

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,

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

Index No. 652382/2014
Part 60
Motion Sequence No. 24
Hon. Marcy S. Friedman

JOINT STATEMENT OF UNDISPUTED FACTS IN CONNECTION WITH THE QVT FUNDS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Intervenor-Respondents QVT Fund V LP, QVT Fund IV LP and Quintessence Fund L.P. (collectively, the "QVT Funds"), and petitioner U.S. Bank National Association, as trustee for the JPMAC 2006-WMC1 residential mortgage-backed securitization trust ("U.S. Bank" or the

“Trustee”), respectfully submit this Joint Statement of Undisputed Facts¹ pursuant to Rule 7 of the Part 60 Practices and Procedures in connection with the QVT Funds’ motion (the “Motion”) for partial summary judgment pursuant to Rules 409(b) and 3212 of the New York Civil Practice Law and Rules (the “CPLR”). Capitalized terms not otherwise defined herein have the meaning ascribed to them in the RMBS Trust Settlement Agreement, dated July 29, 2014² or, where applicable, certain other documents incorporated herein.

STATEMENT OF UNDISPUTED FACTS

A. JPMAC 2006-WMC1 and JPMAC 2006-WMC3

1. The JPMAC 2006-WMC1 residential mortgage-backed securitization trust is comprised of Group 1 Mortgage Loans and Group 2 Mortgage Loans,³ which respectively back the Group 1 Certificates and Group 2 Certificates issued by JPMAC 2006-WMC1. *See generally* JPMAC 2006-WMC1 Pooling and Servicing Agreement, dated as of March 1, 2006, including all amendments thereto (hereinafter, the “JPMAC 2006-WMC1 PSA”).

2. The JPMAC 2006-WMC3 residential mortgage-backed securitization trust is comprised of Group 1 Mortgage Loans and Group 2 Mortgage Loans,⁴ which respectively back the Group 1 Certificates and Group 2 Certificates issued by JPMAC 2006-WMC3. *See generally* JPMAC 2006-WMC3 Pooling and Servicing Agreement, dated as of August 1, 2006, including all amendments thereto (hereinafter, the “JPMAC 2006-WMC3 PSA”).

¹ Nothing herein shall be construed as an agreement between the parties regarding the materiality of any facts, and the parties do not waive, and expressly reserve, the right to raise any arguments regarding the same.

² *See* Exhibit B to the First Amended Petition, NYSCEF Doc. No. 59 (the “Proposed Settlement Agreement” or “Proposed Settlement”).

³ “JPMAC 2006-WMC1, Group 1” and “JPMAC 2006-WMC1, Group 2,” respectively, and collectively, “JPMAC 2006-WMC1.”

⁴ “JPMAC 2006-WMC3, Group 1” and “JPMAC 2006-WMC3, Group 2,” respectively, and collectively, “JPMAC 2006-WMC3.”

3. U.S. Bank is trustee for both JPMAC 2006-WMC1 and JPMAC 2006-WMC3. See JPMAC 2006-WMC1 PSA § 1.01, definition of “Trustee”; JPMAC 2006-WMC3 PSA § 1.01, definition of “Trustee.”

A. The QVT Funds’ and Institutional Investors’ Holdings

4. QVT Financial L.P. (“QVT”) is a hedge fund manager founded in 2003. QVT manages a number of funds, including the QVT Funds, with approximately \$3.3 billion in assets under management as of January 1, 2015.

5. [REDACTED]

6. On June 23, 2014, QVT provided to U.S. Bank certificates of beneficial ownership stating that as of June 9, 2014, [REDACTED]

7. [REDACTED]

8. As of November 13, 2013, the Institutional Investors collectively owned 33.26% of the Group 2 Certificates and 38.85% of all the outstanding securities issued by JPMAC 2006-WMC1. See Expert Report of Daniel R. Fischel, dated July 17, 2014 (“Fischel Rep.”), Ex. P; Supplemental Expert Report of Daniel R. Fischel, dated July 26, 2014 (“Supp. Fischel Rep.”), Ex. B.

9. [REDACTED]

B. Relevant Provisions of the JPMAC 2006-WMC1 PSA

10. J.P. Morgan Acceptance Corporation I serves as Depositor, J.P. Morgan Mortgage Acquisition Corp. (“JPMAC”) serves as Seller, and JPMorgan Chase Bank, National Association serves as Servicer of JPMAC 2006-WMC1. *See* JPMAC 2006-WMC1 § 1.01, definitions of “Depositor,” “Seller,” and “Servicer.” All of the mortgage loans backing JPMAC 2006-WMC1 were originated by WMC Mortgage Corporation (“WMC”). *See* JPMAC 2006-WMC1 PSA § 1.01, definition of “Originator.” WMC sold the loans to JPMAC pursuant to a Mortgage Loan Purchase Agreement subject to numerous representations and warranties concerning the credit quality of the loans. *See* Mortgage Loan Sale and Interim Servicing Agreement, dated as of July 1, 2005, between WMC and JPMAC. JPMAC assigned all of its interests in the loans – including its rights concerning WMC’s various representations and warranties – to the JPMorgan Depositor affiliate, which in turn assigned those interests in the loans to JPMAC 2006-WMC1 pursuant to the terms of the JPMAC 2006-WMC1 PSA. *See* JPMAC 2006-WMC1 PSA § 2.01(a); *see also id.* § 1.01, definitions of “Mortgage Loan Purchase Agreement” and “Assignment and Assumption Agreement.”

11. The Bank of New York Mellon (“BNYM”) currently serves as Securities Administrator for JPMAC 2006-WMC1. *See* Amendment No. 1 to JPMAC 2006-WMC1 PSA, dated July 31, 2007.

12. Pursuant to Section 2.03(a)(i) of the JPMAC 2006-WMC1 PSA, upon discovery “of the breach by the Originator of any representation, warranty or covenant under the Mortgage Loan Purchase Agreement or the Assignment and Assumption Agreement in respect of any Mortgage Loan that materially adversely affects the value of such Mortgage Loan or the interest therein of the Certificateholders,” WMC is required to repurchase the loan (or substitute a non-breaching loan).

13. JPMAC directly represented that certain of the WMC representations and warranties were accurate. *See* JPMAC 2006-WMC1 PSA § 2.06.

14. JPMAC, as Seller, agreed to act as ultimate guarantor for WMC’s repurchase obligations: “In the event that the Originator shall fail to cure the applicable breach or repurchase a Mortgage Loan in accordance with the preceding sentence, the [Seller] shall do so.” JPMAC 2006-WMC1 PSA § 2.03(a)(i); *see also* Amendment No. 1 to the JPMAC 2006-WMC1 PSA § 2.1(i).

15. BNYM, as Securities Administrator, has the primary role under the JPMAC 2006-WMC1 PSA to enforce the repurchase rights: “Enforcement of each Mortgage Loan Purchase Agreement or this Agreement against the Originator or the Seller, respectively, shall be effected by the Securities Administrator on behalf of the Trustee.” JPMAC 2006-WMC1 PSA § 2.02.

16. Section 8.01(iii) of the JPMAC 2006-WMC1 PSA states:

The Trustee shall not be personally liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with this Agreement or with the consent or at the direction of Holders of Certificates as provided herein relating to the time, method and place of conducting any

remedy pursuant to this Agreement, or exercising or omitting to exercise any trust or power conferred upon the Trustee under this Agreement.

17. Section 8.01(iv) of the JPMAC 2006-WMC1 PSA states:

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial or other liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it

18. Section 8.02(a)(iii) of the JPMAC 2006-WMC1 PSA states:

The Trustee shall not be under any obligation to exercise any of the trusts or powers vested in it by this Agreement or to institute, conduct or defend any litigation hereunder or in relation hereto at the request, order or direction of any of the Certificateholders, pursuant to the provisions of this Agreement, unless such Certificateholders shall have offered to the Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby

19. Section 8.02(a)(v) JPMAC 2006-WMC1 PSA states:

[The] Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond or other paper or document, unless requested in writing to do so by the Holders of Certificates entitled to at least 25% of the Voting Rights; provided, however, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee not reasonably assured to the Trustee by such Certificateholders, the Trustee may require reasonable indemnity satisfactory to it against such expense, or liability from such Certificateholders as a condition to taking any such action

20. Section 11.03 of the JPMAC 2006-WMC1 PSA further states:

[N]o one or more Holders of Certificates shall have any right in any manner whatsoever by virtue of any provision of this Agreement to affect, disturb or prejudice the rights of the Holders of any other of such Certificates, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Agreement, except in the manner herein provided and for the equal, ratable and common benefit of all Certificateholders.

C. The Proposed Settlement

21. On or about November 15, 2013, the Institutional Investors announced that they had negotiated a settlement offer from JPMorgan to pay \$4.5 billion to 330 securitization trusts (the “Trusts”) to settle asserted and unasserted claims against JPMorgan for breaches of representations and warranties and loan servicing obligations. *See* First Amended Petition, ¶¶ 1-2 and Ex. B, NYSCEF Doc. Nos. 57, 59. At the same time, the Institutional Investors sent a letter to the Trustees which, among other things, stated, “we ask each of the Trustees to exercise their independent business judgment to accept the settlement on the Trusts’ behalf,” and “[we] believe the settlement is in the best interests of all of the Trusts included in the settlement, so [we] urge the Trustees to accept it.” Gibbs & Bruns letter to the RMBS Trustees concerning JPMorgan Chase & Co's Settlement Offer, dated November 15, 2013, *available at* http://www.rmbstrusteesettlement.com/Gibbs_and_Bruns_Letter_to_RMBS_Trustees_11.15.13.pdf.

22. The Trusts collectively have experienced many billions of dollars in losses and are collectively expected to experience approximately \$64 billion in estimated lifetime losses. *See* Supp. Fischel Rep., Ex. A at 1. The Proposed Settlement reimburses the Trusts, on average, approximately 7.1% of their estimated lifetime losses. *See* Fischel Rep. at ¶ 95. In return, JPMorgan would obtain a release for claims relating to

(i) representations or warranties made by any JPMorgan entity, (ii) any alleged obligation to give notice of alleged breaches of representations or warranties, (iii) any alleged obligation of any JPMorgan entity to enforce claims for breaches of representations or warranties against the originator of a Mortgage Loan . . . , (iv) the documentation of the Mortgage Loans held by the Settlement Trusts including with respect to allegedly defective, incomplete, or non-existent documentation, as well as issues arising out of or relating to recordation, title, assignment, or any other matter relating to legal enforceability of a mortgage or mortgage note . . . , and (v) the servicing of the Mortgage Loans held by the Settlement Trusts (including but not limited to any

claim relating to the timing of collection efforts or foreclosure efforts, any foreclosure delays on Mortgage Loans that as of the Effective Date are already in the process of foreclosure, loss mitigation, transfers to subservicers, advances, servicing advances, or claims that servicing includes an obligation to take any action or provide any notice towards, or with respect to, the possible repurchase of Mortgage Loans by the applicable Servicer, Seller, or any other Person)

Proposed Settlement Agreement § 3.02.

23. Section 3.05 of the Proposed Settlement Agreement explains the settlement payment allocation:

(a) First, the Expert shall calculate the amount of Net Losses for each Trust (“Individual Trust Loss”). In determining Net Losses, past and expected future reimbursements by monoline or other third party insurers or credit enhancement providers to a Trust shall not be considered in the calculation.

(b) Second, the “Adjusted Individual Trust Loss” shall be (i) for each Bear Stearns and Chase Trust, the Individual Trust Loss; and (ii) for each JPMorgan Trust, the Individual Trust Loss less 90% of the Net Losses associated with the Selected Third Party Originators. For the avoidance of doubt, (x) in calculating the Adjusted Individual Trust Loss of the JPMorgan Trusts, the Net Losses of the JPMorgan Trusts associated with originators other than the Selected Third Party Originators shall not be discounted, and (y) if the Expert is unable to determine, using reasonable efforts and industry data, the identity of the originator of any particular Mortgage Loan, such Mortgage Loan shall be deemed to not be associated with any of the Selected Third Party Originators.

(c) Third, the “Total Adjusted Trust Losses” shall be the sum of the Adjusted Individual Trust Losses for all Trusts.

(d) Fourth, the “Trust Allocated Settlement Percentage” for each Trust shall be the Adjusted Individual Trust Loss for such Trust divided by the Total Adjusted Trust Losses.

(e) Fifth, the “Allocable Share” for each Trust shall be the Gross Settlement Amount multiplied by the Trust Allocated Settlement Percentage for such Trust.

24. WMC is one of the defined “Selected Third Party Originators.” Proposed Settlement Agreement, Ex. C.

25. WMC is a subsidiary of General Electric Company (“GE”) that went out of business in October 2007. *See, e.g.*, Investigation: How lending industry ignored risks, *CBS MoneyWatch* (Jan. 9, 2012), available at http://www.cbsnews.com/8301-505123_162-57353837/investigation-how-lending-industryignored-risks/. “GE . . . had to set aside hundreds of millions more to cover the cost of repurchasing faulty loans [originated by WMC] that had been securitized and sold to investors.” *Id.* Professor Fischel, a financial expert retained by the Trustees, stated that information on WMC’s ability to pay is not available and neither is information about whether GE could be reached to satisfy WMC’s potential liability. *See* Fischel Rep. at ¶ 137 n.232. Professor Fischel further noted that claims against GE may be time-barred. *See id.*; *see also id.*, Ex. S at 3.

26. The Proposed Settlement Agreement reduced by 90% the amount of losses considered in calculating the settlement payment amount allocable to JPMAC 2006-WMC1, leaving JPMAC 2006-WMC1 with an estimated recovery of \$2,973,933 – 0.8% of the approximately \$393,718,648 in projected losses. *See* Supp. Fischel Rep., Ex. A at 15.

27. In a notice dated December 11, 2013, U.S. Bank and the other Trustees announced that they had received and were considering the Proposed Settlement. *See* RMBS Trustees’ 12/11/2013 Notice, available at http://www.rmbstrusteesettlement.com/RMBS_Trustees_12.11.2013_Joint_Notice.pdf. The Trustees’ December 11, 2013 notice and the Proposed Settlement Agreement do not address the rationale for the 90% reduction in the amount of losses considered in calculating the settlement payment for some Trusts under the Proposed Settlement Agreement.

D. QVT's Communications with U.S. Bank Regarding JPMAC 2006-WMC1 and JPMAC 2006-WMC3

28. [REDACTED]

29. QVT further argued in its letter that the Proposed Settlement offers lower value, on a percentage of loss basis, than the \$8.5 billion settlement entered into by BNYM, as trustee to 530 Countrywide-sponsored trusts, with Bank of America (Countrywide's parent). QVT pointed out that in seeking approval of the settlement with Countrywide, BNYM argued that the negotiated amount "incorporated a discount for Bank of America's defenses related to Countrywide's limited net worth and the issue of successor liability." Neither the Trustees nor their experts have asserted that JPMorgan is subject to bankruptcy risk that limits the amount that could be recovered in litigating repurchase and servicing claims against JPMorgan.

30. The estimated payment under the Proposed Settlement for most Trusts is approximately 7.6% of their estimated lifetime losses. *See* Fischel Rep. at ¶ 95. For certain JPMorgan Trusts, their payment under the Proposed Settlement is less than 1% of their estimated lifetime losses as a result of the 90% reduction in the amount of losses considered in calculating their settlement payment. *Id.*

31. In its January 10, 2014 letter, QVT also expressed that the 90% reduction in the amount of losses considered in calculating the settlement payment for some Trusts under the Proposed Settlement Agreement unfairly penalized JPMAC 2006-WMC1 and JPMAC 2006-WMC3 because the "heavy discount assumes that trusts with Select Third Party Originators will

be able to successfully enforce repurchase claims against the underlying originators. Under the terms of the PSAs, however, virtually all of the same claims can be enforced against JP

Morgan.” QVT also stated the following in its January 10, 2014 letter:

- JPMorgan was responsible under the terms of the PSA for repurchasing defective loans in the event WMC failed to do so. *See* JPMAC 2006-WMC1 PSA § 2.03(a)(i); JPMAC 2006-WMC3 PSA §2.03(a)(i).
- JPMorgan directly represented that many of the WMC representations, including representations concerning compliance with underwriting guidelines, the absence of fraud, the use of proper appraisal practices, and delivery of the complete mortgage file, were accurate. *See* JPMAC 2006-WMC1 PSA § 2.06; JPMAC 2006-WMC3 PSA § 2.06.
- WMC was undercapitalized and may not be able to pay claims for breaches of its representations and warranties.
- Claims against WMC may be untimely under the First Department’s decision in *ACE Securities Corp. v. DB Structured Products, Inc.*, 977 N.Y.S.2d 229 (1st Dep’t 2013).

32. For these reasons, QVT stated “it would be premature to absolve JPMorgan from its obligations before first pursuing claims against WMC Mortgage Corp. and GE Capital.” The January 10 letter concluded by instructing U.S. Bank not to accept the Proposed Settlement for JPMAC 2006-WMC1 and JPMAC 2006-WMC3 “in its current form” and invited US. Bank to provide its “thoughts on the matter.”

33. Having received no response from U.S. Bank to QVT’s January 10, 2014 letter, by letter dated April 11, 2014, QVT repeated its instruction to U.S. Bank not to accept the Proposed Settlement for JPMAC 2006-WMC1 and JPMAC 2006-WMC3, and noted it was “eager to discuss [its] concerns with you in more detail.”

34. On April 22, 2014, U.S. Bank and its counsel attended a conference call with QVT and an attorney from Quinn Emanuel concerning the matters addressed in QVT’s letters. U.S. Bank stated that it had forwarded redacted versions of QVT’s letters to certain of the

experts retained to assist the Trustees in evaluating the Proposed Settlement Agreement pursuant to these experts' request to receive copies of all pertinent written correspondence received from investors in the Trusts. The material redacted from QVT's letters included indicia concerning QVT's identity and the QVT Funds' investment holdings amounts.

35. On April 25, 2014, U.S. Bank responded to QVT's letters in writing and explained that "the Trustee has not made any determination on behalf of any trust regarding the advisability of entering into the Proposed Settlement Agreement." U.S. Bank confirmed that it had provided QVT's letters to the Trustees' experts. U.S. Bank conveyed a request by these experts for "disclosure of the identity and holdings amounts of investors that contact the Trustee concerning the Proposed Settlement Agreement, to more fully assist the experts with their analyses," and requested that QVT "[p]lease confirm whether [the QVT Funds] will authorize the Trustee to release such information to the experts." U.S. Bank also noted that the experts requested copies of the analyst reports referred to in QVT's letter.

36. By email dated April 28, 2014, QVT provided copies of the requested analyst reports, which U.S. Bank provided to the experts that requested these reports. QVT did not give permission to U.S. Bank to disclose the identity or holdings amounts of the QVT Funds at that time, stating the following: "As to your question about providing our identity and holdings, we're not sure why the expert is requesting this information. Unless it is so that we can have a direct correspondence with the expert to discuss our concerns in more detail it seems irrelevant. If you could provide additional context for this request, that would be helpful."

37. On April 29, 2014, U.S. Bank and the other Trustees issued a notice inviting investors that wished to provide a direction to the Trustees with respect to the Proposed Settlement to contact the Trustees and obtain a proposed form of direction and indemnity letter.

See RMBS Trustees' 4/29/2014 Notice, *available at* http://www.rmbstrusteesettlement.com/JPM_Settlement_Fourth_Joint_Trustee_Notice.pdf.

38. QVT sent an email to U.S. Bank requesting the form direction and indemnity letter on May 5, 2014 in connection with JPMAC 2006-WMC1 and JPMAC 2006-WMC3.

39. On May 21, 2014, U.S. Bank and its counsel attended another conference call with QVT and an attorney from Quinn Emanuel. During that call, U.S. Bank explained to QVT that the experts requested the identity and holdings amounts of investors that contacted the Trustees concerning the Proposed Settlement Agreement to take into consideration the weight to be afforded such investors' views concerning the Proposed Settlement Agreement based on the type of investor and size of the holdings. QVT stated that the Trustee did not have permission to disclose its identity or the amounts of the QVT Funds' holdings.

40. On June 23, 2014, QVT sent another letter in response to the April 29 notice. In its June 23, 2014 letter, QVT, on behalf of the QVT Funds, (i) stated that it regarded the 90% reduction in the amount of losses considered in calculating the settlement payment for JPMAC 2006-WMC1 and JPMAC 2006-WMC3 as unreasonable, (ii) informed U.S. Bank that QVT had acquired additional certificates issued by JPMAC 2006-WMC1 such that its holdings exceeded 25% in JPMAC 2006-WMC1, and (iii) directed U.S. Bank to reject the Proposed Settlement for JPMAC 2006-WMC1 and JPMAC 2006-WMC3. In regard to JPMAC 2006-WMC1, QVT further stated, "If U.S. Bank and BNYM are unwilling to conduct loan file review on their own even in the face of considerable evidence of breaches, QVT may be willing to provide such direction and indemnity. In order to make this decision, we reiterate our request for information about the tolling status for JPMAC 2006-WMC1"

41. QVT simultaneously provided documentation to U.S. Bank of the QVT Funds' holdings in JPMAC 2006-WMC1.

42. On June 26, 2014, QVT and U.S. Bank had a telephone call in which QVT inquired about the tolling status of JPMAC 2006-WMC1, the same inquiry made by QVT in its June 23 letter to U.S. Bank. U.S. Bank informed QVT that all of the information about the tolling status of JPMAC 2006-WMC1 was available on the Trustees' website.

43. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

44. [REDACTED]

[REDACTED]

[REDACTED]

45. During a call with QVT on July 16, 2014, U.S. Bank indicated that it expected to make the expert reports available shortly and said it would discuss next steps with QVT after QVT had the opportunity to review the expert reports.

46. On July 17, 2014, QVT sent an email to U.S. Bank which stated, "It seems that there have not yet been any updates to the trustee website. Would you mind emailing me if that changes." By email dated July 18, 2014, U.S. Bank responded, "Will do."

47. [REDACTED]

48. On July 22, 2014, the Trustees made publicly available through their joint website the reports of the experts they retained to evaluate the Proposed Settlement. *See* RMBS Trustees' 7/22/2014 Notice, *available at* http://www.rmbstrusteesettlement.com/docs/RMBS_Trustees_July_22_2014_Notice_Regarding_the_Posting_of_Certain_Expert_Reports.pdf. U.S. Bank also provided notice by mail and through the Depository Trust Company to all certificateholders that the reports were available through this website. *See id.* U.S. Bank did not notify QVT by email that the Trustees' website had been updated.

49. Professor Fischel's report provides a loan-group-by-loan-group and trust-by-trust analysis of the Proposed Settlement, and contains specific settlement recommendations to the Trustees. Professor Fischel's report states, among other things, the following about the 90% reduction in the amount of losses considered in calculating the settlement payment for some Trusts under the Proposed Settlement Agreement:

The Allocation Formula also substantially reduces the Settlement Payment to certain Trusts (the "JPMorgan Trusts"), to the extent the Trust's loans were originated by any of nine third party originators (the "Selected Third Party Originators" or "STPOs"). For certain JPMorgan Trusts, this results in a

reduction to the Trust Settlement Payment of approximately 90%. All else equal, the Proposed Settlement will be much less attractive for these Trusts. . . . I am also advised by Professor Schwartz that certain Trusts must first assert repurchase claims against originators rather than JPM. It is possible the Haircut is an attempt to take this into account. However, the Haircut only has a substantial effect on a small number of trusts.

Fischel Rep. at ¶¶ 25, 38 n.52 (citations omitted). The reports of the Trustees' experts do not provide an explicit rationale for the 90% reduction.

50. In his report, Professor Alan Schwartz stated:

[T]he Trustee can sue the Seller as primary obligor for failure to repurchase loans when (a) the contract binds only the Seller (Set I); or (b) when originators affiliated with the Seller have failed to repurchase loans they have failed to cure (Set III). The Trustee can sue the Seller as secondary obligor when (a) the contracts expressly so provide (Set II); or (b) a non-affiliated Originator has failed to repurchase a loan that it is required to cure (Set III). The Trustee need not make a demand on an Originator to cure before claiming against the Seller.

Expert Report of Professor Alan Schwartz, dated May 27, 2014, at ¶ 18. Professor Fischel categorized JPMAC 2006-WMC1 as a Set II trust. *See* Fischel Rep., Ex. S at 3.

51. In his report, Professor Fischel set out three evaluative criteria, each of which needed to be satisfied before Fischel would recommend rejection of the Proposed Settlement with respect to any particular trust or loan group:

[1] The holders of a substantial proportion of the Trust's Certificates have expressed opposition to accepting the Proposed Settlement for that Trust and their holdings exceed those of Certificateholders who support the Proposed Settlement;

[2] There is an indication that the Expected Recovery would be greater than the value of the Settlement Consideration;

[3] The Trust's claims that are released by the Proposed Settlement, other than those related to servicing, are not likely to be barred or there is an indication that the Trust's recovery on servicing claims would exceed the Settlement Consideration.

Supp. Fischel Rep. at ¶ 4.

52. Only where all three criteria were satisfied and the Trustee was “confident there is a group of Certificateholders who are willing and able to direct and indemnify the Trustee to complete the investigation and litigation that would likely be necessary to pursue claims against JPM” would Fischel recommend that the Trustee reject the Proposed Settlement. *Id.* at ¶ 16.

53. Professor Fischel recommended that U.S. Bank accept the Proposed Settlement on behalf of JPMAC 2006-WMC1 and that U.S. Bank reject the Proposed Settlement on behalf of JPMAC 2006-WMC3, Group 2. *See id.*, Ex. F at 10.

54. As to JPMAC 2006-WMC1, Professor Fischel recommended that the Trustee accept the Proposed Settlement because certain of the criteria listed in paragraph 51 above were not satisfied. *See id.*

55. Professor Fischel determined that Criterion (1) was not satisfied because Compass concluded that 38.85% of certificateholders supported the Proposed Settlement and only 1.7% of certificateholders opposed the Proposed Settlement. *See Fischel Rep.*, Ex. P at 7.

56. Professor Fischel determined that Criterion (2) was satisfied, as under two of his five economic models the estimated recovery for JPMAC 2006-WMC1—if the Proposed Settlement were to be rejected—would exceed the consideration that JPMAC 2006-WMC1 would receive under the Proposed Settlement. *See Supp. Fischel Rep.*, Ex. F at 10.

57. For criterion (3), Professor Fischel relied on the reports of another expert engaged by the Trustees, Judge Anthony Carpinello, a retired Justice of the New York Supreme Court, Appellate Division, Third Department, who opined on issues related to the statute of limitations. With the assistance of these reports, Professor Fischel concluded that JPMAC 2006-WMC1’s claims related to breaches of representations and warranties would likely be barred by the applicable statute of limitations, regardless of how those claims are denominated, and,

separately, that claims related to mortgage loan servicing likely would not exceed the consideration JPMAC 2006-WMC1 would receive under the Proposed Settlement. *See* Fischel Rep. at ¶¶ 123-126, 123 n.203; Supp. Fischel Rep., Ex. F at 10. Thus, Professor Fischel determined criteria (3) was not satisfied.

58. [REDACTED]

59. [REDACTED]

60. QVT sent a letter on July 29, 2014 to U.S. Bank stating, among other things, that the Trustees' experts' reports "are conspicuously silent in justifying the punitive treatment of third party originated loans" and noting that "[i]t [was] puzzling . . . why a feature unique to this settlement that results in a dramatic reduction in settlement proceeds to certain trusts receives such little focus in the expert review." QVT concluded its letter by saying that "[w]e reiterate our direction to reject this settlement and direct U.S. Bank to obtain a fair deal for JPMAC 2006-WMC1 with respect to the other trusts in the JPM RMBS Agreement."

61. The QVT Funds did not provide BNYM, the Securities Administrator, with a direction or indemnity to litigate claims on behalf of JPMAC 2006-WMC1.

62. [REDACTED]

63. U.S. Bank confirmed receipt of QVT's July 29 letter and at 11:07 pm on July 31, U.S. Bank sent a letter to QVT stating that "as previously communicated on numerous occasions, [U.S. Bank] will not follow the 'direction' referred to in the July 29, 2014 letter . . . in the absence of a reasonable indemnity satisfactory to the Trustee."

64. U.S. Bank followed Professor Fischel's recommendation and accepted the Proposed Settlement on behalf of JPMAC 2006-WMC1 on August 1, 2014. *See* RMBS Trustees' 8/1/14 Notice, *available at* http://www.rmbstrusteesettlement.com/docs/08_01_2014_Notice_to_Holders.pdf.

65. The Trustee did not receive a direction and indemnity to accept the Proposed Settlement for JPMAC 2006-WMC1.

66. The Trustees announced on August 1, 2014 that they had reached an agreement with JPMorgan to extend to October 1, 2014 the deadline to respond to the Proposed Settlement with respect to certain Trusts and loan groups within Trusts, which included JPMAC 2006-WMC3, Group 2 and did not include JPMAC 2006-WMC1. *See id.*

67. QVT and U.S. Bank exchanged several emails between August 1, 2014 and August 11, 2014. QVT restated its opposition to the Proposed Settlement for JPMAC 2006-WMC1 and notified U.S. Bank that the holdings information reflected in Professor Fischel's reports for "total opposing certificate holders in Group 2 [of JPMAC 2006-WMC1] . . . does not include [QVT's] holdings." Among other things, U.S. Bank stated "that QVT declined to permit the Trustee to provide QVT's clients' holdings information to the trustees' retained experts." On

August 11, U.S. Bank stated that it “called [QVT’s] office last Monday afternoon, Aug. 4, and left a message . . . but you've not returned that call” and QVT responded that different personnel at QVT would be corresponding with U.S. Bank. QVT did not further correspond with U.S. Bank after August 11 regarding JPMAC 2006-WMC1.

68. [REDACTED]

69. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

70. The Opposing Certificateholders’ holdings reflected in Exhibit P to the Fischel Report and Exhibit B to the Supplemental Fischel Report, used by Professor Fischel in his

⁵ Pursuant to Section 2.02 of the JPMAC 2006-WMC3 PSA, “Enforcement of each Mortgage Loan Purchase Agreement or this Agreement against the Originator or the Seller, respectively, shall be effected by the Securities Administrator on behalf of the Trustee.”

analysis, do not include the QVT Funds' holdings in JPMAC 2006-WMC1. Fischel Rep., Ex. P at 5; Supp. Fischel Rep., Ex. B at 12.

71. U.S. Bank and QVT knew that the Opposing Certificateholders' holdings used by Professor Fischel in his analysis did not include the QVT Funds' holdings in JPMAC 2006-WMC1.

72. U.S. Bank relied on Professor Fischel's recommendations in agreeing to accept the Proposed Settlement with respect to JPMAC 2006-WMC1.

E. The Article 77 Proceeding and QVT's Motion

73. On August 3, 2014, the Trustees initiated this action by filing a petition pursuant to Article 77 of the CPLR seeking judicial approval of the Proposed Settlement (the "Article 77 Proceeding"). *See* Petition, NYSCEF Doc. No. 1.

74. On October 31, 2014, the QVT Funds filed a motion to intervene in the Article 77 Proceeding, which, among other things, states that the QVT Funds intend to "move . . . for an order rejecting the proposed settlement as to JPMAC 2006-WMC1." The QVT Funds' Memorandum of Law in Support of Their Motion to Intervene at 2, NYSCEF Doc. No. 88.

75. The QVT Funds' objections to the Proposed Settlement and Motion concern only JPMAC 2006-WMC1.

Dated: September 4, 2015
New York, New York

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