

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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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), AEGON USA Investment Management, LLC :  
(intervenor), Bayerische Landesbank (intervenor), BlackRock Financial :  
Management, Inc. (intervenor), Cascade Investment, LLC (intervenor), the :  
Federal Home Loan Bank of Atlanta (intervenor), the Federal Home Loan :  
Mortgage Corporation (Freddie Mac) (intervenor), the Federal National :  
Mortgage Association (Fannie Mae) (intervenor), Goldman Sachs Asset :  
Management L.P. (intervenor), Voya Investment Management LLC (f/k/a :  
ING Investment LLC) (intervenor), Invesco Advisers, Inc. (intervenor), :  
Kore Advisors, L.P. (intervenor), Landesbank Baden-Wuerttemberg :  
(intervenor), Metropolitan Life Insurance Company (intervenor), Pacific :  
Investment Management Company LLC (intervenor), Sealink Funding :  
Limited (intervenor), Teachers Insurance and Annuity Association of :  
America (intervenor), The Prudential Insurance Company of America :  
(intervenor), the TCW Group, Inc. (intervenor), Thrivent Financial for :  
Lutherans (intervenor), and Western Asset Management Company :  
(intervenor), :

Petitioners,

-against-

FEDERAL HOME LOAN BANK OF BOSTON (intervenor), TRIAXX :  
PRIME CDO 2006-1, LTD., TRIAXX PRIME CDO 2006-2, LTD., :  
TRIAXX PRIME CDO 2007-1, LTD. (intervenor), QVT FUND V LP, :  
QVT FUND IV LP, QUINTESSENCE FUND L.P., QVT FINANCIAL LP :  
(intervenor), BREVAN HOWARD CREDIT CATALYSTS MASTER :  
FUND LIMITED AND BREVAN HOWARD CREDIT VALUE MASTER :  
FUND LIMITED (intervenor), THE NATIONAL CREDIT UNION :  
ADMINISTRATION BOARD AS LIQUIDATING AGENT FOR U.S. :  
CENTRAL FEDERAL CREDIT UNION, WESTERN CORPORATE :  
FEDERAL CREDIT UNION, MEMBERS UNITED CORPORATE :  
FEDERAL CREDIT UNION, SOUTHWEST CORPORATE FEDERAL :  
CREDIT UNION, AND CONSTITUTION CORPORATE FEDERAL :  
CREDIT UNION (intervenor), and AMBAC ASSURANCE :  
CORPORATION, THE SEGREGATED ACCOUNT OF AMBAC :  
ASSURANCE CORPORATION (intervenor), AND W&L :  
INVESTMENTS, LLC (intervenor).

Respondents,

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

Index No. 652382/2014

Assigned to: Friedman, J.

**THE INSTITUTIONAL  
INVESTORS'  
OPPOSITION TO QVT'S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

**Motion Sequence No. 24**

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## INTRODUCTION

The Institutional Investors have significant holdings in the JPMAC 2006-WMC1 trust (the “Trust”) that QVT seeks to exclude from the Settlement by its motion for partial summary judgment.<sup>1</sup> The Institutional Investors oppose QVT’s motion because it is legally and factually meritless, and because granting it would harm certificateholders in the Trust by denying them the benefits of the Settlement, while offering no viable path to an equal or greater recovery.

## ARGUMENT

U.S. Bank, as trustee for the Trust, made the judgment that entering into the Settlement was in the best interest of all certificateholders in the Trust. An important component of that decision was the opinion of U.S. Bank’s legal adviser, retired Appellate Division Justice Anthony Carpinello, that the statute of limitations on the Trust’s repurchase claims had already expired, meaning that if U.S. Bank rejected the Settlement, the most likely outcome would be that the Trust, and its certificateholders, would receive nothing. After Justice Carpinello’s opinion, and U.S. Bank’s acceptance of the Settlement, the Court of Appeals handed down its decision in *ACE Securities Corp.*, confirming Justice Carpinello’s view that statutes of limitation on RMBS repurchase claims run from the date of the sale of the mortgages to the trust.<sup>2</sup> Thus, if QVT’s motion is granted, certificateholders in the Trust will receive nothing from the Settlement, and nothing on their claims.

U.S. Bank’s decision to accept the Settlement was, therefore, eminently reasonable. As the First Department has explained, where an RMBS trustee has been advised by retained experts that rejecting a settlement offer “would likely result in the actual collection of a lesser sum than

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<sup>1</sup> The Institutional Investors hold approximately 18% of the outstanding certificates in the Trust.

<sup>2</sup> *ACE Sec. Corp. v. DB Structured Prod., Inc.*, 25 N.Y.3d 581, 588-89 (2015).

that offered in the proposed settlement . . . it would have been unreasonable [for the trustee] to decline to enter into the settlement with the expectation of obtaining a much greater judgment . . .”<sup>3</sup> In other words, had the Trustee followed QVT’s suggestion that the Settlement be rejected, *that* would have been an abuse of discretion. Thus, QVT’s argument that U.S. Bank abused its discretion in entering into the Settlement must be rejected, as matter of law.

QVT is also wrong when it asserts that it had the power to divest U.S. Bank of the authority to enter into the Settlement. No provision of the PSA for the Trust authorizes certificateholders to force the trustee to reject a settlement offer where, as here, the trustee has concluded that the settlement is in the best interest of certificateholders and should be accepted.

Finally, the Institutional Investors oppose QVT’s effort to misuse the Court’s scarce time and resources, by attempting to force resolution of individual objections to the Settlement in a piecemeal fashion. To the extent that the issues raised by QVT have any relevance to the issues before the Court, they overlap with all of the other objections to the Settlement and should be decided with all other objections, at the final hearing of this matter now scheduled to begin January 20, 2016.

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<sup>3</sup> *In the Matter of The Bank of New York Mellon*, 127 A.D.3d 120, 127 (2015).

**CONCLUSION**

For all the forgoing reasons, the Institutional Investors respectfully request that QVT's motion for partial summary judgment be denied.

Dated: New York, New York  
October 5, 2015

WARNER PARTNERS, P.C.

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