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October 28, 2014

Hon. Marcy S. Friedman  
Supreme Court, New York County  
60 Centre Street, Courtroom 248  
New York, NY 10007

**Re: In re the Application of U.S. Bank National Association et al., Index No. 652382/14**

Dear Justice Friedman:

We write on behalf of the 20 Institutional Investors -- who have requested leave to intervene as co-petitioners in this Article 77 proceeding -- to join in the letter filed yesterday by the Trustees (Doc. No. 80) responding to the letter of October 21, 2014 from the Federal Home Loan Bank of Boston (Doc. No. 40).

The FHLB Boston has made no showing that an extension of the Court's November 3 objection deadline is necessary or warranted. The sole issue in this Article 77 proceeding is whether the Trustees acted reasonably and in good faith when, in reliance on the advice of highly credentialed experts, the Trustees evaluated and then accepted the settlement offer made to them by JPMorgan and its affiliates.<sup>1</sup> The settlement agreement at issue, and the expert reports on which the Trustees based their decisions, have been available to certificateholders for many months. These materials provide more than enough information for certificateholders to make an informed decision, by November 3, whether to file an objection challenging the good faith and reasonableness of the Trustees' decisions to enter into the settlement agreement.

An action under Article 77 is a special proceeding.<sup>2</sup> It is intended to be summary in nature, and to provide trustees and trust beneficiaries with an expeditious and efficient means for resolving *trust-related* issues.<sup>3</sup> FHLB Boston has standing to seek leave to intervene on the sole

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<sup>1</sup> See *Haynes v. Haynes*, 72 A.D.3d 535, 536 (1st Dep't 2010) ("Where a trustee has discretionary powers, its exercise should not be the subject of judicial interference, as long as it is exercised reasonably and in good faith.").


<sup>2</sup> "A *special proceeding* may be brought to determine a matter relating to any express trust." CPLR 7701 (emphasis added).

<sup>3</sup> See, e.g. *Gregory v. Wilkes*, 26 Misc.2d 641, 642 (Sup. Ct. N.Y. Cnty 1960) ("The reason for the enactment of article 79 [the predecessor of Article 77] was to provide a special proceeding in trust accountings and administrations with incidental construction and enforcement relief in the interests of expedition and economy."); *In re Bucherer's Trust*, 21 Misc.2d 566, 567 (Sup. Ct. N.Y. Cnty 1959) ("The

issue before the Court -- *i.e.*, the good faith and reasonableness of the Trustees' decision -- because it holds Trust certificates. FHLB Boston may not, however, use its intervention "to determine if the settlement is in FHLB Boston's best interests." *See* Letter of FHLB Boston at 2. FHLB Boston's idiosyncratic interest is not before the Court, Thus, its demand for discovery (and months of delay) so it can assess *its own* individual best interests is beyond the scope of this proceeding, irrelevant to any issue before the Court, and prejudicial to other certificateholders who will be injured by undue and unnecessary delay.

For these reasons, and those stated by Trustees' counsel, FHLB Boston should be required to comply with the existing November 3, 2014 objection deadline.

Respectfully,



Kenneth E. Warner

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cc: All Counsel of Record (by e-filing)

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summary proceeding relating to express trusts . . . was intended to dispense with the cumbersome details of a plenary action in regard to settlement of accounts and construction of the trust."); N.Y.C.P.L.R. § 401, Practice Commentaries (McKinney 2010) (noting that "[s]peed, economy, and efficiency are the hallmarks of" a special proceeding.).