

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-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-

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.

Index No. 652382/2014

The Honorable Marcy S. Friedman,
J.S.C.

[PROPOSED] ORDER APPOINTING SPECIAL MASTER

Pursuant to CPLR § 3104(b), and with the consent of all parties in the above captioned action (the “JPM Article 77 Proceeding”), the Court hereby appoints Hon. Stephen G. Crane as Special Discovery Master (“Special Master”).

1. Scope of the Special Master’s Duties. Any discovery disputes (i) concerning any revised document demand served by Respondents in accordance with the Court’s July 23, 2015 bench ruling, so-ordered on August 4, 2015 (NYSCEF Doc. No. 477); (ii) concerning any party’s privilege log; or (iii) otherwise arising between the parties that have not been adjudicated by the Court and are properly before the Special Master (as determined by the Special Master in accordance with the Court’s prior rulings and guidance), shall be submitted to the Special Master.

2. Procedure for Submissions to the Special Master. The Special Master shall establish procedures for submissions related to discovery disputes, including the filing of and time periods for submissions to the Special Master and decisions by the Special Master on such submissions; provided, however, that the Special Master shall set such time periods as may be necessary in recognition that the trial of this matter will begin on January 20, 2016.

3. Proper Notice Given to All Parties. For any dispute, each party shall be responsible for promptly providing copies of any submissions to the Special Master and to all counsel of record in the JPM Article 77 Proceeding by electronic mail.

4. Compensation. The Special Master’s fees and billing arrangements, including the allocation of fees and costs, are as follows:

- (a) The Special Master shall receive compensation for his services at an hourly rate of \$1,100. In addition, JAMS shall receive a Case Management Fee, as described in the Special Master’s fee schedule attached hereto as Exhibit 1. The Special Master shall also be reimbursed for his out-of-pocket expenses.

- (b) The Special Master shall prepare a monthly invoice for his services.
- (c) Petitioners collectively and Respondents collectively shall each pay one-half of each of the Special Master's monthly invoice.
- (d) Petitioners collectively and Respondents collectively shall be responsible for remitting their allocable share of any Special Master monthly bill directly to the Special Master or JAMS, as directed.

5. Special Master's Rulings. The Special Master shall report all rulings on discovery matters either (i) in writing accompanied by a statement of reasons or (ii) on the transcript, if made at a hearing on the disputed issues and the Special Master so orders the transcript (either, the "Ruling") and shall provide copies of the Ruling to all parties by electronic mail, with a copy to the Court. The Ruling of the Special Master shall be deemed so ordered by the Court and for all purposes considered entered as an Order of the Court unless a party seeks review of the Ruling by the Court within five business days pursuant to the procedures established by Paragraph 6.

6. Appeal of the Special Master's Rulings. Any party with an interest in a Ruling by the Special Master may move for review of that Ruling by the Court by filing on the docket of the JPM Article 77 Proceeding a written submission of no more than six pages, double-spaced, within five business days after receipt of the Special Master's Ruling. Opposition papers, which may be no more than six pages, double-spaced, shall be submitted within five business days after receipt of the initial submission. (The Court may extend Page lengths and time periods.) The moving party must attach the Ruling that is subject to review by the Court to the initial submission. The moving party shall provide a courtesy copy to the Special Master of all submissions to the Court by electronic mail. The standard of review the Court shall use is

whether the Special Master's Ruling is clearly erroneous or contrary to law. Subject to an order of the Court to the contrary, the filing of such a motion for review shall suspend compliance with the Ruling until the Court rules on the motion.

7. Communications with the Court. The Special Master may communicate *ex parte* with the Court at any time.

8. Retention of Materials. The Special Master shall maintain orderly files consisting of all documents submitted to him by the parties and any of his orders, findings and/or recommendations.

9. Affidavit. The Special Master will submit an affidavit disclosing that he meets the qualifications of NY CLS Jud § 14 by September 4, 2015. The Special Master and the parties to the JPM Article 77 Proceeding shall notify the Court if they later become aware of any grounds for disqualification.

10. Termination. All parties reserve the right to terminate their consent to future references to the Special Master if they believe the Special Master process is being abused.

Dated: August 24, 2015

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EXHIBIT 1



Arbitration & Special Master Fee Schedule

Hon. Stephen G. Crane (Ret.)

PROFESSIONAL FEES

\$1,100 per hour

\$1,100 per hour for Neutral Evaluation Matters

\$700 per hour for Personal Injury Matters

NON-REFUNDABLE CASE MANAGEMENT FEE

- The Case Management Fee includes access to an exclusive nationwide panel of judges, attorneys, and other ADR experts, dedicated services including all administration through the duration of the case, document handling, and use of JAMS conference facilities including after hours and on-site business support. Weekends and holidays are subject to additional charges.
- The Case Management Fee is reassessed on cases that continue beyond originally scheduled professional time.
- Professional fees include time spent for hearings and pre- and post-hearing reading and research, and award preparation.

<i>One day is defined as 10 hours of professional time</i>	<i>Fee</i>
1-3 days	\$400 per party, per day
Time in excess of initial 30 hours	10% of professional fees

CANCELLATION/CONTINUANCE POLICY

	<i>Cancellation/Continuance Period</i>	<i>Fee</i>
1 day or less	30 days or more prior to hearing.....	100% REFUNDABLE, except for time incurred
2 days or more	60 days or more prior to hearing.....	100% REFUNDABLE, except for time incurred
Hearings of any length	Inside the cancellation/continuance period.....	NON-REFUNDABLE

- Unused hearing time is non-refundable.
- Hearing fees are non-refundable if time scheduled (or a portion thereof) is cancelled or continued within the cancellation period unless the Arbitrator's time can be rescheduled with another matter. The cancellation policy exists because time reserved and later cancelled generally cannot be replaced. In all cases involving non-refundable time, the party causing the continuance or cancellation is responsible for the fees of all parties.
- A retainer for anticipated preparation and follow-up time will be billed to the parties. Any unused portion will be refunded.
- All fees are due and payable upon receipt of invoice and payment must be received in advance of hearing. JAMS reserves the right to cancel your hearing if fees are not paid by all parties by the applicable cancellation date and JAMS confirms the cancellation in writing.
- Receipt of payment for all fees is required prior to service of an order or award.
- For arbitrations arising out of employer-promulgated plans, the only fee that an employee may be required to pay is the \$400 per party fee for a one-day case. The employer must bear the employee's share of any increased Case Management Fee. Any questions or disagreements about whether a matter arises out of an employer-promulgated plan or an individually negotiated agreement or contract will be determined by JAMS, whose determination shall be final.
- For arbitrations arising out of pre-dispute arbitration clauses between companies and individual consumers, JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses, Minimum Standards of Procedural Fairness applies. In those cases, when a consumer (as defined by those Minimum Standards) initiates arbitration against the company, the only fee required to be paid by the consumer is \$250. All other fees must be paid by the company.

JAMS agreement to render services is with the attorney, the party, and/or other representatives of the party.