

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

In the matter of the application of U.S. BANK NATIONAL ASSOCIATION, THE BANK OF NEW YORK MELLON, THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., WILMINGTON TRUST, NATIONAL ASSOCIATION, LAW DEBENTURE TRUST COMPANY OF NEW YORK, WELLS FARGO BANK, NATIONAL ASSOCIATION, HSBC BANK USA, N.A., and DEUTSCHE BANK NATIONAL TRUST COMPANY (as Trustees under various Pooling and Servicing Agreements and Indenture Trustees under various Indentures),

Petitioners,

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

Index No.: 652382/2014

Hon. Marcy S. Friedman
IAS Part 60

AFFIRMATION OF CHARLES R. JACOB III IN SUPPORT OF TRIAXX'S MOTION TO COMPEL DISCLOSURE BY THE INSTITUTIONAL INVESTORS

CHARLES R. JACOB III, hereby affirms under penalty of perjury:

1. I am a member of the Bar of the State of New York and of Miller & Wrubel P.C., counsel to respondents Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd., and Triaxx Prime CDO 2007-1, Ltd. (together, "Triaxx"). I submit this affirmation in support of Triaxx's motion to compel limited disclosure by the Institutional Investors of their holdings in the trusts that are the subject of this proceeding.

2. Specifically, Triaxx seeks disclosure of the Institutional Investors' holdings (if any) in the trusts that are the subject of this proceeding as of two dates: September 1, 2008 and April 1, 2009. This information is relevant to the rationality and fairness of the allocation formula (the "Allocation Formula") in the proposed settlement

that is the subject of this proceeding, for the reasons set forth in the accompanying Affidavit of Mingsung Tang (“Tang Aff.”) and Memorandum of Law.

3. Annexed as Exhibit 1 is a copy of the Institutional Investors’ First Set of Interrogatories to Triaxx (and others) dated December 12, 2014. The Institutional Investors requested holdings information from the respondents, including Triaxx, as of four dates: November 1, 2013; December 11, 2013; August 1, 2014; and October 1, 2014.

4. Triaxx considers holdings information as of two of those dates — November 1, 2013 and August 1, 2014 — to be potentially relevant in this proceeding. Triaxx did not agree that holdings information as of the other two dates has any relevance.

5. Nonetheless, Triaxx responded with its holdings information as of all four of the dates that the Institutional Investors requested. Annexed as Exhibit 2 is a copy of Triaxx’s Responses to the Institutional Investors’ First Set of Interrogatories, dated December 24, 2014, containing Triaxx’s holdings information as to all four of the dates requested.

6. Also on December 24, 2014, Triaxx served its First Set of Interrogatories to the Institutional Investors, a copy of which is annexed as Exhibit 3.

7. In its First Set of Interrogatories, Triaxx, like the Institutional Investors, requested holdings information as of four dates. Two of the dates (November 1, 2013 and August 1, 2014) were the same as in the Institutional Investors’ requests. The other two dates — September 1, 2008 and April 1, 2009 — were different.

8. Triaxx requested the Institutional Investors' holdings information as of September 1, 2008 and April 1, 2009 because those dates marked or closely preceded important points in the financial crisis, as more fully set in the Tang Aff., and the Institutional Investors' holdings — or lack of holdings — on those dates are relevant to the Allocation Formula for the reasons set forth in the Tang Aff. and accompanying Memorandum of Law.

9. A copy of the Institutional Investors' Objections and Responses to Triaxx's First Set of Interrogatories, dated January 13, 2015, is annexed as Exhibit 4. The Institutional Investors objected to producing their holdings information as of September 1, 2008 and April 1, 2009. See Exhibit 4 at 2.

10. We have met and conferred with the Institutional Investors' counsel in an effort to resolve this objection and have been unable to do so.

11. For the reasons set forth in the Tang Aff. and the accompanying Memorandum of Law, Triaxx requests that the Court enter an order compelling the Institutional Investors to disclose their holdings (if any) in the trusts that are the subject of this proceeding as of September 1, 2008 and April 1, 2009.

Dated: July 7, 2015



CHARLES R. JACOB III