

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

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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), :

Index No. 652382/2014

Part 60

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

Petitioners,

-against-

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.

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**AFFIDAVIT OF NICOLAS VALAPERTA IN SUPPORT OF**  
**THE TRUSTEES' FIRST AMENDED PETITION**

STATE OF ILLINOIS        )  
  )  
COUNTY OF COOK        )        ss

NICOLAS VALAPERTA, being duly sworn, deposes and says:

1. I am a Vice President in Global Corporate Trust Services of Petitioner U.S. Bank National Association (acting solely in its trustee capacity, “U.S. Bank”). I have been employed by U.S. Bank since 2011. I offer this affidavit in support of the First Amended Petition (as defined below) in the above-captioned proceeding.<sup>1</sup>

2. The facts set forth herein are based upon my personal knowledge or, in my capacity as a designated corporate representative of U.S. Bank, based upon information contained in U.S. Bank’s business records, information supplied to me by other U.S. Bank personnel, or information related to this matter.

3. U.S. Bank is a trustee, indenture trustee, or successor trustee, as applicable, for certain of the residential mortgage-backed securitization (“RMBS”) trusts that are at issue in the proceeding. The RMBS trusts are governed, in part, by pooling and servicing agreements or indentures and sale and servicing agreements, and relate to securitization transactions that were sponsored by JPMorgan Chase & Co. or its direct or indirect subsidiaries (“JPMorgan”).

**I. THE PROPOSED SETTLEMENT**

4. By letter dated November 15, 2013<sup>2</sup> (the “November 15th Letter”), a group of institutional investors (collectively, the “Institutional Investors”) informed U.S. Bank and seven other trustees (each a “Trustee” and collectively, the “Trustees”) that the Institutional Investors had reached a settlement (the “Proposed Settlement”) with JPMorgan concerning 330 RMBS trusts sponsored by JPMorgan for which the Trustees act as trustee, indenture trustee, successor

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<sup>1</sup> All references to exhibits herein are from the Trustees’ Exhibit List (“Trustees’ Ex.”).

<sup>2</sup> **Trustees’ Ex. 005** is a true and correct copy of this letter.

trustee, or separate trustee (each a “Trust” and collectively, the “Trusts”). *See Trustees’ Ex. 005 at 65.* The Proposed Settlement was memorialized in the RMBS Trust Settlement Agreement, entered into as of November 15, 2013 by and among JPMorgan and the Institutional Investors (as modified on July 29, 2014, the “Settlement Agreement”). *See NYSCEF No. 59 (Trustees’ Ex. 003).* The November 15th Letter stated that the Proposed Settlement was the result of “exhaustive negotiations” between JPMorgan and the Institutional Investors, and the Institutional Investors “urged the Trustees to accept it.” **Trustees’ Ex. 005 at 66.**

5. In addition to U.S. Bank, the Trustees are: 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 (“Law Debenture”); Wells Fargo Bank, National Association (“Wells Fargo”); HSBC Bank USA, National Association; and Deutsche Bank National Trust Company.<sup>3</sup> Throughout this affidavit, I refer to the other trustees besides U.S. Bank as the “Other Trustees.”

6. The Institutional Investors are: Aegon USA Investment Management, LLC; Bayerische Landesbank; BlackRock Financial Management, Inc.; Cascade Investment, LLC; the Federal Home Loan Bank of Atlanta; the Federal Home Loan Mortgage Corporation (Freddie Mac); the Federal National Mortgage Association; Goldman Sachs Asset Management L.P.; Voya Investment Management LLC (f/k/a ING Investment Management LLC); Invesco Advisers, Inc.; Kore Advisors, L.P.; Landesbank Baden-Wuerttemberg; Metropolitan Life Insurance Company; Pacific Investment Management Company LLC; Sealink Funding Limited; Teachers Insurance and Annuity Association of America; The Prudential Insurance Company of America; the TCW Group, Inc.; Thrivent Financial for Lutherans; and Western Asset

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<sup>3</sup> I understand that for the thirty Trusts for which Wells Fargo is trustee, Law Debenture was appointed as separate trustee for the purpose of enforcing repurchase claims, including evaluation of the Proposed Settlement.

Management Company. *See* NYSCEF No. 59 (Trustees' Ex. 003 at ¶ 1.11).

7. Some of the 330 Trusts at issue in this proceeding contain multiple loan groups (each a "Loan Group" and collectively, the "Loan Groups"). U.S. Bank is trustee for 180 of the 330 Trusts. Those 180 Trusts are identified in **Trustees' Ex. 051**, and there are a total of 461 Loan Groups within such Trusts. When the term "Trust" or "Trusts" is used herein it refers to all Loan Groups within such Trust or Trusts. When the term "Loan Group" is used herein it refers to a particular Loan Group within an individual Trust that contains multiple Loan Groups, and when the term "Loan Groups" is used it refers to particular Loan Groups within multiple Trusts that contain multiple Loan Groups.<sup>4</sup>

8. Under the terms of the Proposed Settlement, JPMorgan will (a) make a cash payment to the Trusts (the "Settlement Payment") and (b) perform and/or implement the mortgage loan servicing improvements and remedies set forth in Exhibit B to the Settlement Agreement (the "Subservicing Protocol"), which includes a requirement that JPMorgan transfer the servicing of certain delinquent loans to qualified subservicers ((a) and (b) collectively, the "Settlement Consideration"). *See* NYSCEF No. 59 (Trustees' Ex. 003 at ¶ 3.01).

9. In exchange for the Settlement Consideration, JPMorgan would receive a full release by the Trusts of certain claims related to breaches of mortgage loan representations and warranties ("Representation and Warranty Claims") and certain claims related to the servicing of mortgage loans ("Servicing Claims") (collectively, the "Released Claims"). *See* NYSCEF No. 59 (Trustees' Ex. 003 at ¶ 3.02).

10. If the Trustees accepted the Proposed Settlement for all 330 Trusts, the Settlement Payment to the Trusts would equal \$4.5 billion. *See* NYSCEF No. 59 (Trustees' Ex. 003 at ¶

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<sup>4</sup> Additionally, when the term "Trusts" or "Loan Groups" is used herein in a context that is specific to U.S. Bank, such term refers only to Trusts or Loan Groups for which U.S. Bank is trustee.

**3.01).** The Settlement Payment would be allocated among the Trusts pursuant to a formula agreed upon between the Institutional Investors and JPMorgan based on the respective lifetime losses of the Trusts (the “Allocation Formula”). *See NYSCEF No. 59 (Trustees’ Ex. 003 at ¶ 3.05).*

11. The terms of the Settlement Agreement permitted the Trustees to accept or reject the Proposed Settlement on a Loan Group basis. *See NYSCEF No. 59 (Trustees’ Ex. 003 at ¶ 2.03(a)).*

12. The Trustees’ last date to accept or reject the Proposed Settlement (the “Acceptance Date”) was initially set as January 15, 2014. *See NYSCEF No. 59 (Trustees’ Ex. 003 at ¶ 1.01, 2.03(a)).* The Proposed Settlement permitted the Trustees to extend the Acceptance Date for sixty days, and provided JPMorgan the right to refuse to further extend the Acceptance Date. *See NYSCEF No. 59 (Trustees’ Ex. 003 at ¶ 2.03(b)).* As described in greater detail below, the Acceptance Date was ultimately extended pursuant to successive agreements to August 1, 2014, with the exception of an identified group of Trusts and Loan Groups which were subject to a further extension to October 1, 2014. *See Trustees’ Ex. 040.*

## **II. THE INTERNAL STRUCTURE FOR U.S. BANK’S EVALUATION OF THE SETTLEMENT OFFER**

13. Soon after receipt of the Proposed Settlement, U.S. Bank created a working group consisting of Vice Presidents in Global Corporate Trust Services of U.S. Bank, including myself, James Byrnes, and Brad Zwetzig (the “Working Group”).<sup>5</sup> The Working Group’s role included coordinating the process for evaluation of the Proposed Settlement, gathering relevant data and information, communicating with other employees of U.S. Bank, responding to inquiries from

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<sup>5</sup> Elizabeth Taraila, a Vice President in Global Corporate Trust Services of the Trustee, was a member of the Working Group until April 2014, at which time Mr. Zwetzig joined the Working Group.

Investors<sup>6</sup> concerning the Proposed Settlement, and vetting expert advisors to assist U.S. Bank.

14. In addition, U.S. Bank identified management personnel responsible for making U.S. Bank's decisions as to whether to accept or reject the Proposed Settlement for each Trust or Loan Group (the "Trust Committee"). The Working Group was responsible for making recommendations to the Trust Committee concerning such decisions. The Trust Committee consisted of Eve Kaplan, Scott Strodthoff, and Ed Frere, who are all Senior Vice Presidents in Global Corporate Trust Services of U.S. Bank.

15. U.S. Bank retained the law firm Jones Day to represent it in connection with, and assist in, its evaluation of the Proposed Settlement.

16. Throughout the process of evaluating the Proposed Settlement, Working Group members participated in teleconferences with Jones Day, typically twice a week, between December 2013 and October 2014. In addition, members of the Working Group and Jones Day participated in *ad hoc* teleconferences and occasional in-person meetings. Working Group members communicated frequently amongst themselves, and Working Group members and/or Jones Day communicated with members of the Trust Committee to keep them informed of the evaluation of the Proposed Settlement. The Working Group and Jones Day also held occasional teleconferences with other employees of U.S. Bank, and held twice-weekly calls with the Other Trustees and their counsel concerning the Proposed Settlement.

### **III. THE TRUSTEES' EVALUATION AND SELECTION OF EXPERTS**

17. After receiving the Proposed Settlement, U.S. Bank and its counsel consulted with the Other Trustees and began the process of vetting potential experts to assist the Trustees in their evaluation of the Proposed Settlement. The Trustees and their counsel considered candidates on the basis of, among other factors: (a) credentials and subject-matter expertise;

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<sup>6</sup> For ease of reference, the term "Investors" is used to refer to beneficial owners of certificates or notes issued by the Trusts or Loan Groups and any investment manager advisors acting on behalf of such beneficial owners.

(b) understanding of securitization participants, including corporate trustees; (c) ideas for assessing the reasonableness of the Proposed Settlement; (d) availability and capacity; (e) conflicts; and (f) testifying experience.

18. The Trustees considered various areas of possible expert advice and guidance. Ultimately the Trustees decided to rely on advice of four types of experts: (a) valuation experts to consider and estimate historical losses for the Trusts and Loan Groups, to project future losses for each of the Trusts and Loan Groups, and to determine the Settlement Payment allocable to each of the Trusts and Loan Groups (the “Valuation Expert”); (b) a servicing expert to evaluate the servicing-related aspects of the Proposed Settlement (the “Servicing Expert”); (c) legal experts who could provide analysis to, and inform the assumptions of, the Trustees and their other experts (the “Legal Experts”); and (d) a financial and economic expert who could, among other things, consider the results of the analyses conducted by the Trustees’ other experts and other factors relevant to the reasonableness of the Proposed Settlement, and provide a recommendation to either accept or reject the Proposed Settlement as to each Trust and Loan Group (the “Economic Expert” and together with the Valuation Expert, the Servicing Expert, and the Legal Experts, the “Experts”).

**A. The Valuation, Servicing, and Economic Experts**

19. The Trustees and their counsel initially considered approximately ten potential Valuation Expert, Servicing Expert, and Economic Expert candidates. *See Trustees’ Exs. 052 – 066.*<sup>7</sup>

20. The Trustees and their counsel eventually narrowed the group of potential Valuation Experts, Servicing Experts, and Economic Experts under consideration, and on or about November 12, 2013, representatives of the Working Group, the Other Trustees, and their

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<sup>7</sup> These exhibits are true and correct copies of resumes, CVs, and other materials provided by such candidates.

respective counsel conducted in-person interviews with Compass Lexecon, Boston Portfolio Advisors (“BPA”), NERA Economic Consulting (“NERA”), and Alix Partners. *See Trustees’ Exs. 060, 061, 063.* Subsequently, on or about December 3, 2013, representatives of the Working Group, the Other Trustees, and their respective counsel conducted further in-person interviews with Compass Lexecon, BPA, and NERA, and also conducted an in-person interview with RRMS Advisors. *See Trustees’ Exs. 042, 043, 044.*<sup>8</sup>

21. After U.S. Bank considered the candidates and various relevant factors, including the factors described *supra* ¶ 18, U.S. Bank and the Other Trustees selected Faten Sabry, PhD of NERA to serve as the Valuation Expert, Jeremy Reifsnnyder of BPA to serve as the Servicing Expert, and Prof. Daniel Fischel of Compass Lexecon to serve as the Economic Expert. *See Trustees’ Exs. 073, 074, 076.*<sup>9</sup>

22. Dr. Sabry, Mr. Reifsnnyder, and Prof. Fischel are highly qualified, and the analyses with which they were charged are within their respective fields of expertise. *See Trustees’ Exs. 019 at 4, 020 at 1, 021 at 11, 055, 056, 058.*

#### **B. The Legal Experts**

23. In March 2014, the Trustees and their respective counsel conducted interviews with approximately six candidates for the role of Legal Expert. *See Trustees’ Exs. 081 – 086.*<sup>10</sup>

24. After U.S. Bank considered the candidates and various relevant factors, including the factors described *supra* ¶ 18, U.S. Bank and the Other Trustees selected Prof. Alan Schwartz of Yale Law School and Yale School of Management, and Justice Anthony Carpinello, a retired Associate Justice of the New York Supreme Court, Appellate Division, Third Department to

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<sup>8</sup> These exhibits are true and correct copies of materials provided on December 3, 2013 by such candidates.

<sup>9</sup> These exhibits are true and correct copies of the engagement letters of the retained Valuation, Servicing, and Economic Experts.

<sup>10</sup> These exhibits are true and correct copies of resumes and CVs provided by such candidates.



serve as the Legal Experts. *See Trustees' Exs. 087, 088.*<sup>11</sup>

25. Prof. Schwartz and Justice Carpinello are highly qualified, and the analyses with which they were charged are within their respective fields of expertise. *See Trustees Exs. 015 at 2, 017 at 1, 081, 085.*

#### **IV. THE EXPERTS' EVALUATIONS OF THE PROPOSED SETTLEMENT**

26. After they were retained, the Experts considered the issues within their roles as described *supra* ¶ 18, designed analyses they deemed appropriate, and began their analyses.

27. Each of the Experts requested documents and information from the Trustees to aid in their analyses. Jones Day acting at the direction of the Working Group provided to the Experts, among other documents, agreements governing Trusts for which U.S. Bank is trustee, summaries of certain provisions in those agreements requested by the Experts, copies of correspondence from Investors concerning the Proposed Settlement, data concerning lawsuits then being prosecuted by U.S. Bank involving breach of mortgage loan representation and warranty claims, mortgage loan repurchase correspondence concerning certain Trusts, and tolling agreements applicable to the Trusts. Additionally, no declared Events of Default were identified in connection with any Trusts for which U.S Bank is trustee.

28. The Experts also requested documents and information from JPMorgan to aid in their analyses. Counsel for the Trustees conferred with JPMorgan over a period of approximately seven months to obtain those documents.

29. The documents and information provided by JPMorgan to the Trustees and the Experts are described in **Trustees' Ex. 129**, JPMorgan Chase & Co.'s Verified Responses to Agreed-Upon Questions in Lieu of Deposition, dated December 17, 2015. I understand that JPMorgan ultimately provided approximately 1.75 million pages of documents and information

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<sup>11</sup> These exhibits are true and correct copies of the engagement letters of the retained Legal Experts.

to the Trustees and the Experts, and that such documents and information included:

- (a) transaction closing sets and other documents related to the Trusts;
- (b) data compiled at the Trustees' request related to the Trusts, including historic mortgage loan repurchase and performance information and mortgage loan modification data;
- (c) mortgage loan breach notices received by JPMorgan and subsequent correspondence;
- (d) repurchase data concerning certain mortgage loans JPMorgan sold to Government Sponsored Entities;
- (e) information concerning JPMorgan's servicing practices;
- (f) documents and information regarding subservicer Select Portfolio Servicing, Inc. ("SPS"); and
- (g) loan servicing records from various third-party and JPMorgan databases.

*See Trustees' Ex. 129 at 4.* Among other things, I understand that JPMorgan also provided the Experts with access to CoreLogic LoanPerformance (a third-party database that contains loan-level data concerning the Trusts) and Risk Model (a loan performance modeling program), and arranged for BPA to visit subservicer SPS's headquarters on two separate occasions. *See Trustees' Ex. 129 at 6.*

30. Throughout the evaluation period, counsel for the Trustees typically participated in regular calls with the Experts to monitor the Experts' progress, ensure coordination among the Experts, and facilitate information and document requests by the Experts.

31. To ensure adequate time for the Experts to complete their review and analyses, the Trustees sought from JPMorgan extensions of time to respond to the Proposed Settlement. By letter dated January 13, 2014, the Trustees exercised their option under Section 2.03(b) of the Settlement Agreement to extend the evaluation period to March 16, 2014. *See Trustees' Ex. 037.* For the same reasons, the Trustees sought further extensions until June 16, 2014 and

August 1, 2014. Despite JPMorgan's right to refuse to extend the Acceptance Date, after negotiations with the Trustees, JPMorgan ultimately granted each of these extensions. *See Trustees' Exs. 038, 039.*

**V. THE TRUSTEES' COMMUNICATIONS WITH INVESTORS IN THE TRUSTS**

32. The Trustees retained Garden City Group, LLC ("GCG") to assist in their efforts to transmit relevant information to Investors in the Trusts. At the Trustees' direction, GCG established a publicly accessible website containing relevant documents, information, and notices concerning the Proposed Settlement at [www.rmbstrusteesettlement.com](http://www.rmbstrusteesettlement.com) (the "Settlement Website"). GCG continues to maintain the Settlement Website, and in addition to the notices to Investors, Expert reports, and other relevant documents, GCG has posted filings of the parties and orders of this Court in this proceeding.

33. On December 11, 2013, the Trustees provided an informational notice to Investors informing them of the Proposed Settlement (the "December 11th Notice"). *See Trustees' Ex. 010.* The December 11th Notice provided the address of the Settlement Website, where anyone, including Investors, could view the Settlement Agreement. *See Trustees' Ex. 010 at 2.* The December 11th Notice also set forth certain basic terms of the Settlement Agreement (including the Settlement Consideration, the Released Claims, and the Acceptance Date by which the Trustees were required initially to reach a decision to accept or reject the offer). *See id.* The Trustees urged Investors and any potentially interested persons to review the Settlement Agreement carefully and referred Investors to the Settlement Website for its complete terms. *See Trustees' Ex. 010 at 3.* The notice also informed Investors of a tolling and forbearance agreement (the "JPM Tolling Agreement"), a copy of which is posted to the Settlement Website, in which JPMorgan agreed that while the Trustees considered the Proposed Settlement any statutes of limitations would be tolled with respect to certain claims of the Trusts

(excluding Trusts in litigation and certain other identified Trusts). *See* **Trustees’ Ex. 004**.

Furthermore, the Trustees informed Investors that they intended to retain expert advisors to assist them in an independent evaluation of the Proposed Settlement, and provided contact information of the Trustees for inquiries from Investors and other potentially interested persons. *See* **Trustees’ Ex. 010 at 2**.

34. From December 11, 2013 to October 14, 2014, the Trustees provided a total of twelve separate informational notices to Investors concerning developments relating to the Proposed Settlement and posted all of the notices on the Settlement Website. *See* **Trustees’ Exs. 010, 011, 012, 013, 023 – 030**. In addition to the December 11th Notice, the Trustees’ informational notices included:

1. notice dated January 17, 2014 concerning the extension of the Acceptance Date to March 16, 2014 and a corresponding extension of the JPM Tolling Agreement;
2. notice dated March 7, 2014 concerning the extension of the Acceptance Date to June 16, 2014 and a corresponding extension of the JPM Tolling Agreement;
3. notice dated April 29, 2014 concerning the ongoing review of the Proposed Settlement and stating, among other things, that Investors who “wish to provide a direction with respect to the Proposed Settlement . . . for consideration by a[] . . . Trustee should contact the applicable Trustee as soon as possible to verify their holdings and receive a confidential form of direction and indemnity letter”;
4. notice dated June 11, 2014 concerning the extension of the Acceptance Date to August 1, 2014 and a corresponding extension of the JPM Tolling Agreement;
5. notice dated July 22, 2014 concerning the posting of the Experts’ reports on the Settlement Website;
6. notice dated August 1, 2014 concerning the modification of the Proposed Settlement, Trustees’ acceptance and rejection of the Proposed Settlement for certain Trusts and Loan Groups, and the extension of the Acceptance Date to October 1, 2014 for certain Trusts and Loan Groups and a corresponding extension of the JPM Tolling Agreement;

7. notice dated August 20, 2014 concerning a judicial instruction proceeding in connection with the Proposed Settlement;
8. notice dated August 27, 2014 concerning separate notices regarding Trusts and Loan Groups for which the Acceptance Date was extended to October 1, 2014;
9. notice dated August 29, 2014 inviting qualified certificateholders to apply for membership on the servicing advisory committee;
10. notice dated October 1, 2014 concerning the Trustees' acceptance and rejection of the Proposed Settlement for certain Trusts and Loan Groups for which the Acceptance Date was extended to October 1, 2014; and
11. supplemental notice dated October 14, 2014 concerning a judicial instruction proceeding.

**See Trustees' Exs. 011, 012, 013, 023 – 030.**

35. As discussed *infra* ¶¶ 61, 67, the August 20, 2014 notice and the October 14, 2014 supplemental notice concerning a judicial instruction proceeding were also provided to Investors in accordance with directives of the Court. Further, on August 13, 2014, U.S. Bank separately provided thirteen individual notices concerning certain Trusts and Loan Groups for which the Acceptance Date was extended to October 1, 2014. *See Trustees' Exs. 106 – 118.* These notices are discussed *infra* ¶ 52.

36. During the evaluation of the Proposed Settlement, various Investors contacted U.S. Bank concerning the Proposed Settlement. The Working Group with the assistance of Jones Day maintained reasonable processes to manage the inflow of Investor communications, including by establishing and maintaining a dedicated email address that was referenced in notices to Investors and available on the Settlement Website ([JPM.Settlement.Investor.Inquiries@usbank.com](mailto:JPM.Settlement.Investor.Inquiries@usbank.com)), logging and tracking communications, and frequently conferring among themselves and with Jones Day concerning the status of communications with Investors. U.S. Bank frequently communicated directly with Investors via

letters and emails from members of the Working Group and/or Jones Day and through telephonic conferences attended by members of the Working Group and/or Jones Day. Communications with Investors typically concerned an Investor's support or opposition to the Proposed Settlement, and, in certain circumstances, an Investor's interest in potentially providing a direction and indemnity to U.S. Bank to reject the Proposed Settlement as to a particular Trust or Loan Group. In total, U.S. Bank communicated with approximately twenty-five Investors concerning the Proposed Settlement,<sup>12</sup> and, as discussed *infra* § 7, U.S. Bank rejected the Proposed Settlement with respect to three Trusts and four Loan Groups pursuant to direction and indemnity agreements with Investors.

## **VI. THE EXPERT REPORTS**

37. Following the completion of their respective analyses, Dr. Sabry, Mr. Reifsnyder, Prof. Schwartz, and Justice Carpinello provided the Trustees with reports. *See* **Trustees' Exs. 015 – 022**. As previously indicated, all of the Experts' reports were posted to the Settlement Website on July 22, 2014.

38. Dr. Sabry's report provided an estimate of the expected lifetime losses for each Trust and Loan Group and applied the Allocation Formula in the Settlement Agreement to estimate the allocable share of the Settlement Payment for each Trust and Loan Group. *See* **Trustees' Ex. 021**. Additionally, Dr. Sabry's report provided estimates of losses attributable to breaches of mortgage loan representations and warranties. *See id.*

39. Mr. Reifsnyder's report provided a "Servicing Loss Differential," an estimate of losses potentially attributable to differences between servicing by JPMorgan and other comparable servicers, and an estimate of the potential benefit provided to the Trusts by the Subservicing Protocol. *See* **Trustees' Ex. 019**.

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<sup>12</sup> U.S. Bank was also contacted by two monoline insurers concerning the Proposed Settlement.

40. Justice Carpinello's reports provided analyses of (i) legal differences in repurchase claims brought by monoline insurers and the Trustees; (ii) the statute of limitations applicable to the Released Claims; (iii) conditions precedent to the Trustees bringing suit to enforce claims against JPMorgan; and (iv) the effect of tolling agreements on claims potentially released by the Proposed Settlement. *See Trustees' Exs. 015, 016, 018.*

41. Prof. Schwartz's report provided analyses of (i) contractual limitations on the Trustees' ability to pursue repurchase claims against JPMorgan, and (ii) contractual obligations placed on mortgage loan servicers. *See Trustees' Ex. 017.*

42. On July 17, 2014, Prof. Fischel provided his report (the "Fischel Report"), which considered and discussed relevant aspects of the other Experts' reports, performed certain economic analyses, and provided recommendations to either accept or reject the Proposed Settlement for each of the 330 Trusts, including the 180 Trusts for which U.S. Bank is trustee. *See Trustees' Ex. 020 at Ex. T.* On July 26, 2014, Prof. Fischel provided a supplemental report (the "Supplemental Fischel Report", and with the Fischel Report, the "Fischel Reports"), which provided recommendations at the Loan Group level for each of the 330 Trusts. *See Trustees' Ex. 022 at Ex. F.*

43. The Fischel Reports included the following:
- (a) an explanation of the general economics of settlement decisions;
  - (b) an analysis and comparison of the Proposed Settlement to other RMBS-related settlements;
  - (c) an analysis of the market's reaction to the Proposed Settlement;
  - (d) an analysis of Investor support and opposition to the Proposed Settlement;
  - (e) an estimate of the Settlement Consideration for each Trust and Loan Group;

- (f) an estimate under six different economic models of the expected recovery for each Trust and Loan Group if litigation were pursued in lieu of the Proposed Settlement (“Expected Recovery”);<sup>13</sup> and
- (g) an analysis of the impact of the applicable statute of limitations on the Released Claims, using the analyses provided by the Legal Experts.

*See Trustees’ Exs. 020, 022.*

44. With respect to Prof. Fischel’s specific recommendations for each Trust and Loan Group, the Fischel Reports stated that he would recommend rejecting the Proposed Settlement only if:

1. the Investors of a substantial proportion of the Trust’s or Loan Group’s certificates have expressed opposition to accepting the Proposed Settlement and their holdings exceed those of Investors who support the Proposed Settlement;
2. there is an indication that the Expected Recovery for the Trust or Loan Group would be greater than the estimated value of the Settlement Consideration; and
3. the Trust’s or Loan Group’s Representation and Warranty Claims are not likely barred by the applicable statute of limitations or there is an indication that the Trust’s or Loan Group’s potential recovery related to Servicing Claims would exceed the Settlement Consideration.

*See Trustees’ Ex. 020 at 18.* Prof. Fischel further stated that even if all three criteria were satisfied, rejection was only appropriate if a Trustee was “confident there [was] a group of [c]ertificateholders . . . 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].”

**Trustees’ Ex. 020 at 19.**

45. Applying the above criteria, Prof. Fischel recommended that U.S. Bank accept the Proposed Settlement for 170 Trusts and reject the Proposed Settlement for three Trusts. *See Trustees’ Ex. 022 at Ex. F.* With respect to the six remaining Trusts, each contained two Loan

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<sup>13</sup> For purposes of the analysis of Expected Recovery, the Fischel Reports assumed that claims would not be barred. *See Trustees’ Ex. 020 at 77.*



Groups and, for each such Trust, Prof. Fischel recommended U.S. Bank reject the Settlement for one Loan Group and accept the Settlement for the remaining Loan Group. *See id.* Based on my review of his work and his credentials, I believe Prof. Fischel's recommendations were thorough, reasonable, and within his area of expertise.

**VII. U.S. BANK'S CONSIDERATION OF THE EXPERTS' FINDINGS AND RECOMMENDATIONS AND ITS DECISION TO ACCEPT OR REJECT THE PROPOSED SETTLEMENT FOR CERTAIN TRUSTS AND LOAN GROUPS**

46. Throughout the process of evaluating the Proposed Settlement, the Working Group, along with counsel, provided formal and informal updates to the Trust Committee.

47. As the deadline approached to reach a decision to accept or reject the Proposed Settlement, the Working Group and counsel kept the Trust Committee apprised of the Experts' processes and progress and of ongoing communications with Investors concerning the Trusts and Loan Groups. Further, after the Experts delivered their reports, the Working Group, including myself, the Trust Committee, and counsel read, analyzed, and discussed such reports.

**A. U.S. Bank's August 1, 2014 Settlement Decisions**

48. The Working Group and counsel held a series of teleconferences with the Trust Committee on July 25, 29, and 31, 2014. At these meetings, the Working Group recommended the Trust Committee accept the Proposed Settlement for 164 Trusts and five Loan Groups. For all such Trusts and Loan Groups, Prof. Fischel recommended acceptance of the Proposed Settlement and U.S. Bank had not received a direction and indemnity from any Investors to reject the Proposed Settlement. Various information and materials were discussed at the meetings, including the Experts' reports, the Settlement Agreement, and communications with Investors as well as certain documents containing summaries of relevant information. *See*

**Trustees’ Exs. 095, 096, 097, 099, 100, 102, 103.**<sup>14</sup> After review and consideration of such material and information and the Working Group’s recommendations, the Trust Committee determined at the meetings to accept the Proposed Settlement for each of the aforementioned 164 Trusts and five Loan Groups (collectively, the “USB August 1 Accepting Trusts and Loan Groups”). *See Trustees’ Ex. 012 at Ex. B.*

49. With respect to the USB August 1 Accepting Trusts and Loan Groups, I executed the RMBS Trust Settlement Agreement (the “Executed Settlement Agreement”) on behalf of U.S. Bank. *See NYSCEF No. 59 (Trustees’ Ex. 003).*

50. During the July meetings, the Working Group also recommended that the Trust Committee reject the Proposed Settlement for two Trusts for which Prof. Fischel recommended rejection and for which U.S. Bank was litigating claims against JPMorgan pursuant to direction and indemnity agreements with Investors. The Trust Committee followed the Working Group’s recommendations, and U.S. Bank rejected the Settlement for the two Trusts on August 1, 2014. *See Trustees’ Ex. 012 at Ex. C.*

**B. U.S. Bank’s October 1, 2014 Settlement Decisions**

51. As discussed *supra* ¶ 12, at the request of certain Trustees, JPMorgan agreed to extend the Acceptance Date to October 1, 2014 for an identified group of Trusts and Loan Groups (the “Extended Acceptance Date Trusts and Loan Groups”), including eight Trusts and five Loan Groups for which U.S. Bank is trustee (the “USB Extended Acceptance Date Trusts and Loan Groups”).

52. On August 13, 2014, U.S. Bank provided thirteen notices to Investors in the USB Extended Acceptance Date Trusts and Loan Groups concerning the Settlement. *See Trustees’ Exs. 106 – 118.* Among other things, these notices requested Investors in the USB Extended

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<sup>14</sup> These exhibits are true and correct copies of the documents containing summaries of relevant information provided for the July 25, 29, and 31, 2014 meetings.

Acceptance Date Trusts and Loan Groups to contact U.S. Bank if they wished to provide U.S. Bank with a direction and indemnity to reject the Proposed Settlement. *See Trustees' Exs. 106 – 118.*

53. On September 26, 2014, the Working Group and counsel held a teleconference with the Trust Committee concerning the USB Extended Acceptance Date Trusts and Loan Groups. At this meeting, the Working Group recommended the Trust Committee accept the Proposed Settlement for six Trusts and three Loan Groups and reject the Proposed Settlement for one Trust and four Loan Groups.<sup>15</sup> For each Trust and Loan Group for which the Working Group recommended rejection, U.S. Bank had received a direction and indemnity from Investors to reject the Proposed Settlement, and for each Trust and Loan Group for which the Working Group recommended acceptance, U.S. Bank had not received a direction and indemnity from Investors to reject the Proposed Settlement. Various information and materials were discussed at the meeting, including the Experts' reports, the Settlement Agreement, and communications with Investors as well as certain documents containing summaries of relevant information. *See Trustees' Exs. 119, 120, 121, 122.*<sup>16</sup> After review and consideration of such materials and information and the Working Group's recommendations, the Trust Committee determined at the meeting to accept the Proposed Settlement for each of the aforementioned six Trusts and three Loan Groups and reject the Settlement for each of the aforementioned one Trust and four Loan Groups. *See Trustees' Ex. 030.*

54. Jones Day informed JPMorgan of its acceptance of the Proposed Settlement for the aforementioned Trusts and Loan Groups by a letter, dated October 1, 2014 (the "October 1st Letter"). *See Trustees' Ex. 123.*

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<sup>15</sup> For one of the USB Extended Acceptance Date Trusts, BSMF 2007-SL1, the Working Group recommended the Trust Committee reject the Proposed Settlement for Loan Group I and accept it for Loan Group II.

<sup>16</sup> These exhibits are true and correct copies of the documents containing summaries of relevant information provided for the September 26, 2014 meeting.

55. **Trustees' Ex. 049** contains a list of all of the Trusts and Loan Groups for which U.S. Bank accepted the Proposed Settlement (the "USB Accepting Trusts and Loan Groups").

56. **Trustees' Ex. 050** contains a list of all of the Trusts and Loan Groups for which U.S. Bank rejected the Proposed Settlement (the "USB Rejecting Trusts and Loan Groups"). For the USB Rejecting Trusts and Loan Groups, U.S. Bank or other deal parties are currently litigating claims against JPMorgan at the direction of Investors, or U.S. Bank has entered into separate settlements, also at the direction of Investors.

**VIII. THE TRUSTEES' NOTICE TO INVESTORS OF ACCEPTANCE OF THE PROPOSED SETTLEMENT, THE FILING OF THE AMENDED PETITION, AND COMMENCEMENT OF THE ARTICLE 77 PROCEEDING**

57. On August 1, 2014, the Trustees provided a notice (the "August 1st Notice") informing Investors of the Trustees' respective determinations concerning whether to accept or reject the Proposed Settlement for each Trust and Loan Group, and posted a copy of the August 1st Notice on the Settlement Website where it remains available for review. *See* **Trustees' Ex. 012.**

58. Exhibit B to the August 1st Notice sets forth the Trusts and Loan Groups for each Trustee that accepted the Proposed Settlement on August 1 (collectively, the "August 1st Accepting Trusts and Loan Groups," and as to Trusts and Loan Groups for which U.S. Bank is trustee, the "USB August 1st Accepting Trusts and Loan Groups"). Exhibit C identified the Trusts and Loan Groups for each Trustee that rejected the Proposed Settlement on August 1, including the following two Trusts for which U.S. Bank is trustee: (i) BSMF 2006-SL1; and (ii) SACO 2006-3. Exhibit D identified the Extended Acceptance Date Trusts and Loan Groups, including the USB Extended Acceptance Date Trusts and Loan Groups: (i) BSABS 2007-AQ2; (ii) BSMF 2006-SL2; (iii) BSMF 2006-SL3; (iv) BSMF 2006-SL4; (v) BSMF 2006-SL6; (vi) BSMF 2007-SL1; (vii) BSMF 2007-SL2; and (viii) JPMAC 2006-WF1. (i) BSABS 2007-HE4

(Loan Group I only); (ii) JPMAC 2006-HE3 (Loan Group 2 only); (iii) JPMAC 2006-WMC2 (Loan Group 2 only); (iv) JPMAC 2006-WMC3 (Loan Group 2 only); and (v) JPMAC 2006-WMC4 (Loan Group 2 only).

59. Shortly thereafter, the Trustees, by and through their counsel, commenced this proceeding (the “Article 77 Proceeding”) by filing a petition (the “Petition”) on August 3, 2014.

60. The Court entered an Order to Show Cause on August 15, 2014, **NYSCEF No. 40 (Trustees’ Ex. 006)** (the “Order to Show Cause”), setting forth a comprehensive worldwide program to provide notice to Investors of the Article 77 Proceeding and the Trustees’ acceptance of the Proposed Settlement (the “Notice Program”).

61. On August 20, 2014, the Trustees provided a notice (the “August 20th Notice”) informing Investors, among other things, of (i) the Trustees’ acceptance of the Settlement Agreement; (ii) the Trustees’ commencement of the Article 77 Proceeding; (iii) the Court’s entry of the Order to Show Cause; (iv) the deadline for objections to the Settlement Agreement; and (v) the time and place of the hearing. *See Trustees’ Ex. 027*. The Trustees posted a copy of the August 20th Notice on the Settlement Website, where it remains available for review.

62. Jose C. Fraga of GCG provided an affidavit, dated October 13, 2014, which was filed by Jones Day, concerning the Trustees’ compliance with the Notice Program (the “Fraga Affidavit”). *See NYSCEF No. 73 (Trustees’ Ex. 008)*. GCG provided the August 20th Notice to The Depository Trust Company (“DTC”), which disseminated the August 20th Notice in accordance with DTC’s established procedures. *See id.* at ¶ 7. GCG also published the August 20th Notice in several national and international publications, including *The Wall Street Journal*, *The New York Times*, and *The Economist Worldwide Edition*. *See id.* at ¶ 3. GCG had local-language translations of the August 20th Notice published in numerous countries, including France, Germany, Italy, Netherlands, Japan, and China. *See id.* at ¶ 4. GCG purchased online

banner advertisements on investing websites, including wsj.com and reuters.com. *See id.* at ¶ 6. Finally, GCG undertook a program to send via mail to Investors listed in the certificate registry for the August 1st Accepting Trusts and Loan Groups copies of the August 20th Notice, the Order to Show Cause, and the Petition. *See id.* at ¶ 9.

63. For each of the USB August 1st Accepting Trusts and Loan Groups, U.S. Bank contacted the certificate registrar, obtained the names and addresses of the registered certificateholders, and provided their names and contact information to GCG to complete the mailings required under the Notice Program, which are described in paragraph nine of the Fraga Affidavit. *See id.*

64. U.S. Bank also posted a notice on its investor reporting website advising Investors of the USB August 1 Accepting Trusts and Loan Groups of the Settlement and Article 77 Proceeding and referring them to the Settlement Website for information about the Proposed Settlement and the Article 77 Proceeding (or, where applicable, U.S. Bank confirmed that third parties who perform investor reporting posted such a notice).

65. With respect to the Extended Acceptance Date Trusts and Loan Groups, on October 1, 2014, the Trustees provided a notice (the “October 1st Notice”) informing Investors of their determination to accept the Proposed Settlement as to certain of the Extended Acceptance Date Trusts and Loan Groups (the “October 1st Accepting Trusts and Loan Groups”) and posted a copy of the October 1st Notice on the Settlement Website where it remains available for review. Exhibit A to the October 1st Notice identified the October 1st Accepting Trusts and Loan Groups, including the USB Extended Acceptance Date Trusts and Loan Groups that accepted the Settlement Agreement. *See Trustees’ Ex. 030.*

66. Shortly thereafter, on October 2, 2014, the Trustees, by and through their counsel, filed the First Amended Petition (the “First Amended Petition”), which added the October 1st

Accepting Trusts and Loan Groups to the Article 77 Proceeding. *See* **NYSCEF No. 57 (Trustees' Ex. 001)**.

67. For the October 1st Accepting Trusts and Loan Groups, the Court entered an Order to Show Cause on October 9, 2014, **NYSCEF No. 68 (Trustees' Ex. 007)**, setting forth a similar comprehensive worldwide program to provide notice to Investors of the Article 77 Proceeding and the Trustees' acceptance of the Proposed Settlement for the October 1 Accepting Trusts and Loan Groups (the "Supplemental Notice Program"). Fraga provided an additional affidavit, dated November 4, 2014, which was filed by Jones Day, concerning the Trustees' compliance with the Supplemental Notice Program. *See* **NYSCEF No. 169 (Trustees' Ex. 009)**.

#### **IX. THE ARTICLE 77 PROCEEDING**

68. In October and November 2014, the following parties intervened in the Article 77 Proceeding and asserted objections: Ambac Assurance Corporation and The Segregated Account of Ambac Assurance Corporation ("Ambac"); Construction Laborers Pension Trust for Southern California and Laborers Pension Trust Fund for Northern California ("California Pension Funds"); DW Catalyst Master Fund, Ltd. and DW Value Master Fund, Ltd. (f/k/a Brevan Howard Credit Catalysts Master Fund Limited and Brevan Howard Credit Value Master Fund Limited) ("DW Funds"); the Federal Home Loan Bank of Boston ("FHLBB"); the National Credit Union Administration Board As Liquidating Agent ("NCUA"); QVT Fund V LP, QVT Fund IV LP, Quintessence Fund L.P., and QVT Financial LP ("QVT"); Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd., and Triaxx Prime CDO 2007-1, Ltd. ("Triaxx"); and W&L Investments, LLC ("W&L"). These objecting parties asserted objections with respect to 171 of the 319 Trusts and Loan Groups that accepted the Proposed Settlement. *See* **Trustees' Exs. 033, 127, 128, 147, 202, 357; see also NYSCEF Nos. 103, 125**.

69. The following objecting parties have since withdrawn from the proceeding: DW

Funds, California Pension Funds, FHLBB, NCUA, and Triaxx. *See* **NYSCEF Nos. 298, 436, 539, 540, 546, 547 (Trustees' Exs. 045, 046, 047, 048, 125, 126)**.

70. The remaining objecting parties purport to object to the Proposed Settlement with respect to only eleven of the 319 Trusts and Loan Groups that accepted the Proposed Settlement.

71. Currently, only one objecting party is asserting an objection with respect to a single Trust for which U.S. Bank is trustee: QVT asserts an objection with respect to JPMAC 2006-WMC1. *See* **Trustees' Exs. 202, 208**; *see also* **NYSCEF No. 87, 88**. U.S. Bank's decision to accept the Proposed Settlement on behalf of the 175 other USB Accepting Trusts and Loan Groups is unopposed.


72. I have reviewed the First Amended Petition and verify that the statements with respect to U.S. Bank are true and correct upon information and belief. At all times, U.S. Bank acted within the bounds of its discretion, reasonably, and in good faith with respect to its evaluation and acceptance of the Settlement Agreement for the USB Accepting Trusts and Loan Groups.



Dated: January 15, 2016  
Chicago, Illinois

  
Nicolas Valaperta

Sworn to and subscribed before me,  
A Notary Public, this 15th day of January 2016.

  
Notary Public

