

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), AMBAC ASSURANCE CORPORATION, AND 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.

**AFFIDAVIT OF THOMAS G. MACKAY IN SUPPORT
OF THE TRUSTEES' FIRST AMENDED PETITION**

STATE OF NEW YORK)
):ss
COUNTY OF NEW YORK)

THOMAS G. MACKAY, being duly sworn, deposes and says:

1. I am Senior Vice President Head of Transaction Management Corporate Trust & Loan Agency (“CTLA”) of HSBC Bank USA, National Association (“HSBC”). I have over 25 years of experience in the corporate trust industry and have been employed by HSBC in my current position since 2013.

2. I submit this affidavit in support of the First Amended Petition filed by Petitioners HSBC, U.S. Bank National Association, The Bank of New York Mellon, The Bank of New York Mellon Trust Company, National Association, Wilmington Trust, National Association, Law Debenture Trust Company of New York, Wells Fargo Bank, National Association, and Deutsche Bank National Trust Company, solely in their respective capacities as trustees, indenture trustees, successor trustees, and/or separate trustees (collectively, “Trustees”) for the residential mortgage-backed securitization (“RMBS”) trusts and/or loan groups listed in Exhibit A (“Accepting Trusts”) of the First Amended Petition, in the special proceeding entitled *In re U.S. Bank National Association*, Index No. 652382/2014 (Sup. Ct. N.Y. Cnty.).

3. I submit this affidavit pursuant to Section 409 of the New York Civil Practice Law and Rules (“CPLR”) in lieu of providing live testimony at the hearing in this special proceeding. The respondents objecting to the relief sought in the First Amended Petition (“Objectors”) do not allege any holdings in any of the 10 trusts for which HSBC serves as trustee.¹ In addition, I understand that the Objectors do not intend to call any HSBC witness

¹ As set forth in more detail below, HSBC ultimately accepted the Settlement Agreement (defined below) on behalf of the 10 HSBC trusts. See Point V.

during the hearing in this special proceeding. This affidavit is based on my personal knowledge and information contained in HSBC's business records.

I. HSBC RECEIVED THE PROPOSED SETTLEMENT AGREEMENT AND TASKED ITS COMMITTEE OF RESPONSIBLE OFFICERS TO EVALUATE IT

4. On October 22, 2013, the law firm of Gibbs & Bruns LLP ("G&B"), outside counsel for a group of twenty-one institutional investors ("Institutional Investors"), emailed outside counsel for HSBC and certain of the other Trustees, informing them that the Institutional Investors and JPMorgan Chase & Co., as well as certain of its direct and indirect subsidiaries (collectively, "JPMorgan"), were negotiating a settlement of certain claims held by certain RMBS trusts against JPMorgan.

5. On October 30, 2013, G&B, JPMorgan, and certain of the Trustees, including HSBC, and outside counsel for those Trustees attended a meeting during which G&B informed the Trustees that it had reached a settlement in principle with JPMorgan and that it would be circulating a settlement agreement to the Trustees in the near future. HSBC serves as trustee for 10 of the trusts subject to the settlement. JPMorgan requested that the Trustees enter into a tolling and forbearance agreement ("Tolling Agreement") under which JPMorgan would agree to toll certain claims. HSBC's outside counsel, Mayer Brown LLP ("Mayer Brown"), forwarded a draft of the Tolling Agreement to HSBC.

6. Later that day, HSBC requested that its Committee of Responsible Officers ("Committee") oversee HSBC's evaluation of the forthcoming settlement agreement and evaluate whether to approve the Tolling Agreement. The Committee is comprised of senior officers from various departments within HSBC. The Committee meets periodically to discuss and vote on whether HSBC should either take or refrain from taking certain actions, including,

but not limited to, entering into agreements, filing legal claims, and settling those claims on behalf of various parties.

7. After deliberating, the Committee approved the Tolling Agreement which covered the 10 HSBC trusts. As a Committee member, I reviewed the Tolling Agreement and considered the benefits it would confer on the 10 HSBC trusts by preserving the trusts' potential claims against JPMorgan while HSBC considered and evaluated the forthcoming settlement agreement between the Institutional Investors and JPMorgan. After receiving Committee approval, I executed the Tolling Agreement on behalf of HSBC. *See* Trustees Ex. 004 at 7.

8. By letter dated November 15, 2013, G&B sent the Trustees' counsel, including Mayer Brown, a letter regarding a settlement offer and attached the RMBS Trust Settlement Agreement, dated November 15, 2013, between the Institutional Investors and JPMorgan ("Proposed Settlement Agreement"), which Mayer Brown forwarded to HSBC. Pursuant to the Proposed Settlement Agreement, JPMorgan agreed to make a cash payment up to \$4.5 billion and implement servicing improvements with respect to 330 JPMorgan-sponsored trusts ("Covered Trusts") in exchange for the release of (i) all claims for alleged breaches of representations and warranties regarding the underlying mortgage loans in the trusts and (ii) all servicing claims for alleged servicing breaches. *See* Trustees Ex. 002 at ¶¶ 3.01, 3.02.

9. HSBC serves as trustee for 10 of the Covered Trusts subject to the Proposed Settlement Agreement. The 10 HSBC trusts consist of 39 loan groups. *See* Trustees Ex. 252. The Institutional Investors requested that HSBC review, analyze, and accept the Proposed Settlement Agreement on behalf of the 10 HSBC trusts.²

² The Proposed Settlement Agreement was modified to, among other things, permit the Trustees to accept the proposed settlement on a loan group-by-loan group basis. *See* Trustees Ex. 003 at ¶ 2.03(a). The modified agreement is the RMBS Trust Settlement Agreement, dated

10. After receiving the Proposed Settlement Agreement, HSBC undertook an approximately nine-month process of evaluating whether it, as trustee, should accept the Proposed Settlement Agreement on behalf of the 10 HSBC trusts. I refer to the period between November 15, 2013, the date HSBC received the Proposed Settlement Agreement, and August 1, 2014, as the “Evaluation Period.”

11. In accordance with the Tolling Agreement, potential claims held by the 10 HSBC trusts alleging breaches of representations and warranties and servicing claims against JPMorgan were tolled during the Evaluation Period.

12. HSBC retained Mayer Brown as its outside counsel to assist it with the evaluation of the Proposed Settlement Agreement.

13. In addition, HSBC and the other Trustees jointly retained Garden City Group, LLC (“GCG”) to host a publicly available website (www.rmbstrusteesettlement.com) (“Settlement Website”) that the Trustees used to notify certificateholders in the Covered Trusts, and all other potentially interested parties, about current developments in the evaluation process. The Settlement Website included an email address (US.CTLA.Structured.Unit@us.hsbc.com) for certificateholders, and all other potentially interested parties, to use to contact HSBC concerning the evaluation process, as well as the Proposed Settlement Agreement.

14. The Proposed Settlement Agreement also specifically contemplated that HSBC could retain subject matter experts to assist it in the evaluation of the Proposed Settlement Agreement and the eventual allocation of the settlement payments to the 10 trusts for which HSBC ultimately accepted the Settlement Agreement. *See* Trustees Ex. 002 at ¶¶ 2.05, 3.05. Accordingly, HSBC anticipated that it would jointly retain with the other Trustees certain

November 15, 2013, modified as of July 29, 2014 (“Settlement Agreement”). The Settlement Agreement was forwarded to HSBC on July 30, 2014.

financial and legal experts to issue reports on which HSBC could rely in deciding whether to accept the Proposed Settlement Agreement.

15. On behalf of HSBC, Mr. Fernando Acebedo, Vice President of CTLA, Mr. Domenic Cervoni, Vice President & Senior Legal Counsel, and I were tasked with day-to-day duties in managing and coordinating the evaluation of the Proposed Settlement Agreement.

16. Throughout the Evaluation Period, Messrs. Acebedo, Cervoni, and I participated in telephone conferences with Mayer Brown and the other Trustees on a weekly basis to discuss issues relating to the Proposed Settlement Agreement, including the retention of subject matter experts, providing notices to certificateholders, and requesting information from JPMorgan for the experts to consider in connection with their analyses.³ In addition, throughout the Evaluation Period, Messrs. Acebedo and Cervoni participated in *ad hoc* calls with Mayer Brown to address similar issues.

17. Under the original terms of the Proposed Settlement Agreement, HSBC's evaluation and final decision were to have been completed by January 15, 2014 ("Acceptance Date"). *See* Trustees Ex. 002 at ¶ 1.01. However, the Proposed Settlement Agreement contemplated the extension of the Acceptance Date. *Id.* at ¶ 2.03(b). Accordingly, to ensure that the Trustees and their experts were afforded an adequate opportunity to evaluate and consider the Proposed Settlement Agreement, HSBC and the other Trustees sought and obtained from JPMorgan several extensions of the Acceptance Date. Ultimately, the Acceptance Date was extended to August 1, 2014 for the 10 HSBC trusts. The Trustees notified certificateholders of these extensions by promptly posting notices of such extensions to the Settlement Website.

³ Specifically, Mr. Cervoni began assisting in the evaluation of the Proposed Settlement Agreement in December 2013.

II. HSBC INTERVIEWED AND RETAINED WELL-QUALIFIED EXPERTS TO ASSIST IT WITH THE EVALUATION OF THE PROPOSED SETTLEMENT AGREEMENT

18. During the Evaluation Period, HSBC and Mayer Brown interviewed numerous experts to assist in the assessment of the Proposed Settlement Agreement. HSBC and Mayer Brown evaluated the candidates based upon various factors, including, but not limited to, the potential expert's experience, reputation in the relevant industry, suitability to the assignment, availability, and testifying experience. The Trustees jointly decided to interview and retain a valuation expert, a servicing expert, legal experts, and an expert to provide advice regarding the reasonableness of the Proposed Settlement Agreement for each Covered Trust.

19. On HSBC's behalf, Mayer Brown actively participated in the interview process and eventual retention of the experts.

20. Mr. Acebedo and I also participated in some of these interviews. In particular, on November 12, 2013, Mr. Acebedo attended in-person interviews of Compass Lexecon, Boston Portfolio Advisors ("BPA"), NERA Economic Consulting ("NERA"), and Alix Partners. I attended a subsequent in-person meeting with potential experts Compass Lexecon, BPA, NERA, and RRMS Advisors on December 3, 2013. Mayer Brown also attended these in-person interviews and regularly updated me regarding the potential retention of these experts in weekly telephone calls and emails.

21. Following the completion of first-round interviews, the Trustees conferred and narrowed the initial pool of candidates to smaller groups of finalists. As explained in more detail below, in each instance, Mr. Acebedo or I forwarded information concerning the candidate to the Committee, including a profile of the candidate, a summary of the assignment that the expert would likely address in an expert report, and copies of any presentations that the candidate had provided to the Trustees and their outside counsel during the in-person interviews. The

Committee convened meetings on December 9, 2013, and December 16, 2013, to discuss and vote on the retention of the valuation, servicing, and top-level experts. Moreover, in March 2014, the Committee discussed and voted on the potential retention of the legal experts. After deliberating and considering information regarding each of the potential experts, the Committee approved the retention of candidates for each of the subject matter areas.

22. As a Committee member, I received the materials that were forwarded to the Committee, carefully considered them, discussed the potential engagement of the candidates with other Committee members in some instances, and voted in favor of engaging each of the ultimately retained experts.

A. NERA

23. Following in-person presentations by the final candidates, I forwarded materials to the Committee members regarding NERA, including my observations and impressions from the December 3, 2013 in-person meeting. On December 16, 2013, the Committee convened a meeting to discuss the retention of NERA. *See* Trustees Ex. 257. The members of the Committee who attended the meeting unanimously approved the engagement of NERA as the valuation expert based on several factors, including, among others, the quality, experience, and availability of its staff. The next day, the members of the Committee who had not attended the December 16, 2013 meeting also approved the retention of NERA. Dr. Faten Sabry, PhD, prepared NERA's expert report.

B. BPA

24. Similarly, after the Trustees had narrowed the field of potential servicing experts, I forwarded information concerning BPA, and conveyed my impressions from the December 3, 2013 meeting with potential experts, to the Committee. *See* Trustees Ex. 253. On December 9, 2013, the Committee convened a meeting and unanimously approved BPA's engagement as the

servicing expert based on several factors including, among others, its experience consulting on RMBS matters, its track record in litigation support, and its prior engagements in evaluating servicing improvements. *See* Trustees Ex. 254. Jeremy Reifsnnyder prepared BPA's expert report.

C. Professor Fischel and Compass Lexecon

25. I also provided the Committee with background information concerning, as well as my assessment of, Professor Daniel Fischel, the Lee and Brena Freeman Professor of Law and Business Emeritus at The University of Chicago Law School, and Compass Lexecon, an economic consulting firm of which Professor Fischel is President. *See* Trustees Ex. 255. The Trustees had interviewed Professor Fischel during the December 3, 2013 meeting as a potential expert. On December 9, 2013, the Committee convened a meeting and unanimously approved the engagement of Professor Fischel based upon, among other reasons, his widely-recognized expertise in an array of financial and economic subjects, including RMBS, and his considerable testimonial experience. *See* Trustees Ex. 256. In addition, the Committee recognized that Compass Lexecon's prior experience in evaluating settlements involving RMBS trusts would likely prove valuable in providing assistance to Professor Fischel.

D. Professor Schwartz and Justice Carpinello

26. After the Trustees had interviewed a number of candidates to opine on potential legal issues, Mr. Acebedo forwarded to the Committee information relating to Professor Alan Schwartz, a Professor of Law at Yale University, and Justice Anthony Carpinello, a former Justice of the New York Appellate Division. *See* Trustees Exs. 258-259. In March 2014, after considering these materials and a summary of likely relevant legal issues, the Committee unanimously approved the engagement of Professor Schwartz and Justice Carpinello. The

Committee based these retention decisions on various factors including, but not limited to, the candidates' credentials and knowledge of legal issues relating to the financial services industry.

27. In sum, HSBC retained – jointly with the other Trustees – the following five experts who each submitted written reports in his or her area of subject matter expertise: (i) Dr. Sabry of NERA, as a valuation expert, to apply the allocation formula in the Proposed Settlement Agreement to the Covered Trusts; (ii) Mr. Reifsnnyder of BPA, as a servicing expert, to evaluate the sub-servicing protocol and other servicing enhancements; (iii) Professor Schwartz to opine on legal issues that HSBC would face in attempting to prove claims held by its 10 trusts against JPMorgan if HSBC were to reject the Proposed Settlement Agreement and assert claims against JPMorgan in a judicial proceeding; (iv) Justice Carpinello to opine on various principles of New York law, including the statute of limitations applicable to the claims released in the Proposed Settlement Agreement; and (v) Professor Fischel to serve as an overall expert in making the ultimate recommendation as to whether HSBC should accept or reject the Proposed Settlement Agreement on behalf of each of HSBC's 10 trusts. In making his recommendations on a trust-by-trust and loan group-by-loan group basis with respect to HSBC, Professor Fischel considered the work product of, and the expert reports of, the other experts.

28. Throughout the Evaluation Period, I on behalf of HSBC, together with the other Trustees, routinely participated in weekly calls with the experts to facilitate coordination between the experts, respond to questions and information requests from the experts, and generally monitor the progress of the experts' work. Mayer Brown and Messrs. Acebedo and Cervoni provided me with progress reports concerning the status of the experts' work product. Throughout the Evaluation Period, Mayer Brown provided documents and information specific to the 10 HSBC trusts in response to requests from the experts.

29. The experts issued their reports in May, June, and July of 2014. In particular, on

July 17, 2014, Professor Fischel issued his initial report (“Fischel Report”), which set forth Professor Fischel’s recommendations to either accept or reject the Proposed Settlement Agreement with respect to each of the Covered Trusts, including the 10 HSBC trusts. *See* Trustees Ex. 020. On July 26, 2014, Professor Fischel provided a supplemental expert report (“Supplemental Fischel Report”), which set forth Professor Fischel’s recommendations with respect to each loan group at issue in the proposed settlement, including the 39 HSBC loan groups. *See* Trustees Ex. 022.

III. HSBC PROVIDED NOTICE TO AND RESPONDED TO INQUIRIES FROM CERTIFICATEHOLDERS

30. Throughout the Evaluation Period, HSBC (and the other Trustees) with the assistance of GCG provided frequent updates to certificateholders and other potentially interested parties concerning HSBC’s ongoing evaluation of the Proposed Settlement Agreement. In total, HSBC (and the other Trustees) issued twelve separate notices on the Settlement Website, concerning developments relating to the Proposed Settlement Agreement. *See* Trustees Exs. 010-013, 023-030.

31. For example, on December 11, 2013, HSBC issued a notice on the Settlement Website, informing certificateholders and other interested parties about the Proposed Settlement Agreement. This notice provided the address of the Settlement Website where anyone, including certificateholders, could view the Proposed Settlement Agreement. The notice also set forth certain basic terms of the Proposed Settlement Agreement (including the proposed settlement payment amount, the releases being sought by JPMorgan, and the Acceptance Date by which the Trustees were required initially to reach a decision to accept or reject the Proposed Settlement Agreement). HSBC (and the other Trustees) urged certificateholders and other potentially interested parties to carefully review the Proposed Settlement Agreement and referred those

parties to the Settlement Website for its complete terms. The notice also described the Tolling Agreement, a copy of which was available on the Settlement Website. Furthermore, HSBC informed certificateholders that the Trustees intended to jointly retain experts to assist them in evaluating the Proposed Settlement Agreement, and that certificateholders could direct any inquiries to HSBC using the contact information available on the Settlement Website.

32. In addition, on April 29, 2014, HSBC issued a notice advising that certificateholders that were interested in providing a direction with respect to the Proposed Settlement Agreement should contact HSBC prior to May 15, 2014 to verify its holdings and receive a confidential form of direction and indemnity letter. HSBC received three inquiries from certificateholders regarding the Proposed Settlement Agreement. HSBC and Mayer Brown reviewed those communications, promptly responded to the certificateholders' respective inquiries, and provided the information they requested in a timely fashion.

33. On April 15, 2014, counsel for a certificateholder in two HSBC trusts emailed Mayer Brown, seeking to discuss HSBC's evaluation of the Proposed Settlement Agreement. Mayer Brown forwarded the communication to me and others at HSBC. On May 9, 2014, counsel for the certificateholder requested that Mayer Brown provide it with a form of direction and indemnity letter, which Mayer Brown did on June 3, 2014, after HSBC had confirmed the certificateholder's holdings in one of the HSBC trusts.

34. Similarly, on May 6, 2014, a second certificateholder emailed HSBC using the email address provided on the Settlement Website, inquiring about the Proposed Settlement Agreement. The certificateholder also provided HSBC with information concerning its holdings in one of HSBC's trusts and requested a form of direction and indemnity letter. Throughout May and June 2014, Mr. Acebedo communicated with this certificateholder, provided it with a draft

of a form confidentiality and indemnification agreement, and answered its inquiries regarding potential direction scenarios.

35. Additionally, on May 21, 2014, Mr. Acebedo responded to a request for information made on May 19, 2014 by counsel for a certificateholder alleging holdings in certain of HSBC's 10 trusts. Mr. Acebedo explained that the latest information regarding the Proposed Settlement Agreement was available on the Settlement Website.

36. None of the certificateholders that contacted HSBC during the Evaluation Period provided HSBC with a direction and indemnity with respect to the Proposed Settlement Agreement.

IV. PROFESSOR FISCHEL RECOMMENDED THAT HSBC ACCEPT THE PROPOSED SETTLEMENT AGREEMENT FOR ITS 10 TRUSTS

37. In his expert reports, Professor Fischel provided recommendations to either accept or reject the Proposed Settlement Agreement for each of the trusts and loan groups at issue. *See* Trustees Ex. 020 at Ex. T; Trustees Ex. 022 at Ex. F. Professor Fischel explained that he would recommend rejection of the Proposed Settlement Agreement for a trust only if all of the following criteria were satisfied: (i) “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”; (ii) “[t]here is an indication that the Expected Recovery would be greater than the value of the Settlement Consideration”; and (iii) “[t]he 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.” Trustees Ex. 020 at ¶¶ 29, 30.⁴

38. Professor Fischel also noted that, “before a Trustee rejects the Proposed Settlement for any Trust, the Trustee needs to be 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[organ].” *Id.* at ¶ 139.

39. Professor Fischel further explained that, to satisfy the first criterion for rejection, opposing certificateholders’ holdings must exceed 15% of the unpaid principal balance of the non-notional certificates and be greater than those of supporting certificateholders. *Id.* at ¶¶ 98-101.

40. If any one of these three criterion were not satisfied for a particular trust, Professor Fischel would recommend that HSBC (and the other Trustees) accept the Proposed Settlement Agreement on behalf of that trust.

41. In applying this methodology, Professor Fischel recommended that HSBC accept the Proposed Settlement Agreement for each of HSBC’s 10 trusts. *Id.* at Ex. T.

42. As discussed above, Professor Fischel analyzed the views of certificateholders regarding the Proposed Settlement Agreement. In order for Professor Fischel to recommend rejection of the Proposed Settlement Agreement on behalf of a specific trust, the holdings of certificateholders opposing the Proposed Settlement Agreement would have to exceed the holdings of certificateholders advocating for acceptance of the Proposed Settlement Agreement. Significantly, with respect to 9 of HSBC’s 10 trusts, no certificateholder expressed any

⁴ Professor Fischel slightly revised these criteria in the Supplemental Fischel Report to take into account differences between loan groups and trusts. *See* Trustees Ex. 022 at ¶¶ 5-16. Despite these slight revisions to his methodology, Professor Fischel recommended that HSBC accept the Proposed Settlement Agreement on behalf of all 39 loan groups in its 10 trusts. *Id.* at Ex. F. For simplicity’s sake, I will only refer to the criteria set forth in the original Fischel Report.

opposition to the Proposed Settlement Agreement; by contrast, the Institutional Investors, who support the Proposed Settlement Agreement, have holdings in each of the 10 HSBC trusts, including more than 25% of the unpaid principal balance in 7 of the 10 HSBC trusts. *Id.* at Ex. P. With respect to the one remaining HSBC trust, Professor Fischel considered the alleged opposition by a group of certificateholders, but those certificateholders held less than 1.0% of the unpaid principal balance as opposed to the Institutional Investors' 25.67% holdings in the same trust and, therefore, even for that trust, the first criterion for rejection was not satisfied. *Id.* at ¶¶ 57, 100 & Ex. P.

43. Professor Fischel also determined that the claims alleging breaches of representations and warranties held by one of the HSBC trusts likely would be time barred if HSBC rejected the Proposed Settlement Agreement. *Id.* at Ex. R-1.

V. HSBC RELIED UPON THE EXPERTS IN ACCEPTING THE SETTLEMENT AGREEMENT ON BEHALF OF THE 10 HSBC TRUSTS

44. On July 11, 2014, I emailed the Committee informing them of a July 21, 2014 Committee meeting during which the Proposed Settlement Agreement would be discussed. *See* Trustees Ex. 260. I also explained that the Committee members would receive materials to review and consider before the Committee ultimately voted whether to accept the Proposed Settlement Agreement.

45. On July 21, 2014, the Committee convened to discuss the Proposed Settlement Agreement. *See* Trustees Ex. 261. During that meeting, the Committee was provided a summary of the Proposed Settlement Agreement and the evaluation process that HSBC and the other Trustees undertook during the Evaluation Period.

46. In addition, a binder of materials relating to the Proposed Settlement Agreement was distributed to the Committee members. The binder included: (i) the November 15, 2013

letter from G&B regarding the Proposed Settlement Agreement; (ii) the Proposed Settlement Agreement; (iii) the expert reports issued by Professor Fischel, Mr. Reifsnnyder, Dr. Sabry, Justice Carpinello, and Professor Schwartz; (iv) the tolling agreement between JPMorgan and the Institutional Investors (and its various extensions); (v) the Tolling Agreement between JPMorgan and the Trustees (and its various extensions); (vi) a list of HSBC's 10 trusts; (vii) all of the notices to certificateholders that the Trustees had posted to the Settlement Website as of that date concerning the Proposed Settlement Agreement; and (viii) a spreadsheet listing the holdings of the Institutional Investors in the 10 HSBC trusts. *See* Trustees Exs. 264-283.

47. The Committee undertook to analyze this material and formulate questions in preparation for a subsequent meeting at which the Committee would ultimately vote whether to accept or reject the Proposed Settlement Agreement on a trust-by-trust basis. The Committee agreed to hold the second meeting one week later on July 28, 2014.

48. On July 28, 2014, the Committee convened to evaluate, consider, and vote whether to accept or reject the Proposed Settlement Agreement on behalf of the 10 HSBC trusts. *See* Trustees Ex. 262.

49. The Committee meeting lasted approximately three hours.

50. At that time, the Committee was comprised of the following members: (i) Kevin V. Fisher, Head of CTLA; (ii) Raz X. Haramati, Head of Business Support; (iii) Robert J. Tunney, Head of Business Risk-Compliance Management; (iv) Ronald DeSorbo, Vice President - New Business Development; (v) and myself.

51. During the meeting, the Committee received a factual overview of the process implemented by HSBC, along with the other Trustees and their outside counsel, during the Evaluation Period, including the consideration and engagement of the experts. The Committee also reviewed the basic terms of the Proposed Settlement Agreement. It received an overview of

each of the expert reports, with particular emphasis on Exhibit T of the Fischel Report, which sets forth Professor Fischel's three criteria for rejection as applied to each of the Covered Trusts, including the 10 HSBC trusts. Finally, the Committee discussed Professor Fischel's recommendations to accept the Proposed Settlement Agreement for each of the 10 HSBC trusts.

52. Throughout the meeting, the Committee members posed certain questions, which were addressed, and Committee members discussed various aspects of the Proposed Settlement Agreement and the expert reports. In particular, my review of Professor Fischel's expert report led me to conclude that his methodologies and recommendations with respect to the 10 HSBC trusts were reasonable.

53. After due deliberation, the Committee voted unanimously to approve HSBC's acceptance of the Proposed Settlement Agreement on behalf of each of the 10 HSBC trusts, which consist of 39 loan groups. HSBC did not reject the Proposed Settlement Agreement for any of the 10 HSBC trusts or 39 loan groups. The Committee concluded that the Proposed Settlement Agreement was in the best interests of the certificateholders of the 10 HSBC trusts. I believe that HSBC acted reasonably and in good faith in evaluating and accepting the Settlement Agreement based on, among other things, HSBC's engagement of and reliance on well-qualified experts, issuance of notices to certificateholders, prompt responses to certificateholder inquiries, and the Committee's thorough review and deliberations regarding the expert reports and the Proposed Settlement Agreement.

54. On July 31, 2014, I executed the Settlement Agreement on behalf of HSBC, thereby memorializing its acceptance of the Settlement Agreement on behalf of the 10 HSBC trusts.

55. On August 1, 2014, HSBC posted a notice to the Settlement Website, informing certificateholders and all other interested parties that HSBC had accepted the Settlement Agreement on behalf of the 10 HSBC trusts.

VI. HSBC FILED AND PROVIDED NOTICE OF THIS SPECIAL PROCEEDING TO CERTIFICATEHOLDERS AND ALL POTENTIALLY INTERESTED PARTIES

56. Thereafter, the Trustees, through their counsel, filed this special proceeding in this Court seeking an order pursuant to CPLR Section 7701 regarding the Trustees' action in evaluating and accepting the Proposed Settlement Agreement on behalf of the Accepting Trusts, including the 10 HSBC trusts.

57. I have read the First Amended Petition filed in this special proceeding and know the contents thereof. The contents of the First Amended Petition with respect to HSBC are true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

58. To the best of my knowledge, there has not been any Event of Default, as that term is defined in the applicable governing agreements, in any of the 10 HSBC trusts.

59. The Trustees, with the assistance of GCG, implemented an expansive program to notify certificateholders and all other potentially interested parties about this special proceeding and HSBC's acceptance of the Settlement Agreement on behalf of 10 of the Accepting Trusts.

60. Mayer Brown, on behalf of HSBC, provided the names and mailing addresses of the registered certificateholders to GCG. GCG then mailed notices regarding HSBC's acceptance of the Settlement Agreement and the commencement of this special proceeding to the registered certificateholders.

61. In addition, Mayer Brown, on behalf of HSBC, provided GCG the names and mailing addresses for other potentially interested parties. Those parties are identified in


paragraph 4 of the Affirmation of Robert Micheletto, dated August 4, 2014, which was filed in this special proceeding. GCG then mailed notices regarding HSBC's acceptance of the Settlement Agreement and the commencement of this special proceeding to those third parties.

62. Two certificateholders – the Federal Home Loan Bank of Boston (“FHLB Boston”) and the National Credit Union Administration Board, as Liquidating Agent for U.S. Central Federal Credit Union, Western Corporate Federal Credit Union, Southwest Corporate Federal Credit Union, Members United Corporate Federal Credit Union and Constitution Corporate Federal Credit Union (collectively, “NCUA”) – intervened in this special proceeding and collectively alleged holdings in 6 of HSBC's 10 trusts. FHLB Boston and NCUA objected to HSBC's acceptance of the Settlement Agreement. However, both FHLB Boston and NCUA withdrew their objections in this special proceeding on May 6, 2015 and October 28, 2015, respectively. *See* Trustees Exs. 046-047. None of the remaining Objectors that intervened in this special proceeding to object to the Trustees' acceptance of the Settlement Agreement allege any holdings in HSBC's 10 trusts.

63. Accordingly, no certificateholder or any other third party with an interest in the ten HSBC trusts currently is prosecuting an objection in this special proceeding with respect to HSBC.

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Executed: New York, New York
January 15, 2016


Thomas G. Mackay

Subscribed and sworn to
before me this 15 day of
January 2016


Notary Public

ANDRES DEJESUS CORDERO
Notary Public - State of New York
No. 01CO6234102
Qualified in New York County
My Commission Expires January 10, 2019