

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

----- X
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), AEGON USA Investment Management, LLC:
(intervenor), Bayerische Landesbank (intervenor), BlackRock Financial:
Management, Inc. (intervenor), Cascade Investment, LLC (intervenor), the:
Federal Home Loan Bank of Atlanta (intervenor), the Federal Home Loan:
Mortgage Corporation (Freddie Mac) (intervenor), the Federal National:
Mortgage Association (Fannie Mae) (intervenor), Goldman Sachs Asset:
Management L.P. (intervenor), Voya Investment Management LLC (f/k/a:
ING Investment LLC) (intervenor), Invesco Advisers, Inc. (intervenor),
Kore Advisors, L.P. (intervenor), Landesbank Baden-Wuerttemberg:
(intervenor), Metropolitan Life Insurance Company (intervenor), Pacific:
Investment Management Company LLC (intervenor), Sealink Funding:
Limited (intervenor), Teachers Insurance and Annuity Association of:
America (intervenor), The Prudential Insurance Company of America:
(intervenor), the TCW Group, Inc. (intervenor), Thrivent Financial for:
Lutherans (intervenor), and Western Asset Management Company:
(intervenor),

Petitioners,

-against-

FEDERAL HOME LOAN BANK OF BOSTON (intervenor), TRIAXX:
PRIME CDO 2006-1, LTD., TRIAXX PRIME CDO 2006-2, LTD.,
TRIAXX PRIME CDO 2007-1, LTD. (intervenor), QVT FUND V LP,
QVT FUND IV LP, QUINTESSENCE FUND L.P., QVT FINANCIAL LP:
(intervenor), BREVAN HOWARD CREDIT CATALYSTS MASTER:
FUND LIMITED AND BREVAN HOWARD CREDIT VALUE MASTER:
FUND LIMITED (intervenor), THE NATIONAL CREDIT UNION:
ADMINISTRATION BOARD AS LIQUIDATING AGENT FOR U.S.:
CENTRAL FEDERAL CREDIT UNION, WESTERN CORPORATE:
FEDERAL CREDIT UNION, MEMBERS UNITED CORPORATE:
FEDERAL CREDIT UNION, SOUTHWEST CORPORATE FEDERAL:
CREDIT UNION, AND CONSTITUTION CORPORATE FEDERAL:
CREDIT UNION (intervenor), and AMBAC ASSURANCE:
CORPORATION, THE SEGREGATED ACCOUNT OF AMBAC:
ASSURANCE CORPORATION (intervenor), AND W&L:
INVESTMENTS, LLC (intervenor).

Respondents,

for an order, pursuant to CPLR § 7701, seeking judicial instruction, and:
approval of a proposed settlement.

----- X

Index No. 652382/2014

Assigned to: Friedman, J.

**[PROPOSED]ORDER ON
CONSENT REGARDING
THE PRODUCTION OF
DRAFT SETTLEMENT
AGREEMENTS
WITHOUT WAIVER OF
PRIVILEGE OR
OBJECTIONS**

WHEREAS Respondent Investors¹ in the above captioned proceeding have requested the production in discovery of draft settlement agreements exchanged between the Institutional Investors² and JPMorgan³ in the course of negotiating the Settlement Agreement;⁴ and

WHEREAS the Institutional Investors have objected to the production of the draft settlement agreements on the grounds that the documents: (a) are not material, necessary, relevant to, or reasonably calculated to lead to the discovery of admissible evidence in this proceeding; and (b) are privileged and confidential mediation communications, which are not discoverable under California and New York law;⁵ and

¹ The "Respondent Investors" are: Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd., Triaxx Prime CDO 2007-1, Ltd., (the "Triaxx Entities") QVT Fund V LP, QVT Fund IV LP, Quintessence Fund L.P., QVT Financial LP (the "QVT Funds"), Brevan Howard Credit Catalysts Master Fund Limited, Brevan Howard Credit Value Master Fund Limited (the "Brevan Howard Funds"), The National Credit Union Administration Board as Liquidating Agent for the U.S. Central Federal Credit Union, Western Corporate Federal Credit Union, Members United Corporate Federal Credit Union, Southwest Corporation Federal Credit Union, and Constitution Corporate Federal Credit Union, Ambac Assurance Corporation (the "NCUA"), the Segregated Account of Ambac Assurance Corporation ("Ambac"), and W&L Investments, LLC.

² The "Institutional Investors" are: AEGON USA Investment Management, LLC, Bayerische Landesbank, BlackRock Financial Management, Inc., Cascade Investment, LLC, the Federal Home Loan Bank of Atlanta, the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae), Goldman Sachs Asset Management L.P., Voya Investment Management LLC (f/k/a ING Investment Management LLC), Invesco Advisers, Inc., Kore Advisors, L.P., Landesbank Baden-Wuerttemberg, Metropolitan Life Insurance Company, Pacific Investment Management Company LLC, Sealink Funding Limited, Teachers Insurance and Annuity Association of America, The Prudential Insurance Company of America, the TCW Group, Inc., Thrivent Financial for Lutherans, and Western Asset Management Company.

³ "JPMorgan" means and refers to JPMorgan Chase & Co, and its direct and indirect subsidiaries, parties to the Settlement Agreement.

⁴ "Settlement Agreement" means and refers to the RMBS Trust Settlement Agreement entered into by and between the Institutional Investors and JPMorgan on November 15, 2013.

⁵ The Respondent Investors have not requested production of draft settlement agreements from JPMorgan. Nothing herein shall be construed as a waiver or relinquishment of JPMorgan's rights, privileges and protections concerning this discovery sought from the Institutional

WHEREAS the Respondent Investors contend that the draft settlement agreements (a) are material, necessary, relevant to, or reasonably calculated to lead to the discovery of admissible evidence in this proceeding; and (b) are not subject to any applicable privilege that would preclude disclosure of the draft settlement agreements to the Respondent Investors in this proceeding; and

WHEREAS the Institutional Investors have agreed to produce the draft settlement agreements in this proceeding to the Respondent Investors provided that such production shall not constitute, or be argued to be, a waiver or abandonment of the Institutional Investors' or JPMorgan's respective objections and assertions of privilege as to the production or admissibility of the draft settlement agreements, the Institutional Investors' negotiations with JPMorgan, nor as to any other discovery which is now or may be requested; and

WHEREAS the Respondent Investors have agreed that the Institutional Investors' agreement to produce, and production of, the draft settlement agreements shall not constitute, or be argued to be, a waiver or abandonment of the Institutional Investors' or JPMorgan's respective objections and assertions of privilege as to the production or admissibility of the draft settlement agreements, the Institutional Investors' negotiations with JPMorgan, nor as to any other discovery which is now or may be requested; and

WHEREAS the Respondent Intervenors, Institutional Investors, JPMorgan, and the Petitioner Trustees have consented by written Stipulation to the entry of this order, and

WHEREAS all parties to this proceeding hereby expressly reserve all objections, arguments, rights, and assertions of privilege, and do not consider the subject production or entry of this Order to constitute a waiver of any kind;

Investors or any other discovery sought concerning negotiations between the Institutional Investors and JPMorgan.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

The Institutional Investors' production of draft settlement agreements to the Respondent Investors in this proceeding shall not constitute, or be argued to be, a waiver or abandonment of the Institutional Investors' or JPMorgan's respective objections and assertions of privilege as to the production or admissibility of the draft settlement agreements, nor as to any other discovery which is now or may be requested, and instead all of such objections and assertions of privilege by the Institutional Investors and JPMorgan remain preserved. Except as expressly set forth in the preceding sentence, this Order is without prejudice to the argument of any party concerning the inapplicability of any privilege to the draft settlement agreements or to any other discovery which is now or may be requested, and all such arguments remain preserved.

Dated:

MARCY S. FRIEDMAN, J.S.C.