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November 27, 2013

## **By Hand Delivery and Electronic Filing**

The Honorable Barbara R. Kapnick  
New York Supreme Court, New York County  
60 Centre Street, Courtroom 208  
New York, New York 10007

***Re: In re the Application of The Bank of  
New York Mellon, Index No. 651786/2011***

Dear Justice Kapnick:

We represent Respondents Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd., and Triaxx Prime CDO 2007-1 (together "Triaxx"). We respond to the November 20, 2013 Reply closing argument by counsel for the Institutional Investors, which raised a legal argument for the first time. The argument was presented on page 23 of the Institutional Investors' slide presentation, entitled "Loan Modifications."

The Institutional Investors quoted a Summary Order, *Wells Fargo Bank N.A. v. Fin. Sec. Assur., Inc.*, 2012 WL 6028908 (2d Cir. 2012), as its sole legal authority to support their contention that prospectus supplements and other transactional documents should be considered when interpreting a pooling and servicing agreement ("PSA"). However, this unpublished opinion has no precedential weight. *See* Second Circuit Local Rule 32.1.1(a) ("Rulings by summary order do not have precedential effect,"); *242-44 E. 77th St., LLC v. Greater N.Y. Mut. Ins. Co.*, 31 A.D.3d 100, 106 (1st Dep't 2006) (refusing to follow "an unpublished opinion, the citation of which in the Ninth Circuit is prohibited"); *Conboy v. AT & T Corp.*, 241 F.3d 242, 256 n.13 (2d Cir. 2001) ("[B]ecause the opinion is an unpublished disposition, it is not binding even in the Ninth Circuit, let alone here").

Therefore, the Institutional Investors have cited *no* valid authority for the proposition that the Trustee may "conform" the terms of a PSA to a Prospectus Supplement without investor consent despite the terms of PSA Section 10.01 ("Notwithstanding the foregoing, no amendment that significantly changes the permitted activities of the trust...may be made without the consent of Certificateholders....").

**MILLER & WRUBEL P. C.**

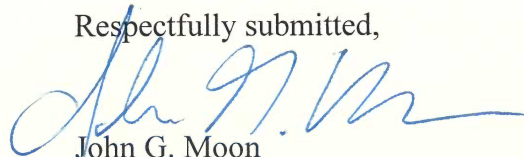
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Respectfully submitted,

A handwritten signature in blue ink, appearing to read "John G. Moon", with a long horizontal flourish extending to the right.

John G. Moon

cc: All counsel (*by e-mail*)