

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.

Motion No. 002

Index No. 652382/2014

**MEMORANDUM OF LAW  
IN SUPPORT OF MOTION  
TO INTERVENE AS  
CO-PETITIONERS**

Assigned To: Friedman, J.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE**

Proposed Intervenors, 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 (Fannie Mae), 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 Management Company (each for themselves and, to the extent applicable, as investment managers of funds and accounts, and collectively, the “Institutional Investors”), by their

attorneys Warner Partners, P.C., submit this memorandum of law in support of their motion to intervene under CPLR §§ 401, 1012 and 1013 in the above-captioned proceeding.<sup>1</sup>

### **INTRODUCTION**

On August 4, 2014, multiple Trustees (collectively the “Trustees”), solely in their capacity as trustees of certain mortgage-securitization trusts, petitioned this Court pursuant to CPLR Article 77 for acceptance of the Trustees’ exercise of discretion in entering into a proposed settlement agreement (the “Settlement” or “Settlement Agreement”) with JPMorgan Chase & Co. (“JPMorgan”) and certain of its affiliates (collectively also “JPMorgan”) relating to the trusts. The trusts for which the Trustees have agreed to enter into the Settlement are identified as Exhibit A to the Trustees’ petition (the “Accepting Trusts”). The Settlement would require a lump-sum payment of billions of dollars (as specified in the Settlement Agreement) into the Accepting Trusts and would require the implementation of, among other things, a series of servicing procedures and improvements designed to more effectively service all performing and non-performing loans.

The Institutional Investors are holders in their own right and/or authorized investment managers for holders of a substantial quantity of securities issued by the Accepting Trusts (amounting to billions of dollars and representing approximately 32% of the securities at issue). Having carefully considered the Settlement and having concluded that it is fair and reasonable, the Institutional Investors now petition to intervene as co-petitioners in support of the Settlement.

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<sup>1</sup> Application is being separately made for the *pro hac vice* admission in this proceeding of three attorneys from Gibbs & Bruns LLP – Kathy D. Patrick, Esq., Robert J. Madden, Esq. and David Sheeren, Esq. – to serve as co-counsel for the Institutional Investors with Warner Partners, P.C.

## **BACKGROUND**

The Accepting Trusts each resulted from residential mortgage-backed securitizations between 2005 and 2007. One or more of the Trustees serves as trustee for each of the Accepting Trusts. The Sponsors and Depositors in each of the Accepting Trusts include various affiliates of JPMorgan. In addition, various JPMorgan affiliates act as Servicer and/or Master Servicer in certain of the Accepting Trusts.

The great majority of the Accepting Trusts are evidenced by separate contracts known as Pooling and Servicing Agreements (“PSAs”). The remainder are evidenced by Indentures and related Sale and Servicing Agreements (“SSAs”). The PSAs, Indentures, and SSAs are collectively referred to herein as the “Governing Agreements.” The Settlement at issue in this proceeding derives from allegations of breaches of representations and warranties in the Governing Agreements and breaches of the Servicer’s prudent servicing obligations under the Governing Agreements.

The Settlement is memorialized in a Settlement Agreement dated July 30, 2014, a copy of which is attached as Exhibit B to the Trustees' Article 77 Petition. The Settlement would require JPMorgan to pay billions of dollars into the Accepting Trusts (as specified in the Settlement Agreement), allocated pursuant to an agreed-upon methodology. It also would require JPMorgan to implement, among other things, a series of servicing protocols and improvements designed to more effectively service all performing and non-performing loans.

## **BASES FOR INTERVENTION**

Intervention as of right is permitted under CPLR 1012(a) when “the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected by the judgment.” Intervention by permission is allowed under CPLR

1013 where “the person’s claim or defense and the main action have a common question of law or fact . . . [and] the intervention will [not] unduly delay the determination of the action or prejudice the substantial rights of any party.” Under either standard, “[i]ntervention is liberally allowed by courts, permitting persons to intervene in actions where they have a *bona fide* interest in an issue involved in that action.” *CMS Life Ins. Opportunity Fund L.P. v. Progressive Capital Solutions, LLC*, 2014 WL 939303 at \*2 (Sup. Ct. N.Y. Co. Mar. 6, 2014) (Marcy Friedman, J.S.C.) quoting *Yuppie Puppy Pet Prods., Inc. v. Street Smart Realty, LLC*, 77 A.D.3d 197, 201 (1st Dep’t 2010).

The Institutional Investors, as holders in their own right and/or investment managers for holders of more than 32% of the securities issued by the Accepting Trusts, have a *bona fide* interest in this action and stand to be significantly affected by the Settlement. Thus, the Institutional Investors’ proposed intervention is appropriate under both CPLR 1012 and 1013.

The Trustees consent to the intervention sought herein, since they have stated in their Petition that they “consent to timely appearances or motions to intervene filed by any investor with current holdings in any of the Accepting Trusts.” Trustees’ Petition at ¶ 29.

The Institutional Investors’ intervention Petition seeks to establish them as co-petitioners with the Trustees in support of the Trustees’ Article 77 Petition, and granting intervention will not delay the determination of this action or prejudice the substantial rights of any party.

#### **RELIEF REQUESTED**

WHEREFORE, the Institutional Investors respectfully request that this Court issue an order permitting the Institutional Investors to intervene as co-petitioners in the above-captioned proceeding and amending the caption accordingly.

Dated: New York, New York  
August 5, 2014

WARNER PARTNERS, P.C.

By:



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