

Exhibit 11

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

In the Matter of:

Court File No.: 62-TR-CV-16-59

The trusteeship created by Bear Stearns Asset Backed Securities I LLC relating to the issuance of certificates by SACO I Trust 2006-5 pursuant to a Pooling and Servicing Agreement dated as of April 1, 2006

**PETITION OF WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE,
FOR INSTRUCTIONS IN THE ADMINISTRATION OF A TRUST
PURSUANT TO MINN. STAT. § 501C.0201 *et seq.***

TO THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT:

1. Petitioner Wilmington Trust, National Association, a national banking association (“Wilmington Trust”), solely in its corporate trustee capacity and not in its individual capacity (the “Trustee”), hereby files this Petition for Instructions in the Administration of a Trust Pursuant to Minn. Stat. § 501C.0201 *et seq.* (the “Petition”) with the Court in connection with the trusteeship for the trust named SACO I Trust 2006-5 (the “Trust”), created pursuant to the Pooling and Servicing Agreement, dated as of April 1, 2006 (the “PSA”), by and among EMC Mortgage Corporation (now known as EMC Mortgage LLC; “EMC”), as sponsor and company; Bear Stearns Asset Backed Securities I LLC (“Depositor”), as depositor; LaSalle Bank National Association, as master servicer¹ and as securities administrator; and Citibank, N.A. (the “Original Trustee”), as the original trustee.

¹ LaSalle Bank National Association has been replaced as master servicer by U.S. Bank National Association (“Master Servicer”).

2. The Trust was created to securitize a separate pool of approximately 13,156 residential mortgage loans (the “Mortgage Loans”) with a total principal balance of approximately \$667 million. Depositor purchased the Mortgage Loans from EMC pursuant to a Mortgage Loan Purchase Agreement dated as of April 28, 2006 (the “MLPA,” collectively with the PSA and/or any other agreements governing or related to the Trust, the “Governing Agreements”), securitized the Mortgage Loans, created the Trust, and conveyed all of its rights, title, and interest in the Trust Fund (as defined in the PSA) to the Original Trustee. The Trust then issued mortgage-backed certificates (the “Certificates”) backed by the Mortgage Loans. The PSA provided that certain Certificates were backed by Group I Mortgage Loans (as defined in the PSA) while other Certificates were backed by Group II Mortgage Loans (as defined in the PSA).

3. Wilmington Trust is the successor Trustee for the Trust under the terms of the PSA. A copy of the PSA (exclusive of its exhibits) has been attached as **Exhibit A**. A copy of the MLPA has been attached as **Exhibit B**.

JURISDICTION AND VENUE

4. Wilmington Trust, successor Trustee of the Trust, is a bank organized under the laws of the United States with its principal place of business in Delaware. Wilmington Trust maintains an office in Minneapolis, Minnesota, where it administers trustee business.

5. This Court has jurisdiction over this Petition under Minn. Stat. § 501C.0202(1), (4) and (24) because the Trustee is seeking an instruction from the Court confirming the actions taken by the Trustee and instructing the Trustee regarding the discharge of the Trustee’s duties under the Governing Agreements, including the PSA.

6. This Petition is properly venued in this Court pursuant to Minn. Stat. § 501C.0207(b) because prior proceedings with respect to the Trust were held in this Court.

7. The Trustee requests that the Court take jurisdiction in this matter as a proceeding *in rem*.

The Basis of this Petition

8. This Petition relates to a proposed settlement of certain claims of the Trust as described below.

9. The Trustee received an offer dated August 23, 2016, to settle certain claims related to the origination and servicing of the Mortgage Loans for the consideration described therein.

10. The MLPA (which was assigned by the Depositor to the Trustee) and the PSA, among other things, set forth the rights and obligations of the parties, contain representations and warranties of EMC, the servicers, and the Depositor, and describe the responsibilities and duties of the Trustee.

11. The Trustee seeks an order confirming that it shall not be liable to any Certificateholder or any other person for accepting the 2016 Settlement Offer (as defined below) or dismissing the Litigation (as defined below) on behalf of the Trust. The Trustee further seeks an order clarifying the manner in which the settlement proceeds should be allocated between the Certificates associated with the two Loan Groups (as defined in the PSA).

Alleged Breaches of Representations and Warranties

12. In the MLPA, EMC made representations and warranties about, among other things, the underwriting of the Mortgage Loans, the mortgaged property securing the loans, credit quality of the borrowers, documentation for the loans, the manner in which the loans were

originated, compliance with applicable laws, and the descriptions of each loan in the mortgage schedules. EMC is obligated to cure any breach of these representations and warranties.

13. Under both the MLPA and the PSA, if a party discovers or receives notice that EMC's representations and warranties under the MLPA are breached, and that breach materially and adversely affects the interest of the holders of the Certificates (the "Certificateholders") in any Mortgage Loan, that party must promptly notify certain other parties, including EMC. PSA § 2.03(d); MLPA § 7. EMC then has ninety days to cure the breach, and if it cannot do so, it must repurchase the Mortgage Loan at the Purchase Price (as defined in the PSA, Article I). *Id.*

14. The PSA also requires the servicers to service the mortgage loans in the Trust, which includes collecting principal and interest, pursuing foreclosure, and maintaining or selling foreclosed properties, in accordance with certain standards described in the PSA and other related transaction documents.

15. The Governing Agreements are valid, binding, and enforceable contracts, each of which is enforceable, separately or together, by the Trustee on behalf of the Trust and the Certificateholders. The Trustee has the authority to enforce the obligations of EMC and the servicer under the MLPA and/or the PSA, as applicable, on behalf of the Trust and for the benefit of the Certificateholders.

The New York Litigation

16. In May 2012, the Master Servicer, at the direction of certain Certificateholders, commenced an action on behalf of the Trust in the Supreme Court of the State of New York, County of New York, No. 651820/2012 (the "Litigation"). In January 2013, following consolidation of the Litigation with a related case, the plaintiffs filed an amended complaint that

also asserted claims on behalf of the SACO I Trust 2006-3, SACO I Trust 2006-6, and SACO I Trust 2007-2 (collectively, the “Other SACO Trusts”).

17. The Master Servicer asserted claims on behalf of the Trust concerning, *inter alia*, alleged breaches of representations and warranties and breaches of servicing obligations by EMC and JPMorgan Chase Bank, N.A. (“JPMC”).

The Prior Trust Instruction Petition

18. The Trustee previously sought instructions from this Court in connection with the administration of the Trust. Specifically, on October 24, 2013, the Master Servicer and the Trustee, as trustees for the Other SACO Trusts and the Trust, filed the Joint Petition of U.S. Bank National Association and Wilmington Trust, National Association, in the Corporate Trustee Capacities Set Forth Herein, for Instructions in the Administration of Certain Trusts Pursuant to Minn. Stat. § 501B.16, Case No. 62-TR-CV-13-40 (the “Prior Petition”). In the Prior Petition, the petitioners sought authorization to, among other things, use repurchase proceeds received from EMC to reimburse certain Certificateholders for expenses related to a mortgage loan file review undertaken in connection with the Litigation. A copy of the Prior Petition (exclusive of the exhibits) is attached hereto as **Exhibit C**.

19. The Court held a hearing on the Prior Petition on December 2, 2013, and, on December 3, 2013, the Court entered the Findings of Fact, Conclusions of Law and Order for Judgment (the “Prior Order”) granting the relief sought in the Prior Petition. A copy of the Prior Order is attached hereto as **Exhibit D**.

2014 Settlement Offer

20. While the Litigation was pending, in November 2013, JPMorgan Chase & Co., on behalf of itself and its direct and indirect subsidiaries (including EMC and JPMC) (collectively with JPMorgan Chase & Co., “JPMorgan”), made an offer to the trustees of hundreds of

residential mortgage backed securitization trusts, including the Trustee (collectively with the other trustees, the “RMBS Trustees”), to settle claims relating to alleged breach of certain obligations, representations, and warranties with respect to the mortgage loans deposited in those trusts (as modified on July 29, 2014, the “2014 Settlement Offer”). The 2014 Settlement Offer covered the Trust, along with other trusts.

21. As part of the 2014 Settlement Offer, the RMBS Trustees were offered up to \$4.5 billion on behalf of the various trusts, to be allocated among the trusts that accepted the 2014 Settlement Offer in accordance with a formula set forth in the proposed settlement agreement. The RMBS Trustees were afforded a period of time to evaluate and decide whether to accept the 2014 Settlement Offer on behalf of each covered trust.

22. The Trustee notified the Trust’s Certificateholders of the 2014 Settlement Offer.

23. The RMBS Trustees retained several highly-qualified experts to assist them in evaluating the 2014 Settlement Offer. The RMBS Trustees’ lead expert recommended, among other things, that the RMBS Trustees accept the 2014 Settlement Offer on behalf of covered trusts in which investors supporting the 2014 Settlement Offer had holdings exceeding opposing investors. The lead expert also recommended that the RMBS Trustees not reject the 2014 Settlement Offer on behalf of a covered trust unless an investor provided a satisfactory direction and indemnity to investigate and pursue claims against JPMorgan for such covered trust.

24. Also, the RMBS Trustees provided numerous informational notices to investors concerning the 2014 Settlement Offer and invited investors to provide a satisfactory direction and indemnity to either accept or reject the 2014 Settlement Offer.

25. Based on the application of his outlined criteria, the RMBS Trustees’ lead expert recommended that the Trustee reject the 2014 Settlement Offer for the Certificates that were

backed by Group I Mortgage Loans and the Certificates that were backed by Group II Mortgage Loans.

26. With respect to the Trust, a group of Certificateholders the (“Directing Certificateholders” opposed the 2014 Settlement Offer and directed the Trustee to not accept the 2014 Settlement Offer on behalf of the Trust. The Directing Certificateholders held Certificates “evidencing not less than 25% of the aggregate Voting Rights of the Certificates” in the Trust.

27. Based on the direction received from the Directing Certificateholders (and the pendency of the Litigation) and pursuant to Section 10.01(d)(iii) of the PSA, the Trustee did not accept the 2014 Settlement Offer for the Trust, and the Litigation continued.

28. Wilmington Trust, solely in its capacity as trustee for certain trusts, and several other RMBS Trustees did, however, conditionally accept (subject to court approval, as described below) the 2014 Settlement Offer on behalf of hundreds of other trusts. The RMBS Trustees, each again solely in its respective capacity as trustee for one or more covered trusts, prosecuted an action in New York State Court (County of New York, Index No. 652382/2014) under Article 77 of the New York Civil Practice Law and Rules seeking a declaration that their acceptance of the 2014 Settlement Offer on behalf of each accepting trust comports with all applicable duties under the respective governing documents and any other applicable law, and that certificateholders in each accepting trust should be barred from asserting claims against any petitioning trustee with respect to the petitioning trustee’s evaluation and acceptance of the 2014 Settlement Offer in accordance with the terms memorialized in the 2014 Settlement Offer.

29. The New York State Court granted Wilmington Trust and the other trustees certain relief they sought in a decision dated August 12, 2016.

2016 Settlement Offer

30. On August 23, 2016, the Trustee received an offer from EMC and JPMC to settle the Trust’s claims against JPMorgan, including EMC and JPMC, relating to their alleged breach of certain obligations, representations, and warranties with respect to the Mortgage Loans (the “2016 Settlement Offer”). The Trustee subsequently secured an extension of the deadline by which it could accept the offer on behalf of the Trust to November 16, 2016.

31. Under the terms of the 2016 Settlement Offer, the Trust would release: “all alleged or actual claims . . . effective as of the Effective Date[] against [JPMorgan and all of its present and former direct and indirect subsidiaries, including but not limited to EMC and JPMC] 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 Trusts.” Such claims include, without limitation, those based on (i) representations and warranties made by EMC and JPMC under the Governing Agreements; (ii) any alleged obligation to give notice of alleged breaches of representations and warranties; (iii) any alleged obligation of EMC or JPMC 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 Trust; and (v) the servicing of the Mortgage Loans, including loan modifications.

32. In exchange for the releases detailed above, the Trust would receive two principal benefits under the Settlement—the “Settlement Payment” (described at Exhibit A of the 2016 Settlement Offer) and the adoption of servicing improvements by JPMorgan.

33. Under Section 3.05 of the 2016 Settlement Offer, the Settlement Payment would be distributed in accordance with the distribution provisions of the PSA as though the Settlement Payment constitutes a “Subsequent Recovery” (as defined in the PSA), and, “[o]n the

Distribution Date immediately following [the deposit of the Settlement Payment in the Trust], the amount of the Subsequent Recoveries represented by the Settlement Payment [would] be applied to increase the Certificate Principal Balance of the Class of Certificates with highest payment priority to which Realized Losses have been allocated (*i.e.*, the Class A Certificates) in accordance with Section 6.04(b) of the respective Pooling and Servicing Agreements for SACO 2006-6 and SACO 2007-2 and Section 6.04(c) for SACO 2006-5, and as contemplated by the definition of ‘Certificate Principal Balance’ in each PSA[,]” and the “Trustee [would] next distribute the Settlement Payment[] on that Distribution Date as provided in Section 6.04(a) (and where applicable for SACO 2006-5, Section 6.04(b)) of the respective PSAs.”

34. The amount of the Settlement Payment is more than the amount the Trust would have expected to receive under the 2014 Settlement Offer had the Trust accepted that offer and the New York court approved such acceptance.

35. In addition to the Settlement Payment, an additional component of the 2016 Settlement Offer is the servicing protocol attached thereto. JPMorgan has agreed to implement various servicing improvements and remedies with respect to the Mortgage Loans within specified time periods set forth in the 2016 Settlement Offer, including, among others, a requirement that JPMorgan transfer to certain qualified subservicers servicing of loans that it services which have become 60 days delinquent.

36. The Trustee disclosed the 2016 Settlement Offer to all Certificateholders shortly after receipt and invited Certificateholders to contact the Trustee to express their views. The Trustee, by a separate notice, also disclosed to all Certificateholders that the Trustee had secured an extension of time to November 16, 2016, to either accept or reject the 2016 Settlement Offer on behalf of the Trust. Copies of the notices are attached hereto as **Exhibit E** and **Exhibit F**.

37. Since providing notice of the 2016 Settlement Offer, the majority of Certificateholders that have contacted the Trustee about the 2016 Settlement Offer have expressed support. Indeed, only one investor contacted the Trustee to express its opinion that the 2016 Settlement Offer should be rejected, and the Certificate Principal Balance of the Certificates that investor held was zero. In contrast, the Directing Certificateholders, who had directed the Trustee to reject the 2014 Settlement Offer on behalf of the Trust and maintain the Litigation, informed the Trustee that they supported the 2016 Settlement Offer.

38. The Trustee also engaged an expert to provide an independent assessment of the reasonableness and adequacy of the 2016 Settlement Offer. The expert, who had served as the lead expert who analyzed the 2014 Settlement Offer as described above, recommended the Trustee accept the 2016 Settlement Offer on behalf of the Trust.

39. On November 16, 2016, the Trustee conditionally accepted the 2016 Settlement Offer in respect of the Trust, subject to the Trustee successfully obtaining court approval of its decision. A copy of the 2016 Settlement Offer, as conditionally accepted by the Trustee on behalf of the Trust as set forth below, is attached as **Exhibit G**.

40. The Trustee provided another notice to Certificateholders informing them that the Trustee had conditionally accepted the 2016 Settlement Offer and indicating that the Trustee anticipated dismissing the Litigation and initiating this proceeding. A copy of this notice is attached hereto as **Exhibit H**.

41. In connection with the Trustee's acceptance of the 2016 Settlement Offer, on November 28, 2016, the Trustee executed a stipulation providing for the dismissal of the Litigation on a without-prejudice basis, which was subsequently ordered and entered by the court (the "Dismissal Order"). A copy of the Dismissal Order is attached as **Exhibit I**.

Allocation of the Settlement Payment

42. The 2016 Settlement Offer does not include a method by which to allocate the Settlement Payment between the Certificates backed by Group I Mortgage Loans and those backed by Group II Mortgage Loans. The Trustee proposes that, in the event the Court approves acceptance of the 2016 Settlement Offer, the Settlement Payment be allocated between the certificates backed by Group I Mortgage Loans and Group II Mortgage Loans based on a ratio of the Realized Losses (as defined in the PSA) between Group I Mortgage Loans and Group II Mortgage Loans as of the date acceptance of the 2016 Settlement Offer is approved. The amounts from the Settlement Payment so allocated will be considered the Final Recovery Determination with respect to each covered Mortgage Loan and will be paid out to Certificateholders in accordance with the payment provisions set forth in the PSA and which each investor agreed to when it purchased its Certificate.

* * *

43. The Trustee recognizes that, despite the communications it has received to date about the 2016 Settlement Offer, there may exist certain Certificateholders who may wish to pursue remedies for the alleged breaches in different ways. Absent instructions from the Court, different Certificateholders may wish to pursue different strategies relating to the Trust, and the Trustee may be subject to claims by individual Certificateholders who believe that the 2016 Settlement Offer is not in their individual interests. Piecemeal litigation would raise a substantial risk that the Trustee would be subject to conflicting judicial instructions in connection with the Trust. The trust instruction procedure provided under Minn. Stat. § 501C.0201, *et seq.*, is available, in part, so that trustees can avoid precisely such a result.

44. The Trustee therefore seeks an order, among other things, confirming its acceptance of the 2016 Settlement Offer, proposed allocation of the Settlement Payment between the Certificates backed by Group I Mortgage Loans and Group II Mortgage Loans, and dismissal of the Litigation.

BASIS FOR RELIEF

45. Section 501C.0202 of the Minnesota Statutes provides, in pertinent part, that a trustee may petition the district court for an order “to confirm an action taken by a trustee,” Minn. Stat. § 501C.0202(1), “to construe, interpret, or reform the terms of a trust,” Minn. Stat. § 501C.202(4), and “to instruct the trustee, beneficiaries, and any other interested parties in any matter relating to the administration of the trust and the discharge of the trustee’s duties,” Minn. Stat. § 501C.0202(24).

46. Here, the relief sought by the Trustee should be granted and the Trustee permitted to enter into the 2016 Settlement Offer.

47. The PSA grants to the Trustee the right to sue to enforce EMC’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.

48. In the PSA, the Depositor 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 EMC’s representations and warranties.

49. The Depositor’s assignment to the Trustee of all “right, title and interest” to the Mortgage Loans includes authorization under the PSA for the Trustee to settle claims on behalf of the Trust.

WHEREFORE, pursuant to the provisions of Minn. Stat. §§ 501C.0202, 501C.0203, 501C.0304, and all other applicable law, the Trustee in its trustee capacity described above respectfully requests that this Court:

- a. Take jurisdiction in this matter as a proceeding *in rem* and make and enter an order designating the time and place when the respective parties in interest may be heard upon the matters set forth in this Petition, and that notice of the hearing be served in the manner specified in the accompanying Order for Hearing and as provided by Minn. Stat. § 501C.0203, subd. 1;
- b. Undertake to represent all parties in interest who are unascertained or not in being, or who are minors or incapacitated, pursuant to the provisions of Minn. Stat. § 501C.0304.
- c. At such designated time and place make a further Order as follows:
 - i. determining that such Order is binding upon the Trustee, the Trust, the Certificateholders, calculation agents, paying agents, servicers, master servicers, securities administrators, and all other persons or entities involved in the administration of the Trust and/or the payment or reimbursement of expenses with respect to the Trust;
 - ii. approving the Trustee’s acceptance, execution, and implementation of the 2016 Settlement Offer, including the application and distribution of the Settlement Payment as a “Subsequent Recovery” under the PSA subject to the terms and conditions set forth in the 2016 Settlement Offer, and approving the Trustee’s dismissal of the Litigation pursuant to the 2016 Settlement Offer and the Dismissal Order;

- iii. finding that the application and distribution of the Settlement Payment in accordance with the Settlement Agreement is consistent with the Governing Agreements;
- iv. directing the Trustee to allocate the Settlement Payment between the Certificates backed by Group I Mortgage Loans and Group II Mortgage Loans based on a ratio of the Realized Losses between Group I Mortgage Loans and Group II Mortgage Loans as of the date this Court enters an order on this petition or allocate the Settlement Payment between Loan Groups in such manner as the Court determines is appropriate and finding that the amounts from the Settlement Payment so allocated will be considered the Final Recovery Determination with respect to each covered Mortgage Loan and will be paid out to Certificateholders in accordance with the payment provisions set forth in the PSA;
- v. finding that the Trustee's actions taken to accept the 2016 Settlement Offer, including, without limitation, any actions taken by the Trustee in connection with the consideration, evaluation, acceptance, and implementation of the 2016 Settlement Offer (including the allocation of the Settlement Payment between the Certificates backed by Group I Mortgage Loans and Group II Mortgage Loans) and the dismissal of the Litigation pursuant to the 2016 Settlement Offer and the Dismissal Order comply with all applicable duties and are fully authorized and protected by the Governing Agreements, and shall not subject Wilmington Trust, National Association, individually or as Trustee, to liability;

- vi. directing that the Trust shall not be subject to the continuing supervision of the Court for the purposes of Minn. Stat. § 501C.0205 or General Rule of Practice 417.02; and
- vii. granting such other and further relief as the Court may deem lawful, just, and proper.

Dated: December 16, 2016

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.

/s/ Eric R. Sherman
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