in 2013 and 2014.	No objection: Institutional Investors will produce their holdings and answer related interrogatories as of the requested dates in 2013 & 2014 upon entry of the Protective Order.
Settlement communications between JPMorgan and the Institutional Investors, including any presentations shared with JPMorgan.	The Institutional Investors object to this request. It is not relevant and it is not discoverable. The information is not relevant because: (1) The Trustees did not participate in the negotiations that led to the settlement; (2) The Trustees did not receive or rely on any information about the negotiations in making their decisions; and (3) The Trustees do not seek any finding in this proceeding concerning the settlement negotiations. The information is independently not subject to discovery because such communications are privileged and confidential mediation communications and subject to a nondisclosure agreement with JPMorgan.
Discovery Requested By W&L	**Institutional Investors' Position**
W &L has requested the identity of knowledgeable witnesses, as well as the Institutional Investors' internal work product and analyses regarding the distribution methodology under the Settlement Agreement, the effect of any particular distribution methodology on different investors, and the distributions the Institutional Investors expect to receive under the Settlement Agreement if it is approved.	The Institutional Investors object to this request because this information was not provided to the Trustees, was not the basis of any decision that is the subject of the Article 77 Proceeding, and seeks the production of documents that are subject to the attorney-client privilege and that are immune from discovery under the work product doctrine.
Discovery Requested by Triaxx	**Institutional Investors' Position**
Institutional Investors' holdings in the trusts in 2008 and 2009.	The Institutional Investors object to this request because their holdings in the trusts 5 years before the settlement was reached are irrelevant to any issue before the Court.
Discovery Requested By Institutional Investors From Objectors	
Discovery Requested By the Institutional Investors	**Objectors' Position**
Objectors' holdings in the trusts on several dates in 2013 and 2014.	No objection. Objectors will produce their holdings as of the requested dates in 2013 and 2014 upon entry of the Protective Order.
Any documents reflecting communications between the objectors and the Trustees before the settlement was accepted in which the objectors informed the Trustees of any of the issues they have now raised in their objections.	Triaxx, Brevan Howard, and the National Credit Union Administration Board have refused to provide the requested discovery, claiming it is irrelevant. Other objectors have agreed to provide their communications.
The Institutional Investors have asked objector W&L, which objects to the distribution methodology, to explain: (i) how and why it believes section 3.06 of the Settlement Agreement is inconsistent with the terms of the governing agreements, and (ii) how W&L Investments contends settlement proceeds should be classified for purposes of the governing agreements' payment waterfall.	W&L has objected on relevance and other grounds and has refused to provide any information on the basis for its objection to the settlement.