

Pursuant to the Court's December 19, 2017 Order to Show Cause (Dkt. No. 30) and its January 22, 2018, Clarifying Order (Dkt. No. 53), the undersigned AIG entities (collectively, the "AIG Investors") write to identify the trusts subject to this proceeding in which the AIG Investors hold an interest, and to provide a brief statement of their position with respect to the issues raised in the Trustees' Petition (the "Petition") (Dkt. No. 1).¹

The AIG Investors join in the arguments of the Institutional Investors concerning the Petition (Dkt. No. 136), and those arguments are hereby incorporated by reference. The AIG Investors submit this supplemental individual submission to set forth additional arguments regarding the issues raised in the Petition.

I. SETTLEMENT PROCEEDS SHOULD BE DISTRIBUTED IMMEDIATELY TO UNCONTESTED TRUSTS.

As identified in Exhibit 1 hereto, the AIG Investors hold certificates in 72 of the trusts that are subject to this proceeding. Of those 72 trusts, five of them² are not directly at issue in the Petition. Settlement proceeds should be distributed immediately as to these five trusts.

As to the remaining 67 trusts, only parties who have entered appearances as to those specific trusts may be heard in this proceeding; all others lack standing to dispute the preferred distribution methodology of the AIG Investors. *See, e.g., Ferran v. City of Albany*, 116 A.D.3d 1194, 1195 (3d Dep't 2014) ("Inasmuch as [a party] does not own or have any possessory interest in the subject property, he does not have any injury in fact or any actual stake in the outcome of this matter.") (citations omitted); *Tribeca Cmty. Ass'n v. New York City Dep't of Sanitation*, 83 A.D.3d 513, 514 (1st Dep't 2011) (holding petitioners lacked standing to challenge plan of

¹ Capitalized terms, not otherwise defined herein, shall have the meanings ascribed in the Petition.

² Those five trusts are BSABS 2005-TC2, JPMAC 2007-CH1, JPMAC 2007-HE1, JPMMT 2006-A5, and JPMMT 2007-A1.

settlement that did not impinge on their property interests); *Uhlfelder v. Weinshall*, 47 A.D.3d 169, 181 (1st Dep't 2007) (“[A] plaintiff must show ‘injury in fact,’ meaning that plaintiff will actually be harmed by the challenged ... action.”) (quoting *New York State Assn. of Nurse Anesthetists v. Novello*, 2 N.Y.3d 207, 211 (2004)) (internal quotation marks omitted).

That standing should be assessed on a certificate-by-certificate basis is consistent with the rulings of Justice Scarpulla in the recent Article 77 proceeding that was conducted with respect to the Countrywide settlement. See *In re Bank of N.Y. Mellon*, Index No. 150973/2016, Dkt. No. 77, Partial Severance Order and Partial Final Judgment (May 12, 2016) (ordering distribution of funds for 512 of the 530 trusts at issue where there was no disagreement among interested holders as to the proper distribution method); *In re Bank of N.Y. Mellon*, Index No. 150973/2016, Dkt. No. 189, Severance Order and Partial Final Judgment (Three Uncontested Trusts), at 4 (Nov. 21, 2016) (applying preferred distribution method of sole certificateholder to appear in the proceeding with respect to those trusts). There, Justice Scarpulla ordered that the preferred distribution methodology of an “interested certificateholder” (*i.e.*, one who had entered a notice of appearance in the proceeding) should be followed if no certificateholder with standing had objected.

For the above reasons, this Court should order settlement funds to be distributed promptly to those trusts for which no disagreement exists among certificateholders who have appeared in this proceeding.

II. THE AIG INVESTORS AGREE WITH THE INSTITUTIONAL INVESTORS THAT THE PAY FIRST, WRITE-UP SECOND METHODOLOGY SHOULD BE FOLLOWED WITHOUT GIVING EFFECT TO ANY TRANSITORY OVER-COLLATERALIZATION.

A. Settlement Proceeds Should Be Distributed Pay First, Write-Up Second To The Trusts In Exhibit D.

The Settlement Agreement is clear that the correct order of operations is pay first, write-up second. Subsection 3.06(a) requires the trustees to distribute the Settlement Payment “pursuant

to the terms of the Governing Agreements ... as though such Allocable Share was a ‘subsequent recovery.’” Subsection 3.06(b) then provides that “[a]fter the distribution of the Allocable Share to a Settlement Trust pursuant to Subsection 3.06(a),” the trustee will write-up the securities ‘in the reverse order of previously allocated losses’ (emphasis added).

Although the Petition claims that it is “unaddressed” in the Settlement Agreement whether the write-up required by Subsection 3.06(b) occurs before or after it is distributed to certificateholders (Petition ¶ 21), it is clear that the write up must occur *after* the settlement payment is distributed to certificateholders. The last sentence of Subsection 3.06(b) states “[f]or the avoidance of doubt, this Subsection 3.06(b) is intended only to increase the balance of the related class of securities, as provided for herein, and shall not affect the distribution of the Settlement Payment provided for in Subsection 3.06(a).” This sentence confirms that payment should occur prior to any write-up, as writing up the certificates before payment to certificateholders *would* otherwise “affect the distribution of the Settlement Payment,” which would in turn violate Subsection 3.06(b).

As the above demonstrates, the Settlement Agreement is clear that the required order of operations is pay first, write-up second. According to the Petition, “the Governing Agreements [in contrast to the Settlement Agreement] for the Settlement Trusts listed on Exhibit D hereto do not clearly specify whether the Petitioners should use the Pay First Method or the Write-Up First Method in this circumstance.” Petition ¶ 23. Given the absence of dispositive language in the Governing Agreements, the pay first, write-up second order provided in the Settlement Agreement should govern the distribution methodology for the trusts listed in Exhibit D of the Petition, as that best reflects the intent of the parties to the JPMorgan settlement.

B. The Trustees Should Not Give Effect To Transitory Overcollateralization, Which Is Not Supported By The Governing Agreements.

As explained in the brief of the Institutional Investors (Dkt. No. 136), certain of the trusts identified in the Petition have an overcollateralization feature—which is primarily intended to protect senior investors. Under the structure of the trusts at issue, losses are realized first by the most junior certificates, which function as a form of credit enhancement for the more senior bonds. In fact, the entire waterfall structure of the trusts at issue is intended to protect the most senior certificates, which generally receive lower interest rates than the more junior, and hence riskier, subordinate bonds.

Consistent with the structure of these trusts, the clear intent of the overcollateralization provisions identified by the trustees in the Petition (*see, e.g.*, ¶ 28) is to ensure that principal is distributed primarily to the most senior bonds, except when the trust is overcollateralized (meaning that the principal value of the underlying mortgages exceeds the principal balance of the outstanding securities). Only then is principal permitted to divert as “excess cashflow” to more junior bonds.

The bonds at issue in the Petition are generally *not* overcollateralized. That is, the principal value of the underlying mortgage loans do not exceed the principal value of the outstanding bonds. If the pay first, write-up second distribution methodology set forth in the Settlement Agreement is followed, the trusts will not be overcollateralized at the beginning of the distribution, nor will they be overcollateralized at the end of the distribution. To the extent there is some construction of the order of operations that could permit the trusts to be seen as being overcollateralized for a split-second in the middle of the distribution (and there is not), such an interpretation would be wholly inconsistent with the structure and intent of the Governing Agreements, the text of the Settlement

Agreement, and common sense, as it would permit “leakage” of funds to junior bonds that should rightfully go to senior bonds.

Any interpretation of the Governing Agreements that permits such “leakage” would also be inconsistent with the directly on point ruling of Justice Scarpulla, who considered this very issue in the Countrywide Article 77 proceeding and required the trustee “*not* to measure such Overcollateralization Amount during the distribution *between* the pay down and write up steps.” Index. No. 150973/2016, Dkt. No. 77, at 8. (Emphasis added.) Instead, Justice Scarpulla required overcollateralization to be evaluated *after* both the distribution of the settlement payment *and* the subsequent write-up of the bonds. *Id.* The same result should obtain here.

For these reasons, the Court should not give effect to any transitory overcollateralization for the trusts in Exhibit D of the Petition.

III. AIG’S POSITION AS TO THE REMAINING ISSUES IN THE PETITION.

The AIG Investors join in the position of the Institutional Investors with respect to the trusts listed in Exhibits E-H of the Petition, and hereby incorporate such arguments by reference.

CONCLUSION

For the reasons stated above, the settlement payment should promptly be distributed to trusts for which no disagreement has been articulated by certificateholders with standing to appear in this proceeding. With respect to the trusts in Exhibit D of the Petition, the pay first, write-up second distribution methodology should be followed without giving effect to any transitory overcollateralization.

With respect to the trusts listed in Exhibits E-H of the Petition, the AIG Investors join in the position of the Institutional Investors.

Dated: January 29, 2018
New York, New York

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: /s/ Jordan A. Goldstein

Jordan A. Goldstein

Joshua S. Margolin

51 Madison Avenue, 22nd Floor

New York, New York 10010

(212) 849-7000

Attorneys for Interested Persons American General Life Insurance Company, American Home Assurance Company, Lexington Insurance Company, National Union Fire Insurance Company of Pittsburgh, Pa., The United States Life Insurance Company in the City of New York, The Variable Annuity Life Insurance Company

Exhibit 1

Trusts Subject To This Article 77 Proceeding In Which The AIG Investors Hold An Interest

BALTA 2005-2
BALTA 2005-4
BALTA 2005-5
BALTA 2005-7
BALTA 2005-8
BALTA 2006-3
BALTA 2006-4
BALTA 2006-5
BALTA 2006-6
BALTA 2006-7
BALTA 2007-1
BALTA 2007-2
BALTA 2007-3
BSABS 2005-TC2
BSABS 2006-HE5
BSABS 2006-IM1
BSABS 2007-HE3
BSABS 2007-HE5
BSARM 2005-4
BSARM 2005-6
BSARM 2005-7
BSARM 2005-9
BSARM 2005-12
BSARM 2006-4
BSARM 2007-1
BSARM 2007-2
BSARM 2007-4
CFLX 2005-2
CFLX 2007-M1
CHASE 2005-A1
CHASE 2005-A2
CHASE 2005-S1
CHASE 2005-S2
CHASE 2006-A1
CHASE 2007-A2
CHASE 2007-S1
CHASE 2007-S2
CHASE 2007-S3
CHASE 2007-S4

GPMF 2006-AR2
JPALT 2006-A2
JPALT 2006-A6
JPALT 2006-A7
JPALT 2006-S3
JPALT 2007-A1
JPALT 2007-S1
JPMAC 2007-CH1
JPMAC 2007-HE1
JPMMT 2005-A2
JPMMT 2005-A6
JPMMT 2005-A7
JPMMT 2005-A8
JPMMT 2005-S2
JPMMT 2006-A2
JPMMT 2006-A3
JPMMT 2006-A5
JPMMT 2007-A1
JPMMT 2007-A3
JPMMT 2007-S1
JPMMT 2007-S2
LUM 2005-1
PRIME 2005-1
SACO 2005-1
SACO 2006-12
SAMI 2005-AR7
SAMI 2006-AR1
SAMI 2006-AR4
SAMI 2006-AR7
SAMI 2006-AR8
SAMI 2007-AR3
SAMI 2007-AR6
SAMI 2007-AR7