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

In the Matter of the Application of THE BANK OF NEW YORK MELLON, in its Capacity as Trustee or Indenture Trustee of 530 Countrywide Residential Mortgage-Backed Securitization Trusts, Petitioner, For Judicial Instructions under CPLR Article 77 on the Distribution of a Settlement Payment.	Index No. 150973/2016 IAS Part 39 Justice Scarpulla

TIG'S STATEMENT OF
GROUNDS FOR OBEJECTION TO PETITION

TIG Securitized Asset Master Fund LP ("TIG"), by and through its undersigned counsel, respectfully submits this Statement of Grounds for Objection (the "Objection"), to the Petition (the "Petition") filed by Bank of New York Mellon ("BNYM") in this proceeding.

On or about June 28, 2011, Petitioner Bank of New York Mellon ("BNY Mellon") entered into a Settlement Agreement with Bank of America Corporation, BAC Home Loan Servicing LP, (collectively "Bank of America") and Countrywide Financial Corporation and Countrywide Home Loans, Inc. (collectively, "Countrywide"), to resolve certain claims related to 530 residential mortgage-backed securities ("RMBS") trusts sponsored by Countrywide (the "Trusts"). BNY Mellon participated in the negotiation of the Settlement Agreement. Commencing immediately thereafter, BNY Mellon sponsored the Settlement Agreement throughout a hotly contested Article 77 proceeding that lasted more nearly four years in the trial court, and ultimately obtained court approval of the Settlement Agreement. That approval was affirmed by the Appellate Division in April 2015. The Settlement Agreement, among other

things, requires a specific mechanism for distribution of the "Allocable Share" of the settlement proceeds for each specific Trust among the Certificateholders for that Trust. TIG owns certificates issued by CWABS Asset-Backed Certificates Trust 2006-12 ("CWABS 2006-12"), one of the Trusts subject to the Settlement Agreement.

It now appears that at no point during the negotiation of the Settlement Agreement, or the years of litigation that followed, did BNY Mellon consider whether the distribution methodology set forth in the Settlement Agreement complied with the governing agreements for the Trusts. By BNY Mellon's own admission, it is only *now* – "in preparing for the distribution of the Allocable Shares" – that BNY Mellon has "observed" that the distribution methodology "results in certain contractual issues that affect the distribution of billions of dollars among Certificateholders." Petition [ECF No. 1] ¶ 21. The gross negligence – the mammoth incompetence – implicit in that admission is shocking.

In the Petition, BNY Mellon is now asking the Court to fix the problem BNY Mellon created for itself, at the expense of (i) *all Certificateholders*, who may be paying BNY Mellon's costs in this proceeding out of Trust cash flows and whose receipt of settlement proceeds is now delayed indefinitely during the pendency of this proceeding; and (ii) those Certificateholders that may receive less in settlement proceeds than is provided by the unambiguous terms of the Settlement Agreement, if the Court were to accept BNY Mellon's invitation to re-write the distribution provisions of the Settlement Agreement years after the fact. However, BNY Mellon acknowledges that the distribution provisions of the Settlement Agreement are clear. The time for BNY Mellon to have evaluated the consistency of those distribution provisions with the governing agreements was *before* it agreed to the settlement. Similarly, the time for BNY Mellon to have sought judicial instruction regarding the distribution provisions was prior to the

approval of the settlement, so that the Article 77 court could have considered the distribution provisions in connection with its overall evaluation of the settlement. Had BNY Mellon timely identified this issue to the original Article 77 court, it would have avoided the duplicative costs associated with this second Article 77 proceeding. In any event, in seeking and obtaining final court approval of the Settlement Agreement, BNY Mellon has committed to complying with its provisions – *all* of its provisions.[1]

Countless certificates have been traded (or held) since the Settlement Agreement was approved, and countless more since the Settlement Agreement was made public, based on the expectation that the settlement proceeds would be distributed *per the terms* of the Settlement Agreement. The Petition threatens to upend those settled expectations in order to immunize BNY Mellon from claims of certain Certificateholders that distribution of the settlement proceeds *in accordance with the terms to which BNY Mellon agreed* would violate the governing agreements. To the extent those claims have merit, they arise out of BNY Mellon's conduct in negotiating, agreeing to, and sponsoring approval of the Settlement Agreement, and it is BNY Mellon that should bear the cost and/or the liability, if any, for such conduct. The Court, sitting as a court of equity, should not shift the costs of BNY Mellon's own failures to other innocent Certificateholders who would be harmed if the Court were now to rewrite the distribution provisions of the Settlement Agreement. Moreover, if (as BNY Mellon argues) the terms of the governing agreements (at least with respect to CWABS 2006-12) do not expressly contradict the "order of operations" set forth in distribution provisions of the Settlement Agreement and there is

[1] Indeed, the Settlement Agreement only contemplates "modification" of the distribution provisions by the "Settlement Court" in the original Article 77 approval proceeding. *See* Settlement Agreement §§ 2(a)(v), 3(d)(v).

no consistent industry practice,[2] there is nothing inherently unfair or inequitable about applying the distribution provisions of the Settlement Agreement to CWABS 2006-12.

CONCLUSION

Accordingly, TIG respectfully objects to the Petition and requests that the Court issue an order directing BNY Mellon to distribute the settlement proceeds for CWABS 2006-12 in accordance with the distribution provisions of the Settlement Agreement.

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[2] *See* Petition [EFC No. 1] ¶¶ 21, 43; BNY Mellon Memorandum of Law in Support of Verified Petition Seeking Judicial Instructions, filed February 5, 2016 [ECF No. 10] at 5, 9-10.