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), 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-Wurttemberg (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, for an order, pursuant to CPLR § 7701, seeking judicial instruction.	**FILED UNDER SEAL** Index No. 652382/2014 Part 60 Motion Sequence No. _______ Hon. Marcy S. Friedman Oral Argument Requested **MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT-INVESTORS' OMNIBUS MOTION TO COMPEL DISCLOSURE FROM THE TRUSTEES**

TABLE OF CONTENTS

Preliminary Statement

In this motion, Respondents seek to compel the Trustees to produce interrogatory responses and certain limited documents directly relevant to this proceeding, which the Trustees have repeatedly refused to provide. Respondents' requests are listed in Appendix A to this motion.[1] Respondents have been mindful of the Court's instructions: they have severely limited their requests, and seek documents from only a few custodians beyond those identified by the Trustees as parties directly responsible for considering the proposed Settlement. This discovery is crucial to a fair adjudication of the Trustees' request for entry of a declaratory judgment that would absolve them of liability for their actions regarding the proposed Settlement – a Settlement that would extinguish billions of dollars in claims held in trust for the benefit of Certificateholders.

The Trustees seek a declaration that: "their acceptance of the Settlement . . . ***comports with all applicable duties*** under the Governing Agreements and any other applicable law and that the ***Certificateholders are barred*** from asserting claims against any Trustee with respect to such Trustee's evaluation and acceptance of the Settlement." (First Am. Pet. ¶ 77) (emphasis added). As the Trustees recognized in their Petition, this requires a finding that the Trustees accepted the proposed Settlement "based on a ***thorough and reasonable investigation*** of the claims proposed to be released and of the settlement consideration," and that each Trustee made its decision "***in good faith***," and "decided to settle because it believed that its decision was in the

[1] For purposes of this motion, "Respondents" are 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; the QVT Fund V LP, QVT Fund IV LP and Quintessence Fund L.P.; Ambac Assurance Corporation and The Segregated Account of Ambac Assurance Corporation; DW Catalyst Master Fund, Ltd. and DW Value Master Fund, Ltd. (formerly Brevan Howard Credit Catalysts Master Fund Limited and Brevan Howard Credit Value Master Fund Limited); and Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd., and Triaxx Prime CDO 2007-1, Ltd. Respondents join in each part of this omnibus motion with the exception of Section V. W&L Investments, LLC ("W&L") has set forth its specific discovery requests in Section V, and joins in this omnibus motion only as it concerns the specific discovery requests W&L has made and is seeking to compel therein.

best interests of the beneficiaries." (First Am. Pet. ¶ 75-6) (emphasis added). Moreover, an indenture Trustee also has an unwaivable "***duty to avoid conflicts of interest***." *See, e.g., Ellington Credit Fund, Ltd. v. Select Portfolio Servicing Inc.,* 837 F. Supp. 2d 162, 191 (S.D.N.Y. 2011) (emphasis added). Finally, in order to determine whether the Trustees complied with their duties, it is necessary to determine whether any ***Events of Default*** occurred, since it is agreed that once an Event of Default occurs, the Trustees are no longer permitted *not* to act. (*See* Trustee Omnibus Response to Objections at n.4).

Respondents believe that the Trustees failed to comply with each of these requirements: that they failed to conduct a thorough and reasonable investigation, failed to act in good faith and avoid a conflict of interest, and failed to act as required after an Event of Default. The limited further discovery that the Respondents seek is narrowly tailored to develop these issues for the Court's review. The parties have met and conferred with respect to their positions, but have been unable to resolve the present dispute.

The Trustees are not, as they sometimes say, asking the Court to accept the proposed Settlement. They are asking the Court to absolve themselves of liability for their evaluation and acceptance of the proposed Settlement. Accordingly, Respondents' discovery is not directed (as the Trustees repeatedly claim) to second-guessing the value of the proposed Settlement. Rather, Respondents' discovery is directly addressed to the process by which the Trustees evaluated and accepted the proposed Settlement. This is squarely within the scope of discovery even as narrowly articulated by the Trustees. It is also important to appreciate that, because the Court is not being asked to "approve" the proposed Settlement, a decision by the Court agreeing with Respondents' concerns will not condemn the proposed Settlement: if the Trustees believe that they have the power to enter into this proposed Settlement and that to do so is consistent with their duties, they can simply do so and face the risks of their actions. At worst, they will face the same prospect of liability that they currently face in a number of suits, including those brought by the Institutional Investors, for having breached their fiduciary duty by failing to act before the statute of limitations ran on the Trusts' repurchase claims.

Because the Court is being asked to review the Trustees' process, rather than its result, there are also options available to the Court beyond simply granting or denying the Trustees' declaratory judgment action. The Court could describe procedures that, if followed by the Trustees, would better comply with their duties, such as, for example, appointing an independent examiner to investigate and make recommendations about the claims (as the court did in the ResCap bankruptcy when it appointed the retired Bankruptcy Judge Arthur J. Gonzalez as Examiner of RMBS claims); or taking steps to increase the likelihood of litigation, for Trusts for which, by the Trustee's own expert's analysis, litigation would have been superior to the proposed Settlement, such as by adopting procedures to facilitate the formation of Certificateholder groups, taking a more reasonable position on indemnification, or seeking Certificateholders' concurrence in funding litigation from trust assets. But the Court cannot assess such alternatives without a full record.

In any case, the Court is not determining whether Certificateholders will receive compensation from JPM; it is determining whether the Trustees will be absolved of any possible liability to any party for the way they approached their responsibility to evaluate and accept the proposed Settlement. Respondents are entitled to responses to their interrogatories and document requests so that they can fully and fairly present their objections to the Court.

ARGUMENT

I. The Trustees Failed to Consider Whether Events of Defaults Occurred, and There is Strong Evidence That They Did

A. If Events of Default Occurred, the Trustees *Cannot* Be Entitled to the Declaration They Request from the Court.

Absent an Event of Default, the Trustees' actions are governed by the express terms of the governing agreements, subject to two unwaivable common law duties: the duty to avoid conflicts of interest and the duty to perform their ministerial duties with due care. *See, e.g., Ellington Credit Fund, Ltd. v. Select Portfolio Servicing, Inc.*, 837 F. Supp. 2d 162, 191 (S.D.N.Y. 2011). However, when an Event of Default occurs, the Trustees may no longer limit their actions in this manner. Instead, their contracts require that they "*shall* exercise [their] rights and powers … and use the same degree of care and skill in [their] exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs." *See, e.g.,* JPMAC 2006-HE1 PSA § 8.01. The Trustees have conceded as much, arguing that "the absence of an Event of Default merely permits the Trustees *not* to act and to instead limit themselves to duties specifically set forth in the Governing Agreements." (Trustees Omnibus Response to Objections, n.4). This means that, after an Event of Default, the Trustees are required, for example, (i) to consider litigation (which a reasonable person would obviously do) and (ii) to litigate, where a reasonable person would, in pursuit of his or her own interests.

It is undisputed that the Trustees *did not even consider* bringing claims themselves on behalf of the Trusts. But had an Event of Default occurred, the Trustees' duties would include the obligation to bring suit when a reasonable person would have; in that case, the Trustees' acceptance of the Settlement, without considering bringing suit themselves, would not "comport[] with all applicable duties under the Governing Agreements." This is not a failing that can be explained away as a permissible exercise of the Trustees' discretion. After an Event of Default, it is an abuse of discretion, not an exercise of it, to fail to even consider exercising the Trustees' discretionary powers.

The Trustees' failure to comply with their duties, had Events of Default occurred, is underscored by the expert report of Daniel Fischel, which the Trustees say was the basis for their acceptance or rejection of the Settlement. *See* First Am. Pet. ¶ 55 (Fischel was "hired . . . to evaluate and synthesize the reports of the other experts and provide a recommendation for each Trust.") Fischel's analysis is remarkable. Fischel compares the proposed Settlement to a similar global settlement between Countrywide and The Bank of New York Mellon, but the basis he offers for acceptance of the proposed Settlement is nothing like the Countrywide settlement. In Countrywide, the Trustees' expert claimed that the settlement being obtained for certificateholders was ***better*** than other relevant benchmarks for the value of their claims in litigation. Whatever the accuracy of that claim, Fischel's view here is very different. He found that the "Proposed Settlement is ***lower*** than other RMBS related settlements." (Fischel ¶ 28). According to Fischel, the proposed Settlement was lower than every other RMBS Trustee settlement for which he could find information apart from Rescap, which was in bankruptcy. Fischel Ex D. The proposed Settlement here would return 7.1% of losses, whereas the Countrywide settlement arguably returned 10/2%-17.1% of losses. Other RMBS Trustee settlements provided as much as 25.7% of losses. Fischel reviewed all RMBS settlements to date with JPM: they ranged from 48.6% to 90.9% of losses (apart from a case that was brought as a class action, an unusual procedure in RMBS litigation, and was settled before certification was granted). Fischel Ex. E. Looking at the Trusts individually, Fischel concluded that there were one or more "indication[s] of an [e]xpected [r]ecovery [that] exceeds the value of the

[s]ettlement [c]onsideration" for all but 20 out of the 330 securitizations – *i.e., 98% of the Securitizations*. Fischel ¶ 103, Ex. T.

So why then did Fischel recommend that the Trustees accept the Settlement for most Trusts, given that he recognized it was so much lower than other deals? Because he assumed that no Event of Default had occurred, and that therefore the Trustees would not litigate unless certificateholders directed the Trustees to do so. As Fischel described this key assumption: "whether or not claims are pursued depends on the ability and willingness of Certificate holders who hold a large amount of Certificates to organize, to remain organized, possibly for years, and to be willing to pay the costs of investigation and litigation, even though they may only receive a fraction of any resulting benefits." Fischel ¶ 20. For that reason, Fischel only recommended rejecting the settlement for Trusts where "a substantial portion of the Trust's Certificates have expressed opposition to accepting the Proposed Settlement," on the assumption that the Trustees would never sue unless directed by Certificateholders. Fischel never directly considered the possibility that Events of Default had occurred: he mentioned in a footnote that "I understand that Plaintiffs and trustees in various litigations disagree about the responsibilities of trustees after an event of default. However, I am not aware of any event of default being declared for any of the Trusts." Fischel n. 21.

Fischel's analysis of Events of Default is an inadequate foundation for his recommendation to accept the proposed Settlement: the question is not whether Events of Default had been "declared," but whether they had in fact *occurred*. And if an Event of Default had occurred, reliance on Fischel's recommendation would be inconsistent with a "thorough and reasonable" investigation of the proposed Settlement, an abuse of discretion, and inconsistent with how a reasonable person would act in the conduct of their own affairs.

It is also now beyond debate that there is evidence sufficient to withstand a motion to dismiss that Events of Default in fact occurred in Trusts administered by at least one of the Trustees here—in circumstances indistinguishable from those pertaining to all the Trustees in their administration of the JPM Trusts. In a complaint filed against HSBC, ***the Institutional Investors*** themselves alleged that:

- [B]eginning in 2009 and continuing to the present, HSBC … knew of failures on the part of the servicers to observe or perform in material respects their covenants or agreements in the PSAs. … These breaches by the servicers constituted "Events of Default" as defined by the PSAs." *See Blackrock Balanced Capital Portfolio (FI), et al v. HSBC Bank USA, N.A.*, Verified Complaint ¶ 424, 2014 WL 6767573.

- "[T]he Events of Default occurred, remained uncured for the requisite period of term and are continuing. Consequently, under the PSAs, HSBC had and continues to have the obligation to exercise the rights and powers vested in it by the PSAs, and to use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs." *Id.* ¶ 426.

- ***A prudent person would have taken action to protect the Trusts and its Certificateholders*** from the known seller breaches of representations and warranties by exercising all of its rights under the PSAs to enforce the seller's repurchase obligations, ***including*** timely conducting an investigation to determine all of the materially breaching mortgage loans and ***suing the sellers for specific performance to compel their repurchase of those loans***. *Id.* ¶ 427.

On June 1, 2015, United States District Judge Scheindlin held that the Institutional Investors' complaint adequately alleged breaches of contract and fiduciary duty by HSBC for HSBC's failure to bring repurchase claims on behalf of trusts after an Event of Default, and denied HSBC's motion to dismiss. *Blackrock Balanced Capital Portfolio (FI), et al v. HSBC Bank USA, N.A.*, No. 14-CV-10101 SAS, 2015 WL 3466121 (S.D.N.Y. June 1, 2015). The court held that the Institutional Investors had adequately pleaded breaches of representations and warranties by alleging the RMBS originators' and sellers' "routine abandonment of their underwriting guidelines; the routine fabrication of borrower and loan information; massive breaches of their [representations and warranties]; and the engagement in predatory and abusive lending." *Id. at* *6. Those allegations were based on publicly available information about the practices of RMBS sellers and originators, including JP Morgan itself, *see Blackrock Balanced Capital Portfolio (FI), et al v. HSBC Bank USA, N.A.*, Verified Complaint ¶ 294, 2014 WL 6767573 (noting that as part of a 2013 settlement with the Department of Justice, "JPMorgan acknowledged that it regularly included loans within the securitizations 'that did not comply with the originator's underwriting guidelines'"), as well as parties such as Countrywide, Greenpoint, WMC, and other originators of countless loans in the trusts at issue here. Judge Scheindlin also held that the Institutional Investors had adequately plead that the Trustee, HSBC, knew of these breaches, based on "the high number of borrower defaults," "the enormous losses to the Trusts," "reports and litigation concerning common originators' systematic abandonment of underwriting standards," and "HSBC's involvement in putback efforts involving the same Sellers" – all allegations that could easily be plead against the Trustees here in relation to the JPM Trusts. *Blackrock*, 2015 WL 3466121 at *7. The Court concluded that, based on these allegations, the Institutional Investors had adequately alleged that Events of Default had occurred, and that HSBC had breached its post-Event of Default duties by failing to act as a prudent person in the exercise of HSBC's discretionary powers, including by failing to bring repurchase claims when a reasonable person would have done so. *Id.* at *8-9. The Institutional Investors' case against HSBC is now proceeding with discovery. Nor is HSBC unique; the Institutional Investors have brought essentially identical cases, currently pending in New York and federal courts, against Bank of New York, U.S. Bank, Deutsche Bank and Wells Fargo.

There is no good reason why the Certificateholders in this case, in which an Event of Default could demonstrate that the Trustees did not act in compliance with their duties, should be denied the same type of discovery that the Institutional Investors will obtain in their case pending before Judge Scheindlin, which is also intended to prove that that one of the very same RMBS Trustees did not act consistently with its duties after Events of Default. At a minimum, the Respondents should be permitted the very limited discovery they seek here to establish that the same types of Event of Default occurred in this case. If the Court deems that discovery of that type is incompatible with the scope of an Article 77 proceeding, it should dismiss this claim or convert it to a plenary proceeding, in order to ensure that the declaratory judgment that the Trustees seek here will be obtained, if at all, based on as full a record as will determine HSBC's liability in the suit brought by the Institutional Investors.[2]

B. Evidence Sought Regarding Events of Default

Document Requests 1, 2 and 3, and Interrogatories 4(a)-r(d), which Respondents seek to compel the Trustees produce, represent a very limited attempt to further demonstrate that Events of Default occurred in connection with the Trusts. This is hardly a fishing expedition. [redacted]

[2] The Trustees are seeking a declaratory judgment that will have the preclusive effect of a judgment on the merits, extinguishing certificate-holders claims against them. Such a judgment cannot be based on discovery and a record that are narrower than what would be available in an adversary proceeding, merely because the Trustees have won the rush to the courthouse, and brought this as an Article 77 proceeding, rather than being sued for breach of fiduciary duty (as they are being sued elsewhere, by the Institutional Investors among others). If the Court were to issue a judgment in favor of the Trustees based on such truncated discovery, it would have no preclusive effect, as it would be something less than a judgment on the merits after "full disclosure of all matter material and necessary." CPLR § 3101. If the Court nonetheless feels constrained to limit discovery beyond what would be available in a plenary proceeding, Respondents respectfully request that they be given the opportunity to seek the Appellate Division's guidance on this crucial issue before the parties proceed to a trial on the merits.

[redacted]

Respondents have also limited the date range of their document requests to documents created on or after April 13, 2010, the commencement of the public hearings by the Senate Permanent Sub-Committee on Investigations on the causes of the credit crisis. It is obvious that by this point at the latest there was a viable issue about the Trustees' knowledge of breaches in the JPM loans. [redacted] *See also, e.g., Commerzbank AG London Branch v. UBS AG*, 2015 WL 3857321 at *2 (N.Y. Sup. Ct. June 17, 2015) (holding that publicly available information regarding the practices of RMBS originators, including originators responsible for countless loans in the trusts at issue here, "unquestionably" put plaintiffs on notice of fraud by 2011). The Trustees' refusal to produce any documents created prior to October 1, 2013 is indefensible, [redacted]

Respondents also seek documents relevant to all JPM Trusts in the proposed Settlement, without permitting the Trustees to limit their production based on their view of which documents relate to Trusts in which Respondents hold certificates. Facts relevant to such issues as Events of Default are not limited to one Trust or another. Justice Scheindlin rejected exactly that principle in finding that evidence relating to the *general* knowledge of a Trustee was relevant to Events of Default, without limitation to facts associated with any particular Trust. *Blackrock*, 2015 WL 3466121 at *10. Justice Scheindlin's insight applies to all of the issues on which Respondents now seek discovery: for example, a conflict of interest relevant to all Trusts could be evidenced in documents that refer to Trusts in which Respondents have no investment (or do not refer to particular Trusts at all). Production of responsive documents without permitting the Trustees to artificially limit production based on their own view of what concerns or relates to Trusts in which Respondents have holdings will also benefit the Court, which is being asked to make a determination that the Trustees have appropriately exercised their duties to *all* Trusts, and that would preclude claims against the Trustees by certificate holders in all Trusts, regardless of whether Respondents happen to hold interests in them.

II. The Trustees Failed to Avoid Conflicts of Interest

A. The Trustees Had a Conflict of Interest in Considering a Settlement That Could Reduce Their Own Liability for Untimely Trusts

The proposed Settlement presented to the Trustees had the peculiar feature that it provides exactly the same compensation to Certificateholders whose repurchase claims were already untimely under the statute of limitations as to Certificateholders who still had timely repurchase claims. As the Trustees knew, the untimely claims were "worth nothing." (Omnibus Resp at 22). Why then provide untimely Trusts the same compensation as Trusts where timely claims could still be brought? (Did the Institutional Investors' have considerable holdings in the

Trusts whose claims had lapsed? Did the Trustees consider that fact?) An objective Trustee would necessarily have considered that this arrangement might be unfairly favoring untimely Trusts at the expense of timely Trusts, or that, if this was fair compensation to the untimely Trusts, there should be more money on the table for timely Trusts.[3] But the Trustees were not objective.

As described above, RMBS trustees, including most of the Trustees in this action, have been sued for breach of fiduciary duty for failing to have acted before the statute of limitations ran on untimely trusts. The Trustees have taken the position before the Court that the relief they seek in this Article 77 proceeding would not bar such suits for the Trustees' failure to act prior to the Settlement. But even if that is the case, by accepting the proposed Settlement, the Trustees at least have reduced their exposure to untimely Trusts by hundreds of millions of dollars, as well as providing themselves with the argument that Certificateholders in untimely Trusts were not disadvantaged because they obtained the same recoveries as holders in timely Trusts.

Facing such an obvious conflict of interest, a responsible Trustee would have stepped aside and arranged for a truly objective decision-maker to consider the merits of the proposed Settlement. Instead, it appears they did not even consider this issue, and provide no rationale for paying untimely Trusts at the same rate as timely Trusts. Document Requests 1 and 3 seek a limited set of documents, from a narrow group of custodians, to confirm whether the Trustees ever considered this issue and, if so, how they determined that (i) it was appropriate to treat timely and untimely Trusts equally and (ii) doing so, in the face of their obvious conflict of interest on the matter, was consistent with their duties to the Trusts.

[3] Fischel recognized that the Settlement amount might have been reduced because some claims were untimely when it was finalized and that, accordingly, "this would raise questions about the reasonableness and adequacy of the Proposed Settlement for the Trusts that [had timely claims] since the Allocation Formula does not take the Statute of Limitations into account." (Fischel ¶ 38).

B. **The Trustees Had a Conflict of Interest in Deciding to Forego Loan File Review, Since Loan File Review Could Increase the Trustees' Own Liability**

Review of loan files has been an essential part of every litigated case concerning claims that mortgages included in RMBS breached representations and warranties and should be "put back" to the originators. It has also been a part of nearly every case that has resulted in a settlement for Certificateholders that exceeded the JPM Settlement's seven cents on the dollar. Loan file review squarely addresses the crucial question at issue in any repurchase case: were the loans underwritten in accordance with the originator's guidelines? Were the loans in breach of representations and warranties, and if so how many of them were in breach – 10%, 30%, 80%? There is simply no way to answer that question without reviewing at least a few loan files.

The Trustees and their experts provide no good reason for not reviewing at least a sample of loan files. Fischel declined to conduct or request loan file reviews "primarily due to the lack of certainty associated with loan file reviews" and, as "[a] secondary factor, . . . the large investment of time a loan file review would require." Fischel Report ¶ 108. Further supporting his "primary" reason, Fischel states that "it is unlikely there would be consensus on its results." Fischel Report ¶ 108. Attempting to explain their reliance on Fischel's analysis, the Trustees argue that "in repurchase litigation, plaintiffs and defendants regularly review the same files and derive wildly different defect rates." (Trustee Omnibus at 23).

In fact, the Trustees' reliance on the purported uncertainty of re-underwriting is grossly overstated; in the only two RMBS cases that have gone to trial, the courts have overwhelmingly credited the defect rates found by plaintiff experts and rejected arguments by defendant experts. *See Assured Guar. Mun. Corp. v. Flagstar Bank, FSB*, 920 F. Supp. 2d 475, 510 (S.D.N.Y. 2013) (work of plaintiff's reunderwriting expert was "fully credible and corroborated in numerous ways"); *FHFA v. Nomura Holding America, Inc.*, No. 11 Civ. 6201, 2015 WL

2183875 (S.D.N.Y. May 11, 2015) (court would "unhesitatingly accept" work of plaintiff's expert over defendant's). But in any case, it is frankly a staggering claim from a Trustee charged with reviewing a proposed settlement on behalf of Trust beneficiaries that it will not consider any issues on which the Trust and its counter-party might disagree. That is not a remotely rational position. It is an abandonment of responsibility and logic. Mr. Fischel himself would be out of a job as an expert witness if courts, juries, and litigants, in cases in court or in settlement discussions, simply discounted any assertion that was not "certain" or on which there was a "lack of consensus" between adverse parties. It is inconsistent with their duties and with the conduct of any reasonable person in their own affairs that the Trustees did not try to determine whether there really were breaching loans in the JPM Trusts, or ask Fischel to determine whether there was any correlation between the percentage of recovery in other RMBS settlements and whether the plaintiff reviewed loan files.

Why would the Trustees accept a settlement without taking a step to determine the extent to which Certificateholders had been harmed? One answer, obvious to the Trustees, was that review of loan loans in the JPM Trusts would likely have increased the Trustees' own exposure, both by providing further evidence that Events of Default had occurred, and, for those Trustees who face exposure in their capacity as originators, sellers and servicers, by showing the extent of JPM's liability for conduct indistinguishable from their own.

The Trustees not only did nothing to try to remedy this obvious conflict of interest by performing at least a limited loan file review; they apparently did not even recognize the potential for a conflict of interest. Document Request 3 seeks a limited set of documents, from a narrow group of custodians, to confirm whether the Trustees ever considered this issue and, if so, how they determined that avoiding loan file review was consistent with their duties to the Trust.

C. The Trustees Had a Conflict of Interest in Considering the Trusts' Claims Against JPM, Given the Trustees' Mutual Ownership and Ongoing Business Relationships with JPM

The conflicts discussed above must also be seen in the context of the Trustees' ongoing relationships with JPM. It is obviously hard for a Trustee to say "no" to a company that owns a substantial part of the Trustee, and on which the Trustee depends for an enormous volume of regular business. Faced with a decision to be made on behalf of Certificateholders, where such an influential company has a strong interest in a particular outcome, a responsible Trustee would consider ways to mitigate the potential for conflict, ranging from standing aside in favor of an objective decision-maker, to adding additional procedural safeguards to ensure that its decision was not swayed by the company's influence, such as polling Certificateholders before making a decision on their behalf. Apparently, the Trustees not only did nothing to counteract the influence of JPM on their decision; they did not even recognize the potential for a conflict of interest.

Interrogatories 4(e)-4(g) seek to quantify in simple terms the extent of financial influence that JPM could exercise on each of the Trustees.

D. The Trustees Had a Conflict of Interest in Settling the Trusts' Claims Based on the Institutional Investors' Recommendation, Given Their Mutual Ownership and Ongoing Business Relationships

Much the same concern about influence over a Trustee decision that applies to JPM applies to the Institutional Investors as well. Again, the Trustees not only did nothing to counteract the potential influence of the Institutional Investors on their decision; they did not even recognize the potential for a conflict of interest.

Interrogatories 4(h)-4(j) seek to quantify in simple terms the extent of financial influence that the largest institutional investors could exercise on each of the Trustees. To reduce the burden on the Trustees, objectors have limited this Interrogatory to only three of the twenty-one Institutional Investors.

III. The Trustees Acted In Bad Faith

"Bad faith" for a fiduciary involves at least two categories of behavior: conduct where the fiduciary "intentionally acts with a purpose other than that of advancing the best interests" of the beneficiary, and conduct where the "fiduciary intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his duties." *In re Walt Disney Co. Derivative Lit.*, 906 A.2d 27, 64 (Del. 2006). Both of those categories of bad faith are implicated by the Trustees' decision-making in accepting the proposed Settlement.

A. The Trustees Acted in Bad Faith in Failing to Provide Their Experts With Information in the Trustees' Possession Regarding Defective JPM Loans, Defective JPM Servicing, and Events of Default

The Trustees possess an abundance of information that reveals that the loans in the Trusts were defective, that JPM servicing was defective, and that Events of Default had occurred in the Trusts. As Judge Scheindlin found in declining to dismiss the Institutional Investors' suit against HSBC, publicly available sources of information likely to be known to HSBC, and the other Trustees, provided a sufficient basis to allege that HSBC had violated its duties to Certificateholders. *Blackrock*, 2015 WL 3466121 at *7 - 10. But the Trustees limited the documents provided to their experts to materials provided by JPM, and some, but not all, documents requested by the experts. The Trustees made no effort to tell the experts what the *Trustees* knew about facts relevant to the acceptance of the proposed Settlement. That is inconsistent with the Trustees' duties: the parties that, acting on behalf of Certificateholders, appointed the banks as trustees, were not appointing just a subordinate official or a Trust department; they were contracting with the banks as a whole. When the Trustees asked their experts to advise them on a decision relevant to Certificateholders, the Trustees could not ignore, or hide from the experts, information known to the *bank*.

The Trustees complain that providing such information would require them to poll every employee in every corner of the world. Of course that is not true. A trustee's duties are limited by the principle of what a reasonable person acting in good faith would do. But the Trustees have never claimed that they took reasonable measures to convey to their experts what the Trustee banks knew about the representation and warranty breaches in the loans in the Trusts, or the deficiencies of JPM's servicing, or the evidence supporting Events of Default. Because the Trustees' decision relies on an expert review of an artificially (and likely intentionally) limited set of facts and documents, it cannot be reasonable basis for the Trustees' acceptance of the proposed Settlement.

The Trustees' complaint that discovery into what they knew and should have, but did not, convey to their experts would open an endless process of discovery, is meritless. Respondents have from the very beginning sought only narrowly tailored discovery on limited subjects from limited custodians. For example, Respondents' Document Request 3 (drafted with no cooperation from the Trustees) contains a narrowly tailored set of requests, addressed to a limited number of custodians, for documents revealing relevant information that was known to the Trustees, but which they did not disclose to their experts or consider in their decision to accept the proposed Settlement.

B. The Trustees Acted in Bad Faith In Accepting the Proposed Settlement Based on the Absence of Opposition, When They Impeded Formation of Directing Certificateholder Groups

The purported absence of opposition to the Trustees' acceptance of the deal is central to their efforts to justify their actions to the Court. But the Trustees' and their experts' efforts to determine support for or opposition to the proposed Settlement – far from representing a "thorough and reasonable" investigation – demonstrate a bad faith, willful blindness in determining the degree of support for the proposed Settlement among Certificateholders.

The Trustees had a ready means at hand to determine if Certificateholders actually supported the proposed Settlement: they could have distributed proxies through record holders to beneficial owners, as they did for a handful of Trusts between August and October 2014. Cite. Had they taken that simple step, the Trustees would actually have had a realistic measure of whether Certificateholders supported or opposed the settlement, rather than an indication of which Certificateholders were able to hurdle the many obstacles, some imposed by the Trustees themselves to direct the Trustees to bring claims.

Instead, the factor on which Fischel relied to recommend accepting the proposed Settlement, which was determinative in the overwhelming majority of cases, was that "Opposing Certificateholders" must own more than 15% of the Trust. (Fischel ¶ 99). Opposing Certificateholders are defined as a group of investors who retained Quinn, Emmanuel to represent them (apart from investors in that group who subsequently dropped their opposition), and trusts in litigation, where a directing group had required the Trustee to bring suit. Fischel ¶ 100. The Trustees and Fischel failed to conduct a thorough and reasonable investigation in relying on the absence of 15% "Opposing Certificateholders," while "consider[ing] the support of the Institutional Investors." Trustee Omnibus Resp. at 10. The burden on the two parties to express their views was very different. The Institutional Investors never agreed to indemnify the Trustees, or take on any liability themselves; they expressed no more commitment than being willing to be represented by a lawyer acting on a contingency. In contrast, as Fischel recognized, the collective action issues preventing directing groups from forming were formidable, particularly in view of the Trustees' insistence on indemnification: "whether or not claims are pursued depends on the ability and willingness of Certificateholders who hold a large amount of Certificates to organize, to remain organized, possibly for years, and to be willing to pay the costs of investigation and litigation, even though they may only receive a fraction of any resulting benefits." Fischel ¶ 23. The problem was exacerbated because "Certificateholders tend to be disbursed," and had no ready way to identify each other. Fischel. ¶ 20. In this context, the Certificateholders who were sufficiently dedicated and financially motived to direct the Trustees to litigate against JPM cannot be interpreted as any kind of indication of the Certificateholders who actually opposed the proposed Settlement, who were in all likelihood far more numerous (as the Trustees could easily have determined).

Worse, the Trustees acted in bad faith in preventing groups of opposing Certificateholders from forming. The Trustees were unhelpful in assisting prospective objecting Certificateholders to identify each other; despite their expert's recognition of the collective action problems involved in directing the Trustees. The Trustees apparently never considered the possibility of being indemnified by the Trusts or seeking permission from Certificateholders to do so, rather than requiring indemnification from Certificateholders themselves. And the Trustees disclosed Fischel's recommendations, upon which the Trustees acted, only two weeks before the acceptance date, ensuring that no directing groups could come together after reviewing Fischel's report and understanding the course the Trustees would take.

Most significantly, the Trustees imposed incredibly onerous indemnification requirements on certificateholders to direct the Trustees to rejected the proposed Settlement. [redacted]

[redacted]

In view of the Trustees' failure to take any step to determine what Certificateholders actually thought about the proposed Settlement, and the Trustees' active role in preventing directing groups from forming, including through imposing incredibly excessive indemnification requirements, it was an act of bad faith for the Trustees to base their acceptance of a settlement that their own expert deemed to fall well below comparable benchmarks on the basis of a lack of evidence that certificateholders opposed it.

Respondents seek a narrow category of documents to investigate the extent to which the Trustees considered (i) the views of Certificateholders opposing the proposed Settlement, and (ii)

[redacted]

their own rights and obligations regarding notice to and indemnification from Certificateholders, reflected in Document Requests 1 and 3.

IV. The Trustees Failed to Conduct a Thorough and Reasonable Investigation

A. The Trustees Failed to Conduct a Thorough and Reasonable Investigation By Failing to Consider Whether Events of Default Had Occurred, or to Consider and Address Their Own Conflicts of Interest and Bad Faith Acts

The issues relevant to the existence of Events of Default, conflicts of interest, and acts in bad faith – and the failure of Trustees to identify and remedy these – equally establish that the Trustees failed to conduct a thorough and reasonable investigation. The relevant document requests are described in the corresponding sections above.

B. The Trustees Failed to Conduct a Thorough and Reasonable Investigation By Relying on the Institutional Investors' Recommendation Without Considering Their Motives

The Trustees place central weight on the Institutional Investors' support for the proposed Settlement. One of the Trustees' principal justifications for their acceptance of the proposed Settlement is that the Institutional Investors had "every incentive to maximize recovery." (Trustees Omnibus Response to Objections, 2). But the Trustees appear to have undertaken no investigation, much less a thorough and reasonable one, to support that central claim. There is no evidence, for example, that the Trustees ever considered the impediments that could prevent an asset manager, such as PIMCO or BlackRock, from bringing suit and offering indemnification on behalf of investors in its funds; asset managers may have had no ability to actually litigate these claims. There is no evidence that the Trustees even considered whether JPM had any reason to fear that the Institutional Investors were prepared to bring suit. Nor is there any evidence that the Trustees considered the institutional and business relationships with JPM that could have led the Institutional Investors' to accept a settlement that was far less than the "maximization of a recovery," and far less than other investors, without such JPM entanglements, would have accepted.

The Trustees also had no knowledge of the negotiations between the Institutional Investors and JPM that led to the proposed Settlement, and therefore no knowledge of how hard the Institutional Investors fought to maximize the recovery, whether side deals existed, or whether representations were made that could further undermine the claim that the Institutional Investors had "every incentive to maximize recovery." The Trustees' own expert found this omission problematic, concluding that he discredited the Institutional Investors' support because "in contrast to the Countrywide Settlement," "we lack adequate information about the process by which the Proposed Settlement was negotiated" and any evidence showing that "the negotiations were at arm's length and the substantive issues were explored in depth." (Fischel Rep. ¶ 56). This is not a question of the Trustees' discretion; it was unreasonable for them to rely on a *process* in which a central tenet of the Trustees' decision-making was supported by no facts, no research, and no data.

Respondents seek a narrow category of documents to investigate the extent to which the Trustees considered or understood the motivations of the Institutional Investors or the tenor of their discussions with JPM, at the same time that the Trustees were assuming that the Institutional Investors had "every incentive to maximize recovery," as reflected in Document Request 3.

C. The Trustees Failed to Conduct a Thorough and Reasonable Investigation By Failing to Consider the Possibility of Further Negotiation With JPM

The Trustees apparently never considered the possibility of further negotiation with JPM: they viewed the proposed Settlement as a take it or leave it proposal. But at the same time, the Trustees knew nothing of the negotiations between the Institutional Investors and JPM, and could have had no knowledge themselves of whether it was reasonable to assume that JPM had put its top dollar on the table. The Trustees could have informed themselves about the Institutional Investors' negotiations and reached a judgment as to whether it was reasonable to accept the proposed Settlement or press for more. Instead, they simply accepted that they had no ability to negotiate JPM's proposal, without having conducted a thorough and reasonable investigation (or any investigation) to determine whether that was actually the case.

Respondents seek a narrow category of documents to investigate the extent to which the Trustees investigated whether JPM's offer was truly a "take it or leave it," or whether there was a basis for negotiating a resolution with JPM that was more advantageous to Certificateholders, as reflected in Document Request 3.

V. **W&L Seeks Narrow Discovery Concerning the Distribution Method Only**

Whether and to what extent the Trustees analyzed the distribution methodology set forth in the Settlement Agreement and considered whether that methodology comports with the Governing Agreements and the purpose of the Settlement, bears directly on the Trustees' reasonableness in evaluating and accepting a critical element of the proposed Settlement—who will be paid how much.

The Institutional Investors negotiated the proposed Settlement with JPMorgan Chase and urged the Trustees to accept it. Doc. No. 1 at ¶¶ 14-15. Within that proposed Settlement is a methodology for distributing the Settlement Payment among Certificateholders in each Accepting Trust. Settlement Agreement § 3.06. Whether the Trustees evaluated this most critical provision is entirely unclear, as it was not a topic considered by the Trustees' advisors and, other than BNY Mellon, the Trustees have not disclosed whether they otherwise conducted an evaluation.

For its part, BNY Mellon, the Trustee for each of the two W&L Accepting Trusts, has now conceded that "no BNYM employee or agent [has] knowledge of" investigations, evaluations, analyses, and communications concerning…the effect of any distribution methodology the Trustees considered and the effect of those distribution methodologies on distributions of the Settlement Payment to the Institutional Investors, senior certificates, junior certificates, or holders of certificates with zero balances. Letter from M. Ingber to M. Rollin, dated July 2, 2015 (the "July 2, 2015 Letter Response"), at 1. This is remarkable in light of the fact that the Institutional Investors had the ability to manipulate the distribution methodology for their own benefit.

Critically, while the Institutional Investors defend the distribution methodology on grounds that it is the methodology required by the Governing Agreements, this is not true. The distribution methodology chosen by the Institutional Investors is inconsistent with the plain terms of the Governing Agreements and is, in fact, designed to funnel the Settlement Payment to senior holders, rather than the Classes of Certificates that actually suffered the losses caused by the very claims being released in the Settlement Agreement, which were largely, if not exclusively, junior.[5]

Recognizing the likely self-interest of the Institutional Investors in their selection of a distribution methodology that is in conflict with the Governing Agreements, W&L propounded four targeted discovery requests to the Institutional Investors and seven to the Trustees. W&L's requests seek documents and information regarding the Trustees' evaluation, if any, of the distribution method for the Settlement Payment and its effect on different Classes of Certificates, an issue that is highly relevant to approval of the Settlement Agreement. In light of both the

[5] In the interest of brevity, and because this motion is focused on outstanding discovery, W&L will not set forth its position as to how the distribution should occur. However, W&L's supplemental responses to the Institutional Investors' interrogatories set forth W&L's position with respect to distribution (subject to additional discovery and expert analysis) and have been served on the Institutional Investors and the Trustees.

Institutional Investors' and the Trustees' refusal to provide adequate responses,[6] W&L now seeks to compel production of the following information from the Trustees:[7]

> **Interrogatory No. 1:** Identify each of Your employees and/or agents with knowledge of any investigations, evaluations, analysis, and communications concerning: (a) the effect of any distribution methodology You considered (including the distribution methodology described in section 3.06 of the Settlement Agreement) and (b) the effect those distribution methodologies would have on the distribution of the Settlement Payment to certificates held by: (i) The Institutional Investors, (ii) Senior certificateholders, (iii) Junior certificateholders, (iv) Holders of certificates bearing balances of $0.00.
>
> **Interrogatory No. 2:** Identify each of Your employees and/or agents with knowledge of any investigations, evaluations, analyses, and communications concerning: (a) any actual or potential self-interest of the Institutional Investors in their negotiation, acceptance, and prosecution of the Settlement Agreement, and (b) any benefit inuring or potentially inuring to the Institutional Investors by virtue of their negotiation, acceptance, or prosecution of the Settlement Agreement.
>
> **Request for Production No. 1:** Please produce all communications between and/or among the Institutional Investors, one or more of the Trustees, and/or JPMC, concerning:
>
> (a) The distribution methodology described in section 3.06 of the Settlement Agreement.[8]
>
> (b) Any and all other distribution methodologies considered by any Settlement Proponent for the purpose of determining the distribution methodology to be adopted in the Settlement Agreement.
>
> (c) The relationship or comparison between the distribution methodology described in section 3.06 of the Settlement Agreement and/or any other distribution methodology considered by any Settlement Proponent.
>
> (d) The relationship or comparison between the distribution methodology described in section 3.06 of the Settlement Agreement and the payment distribution terms of the Governing Agreements.

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[6] The Institutional Investors and all but BNY Mellon have refused to respond at all. As discussed below, BNY Mellon's responses are largely inadequate.

[7] Only BNY Mellon has responded to W&L's interrogatories and has partially responded to W&L's Requests for Production.

[8] W&L is interested in the distribution methodology only to the extent it concerns Chase 2007-A3 and Chase 2007-S6, however, we recognize that all analyses and/or investigations, if any, were likely performed in the aggregate. Thus, these requests are broadly phrased to capture all relevant documents and facts. (Footnote in original request)

(e) Any self-interest or potential self-interest of the Institutional Investors associated with the distribution methodology described in section 3.06 of the Settlement Agreement.

(f) Any benefit to the Institutional Investors associated with the distribution methodology described in section 3.06 of the Settlement Agreement.

Request for Production No. 2: Please produce all investigations, evaluations, notes, analyses, and communications concerning: (a) any distribution methodology You considered, analyzed, evaluated, investigated, or rejected (including the distribution methodology described in section 3.06 of the Settlement Agreement), and/or (b) the effect those distribution methodologies would have on the distribution of the Settlement Payment to certificates held by: (i) The Institutional Investors, (ii) Senior certificateholders, (iii) Junior certificateholders, (iv) Holders of certificates bearing balances of $0.00.

The Trustees have made objections to W&L's interrogatories on grounds of relevance and scope. But W&L's interrogatories go directly to the reasonableness of the Trustees' evaluative process and decision to accept the proposed Settlement—matters that are well within even the narrow scope of discovery advanced by the Trustees. The Trustees also object on grounds that W&L seeks privileged information. While the court has instructed the parties to reserve arguments regarding privilege, much the information sought by W&L is not privileged, and therefore discoverable.[9] New York law makes clear that regardless of whether certain communications may be privileged, the underlying facts are not privileged and thus discoverable. *Miranda v. Miranda*, 184 A.D.2d 286, 286 (1st Dep't 1992). Privilege therefore is an overly broad objection to the extent it is asserted with respect to underlying facts. Finally, the Trustees argue that only BNY Mellon will respond to W&L's discovery requests because the others are not trustees of the W&L Accepting Trusts. This objection, however, ignores the fact that the Trustees have acted collectively and therefore one or more Trustees other than BNY Mellon may

[9] As a party whose interest is being settled under the proposed agreement, W&L arguably falls within the scope of privilege, and is not hereby waiving or conceding any privilege asserted by either the Trustees or the Institutional Investors. W&L expressly reserves its right to argue any such claim of privilege is either invalid or waived.

possess responsive information.

Further, to the extent BNY Mellon has provided responsive documents, those documents were not provided to W&L in a manner consistent with its requests, or the CPLR. Rather, W&L was provided a massive, unwieldy production without receiving written responses stating whether any responsive documents exist or identifying responsive documents by Bates number or otherwise. Indeed, while BNY Mellon recently stated that "[t]o the extent that any responsive, non-privileged documents exist, they have been produced" (July 2, 2015 Letter Response, at 1), the rub is in the qualifier, "to the extent any responsive, non-privileged documents exist." W&L's own trustee is not only failing to identify *whether* responsive document exist but is further sending W&L to look for a needle, *if any exists*, in a document haystack that is hundreds of thousands of pages deep. Indeed, it seems unlikely that any responsive documents could be found now that BNY Mellon concedes that none of its employees or agents has knowledge of investigations, evaluations, analyses, and communications concerning the distribution methodology. Thus, merely directing W&L to the production seems to be even more of misdirection, and is inconsistent with BNY Mellon's role as a purportedly neutral trustee, W&L's specific instructions, CPLR § 3122(c), and the CPLR's mandate that its rules be construed "to secure the just, speedy, and inexpensive determination in every civil judicial proceeding," CPLR § 104. The Trustees' lack of cooperation throughout discovery should be deeply troubling, and tends to support W&L's concern—as thus far conceded by BNY Mellon—that it (and the Trustees) did nothing to evaluate the distribution methodology instituted by the Institutional Investors.

By this motion to compel, W&L asks the Court to:

1) Compel BNY Mellon to state whether it has produced documents responsive to

W&L's document requests as set forth above, and to the extent responsive documents have already been produced, to identify by Bates number which documents are responsive to each of W&L's requests; and

2) Compel the remaining Trustees to respond to W&L's interrogatories and Requests for Production, with identification of responsive documents by Bates number.

W&L's discovery requests go to one fundamental question: what, if anything, did the Trustees do to understand whether, and ensure that, the distribution methodology is consistent with the Governing Agreements and appropriate to fulfill the purpose of the proposed Settlement?

This is a particularly important question because the Settlement Agreement contemplates that the Court may modify the distribution methodology without invalidating the Settlement. *See* Settlement Agreement § 2.09 ("In the event that the provisions of Section 3.06 of this Settlement Agreement are modified by the Settlement Court, the Accepting Trustees shall update their request(s) [for REMIC rulings] to the Internal Revenue Service to take account of such modifications…."); § 3.06(d) ("*Should a court determine* that the distribution of a Settlement Trust's Allocable Share as though such Allocable Share was a "subsequent recovery"…available for distribution on the immediately following distribution date….") (emphasis added).

Thus, the settlement proponents have left it to the Court to determine whether the distribution methodology comports with the Governing Agreements. W&L's discovery requests are necessary to that very determination. This Court's scrutiny of the distribution methodology will be all the more important if the Trustees did not consider it themselves, since, as the Trustees concede, "a trustee must conduct sufficient evaluation or obtain sufficient expert input before settling a claim." Doc. No. 194 at 23 (citing *In re Bank of New York Mellon*, 2014 WL

1057187, at *52 (Sup. Ct. N.Y. Cty. Jan. 31, 2014)). Accordingly, discovery on the Trustees' evaluation of the distribution methodology, as set forth above, is critical to the questions placed before the Court. W&L respectfully requests an Order compelling the Trustees' compliance.

CONCLUSION

For all the foregoing reasons, Respondents respectfully request that the Court grant their motion to compel the Trustees to produce the documents listed in Appendix A.

DATED: New York, NY
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Appendix A

1. To the extent not already produced, provide all communications between the Trustees and investors in the JPM Trusts (not limited to those in which Respondents have holdings) from commencement of hearings of Senate Hearings on causes of the credit crisis (4/13/10) through 10/1/14.

2. To the extent not already produced, provide all communications between the Trustees and JPM as servicer of any JPM Trusts not available on investor websites, from 4/13/10 through 10/1/14.

3. Provide documents identified by the following search terms from the following custodians or sources of documents, from 4/13/10 – 10/1/14
   - Search string 1: ((JPM, or JP, or "JP Morgan") OR (RMBS or MBS or loan or mortgage or [identifiers for each JPM Trust])) AND ("event of default" or conflict or "fiduciary duty" or limitations or indemnif! or EOD or "self-interest")
   - Search string 2: ((JPM or JP or "JP Morgan") AND (RMBS or MBS or loan or mortgage or [identifiers for each JPM Trust])) AND (settlement or servic! or defect! or breach or reunderwrit! or underwrite! or diligence or representation or warranty or RW or "rep and warranty" or "stated income" or fraud! or guidelines or exception! or allocat!)
   - Custodians
     - Settlement custodians and Outside counsel custodians (as identified by the Trustees)
       - We anticipate that with cooperation from the Trustees we could narrow the list of Settlement and Outside Counsel custodians well below the 96 identified by the Trustees
     - Trust administrators: trust department employees directly responsible for administration of JPM Trusts, to the extent not included in Settlement custodians
       - We invite the Trustees to discuss if there is any burden involved; we anticipate that we could narrow this custodial group to a few additional custodians at each bank, based on information from the Trustees.
     - Trust management: highest level manager within Trust department at each bank
       - This may already be included in the Settlement custodians
     - All credit department or risk management internal reports containing the search terms
     - All board agendas and minutes containing the search terms

4. Respond to the following Interrogatories:
   a. List all RMBS securitizations issued from 2004-2008 for which the Trustee served as sponsor or depositor.
   b. List all RMBS securitizations issued from 2004-2008 containing mortgage loans originated by the Trustee.
   c. List all RMBS securitizations issued from 2004-2008 for which the Trustee has served as a servicer, master servicer or sub-servicer at any time from origination through the present.

d. List all RMBS securitizations issued from 2004-2008 with respect to which the Trustee has paid any sum in order to settle a claim of liability in connection with the issuance or servicing of RMBS or the origination of residential mortgage loans included in such securitizations, and state the amount paid.
e. State Trustee revenues from JPM in 2014.
f. State the volume or dollar value of debt and equity of the Trustee held by JPM or about August 1, 2014.
g. State the volume or dollar value of debt and equity of JPM held by the Trustee or about August 1, 2014.
h. State Trustee revenues from each of Blackrock, Pimco and Goldman Sachs in 2014
i. State the volume or dollar value of debt and equity of the Trustee held by each of Blackrock, Pimco and Goldman Sachs on or about August 1, 2014.
j. State the volume or dollar value of debt and equity of each of Blackrock, Pimco and JPM held by the Trustee on or about August 1, 2014.