Exhibit 1

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

In the matter of the application of	Index No. 652382/2014
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),	Part 60 Motion Sequence No. 7 Hon. Marcy S. Friedman
Petitioners,	
for an order, pursuant to CPLR § 7701, seeking judicial instruction.	

THE QVT FUNDS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO INTERVENE

U.S. Bank National Association ("U.S. Bank"), 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 U.S.A., N.A., and Deutsche Bank National Trust Company (collectively, the "Petitioners" or "Trustees") filed this Article 77 proceeding to seek judicial approval of a proposed settlement of the claims of investors in more than 300 trusts (the "Trusts") for which one of the Petitioners serves as trustee (the "Proposed Settlement Agreement"). QVT Fund V LP, QVT Fund IV LP and Quintessence Fund L.P. (collectively, the "QVT Funds") own securities in certain of those trusts, including one Trust – JPMorgan Acquisition Corp. 2006-WMC1 ("JPMAC 2006-WMC1") – in which the QVT Funds together hold more than 25% of the securities. On June 23

2014, the QVT Funds, represented by their investment manager QVT Financial LP ("QVT") exercised their power under the Pooling and Servicing Agreement for JPMAC 2006-WMC1 (the "PSA"), as holders of 25% or more of the securities issued by the Trust, to direct the trustee (U.S. Bank) to reject the proposed settlement. U.S. Bank, however, breached its express obligation under the PSA to follow QVT's direction and purported to accept the settlement on behalf of the investors in JPMAC 2006-WMC1.

If approved, the proposed settlement would release the claims that investors in those Trusts – including, in particular, JPMAC 2006-WMC1 – have against JPMorgan Chase and its affiliates (collectively, "JPMorgan"). The QVT Funds therefore seek an order pursuant to CPLR 401, 1012, and 1013, and Section 18 of this Court's Order to Show Cause, dated August 15, 2014, to intervene as a respondent in this proceeding to appear and object to the proposed settlement at the December 16, 2014 hearing scheduled by the Court and to promptly move pursuant to CPLR 409(b) and 3212 for an order rejecting the proposed settlement as to JPMAC 2006-WMC1 as a matter of law because, among other reasons, U.S. Bank exceeded its delegated powers under the PSA by accepting the proposed settlement in contravention of the QVT Funds' direction.

BACKGROUND

JPMorgan sold millions of its loans to securitization trusts in residential mortgage-backed securities ("RMBS") that it sponsored. To raise the money to pay JPMorgan for the loans, those trusts in turn sold securities called certificates, which are backed by those mortgage loans, to investors all over the world. To assure the investors that the loans it was selling them were of good quality, JPMorgan Chase made numerous representations and warranties about those loans to investors and also agreed to backstop representations and warranties made by the original

lenders. And to put teeth into those representations and warranties, JPMorgan Chase agreed to repurchase from the trusts loans that did not comply with the representations and warranties or to step in if the original lenders did not repurchase the loans.

There have been widespread reports that many of the loans that JPMorgan sold to the trusts did not comply with the representations and warranties that it made about them. Indeed, JPMorgan Chase substantially admitted that it systematically securitized loans that did not comply with representations and warranties regarding underwriting quality. On November 19, 2013, the United States Department of Justice announced that it entered a $13 billion settlement with JPMorgan (the "DOJ Settlement") with respect to securities issued by the Trusts (including JPMAC 2006-WMC1), as well as certain other securitization trusts. As summarized in the Department of Justice's settlement announcement, "JPMorgan acknowledged it made serious misrepresentations to the public – including the investing public – about numerous RMBS transactions," and JPMorgan admitted that "JPMorgan employees knew that the loans in question did not comply with those [underwriting] guidelines and were not otherwise appropriate for securitization, but they allowed the loans to be securitized – and those securities to be sold – without disclosing this information to investors." JPMorgan also admitted that it "waived" in loans for securitization that its due diligence vendors identified as non-compliant because, among other reasons, they were "missing documentation."[1]

Consistent with JPMorgan's admissions, the QVT Funds believe that many of the loans that JPMorgan Chase sold to the trusts in which it owns securities – including, in particular, JPMAC 2006-WMC1 – did not comply with the representations and warranties. On December 11, 2013, the Trustees provided notice to investors that JPMorgan had made an offer to pay $4.5

[1] The Department of Justice's press release announcing the DOJ Settlement, together with the agreement memorializing the DOJ Settlement, the Statement of Facts admitted by JPMorgan, and the list of covered trusts, are available at http://www.justice.gov/opa/pr/2013/November/13-ag-1237.html.

billion to settle all claims for breaches of representations and warranties and violations of JPMorgan's obligations as servicer of the loans with respect to several hundred trusts, including JPMAC 2006-WMC1.

The QVT Funds opposed the proposed settlement, and continue to oppose the proposed settlement, for a number of reasons. As an initial matter, the total settlement compensation offered by JPMorgan is too low – reflecting only 7.1% of losses projected for the trusts.[2] In comparison, the $8.5 billion Countrywide settlement, which was partially approved by the Court over vigorous investor opposition, reimbursed investors for approximately 10.2% to 17.1% of projected losses.[3] Moreover, the Countrywide settlement was reached without the benefit of meaningful review of loan files to estimate the percentage of loans that violated underwriting guidelines. Here, in contrast, there are dozens of settled and pending litigations brought by mortgage guaranty insurers and RMBS trustees (including several of the Petitioners), as well as actions brought by RMBS investors, in which the plaintiffs have re-underwritten many thousands of loans in trusts covered by the proposed settlement. Those reviews uniformly demonstrate that extremely high percentages of loans in the trusts did not comply with the represented underwriting guidelines.[4] Moreover, JPMorgan has already admitted that it knowingly securitized loans that did not comply with the represented underwriting guidelines. The pennies-on-the-dollar offer by JPMorgan is clearly insufficient in light of JPMorgan's admissions and the publicly known and documented breach rates for loans in trusts covered by the proposed settlement.

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[2] *See* Expert Report of Daniel R. Fischel, dated July 17, 2014, at ¶ 95 (attached as Exhibit 1 to the accompanying Affirmation of Michael C. Ledley) ("Fischel Report").
[3] *Id.* ¶ 37.
[4] *See, e.g.,* Fischel Report at ¶ 107 (stating that review of loan files for 25 trusts covered by the Proposed Settlement showed all but one trust with material representation and warranty breach rates greater than 80%)

Moreover, even if the aggregate settlement payment were sufficient, the proposed formula for allocating the payment to the various trusts is grossly unfair to JPMAC 2006-WMC1. Section 3.05 of the Proposed Settlement Agreement (attached as Exhibit B to the Petition) provides that the settlement payment will be allocated pro rata among the various trusts based on the amount of losses suffered by each trust, *except* that losses "associated" with certain "Selected Third-Party Originators" are discounted by *90%* in the allocation calculation. All of the loans in JPMAC 2006-WMC1 were originated by WMC Mortgage Corporation ("WMC"), which is one of the defined "Selected Third-Party Originators." Therefore, the Proposed Settlement Agreement imposes a 90% haircut on JPMAC 2006-WMC1, leaving JPMAC 2006-WMC1 with an estimated recovery of only $3 million – a mere ***0.8%*** of the approximately $393,718,648 million in projected losses.[5]

Although this haircut may be intended to reflect the fact that WMC and other Selected Third-Party Originators remain solvent and able to repurchase the loans directly, there is a significant question whether repurchase claims against WMC for JPMAC 2006-WMC1 would be timely in light of the First Department's decision in *ACE Securities Corp. v. DB Structured Products, Inc.*, 977 N.Y.S.2d 229 (1st Dep't 2013). However, under the existing terms of the PSA, JPMorgan remains liable to the extent WMC, for whatever reason, fails to pay. Moreover, pursuant to Section 2.03(a)(1) of the PSA, JPMorgan, in its capacity as Securities Administrator, is the party obligated in the first instance to enforce the trust's rights against WMC, an obligation for which JPMorgan would be released under the Proposed Settlement Agreement. To the extent claims against WMC are deemed untimely, JPMorgan (as Securities Administrator) would be liable to investors for breaching its obligation and allowing their rights to lapse. Thus, investors

[5] *See* Supplemental Expert Report of Daniel R. Fischel, dated July 26, 2014, Exhibit A at 15 (attached as Exhibit 2 to the accompanying Affirmation of Michael C. Ledley).

in JPMAC 2006-WMC1 currently have two viable theories to recover *in full* from JPMorgan. Under the proposed settlement, however, investors in JPMAC 2006-WMC1 will receive pennies on the dollar with respect to only 10% of their losses and may be left with no viable remedy to recover *anything* with respect to the remaining 90% of their losses.

Critically, U.S. Bank has provided no evidence that it ever considered the fairness of the settlement allocation to JPMAC 2006-WMC1 (or the small number of other trusts that are similarly situated) and none of the eight expert reports commissioned by the Trustees addresses the issue, despite repeated requests by QVT. On the contrary, Daniel Fischel – retained by the Trustees to advise whether the settlement should be accepted for each trust – opined that the settlement is "less attractive" where claims against a Select Third-Party Originator were time barred (even without considering any applicable haircut) and recommended acceptance of the settlement for one such trust (JPMAC 2006-WF1) ***only*** because over 50% of investors (as of October 2013) expressed support for the settlement (which is ***not*** the case with respect to JPMAC 2006-WMC1). Fischel Report at ¶ 128. Since it appears U.S. Bank failed to evaluate or even consider the fairness of the settlement allocation to JPMAC 2006-WMC1, acceptance of the settlement as to JPMAC 2006-WMC1 was, at best, an abuse of discretion. *See Matter of Bank of N.Y. Mellon*, 42 Misc. 3d 1237(A), 2014 N.Y. Misc. LEXIS 1125, *57-64 (Sup. Ct. Jan 31, 2014) (holding that trustee abused its discretion by accepting settlement and release of loan modification claims without sufficient evaluation or expert input).

Based on these and other objections, the QVT Funds exercised their right under the PSA to direct U.S. Bank, as Trustee for JPMAC 2006-WMC1, to reject the proposed settlement. Despite this direction, U.S. Bank and the other Petitioners announced on July 29, 2014 that they had entered into the Proposed Settlement Agreement with JPMorgan to settle all claims against

JPMorgan relating to breaches of representations and warranties and, with certain exceptions, all claims relating to the servicing of loans with respect to the Trusts, including JPMAC 2006-WMC1. On the same day, U.S. Bank and the other Petitioners filed this Article 77 proceeding to request judicial approval of the Proposed Settlement Agreement.

ARGUMENT

"As a general matter, intervention should be permitted where the intervenor has a real and substantial interest in the outcome of the proceedings." *Bernstein v. Feiner*, 842 N.Y.S. 2d 556 (App. Div. 2007). CPLR 1012(a) permits a party to intervene in an action as of right if [1] "the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment" or if [2] "the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment." CPLR 1013 permits a party to intervene with the permission of the Court if [3] "the person's claim or defense and the main action have a common question of law or fact . . . [and] the intervention will [not] unduly delay the determination of the action or prejudice the substantial rights of any party."[6] Although any one of these conditions would be sufficient to permit the QVT Funds to intervene, all three are satisfied in this proceeding.

I. THIS PROCEEDING INVOLVES A CLAIM FOR DAMAGES FOR INJURY TO PROPERTY, AND THE QVT FUNDS WILL BE AFFECTED BY THE JUDGMENT

The QVT Funds own securities in a number of the trusts that are subject to the Proposed Settlement Agreement. If approved, the Proposed Settlement Agreement would release substantially all claims of investors in the Trusts against JPMorgan and thereby materially affect the value of the QVT Funds' certificates in those Trusts. Moreover, the Court's August 15 Order

[6] Because this is a "special proceeding" under Article 77, all petitions to intervene, including as of right, require the approval of the Court. CPLR 401.

to Show Cause contemplates that "potentially interested persons" like the QVT Funds, identified in paragraph 4 of the Affirmation of Robert C. Micheletto dated August 4, 2014, may have an interest in these proceedings and provides in Section 18 that requests to intervene in this proceeding may be made by Order to Show Cause. The QVT Funds are therefore parties that are permitted to intervene as of right in this proceeding under CPLR 1012.

II. THE QVT FUNDS' INTERESTS WILL NOT BE ADEQUATELY REPRESENTED

CPLR 1012 also permits intervention as of right where "the representation of the person's interest by the parties is or *may be* inadequate." (Emphasis added.) To intervene as an adverse party, the QVT Funds need not show that the representation of their interests is necessarily inadequate; it is sufficient for the QVT Funds to show merely that Petitioners *may* not adequately represent the QVT Funds' interests. *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986).[7] Courts have also held that "[t]ypically, persons seeking intervention need only carry a 'minimal' burden of showing that their interests are inadequately represented by the existing parties." *U.S. v. Union Electric Company*, 64 F.3d 1152, 1168 (8th Cir. 1995). The Petitioners acknowledged that certificateholders may have conflicting views about the adequacy of the proposed settlement. The Petitioners, including U.S. Bank, have stated that they "recognize that some Certificateholders may not agree that the Settlement is reasonable" and that "different groups of Certificateholders may wish to pursue remedies for the alleged breaches in different ways, creating the potential for disagreements among Certificateholders within the same trusts." (Petition ¶¶ 17-18.) These are precisely the circumstances that CPLR 1012 was designed to address by permitting parties like the QVT Funds to intervene as of right to protect their own interests. Moreoever, as U.S. Bank already has refused to follow QVT's direction with

[7] CPLR 1012 is modeled after Rule 24 of the Federal Rules of Civil Procedure. Judicial opinions that interpret Rule 24 are thus persuasive authority for this Court.

respect to JPMAC 2006-WMC1, it is obvious that U.S. Bank will not adequately represent the QVT Funds' interests with respect to that Trust.

III. THE QVT FUNDS SATISFY THE REQUIREMENTS FOR DISCRETIONARY INTERVENTION UNDER CPLR 1013

The Court has discretion to permit a party to intervene when "the person's claim or defense and the main action have a common question of law or fact." CPLR 1013. In this case, it is particularly appropriate for the Court to exercise its discretion to permit intervention, because "in the absence of the intervenors, there is, as a practical matter, no real adversary proceeding before the court." *In re The Petroleum Research Fund*, 3 N.Y.S.2d 693 (App. Div. 1956). Under Federal Rule of Civil Procedure 24(b), on which CPLR 1013 is patterned, "intervention is appropriate where the intervenor seeks virtually the same relief as the named plaintiff and . . . is encouraged if the proposed intervenors' claims will add to the Court's understanding of the facts." *Rodriguez v. Debuono*, No. 97 Civ. 0700, 1998 WL 542323, at **2-3 (S.D.N.Y. Aug. 24, 1998); *see also Commack Self-Service Kosher Meats, Inc. v. Rubin*, 170 F.R.D. 93, 106 (E.D.N.Y. 1996) (intervenors "will bring a different perspective to the case and will contribute relevant factual variations that may assist the court in addressing the constitutional issue raised"). Indeed, the QVT Funds' participation in this proceeding is necessary to enforce their right under the PSA for JPMAC 2006-WMC1 to give direction to U.S. Bank, which U.S. Bank disregarded, and to obtain a remedy for U.S. Bank's improper usurpation of powers not delegated to it under the PSA.

Finally, permitting the QVT Funds to intervene in this proceeding will not "unduly delay the determination of the action or prejudice the substantial rights of any party." CPLR 1013. The QVT Funds filed the petition to intervene in a timely manner, well in advance of the deadline for parties to file objections in this Court.

CONCLUSION

For all of these reasons, the QVT Funds respectfully request that the Court grant their application and amend the caption to add the QVT Funds as intervenors-respondents in this Article 77 proceeding.

Dated: New York, New York
October 31, 2014

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