

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

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THE BANK OF NEW YORK MELLON in its	:	Index No. 150973/2016
Capacity as Trustee or Indenture Trustee of 530	:	
Countrywide Residential Mortgage-Backed	:	Part 39
Securitization Trusts,	:	
	:	(Justice Scarpulla)
Petitioner,	:	
	:	
For Judicial Instructions under CPLR Article 77	:	
on the Distribution of a Settlement Payment.	:	
	:	
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**BLUE MOUNTAIN’S CORRECTED STATEMENT  
OF GROUNDS FOR OBJECTION TO PETITION**

Blue Mountain<sup>1</sup> submits this Statement of Grounds for Objection (the “Objection”), to the Verified Petition (the “Petition”) filed by Bank of New York Mellon (“BNYM”) in this proceeding to bring to the Court’s attention two trusts (CWALT 2007-OA3 and CWL 2005-IM3) that differ materially from other Covered Trusts in that the timing of when certificates are written up and when the calculation of the Overcollateralization Amount occurs have no bearing on how Subsequent Recoveries are distributed.<sup>2</sup>

BNYM states that it is seeking judicial instructions to address “how the Trustee should apply the ‘write up’ provisions of the Governing Agreements in respect of the Allocable Shares.” Petition ¶ 17. BNYM seeks instructions because the timing of the write up could affect distribution of Allocable Shares. BNYM is concerned that timing of any “write up” will effect

<sup>1</sup> “Blue Mountain” refers to Blue Mountain Credit Alternatives Master Fund L.P., BlueMountain Guadalupe Peak Fund L.P., BlueMountain Monteners Master Fund SCA SICAV-SIF, BlueMountain Kicking Horse Fund L.P., BlueMountain Logan Opportunities Master Fund L.P., BlueMountain Foinaven Master Fund L.P., and BlueMountain Credit Opportunities Master Fund I L.P., collectively.

<sup>2</sup> Terms not otherwise defined herein shall have the meaning ascribed to them in BNYM’s Petition.

whether principal distributions will flow to “to ‘junior’ or ‘subordinated’ Certificateholders.” *Id.* ¶ 23.

This conundrum is not present in CWL 2005-IM3 and CWALT 2007-OA3. First, in CWL 2005-IM3, the Governing Agreement provides that Subsequent Recoveries should not be distributed through the Excess Cashflow Waterfall, and instead should be included in the Principal Distribution Amount. Second, in CWALT 2007-OA3, while the Governing Agreement does not contain a separate Excess Cashflow Waterfall, the “Principal Distribution Amount” does not allow for inclusion of Subsequent Recoveries above the Target Overcollateralization Amount. Rather, such recoveries flow through the waterfall provided in Section 4.02 until exhausted.

The structural differences of CWL 2005-IM3 and CWALT 2007-OA3 are readily apparent when contrasted to CWL 2006-22, a Covered Trust that BNYM apparently submits suffers from purportedly ambiguous waterfall language. In CWL 2006-22 the definition of “Excess Cashflow” contains an adjustment for overcollateralization – defined as the Overcollateralization Reduction Amount – that is intended to ensure that Excess Cashflow is not distributed until the OC Target is met. As the table below shows, this adjustment is not made in the Excess Cashflow definition for CWL 2005-IM3.

CWL 2006-22	CWL 2005-IM3
<p>“Excess Cashflow: With respect to any Distribution Date the sum of (i) the amount remaining after the distribution of interest to Certificateholders for such Distribution Date pursuant to Section 4.04(a)(v)(b), (ii) the amount remaining after the distribution of principal to Certificateholders for such Distribution Date, pursuant to Section 4.04(b)(1)(B)(ii) or 4.04(b)(2)(D) and (iii) <b><i>the Overcollateralization Reduction Amount for such Distribution Date</i></b>”</p>	<p>Excess Cashflow: With respect to any Distribution Date the sum of (i) the amount remaining after the distribution of interest to Certificateholders for such Distribution Date pursuant to Section 4.04(a)(ii) and (ii) the amount remaining after the distribution of principal to Certificateholders for such Distribution Date pursuant to Section 4.04(d)(i)(B) or 4.04(d)(ii)(B).</p>

Further, the Overcollateralization Reduction Amount is excluded from the definition of the Principal Distribution Amount in CWL 2006-22. This is necessary to ensure that the Principal Distribution Amount does not include Subsequent Recoveries, which are instead included in what is defined as the “Principal Remittance Amount.”

As a result, when CWL 2005-IM3 and CWALT 2007-OA3 certificates are written up, and when the calculation of the Overcollateralization Amount occurs, have no bearing on how the Allocable Shares for those trusts are distributed. BNYM should therefore distribute the Allocable Share as it is required to do under the Governing Agreements without further delay.

Dated: New York, New York  
March 4, 2016

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