

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),

Petitioners,

for an order, pursuant to CPLR § 7701, seeking judicial instruction, and approval of a proposed settlement.

Index No. 652382/2014

**FIRST AMENDED
PETITION**

Petitioners 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 U.S.A., N.A., and Deutsche Bank National Trust Company, solely in their respective capacities as trustees, indenture trustees, successor trustees, and/or separate trustees (collectively, the “Trustees”) under the residential mortgage-securitization trusts listed on Exhibit A (the “Accepting Trusts”), by their undersigned counsel, for their petition pursuant to Article 77 of the New York Civil Practice Law and Rules (“CPLR”), allege as follows:

INTRODUCTION

1. Each of the Trustees is a trustee, indenture trustee, successor trustee, and/or separate trustee for residential mortgage loan securitizations that were sponsored by JPMorgan Chase & Co. or certain affiliates (“JPMorgan”). In November 2013, JPMorgan made an offer to

the Trustees to settle claims relating to the underwriting and servicing of the loans, and the delivery of documents for each loan, in 330 residential mortgage securitization trusts (each a “Trust” and together the “Trusts,” and certificateholders of such Trusts, collectively, the “Certificateholders”). The Trustees understand that the settlement offer was negotiated by JPMorgan and a group of 21 institutional investors holding positions in most of the Trusts. These investors, represented by Gibbs & Bruns LLP, together held over \$24 billion, or 32.45%, of the securities issued by the Trusts. Robert Meyer of Loeb & Loeb LLP mediated the negotiations between the Institutional Investors and JPMorgan.

2. The settlement offer applies to the Trusts but allows each Trustee to accept or not accept the offer on a trust-by-trust, and loan-group, basis. The settlement offer provides for a cash payment to each Trust,¹ which would total \$4.5 billion if accepted for all Trusts, and the implementation of improvements to mortgage loan servicing.

3. Each Trustee, following its own internal decision-making process which involved use of expert financial and legal advisors, has determined to enter into the settlement on behalf of the Accepting Trusts for which it is Trustee. Although the specific rationale for each Trustee’s decision for a given Trust may vary, the Trustees considered, among other things, the potential recoveries on the claims to be released, the legal and factual defenses to such claims, the extraordinary burden and cost of litigation that could last many years, and the risk that investors would not be willing to finance such litigation. Pursuant to the documents governing each Trust, in making their decision the Trustees were permitted to, and in fact did, rely on a group of financial advisors, including experts on mortgage loan servicing, the forecasting of losses on

¹ For Trusts that have more than one “loan group,” the settlement, as modified, permits the Trustees to accept or not accept on behalf of each loan group. References in this petition to Trusts and Accepting Trusts are intended to include loan groups where applicable.

mortgage loan pools, the statistical analysis of loan-repurchase claims, and economics and finance. The Trustees also received reports on legal issues from a retired Justice of the New York Supreme Court, Appellate Division, Third Department, and a professor of the Yale Law School and the Yale School of Management.

4. After an eight and a half month evaluation period, culminating in the Trustees' consideration of the experts' advice, the Trustees commenced this proceeding for the purpose of seeking judicial instructions and approval of their acceptance of the settlement offer on behalf of the Accepting Trusts.

* * *

5. The Trusts were established between 2005 and 2007. In the typical residential mortgage-backed securitization, a loan originator or subsequent purchaser sells portfolios of loans secured by mortgages on residential properties ("Mortgage Loans") to a bank that aggregates them for the purpose of securitization. The bank, or "Seller," then sells the portfolios of loans to another entity, known as a "Depositor."

6. Contracts known as Pooling and Servicing Agreements (each a "PSA"), under which the Trustees are the trustees, govern most of the Trusts.² Generally, in a PSA, the Depositor conveys its rights, title, and interest in the Mortgage Loans to the Trust. Certificates evidencing various categories of beneficial ownership interests in the Trusts are then sold through an underwriter to investors. A master servicer or servicer or both (a "Servicer") has responsibility for, among other things, collecting debt service payments on the Mortgage Loans,

² For the 30 Trusts for which Wells Fargo is Trustee, Law Debenture has been appointed as separate trustee for the purpose of enforcing repurchase claims. Each of Wells Fargo and Law Debenture submits this Petition to the extent of its respective obligations as Trustee or separate trustee.

taking any necessary enforcement action against borrowers, and distributing payments on a monthly basis to the Trustees for distribution to the investors.

7. Some of the Trusts have a different structure—they issued Notes pursuant to an Indenture (collectively, the “Indentures”) on which one of the Trustees serves as indenture trustee. A separate agreement, such as a Sale and Servicing Agreement (“SSA”), governs other terms of these transactions. Although there are important differences between the PSA and Indenture structures, with regard to the Settlement, both the nature of the claims being released and the Trustees’ authority to do so are similar under the two structures.

8. The PSAs, Indentures, SSAs and other related agreements are collectively referred to herein as the “Governing Agreements.”

9. Although the Governing Agreements for each of these securitizations are separate agreements that were individually negotiated and display degrees of variation, the terms that are pertinent to the subject matter of the Petition are similar: the Governing Agreements each contain a series of representations and warranties made by each Seller for the benefit of the Trust. These typically include representations that the Mortgage Loans were underwritten in all material respects in accordance with certain underwriting guidelines; that the origination, underwriting, and collection practices of the Seller and each Servicer have been legal, prudent, and customary in the mortgage lending and servicing business; that the Mortgage Loans conform in all material respects to their descriptions in the investor disclosure documents; and that the Mortgage Loans were originated in accordance with all applicable laws.

10. The Governing Agreements also impose servicing obligations on Servicers, requiring, among other things, that the Servicers service and administer the Mortgage Loans in

accordance with the terms of the Governing Agreements and the customary and usual standards of prudent practice of mortgage loan servicers.

11. The Trustees are aware that a substantial dispute has arisen between the Institutional Investors (as defined below) and JPMorgan concerning JPMorgan's alleged breaches of representations and warranties as a Seller under the Governing Agreements and JPMorgan's alleged violations of prudent servicing obligations as a Servicer under the Governing Agreements.

12. These allegations were made by, among others, a group of Certificateholders that includes some of the world's largest and most sophisticated investors. Collectively, they have many trillions of dollars worth of assets under management. Many have fiduciary duties to their own investor clients. And all have an economic interest in maximizing recovery for the Trusts. This group of investors (the "Institutional Investors") includes AEGON USA Investment Management, LLC; Bayerische Landesbank, New York Branch; BlackRock Financial Management Inc.; Cascade Investment, L.L.C.; Federal Home Loan Bank of Atlanta; Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac"); 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, through its investment manager Neuberger Berman Europe Limited; Teachers Insurance and Annuity Association of America; The Prudential Insurance Company of America; The TCW Group, Inc. on behalf of itself and its subsidiaries; Thrivent Financial for Lutherans; and Western Asset Management Company.

13. At the time that the Settlement was presented to the Trustees, the Institutional Investors held tens of billions of dollars worth of interests in the Trusts.

14. At the request of these sophisticated Institutional Investors, in lieu of litigation that would involve complex issues of law and fact and a review of individual mortgage loan files for hundreds of trusts that hold or held over one million loans, and to avoid the risks and costs in waiting years for an uncertain outcome, the Trustees have agreed, conditionally on the outcome of this proceeding, to enter into a settlement (“Settlement”) on behalf of the Accepting Trusts. The Settlement is memorialized in a modified form of settlement agreement, dated July 29, 2014 (“Settlement Agreement”).³ Following a rigorous evaluation process, the Trustees view the Settlement as advantageous to and in the best interests of the Accepting Trusts.

15. The Settlement Agreement is attached to the Petition as Exhibit B. It will be described more fully in paragraphs 39-45 below. In short, it requires JPMorgan to pay up to \$4.5 billion (“Settlement Payment”), allocated among the Accepting Trusts pursuant to a methodology agreed-upon between the Institutional Investors and JPMorgan that accounts for past and expected future losses associated with the Mortgage Loans in each Trust, and reduced by the allocable share of Trusts for which the relevant Trustee did not accept the Settlement. It also requires JPMorgan to implement, among other things, servicing improvements intended to provide for servicing that is at or above industry standards, including a mechanism to transfer high-risk loans to subservicers for more individualized attention.

16. The Settlement benefits far more trust beneficiaries of the Accepting Trusts now—given the Settlement Payment allocated to each Accepting Trust and the nature of the

³ The settlement agreement originally presented to the Trustees was negotiated by the Institutional Investors and JPMorgan. The July 29, 2014 version of the settlement agreement benefits from certain changes made to the original agreement.

servicing improvements—than would expensive litigation involving separate trusts, separate loan portfolios, and separate groups of Certificateholders over the course of several years, with uncertain outcomes. The Settlement proceeds would be paid out to Certificateholders in accordance with the contractual payment provisions that each investor agreed to when it purchased its Certificates. And it provides a benefit even to the thousands of Certificateholders of the Accepting Trusts among the majority of investors that have never sought to direct, or would have difficulty directing, the Trustees to investigate or bring any claims under the Governing Agreements.

17. Nonetheless, the Trustees recognize that some Certificateholders may not agree that the Settlement is reasonable. The Trustees disclosed the settlement offer to all Certificateholders shortly after they received it, including through The Depository Trust Company and on www.rmbstrusteesettlement.com, a website created by the Trustees upon receipt of the settlement offer and on which they have disclosed certain settlement-related information. The Trustees provided five subsequent notices announcing the evaluation schedule and expressly inviting Certificateholders to share their views of the Settlement with the Trustees. Many have done so. Some believe the Settlement is favorable to particular Trusts, and some believe it is not. Certain of the Trustees' expert advisors took the Certificateholders' views into account in rendering their opinions.

18. The Trustees also recognize that different groups of Certificateholders may wish to pursue remedies for the alleged breaches in different ways, creating the potential for disagreements among Certificateholders within the same Trusts. For example, the Institutional Investors have requested that the Trustees accept the Settlement on behalf of all of the Trusts.

Other groups of Certificateholders have requested that the Trustees not accept the settlement and file (or continue) lawsuits on behalf of particular Trusts.

19. Absent instructions from the Court, different Certificateholders may wish to pursue different strategies relating to the same Trusts, and the Trustees may be subject to claims by individual Certificateholders who believe that the Settlement, though benefiting thousands of investors now and in the future, may not be in their individual interests. Without a single forum in which to resolve these disputes, it is nearly certain that the same issues will be litigated in courts across the country. Such piecemeal litigation would raise a substantial risk that the Trustees would be subject to conflicting judicial instructions, even on the same Trusts. Article 77 exists, in part, so that trustees can avoid precisely such a result.

20. Given the apparent disputes among certain substantial investors, the magnitude of the Settlement, the number of trusts and loans at issue, and the number of parties whose interests may be affected by the Settlement, the Trustees file this Petition to give Certificateholders an opportunity to be heard in opposition to, or in support of, the Settlement. The Trustees seek an order, among other things, concluding that the Trustees acted reasonably and in good faith in their evaluation of the settlement offer and their acceptance of the Settlement Agreement on behalf of the Accepting Trusts.

PARTIES AND PROPOSED NOTICE PROGRAM

21. U.S. Bank National Association (“U.S. Bank”) is a bank organized under the laws of the United States with its principal place of business in Minnesota.

22. The Bank of New York Mellon is a bank organized under the laws of the State of New York with its principal place of business in New York.

23. The Bank of New York Mellon Trust Company, N.A. (“BNYM Trust Company”) is a bank organized under the laws of the United States with its principal place of business in California.

24. Wilmington Trust, National Association (“Wilmington Trust”) is a bank organized under the laws of the United States with its principal place of business in Delaware. Wilmington Trust does business in New York.

25. Law Debenture Trust Company of New York is a trust company organized under the laws of the State of New York with its principal place of business in New York.

26. Wells Fargo Bank, National Association (“Wells Fargo”) is a bank organized under the laws of the United States with its principal place of business in South Dakota. Wells Fargo does business in New York.

27. HSBC Bank USA, N.A. (“HSBC”) is a bank organized under the laws of the United States with its principal place of business in Virginia. HSBC does business in New York.

28. Deutsche Bank National Trust Company (“DBNTC”) is a national banking association with its principal place of business in California.

29. Although the Trustees do not name adverse parties as respondents in this Petition, some Certificateholders have asked to receive copies of court filings in connection with the Settlement, and the Trustees will serve those Certificateholders with this Petition and all papers filed contemporaneously with the Petition. The Trustees expect that some Certificateholders or parties to the various transactions may wish to be heard in support of, or in opposition to, the Petition. The Trustees will consent to timely appearances or motions to intervene filed by any investor with current holdings in any of the Accepting Trusts.

30. Concurrently with the filing of the original Petition in this case, the Trustees filed a proposed order to show cause regarding, among other things, a notice program for the Article 77 proceeding (the “Article 77 Proceeding”). The Trustees filed an amended proposed order to show cause on August 12, 2014. On August 15, 2014, the Court issued an Interim Decision and Order on Order to Show Cause (the “August 15 Order”) approving the Trustees’ proposed order to show cause with certain modifications. The Trustees have provided notice in accordance with the relevant terms of the August 15 Order, as follows:

- causing the form of notice approved by the Court in the August 15 Order (the “Article 77 Notice”) to be published in *The Wall Street Journal (Global)*, *The Financial Times Worldwide*, *The New York Times*, *USA Today*, *Investor’s Business Daily*, and *The Economist Worldwide Edition* for one business day for three consecutive weeks;
- causing translated versions of the Article 77 Notice to be published in *Les Echos* (France), *Die Welt* (Germany), *Il Sole 24 Ore* (Italy), *Tages Anzeiger* (Switzerland), *NRC Handelsblad* (Netherlands), *The Nikkei* (Japan), *Straits Times* (Singapore), *New Straits Times* (Malaysia), *China Business News* (China), *Korea Economic Daily* (South Korea), and *The Times (of London)* for one business day for three consecutive weeks;
- causing the Article 77 Notice to be posted to the following media distribution wire services: *PRNewswire*; *Business Wire*; and *GlobeNewswire*;
- causing banner advertisements publicizing the Settlement, with a hyperlink to www.rmbstrusteesettlement.com, to be placed on the following websites: wsj.com, investors.com, ft.com, reuters.com, economist.com, yahoo.com, Globalcustody.net, Assetman.net, FundServices.net, and IHT.com;

- causing the Article 77 Notice, the August 15 Order, the Petition and the papers filed contemporaneously therewith, certain other papers filed with the Court, and a list containing Committee on Uniform Security Identification Procedures numbers related to the residential mortgage-backed securitization trusts covered by the initial offer in the Settlement, including such numbers for the August 1 Accepting Trusts, (the “CUSIP List”) to be provided to The Depository Trust Company (“DTC”), which was posted in accordance with DTC’s established procedures;
- causing the documents in the above paragraph to be posted to the website previously created by the Trustees, www.rmbstrusteesettlement.com;
- causing the Article 77 Notice to be posted to the applicable investor reporting websites for the August 1 Accepting Trusts;
- causing the Article 77 Notice, the August 15 Order, the Petition and the papers filed contemporaneously therewith, certain other papers filed with the Court, and the CUSIP List to be mailed by first-class, registered mail to the persons and entities identified in the August 15 Order.

31. At the time the original Petition was filed, JPMorgan had agreed to extend the deadline for 27 of the Trusts or loan groups within the Trusts (the “Extension Trusts”) to evaluate the Settlement until October 1, 2014. On October 1, 2014, the Trustees for 18 of the Extension Trusts (the “October 1 Accepting Trustees”) have determined to accept the Settlement in respect of such Extension Trusts (the “October 1 Accepting Trusts”), conditioned on the outcome of the Article 77 Proceeding. The October 1 Accepting Trusts are specifically identified on Exhibit C hereto, and they also appear on Exhibit A hereto, which lists all Accepting Trusts.

32. Concurrently with the filing of the Amended Petition, the Trustees are seeking an order to show cause from the Court (the “OSC”) approving, among other things, a notice program for the October 1 Accepting Trusts, which requires notice to be given by:

- mailing a copy of the notice (the “Supplemental Notice”) in the form that is attached as Exhibit B to the Affirmation of Robert C. Micheletto, dated October 2, 2014 (the “Second Micheletto Affirmation”), along with the CUSIP List, the Petition, all other papers filed contemporaneously with the Petition, the Amended Petition, all other papers contemporaneously filed with the Amended Petition, the OSC, and the August 15 Order, by first class, registered mail to Certificateholders listed on the Certificate Registry for each October 1 Accepting Trust and to each Certificateholder (or its counsel) for an October 1 Accepting Trust that has both communicated with the October 1 Accepting Trustees concerning the Settlement and requested such papers. This mailing shall be made to all Certificateholders listed on the Certificate Registry for each October 1 Accepting Trust, whether or not the relevant October 1 Accepting Trustee accepted the Settlement for all or some loan groups in the October 1 Accepting Trust;
- mailing the Supplemental Notice and all other documents set forth in the above paragraph by first class, registered mail to all persons or entities for each October 1 Accepting Trust set forth in ¶ 4(b)-(m) of the Affirmation of Robert C. Micheletto (Aug. 3, 2014);
- providing the Supplemental Notice to DTC, which will post the Supplemental Notice to Certificateholders for the October 1 Accepting Trusts in accordance with DTC’s established procedures;
- posting as soon as reasonably practicable but no later than 10 days from the date hereof to the website previously created by the Trustees, www.rmbstrusteesettlement.com, a copy

of the Supplemental Notice, the Petition, all other papers filed contemporaneously with the Petition, the Amended Petition, all other papers contemporaneously filed with the Amended Petition, the OSC, and the August 15 Order. All papers subsequently filed in connection with the Article 77 Proceeding will continue to be posted to www.rmbstrusteesettlement.com; and

- posting a notice on each October 1 Accepting Trustees' investor reporting website, if such October 1 Accepting Trustee performs investor reporting for an October 1 Accepting Trust, or undertaking efforts to cause relevant third parties who perform investor reporting for October 1 Accepting Trusts to post such a notice, advising investors of the addition of the October 1 Accepting Trusts to the Settlement and the Article 77 Proceeding and referring them to www.rmbstrusteesettlement.com for information about the Settlement and the Article 77 Proceeding.

JURISDICTION, VENUE AND GOVERNING LAW

33. This Court has jurisdiction pursuant to CPLR Articles 4 and 77 to entertain a special proceeding to determine any matter relating to these Trusts.

34. This Court has jurisdiction to hear this matter in part because the laws of the State of New York govern the rights and obligations of the Certificateholders and the Trustees under the Governing Agreements, and, upon information and belief, many Certificateholders of the Trusts are citizens of New York.

35. Venue is proper in this Court under CPLR 503, because two of the Trustees—The Bank of New York Mellon and Law Debenture Trust Company of New York—have their principal offices in New York County.

ALLEGED BREACHES OF THE GOVERNING AGREEMENTS

36. Each Trust is governed by Governing Agreements that set forth the rights and obligations of the parties and contain representations and warranties of the Sellers, the Servicers, and the Depositors.

37. The Sellers provided representations and warranties about, among other things, the underwriting of the Mortgage Loans—including representations and warranties relating to the mortgaged property securing the loans, credit quality of the borrowers, documentation for the loans, manner in which the loans were originated, and compliance with applicable laws—and the descriptions of each loan in the mortgage schedules and prospectus supplements.

38. The remedy for a breach of a representation or warranty is contained in the Governing Agreements. With modest variations across the Governing Agreements, they provide that, upon discovery and/or notice of a breach of a representation and warranty with respect to a Mortgage Loan that materially and adversely affects the interests of the Certificateholders, the Seller shall cure the breach or repurchase the affected Mortgage Loan at its “Purchase Price,” which is equal to the then-outstanding amount due on the Mortgage Loan.

39. The Governing Agreements also require the Servicers to service the Mortgage Loans in accordance with prevailing industry standards, which include collecting principal and interest, pursuing foreclosure, and maintaining or selling foreclosed properties.

40. The Institutional Investors, and other Certificateholders, have alleged, among other things, widespread breaches of representations and warranties by JPMorgan, as well as breaches of JPMorgan’s servicing obligations under the Governing Agreements.

THE SETTLEMENT

41. Under the terms of the Settlement, each Accepting Trust releases: “all alleged or actual claims . . . effective as of the Effective Date[] against JPMorgan that arise under or are

based upon the Governing Agreements and that relate to the origination, sale, delivery, and/or servicing of Mortgage Loans to or in the [Accepting] Trusts.” Such claims include, without limitation, those based on (i) representations and warranties made by JPMorgan; (ii) any alleged obligation to give notice of alleged breaches of representations and warranties; (iii) any alleged obligation of JPMorgan to enforce claims for breach of representations or warranties against the originator of a Mortgage Loan; (iv) the documentation of the Mortgage Loans held by the Accepting Trusts; and (v) the servicing of the Mortgage Loans, including loan modifications.

42. In exchange for the releases detailed above, each Accepting Trust receives two principal benefits under the Settlement—the Settlement Payment and the servicing improvements. They reflect the negotiated compromise between the Institutional Investors and JPMorgan, accepted by the Trustees on behalf of the Accepting Trusts, of the asserted or unasserted claims by the Trustees on behalf of the Trusts that JPMorgan (i) must repurchase loans as to which it allegedly has breached representations and warranties, and (ii) violated prudent servicing obligations under various provisions of the Governing Agreements.

43. An allocation for each of the Trusts will be calculated upon court approval in accordance with an allocation formula set forth in the Settlement Agreement. For any Trust for which the Settlement does not take effect—either by the terms of the Settlement Agreement or because the relevant Trustee chose not to accept the settlement offer for a particular Trust—the Settlement simply does not apply: JPMorgan will not pay that Trust its allocable share, and the Trust would release no claims.

44. Each Trust’s proportional share will be based on that Trust’s pro rata share of the losses suffered by all Trusts covered by the Settlement, measured by the outstanding amounts due that are not recovered through liquidation following a mortgage loan default. The losses

used in the allocation will be estimated over the life of each Trust. Losses that are realized as of the allocation date will be known; future losses will be estimated by an independent financial advisor retained by the Trustees.

45. That independent financial advisor—NERA Economic Consulting (“NERA”)—has employed a methodology for determining existing and estimated future net losses, which is described in NERA’s report to the Trustees, was disclosed to all Certificateholders on July 22, 2014, and made available publicly on www.rmbstrusteesettlement.com.

46. Each allocable share will be remitted to the applicable Accepting Trust. Those funds will be treated as unscheduled principal payments (or Subsequent Recoveries, where provided for in the Governing Agreements) and distributed to Certificateholders as provided in the respective existing Governing Agreements.

47. The second principal component of the Settlement is the servicing protocol attached to the Settlement Agreement as Exhibit B (“Subservicing Protocol”). JPMorgan has agreed to implement various servicing improvements and remedies within specified time periods set forth in the Settlement Agreement. They include:

- *A requirement that JPMorgan transfer to qualified subservicers servicing of loans that it services and that become 60 days delinquent.* The transfer to subservicers is intended to ensure that high-risk loans receive the benefit of more intensive servicing. The Subservicing Protocol, which includes incentive fees for certain performance improvements, will govern the actions of the subservicers.
- *A requirement that the servicer obtain a broker price opinion (“BPO”) for any loan that goes into foreclosure.* At any foreclosure sale, the servicer is required to make a minimum bid, set at a percentage of the BPO value. The settlement also

prohibits JPMorgan or subservicers from continuing to advance payments beyond a specified percentage of the BPO value, and prohibits subservicers from forgiving principal below 115% of the BPO value.

- *A new policy that governs the maintenance of homes owned by the Trusts after default.* Among other things, the policy prohibits subservicers from hiring affiliated vendors to carry out renovations of such homes.
- *A new system of performance benchmarking and compensatory payments.* Each subservicer must deliver a monthly report to JPMorgan and the applicable trustee comparing its performance on each foreclosure to the relevant timeline for completing foreclosures based on standards set by Fannie Mae and Freddie Mac. Any subservicer that falls short of the relevant timeline is subject to a reduced servicing fee.

THE SETTLEMENT SHOULD BE APPROVED

I. The Trustees Have the Power to Settle Claims Belonging to the Trusts.

48. The Governing Agreements grant to the Trustees the right to sue to enforce the Seller's repurchase obligations and the Servicer's servicing obligations. Under longstanding principles of trust law, that power to sue includes the power to compromise claims in settlement.

49. In the Governing Agreements, each Depositor (or, for Indenture-governed Trusts, each issuer, "Issuer") assigned to each applicable Trustee both its right, title, and interest in the pool of Mortgage Loans, and its right to demand a cure of any breach of the Seller's representations and warranties.

50. The Depositor's assignment to the Trustees of all "right, title and interest" to the Mortgage Loans includes authorization under the PSAs for the Trustees to settle claims on behalf of the Trusts.

51. Similarly, for those Trusts structured with an Indenture instead of a PSA, each Issuer's pledge in favor of the applicable Trustees of all of the Issuer's "right, title and interest" to the Mortgage Loans is authorization under the Indentures for the Trustees to act for the benefit of the Trusts.

II. The Trustees' Acceptance of the Settlement Was a Reasonable and Good Faith Exercise of Their Authority Under the Applicable Governing Agreements.

52. The acceptance of this Settlement was a reasonable and good faith exercise of the Accepting Trustees' authority under the applicable Governing Agreements – the standard for discretionary acts of trustees under New York law. Accordingly, the Court should rule that investors are barred from asserting claims against any of the Trustees with respect to such Trustee's evaluation and acceptance of the Settlement and implementation of the Settlement in accordance with its terms as memorialized in the Settlement Agreement.

53. The Settlement is a better result for the Accepting Trusts and the Certificateholders of the Accepting Trusts than rejecting the Settlement with no certainty of any amounts that might otherwise be obtained with respect to putative representation and warranty claims and servicing claims for the Accepting Trusts, much less amounts exceeding the Settlement Payment for each Accepting Trust. It is a settlement that takes into account the seriousness of the allegations, yet acknowledges the risk that JPMorgan might prevail on key defenses (see paragraph 71 below). It is a settlement that mandates servicing improvements that will require individualized attention to high-risk loans and will facilitate improved servicing of all other loans. And it is a settlement that benefits far more Certificateholders today than would uncertain enforcement of separate claims, directed by separate groups of investors, concerning individual Trusts.

54. Recognizing that there is no precise formula for determining the proper terms of a settlement in a matter of this magnitude, the Trustees have acted in a manner that they believe is in the best interests of the Trusts. The Trustees have weighed the views of the Institutional Investors, and other Certificateholders, if any, that have directed litigation or otherwise expressed their views on the Settlement as to a given Trust. The Trustees have evaluated the reasonableness of the Settlement by retaining and receiving opinions from independent experts in residential mortgage loans, loan servicing, and economics and finance. In addition, counsel have represented the Trustees throughout the evaluation process and the Trustees have received separate opinions from legal experts on relevant legal issues.

55. After initially discussing and considering a pool of candidates, the Trustees and certain of their internal and outside counsel interviewed potential advisors in December 2013. Each candidate explained its qualifications and its views concerning the assignment for which the Trustees were considering it as a potential expert. The Trustees ultimately hired Boston Portfolio Advisors to advise on servicing issues, NERA to estimate each Trust's allocable share of the Settlement Payment and collateral losses related to underwriting defects, Justice Anthony Carpinello (Ret.) and Professor Alan Schwartz to opine on various legal issues, and Compass/Lexecon to evaluate and synthesize the reports of the other experts and provide a recommendation for each Trust.

56. The following paragraphs summarize the work performed by these advisors.

A. Boston Portfolio Advisors ("BPA")

57. BPA is a consultancy and portfolio manager that specializes in analysis of the servicing, origination, administration, and financing of loan portfolios, including residential mortgage loans. Its principals have decades of experience in the financial markets and the

structured finance industry. The Trustees hired BPA to evaluate the Trusts' potential claims relating to servicing deficiencies and the servicing improvements in the Settlement.

58. BPA first calculated a "Servicing Loss Differential," an amount of past collateral losses that it believed could be attributed to differences between servicing by JPMorgan and by two control groups. BPA emphasized that because it was not able to identify particular servicing conduct, or to account for contractual limitations on liability, this differential did not necessarily mean that breaches of contractual servicing obligations actually existed or measure the amount of damages recoverable on a claim for breach of servicing obligations in the Governing Agreements. Nor did it take into account the costs and risks associated with pursuing any potential claims for breach of servicing obligations.

59. BPA carried out due diligence visits to the primary servicer designated to receive loans under the Subservicing Protocol—Select Portfolio Servicing, Inc. ("SPS"), in Salt Lake City, Utah and Jacksonville, Florida. It reported favorably on SPS and advised that transfer of loans to SPS is a benefit of the Settlement Agreement.

60. BPA also attempted to estimate the benefit of transferring loans to subservicing under the Settlement. It calculated trust-by-trust benefit figures based on the observed differential in servicing performance—default rates and loss-severity rates—between JPMorgan and certain specialized servicers, including SPS.

B. NERA Economic Consulting

61. NERA is a well-established and highly-regarded consultancy firm that performs economic analysis of legal and business issues for clients around the world. Dr. Faten Sabry is an economist in NERA's Securities and Finance practice. Dr. Sabry has a Ph.D. from Stanford University and is accredited as a professional statistician by the American Statistics Association. Dr. Sabry has substantial recent experience involving the analysis of structured finance

securities, particularly residential mortgage-backed securities (“RMBS”). Among other engagements, NERA and Dr. Sabry were retained to forecast losses on the \$425 billion RMBS portfolio that was the subject of an \$8.5 billion settlement with Bank of America Corp. and Countrywide Financial Corp., and to allocate the settlement payment across 530 trusts.

62. NERA’s assignment was twofold. First, it calculated the expected lifetime net losses in each of the 330 Trusts and applied the allocation formula in the Settlement Agreement to estimate each Trust’s indicative allocable share of the Settlement Payment, before any adjustment for loan repurchases or make-whole payments after the settlement offer date.

63. Second, applying three alternative methodologies, NERA estimated, on a trust-by-trust basis, the amount of losses that may be attributable to JPMorgan’s alleged breaches of representations and warranties (“Representation and Warranty Losses”). The first method calculated estimated Representation and Warranty Losses using as a proxy JPMorgan’s experience repurchasing loans from Fannie Mae and Freddie Mac (the government-sponsored entities or “GSEs”). NERA calculated \$4.495 billion in total Representation and Warranty losses for the Trusts. For 83% of the Trusts, the allocable share actually exceeded the amount of Representation and Warranty Losses when applying the GSE repurchase rates at the Trust level.

64. The second method estimated Representation and Warranty Losses based on the actual repurchase demands for the Trusts and imputed GSE repurchase rate data. NERA estimated total Representation and Warranty Losses of \$1.73 billion to \$1.78 billion, with the allocable share for *every* Trust exceeding that Trust’s Representation and Warranty Losses.

65. The third method estimated Representation and Warranty Losses by running an econometric model of loan-level default behavior and credit attributes for 60 of the 330 Trusts – using the 60 Trusts that were the subject of a complaint filed by the Federal Housing Finance

Agency against JPMorgan, Bear Stearns, and others. NERA calculated a range of Representation and Warranty Losses from \$2.6 billion to \$5.3 billion, and concluded that the allocable share would exceed the Representation and Warranty Losses for the large majority of the Trusts.

C. Justice Anthony Carpinello (Ret.)

66. Justice Anthony Carpinello is a mediator and retired Justice of the New York State Supreme Court, Appellate Division. He provided the Trustees with three legal reports concerning the statute of limitations applicable to claims relating to representation-and-warranty breaches: (i) the relationship between the requirement of pre-suit notice and the statute of limitations, as well as the requirement that JPMorgan repurchase loans as to which it discovers a breach; (ii) the comparability of the Trustees' claims to the claims of monoline insurers against securitization sponsors; and (iii) the scope of a tolling agreement negotiated between JPMorgan and the Institutional Investors, for the benefit of the Trusts.

D. Professor Alan Schwartz

67. Professor Alan Schwartz is a Sterling Professor at the Yale Law School and the Yale School of Management. He provided the Trustees with a report that covered the following topics: JPMorgan's position that, on certain Trusts, the Trustees may bring loan-repurchase claims directly against JPMorgan only if the loan originators are unable to satisfy a judgment; whether the Governing Agreements require the purchase (or repurchase) of loans modified for any reason other than as a substitute for refinancing; the effect of the Governing Agreements' limitation-on-liability provisions relating to servicing; and the meaning of the requirement that a loan cannot be put back to the Seller unless a breach "materially and adversely affects the interests of the Certificateholders . . . in [the] Mortgage Loan."

E. Compass/Lexecon

68. Compass/Lexecon is also a well-known consultancy firm that specializes in various types of economic analysis of legal issues, and it has significant experience relating to RMBS. Like NERA, it employs hundreds of economists and statisticians. Its President, Daniel Fischel, is a professor emeritus of law and business at The University of Chicago and at Northwestern University and is the former Dean of The University of Chicago Law School. *The Economic Structure of Corporate Law*, which Professor Fischel wrote with Seventh Circuit Judge Frank Easterbrook, is one of the leading sources in its field. Professor Fischel has also published approximately 50 articles, which have been cited by various courts, including the U.S. Supreme Court.

69. Compass/Lexecon emphasized, as an initial matter, that there is no purely objective way to evaluate a settlement. A mathematical risk assessment is not possible due to the variance in the relevant risk factors and their lack of susceptibility to quantification. Thus, any settlement decision will require business judgment and the weighing of qualitative factors.

70. In examining the reasonableness of the Settlement Payment, Compass/Lexecon examined various factors that apply to all Trusts. It compared the \$4.5 billion settlement amount to the amount of other RMBS settlements. It also considered the support of the Institutional Investors, the opposition of others, including a group of investors represented by the law firm of Quinn Emanuel Urquhart & Sullivan, LLP, and the sophistication of the negotiating parties. Finally, Compass/Lexecon examined the market reaction to the announcement of the proposed Settlement.

71. With respect to the individual Trusts, Compass/Lexecon considered several factors in determining whether to recommend acceptance or non-acceptance for a particular Trust. That included, among other things, whether a substantial proportion of Certificateholders

in the Trust oppose acceptance, whether their holdings exceed those of holders who support the proposed Settlement, whether there is an indication that the expected recovery in litigation would exceed the value of the settlement consideration for the Trust, whether the Trust's released claims (other than those related to servicing) are likely to be time barred, and whether there is an indication that the Trust's recovery on servicing claims would exceed the settlement consideration.

72. Based on this analysis, Compass/Lexecon recommended that the proposed Settlement be accepted for 314 of the Trusts and 792 of 816 Loan Groups.

* * *

73. As a result of this process, which included months of work by and with the expert advisors, consideration of the views of various Certificateholders, review and analysis of all of the foregoing expert reports, and careful consideration by each Trustee's relevant trust personnel, the Trustees have determined that the Settlement on behalf of the Accepting Trusts is reasonable, is in the best interests of the Accepting Trusts and Certificateholders, and outweighs the alternative of protracted litigation with no guarantee of success.

COUNT I

(Declaratory Judgment)

74. Each of the Trustees has authority to accept, on behalf of each of the Accepting Trusts, the settlement of each of the claims that is released in the Settlement Agreement.

75. Each of the Trustees accepted the Settlement for certain Trusts or loan groups within Trusts based on a thorough and reasonable investigation of the claims proposed to be released and of the settlement consideration.

76. Each of the Trustees made its settlement decision in good faith, and each Trustee decided to settle because it believed that its decision was in the best interests of the beneficiaries of each Accepting Trust.

77. Accordingly, the Trustees request a declaration that their acceptance of the Settlement on behalf of each of the Accepting Trusts comports with all applicable duties under the Governing Agreements and any other applicable law, and that the Certificateholders are barred from asserting claims against any Trustee with respect to such Trustee's evaluation and acceptance of the Settlement and the implementation of the Settlement in accordance with its terms as memorialized in the Settlement Agreement.

78. The Trustees further request any other relief that the Court deems just and proper.

Dated: New York, New York
October 2, 2014

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