

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

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In the Matter of the Application of	:	Index No. _____/2016
	:	Mot. Seq. 001
THE BANK OF NEW YORK MELLON, in its	:	
Capacity as Trustee or Indenture Trustee of 530	:	<b>AFFIDAVIT</b>
Countrywide Residential Mortgage-Backed	:	<b>IN SUPPORT</b>
Securitization Trusts,	:	<b>OF PETITION AND</b>
	:	<b>PROPOSED ORDER</b>
Petitioner,	:	<b>TO SHOW CAUSE</b>
	:	
For Judicial Instructions under CPLR Article 77	:	
on the Distribution of a Settlement Payment.	:	

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STATE OF NEW YORK    )  
                                  : ss.:  
COUNTY OF NEW YORK )

MICHAEL O. WARE, being duly sworn, deposes and says:

1. I am an attorney admitted to the practice of law in the State of New York and a member of Mayer Brown LLP, attorneys for Petitioner The Bank of New York Mellon, in its capacity as trustee or indenture trustee (“Trustee”) of the 530 residential mortgage-backed securitization (“RMBS”) trusts identified in Exhibit A to the Petition (the “Covered Trusts”). I make this affidavit in support of the Verified Petition and in support of the Trustee’s application for entry of the proposed order to show cause (the “Proposed Order”).

**Background**

2. As detailed in the Verified Petition, this is a special proceeding pursuant to CPLR Article 77 to determine matters relating to express trusts, and in particular a matter

relating to the proper distribution of an \$8.5 billion settlement payment (“Settlement Payment”) that the Trustee expects to receive on or about February 10, 2016. *See* Pet. ¶ 1.

3. The purpose of this case is to resolve a contractual issue bearing directly upon the proper distribution of the Settlement Payment to investors in the Covered Trusts (collectively, “Certificateholders”). *Id.* ¶ 16.

4. Capitalized terms used but not defined in this Affidavit have the meanings ascribed to them in the Verified Petition or in the Settlement Agreement, which is attached to the Petition as Exhibit B.

#### **Escrow Arrangements**

5. This proceeding’s purpose – to obtain the Court’s directions on distribution before funds are remitted to Certificateholders – would be frustrated if the incoming cash were immediately routed to the Covered Trusts and paid to Certificateholders.

6. For this reason, the Proposed Order includes an interim direction that the Trustee enter into the “Proposed Escrow Agreement” annexed as Exhibit 1, with The Bank of New York Mellon (in its non-Trustee capacity, “BNYM”) appointed “Escrow Agent.”

7. The Proposed Order explicitly provides that the Settlement Payment be placed into escrow before it reaches the Certificate Accounts or Collection Accounts for the Covered Trusts. This provision is necessary because, under the Governing Agreements, funds reaching those accounts must (with exceptions not relevant here) be distributed to Certificateholders in a matter of days or weeks.

8. The Proposed Escrow Agreement is needed as an urgent interim measure but is subject to future direction by the Court concerning alternative means of handling the Settlement Payment during the pendency of this proceeding. Meanwhile, the Proposed

Escrow Agreement is of indefinite duration and if necessary can continue in place until the Court resolves the distribution issues presented by the Verified Petition.

9. The Proposed Order directs the Escrow Agent to use commercially reasonable efforts to keep the Settlement Payment invested and reinvested in the short-term United States Treasury money market mutual funds described in the Proposed Order. These funds are among the highest rated short-term U.S. Treasury-only money market funds and are among the funds that have the highest assets under management of such funds on BNYM's liquidity management platform. The liquidity of these money market mutual funds will facilitate closing the escrow at the conclusion of the case (or sooner should the Court direct alternative interim custody arrangements).

10. BNYM will receive no fees or interest or other monetary benefit under the Proposed Escrow Agreement. Any interest earned will be re-invested into such funds and shall inure to the benefit of Certificateholders; the Proposed Escrow Agreement provides a mechanism to allocate earnings proportionally among the Covered Trusts.

#### **Notice and Service**

11. The Trustee proposes a notice (the "Notice") to Certificateholders and any person claiming an interest in any of the Covered Trusts ("Interested Person" and, all such persons, collectively, "Interested Persons") in the form of Exhibit 2 hereto.

12. The Proposed Order requires, within seven (7) business days of the entry of the Proposed Order, (a) mailing by first class mail, to each Certificateholder whose name appears on the Certificate Registry for any of the Covered Trusts and to the general counsel of each monoline insurance company that insures any part of any of the Covered Trusts, a copy of the notice (the "Notice") in substantially the form submitted as Ware

Affidavit Exhibit 2, along with the Verified Petition, this Order, and all other papers filed contemporaneously with the Verified Petition (other than the compact disc containing electronic copies of the Governing Agreements); (b) transmission of the Notice electronically to The Depository Trust Company (“DTC”), which will post the Notice to Certificateholders in accordance with DTC’s established procedures; and (c) posting the Notice on the Trustee’s investor reporting website. This notice program is based on a program recently approved by Justice Ramos in another Article 77 proceeding concerning the distribution to RMBS investors of the proceeds of a settlement. *See In re Bank of New York Mellon (GE-WMC 2006-1)*, Index. No. 653558/2015 (Sup. Ct. N.Y. Cty. Oct. 27, 2015). The notice program is substantially more robust than the Governing Agreements themselves require: notice through DTC is the only form of notice provided for in the Governing Agreements for *all* Trustee-to-investor communications, in part because the Trustee has no way of knowing the identities of the beneficial owners of book-entry (*i.e.*, DTC-registered) certificates.

13. Due process does not require that every interested party actually receive direct notice from the Trustee. Due process requires only “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). For that reason, DTC notice alone – a less robust notice program than the one requested here – has been approved in similar cases. *See, e.g., In the Matter of the Trustships Created by Tropic CDO I Ltd.*, Case No. 1:13-cv-08428-NRB, ECF 1-1, at Ex. D, ¶ 2 (S.D.N.Y. Oct. 8, 2013).

### **Future Proceedings**

14. The Proposed Order proposes an early status conference to discuss a schedule for future proceedings in this case; the Trustee respectfully requests that that conference be held in late February 2016.

15. The Proposed Order also contemplates a Final Hearing in April 2016 on the merits of the issues raised by the Verified Petition, with merits submissions and reply submissions to be due in March. That structure comes from CPLR Article 4, which specifies procedures for all special proceedings. At the time of the proposed status conference, the Court and counsel will be in a better position to evaluate whether modifications to that structure are appropriate for the adjudication of the issues presented by the Verified Petition.

### **No Prior Request, Etc.**

16. No prior request for the relief sought herein has been made to this or any other Court. An *ex parte* order to show cause is sought to minimize disruption in the markets for securities of the Covered Trusts and to ensure that no Certificateholder has an unfair information advantage. This application is made in good faith and to promote the ends of justice.

WHEREFORE, Petitioner The Bank of New York Mellon, as Trustee,  
respectfully requests that the Court enter the Proposed Order and grant the Trustee such  
other, further and different relief as to the Court appears just and proper.



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MICHAEL O. WARE

Sworn to before me this  
5th day of February, 2016.



Notary Public

**THOMAS J. BRENNAN**  
Notary Public, State of New York  
No. 01BR5048229  
Qualified in Dutchess County  
Certificate Filed in New York County  
Commission Expires \_\_\_\_\_

8/21/17



THE BANK OF NEW YORK MELLON

**ESCROW AGREEMENT**

**between**

**THE BANK OF NEW YORK MELLON, in its capacity as trustee or indenture trustee of  
the 530 residential mortgage-backed securitization trusts listed in Schedule I hereto**

**and**

**THE BANK OF NEW YORK MELLON, as Escrow Agent**

**dated as of February [●], 2016**

ESCROW ACCOUNT NUMBER 513946

TITLE OF ACCOUNT BNYM as TTEE for the Covered Trusts

**ESCROW AGREEMENT** dated as of February [●], 2016 (the "Escrow Agreement"), by and among THE BANK OF NEW YORK MELLON, a New York banking corporation, as escrow agent (the "Escrow Agent"), and THE BANK OF NEW YORK MELLON, in its capacity as trustee or indenture trustee ("Trustee") of the 530 residential mortgage-backed securitization trusts listed in Schedule I hereto (the "Depositor").

PRELIMINARY STATEMENTS:

WHEREAS, the Depositor, in its capacity as Trustee of the 530 residential mortgage-backed securitization trusts listed in Schedule I hereto (the "Covered Trusts") has entered into that certain settlement agreement, dated June 28, 2011 (the "Settlement Agreement"), with Bank of America Corporation ("BAC"), BAC Home Loans Servicing, LP (together with BAC, "Bank of America"), Countrywide Financial Corporation ("CFC") and Countrywide Home Loans, Inc. (together with CFC, "Countrywide"), pursuant to which Bank of America and/or Countrywide are required to pay or cause to be paid, no later than February 10, 2016, an aggregate settlement payment of eight billion five hundred million dollars (\$8,500,000,000) (the "Settlement Payment") to the Covered Trusts in exchange for releases of certain trust claims;

WHEREAS, the portion of the Settlement Payment allocable to each Covered Trust (the "Allocable Share") of such Covered Trust) has been calculated by an allocation expert pursuant to the Settlement Agreement and is set out in the allocation expert's report attached as Exhibit A hereto;

WHEREAS, the Settlement Agreement requires the Trustee to distribute the Allocable Share of each Covered Trust to the certificateholders or noteholders in such Covered Trust in accordance with the provisions of the pooling and servicing agreement or indenture and accompanying sale and servicing agreement (such agreements, the "Governing Agreements") that govern such Covered Trust;

WHEREAS, on February [●], 2016, the Trustee filed a verified petition and commenced a special proceeding pursuant to CPLR § 7701 (the "A77 Proceeding") in the Supreme Court of the State of New York, County of New York (the "A77 Court") in which the Trustee is seeking judicial instructions from the A77 Court concerning contractual questions that bear directly upon the proper distribution of the Allocable Shares of the Covered Trusts to certificateholders or noteholders in the Covered Trusts;

WHEREAS, on February [●], 2016, the A77 Court entered the Order to Show Cause attached as Exhibit B hereto (the "Order to Show Cause") which, *inter alia*, (i) directs the Trustee to enter into this Escrow Agreement; (ii) appoints the Escrow Agent as Escrow Agent under this Escrow Agreement; and (iii), directs the Trustee to deposit the entire Settlement Payment (the "Escrow Amount") into escrow with the Escrow Agent until the Escrow End Date (as defined below);

WHEREAS, a copy of the Order to Show Cause has been delivered to the Escrow Agent; and

WHEREAS, the Escrow Agent is willing to accept the appointment by the A77 Court and, to that end, to act as the Escrow Agent hereunder and hold the Escrow Amount in escrow account no. 513946, titled: BNYM as TTEE for the Covered Trusts (the "Escrow Account") until the Escrow End Date, in each case, subject to and in accordance with the Order to Show Cause and all other orders concerning this Escrow Agreement that the A77 Court may enter from time to time;

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements contained herein, and intending to be legally bound hereby, the Trustee, acting pursuant to the direction and authorization of the A77 Court in the Order to Show Cause, and the Escrow Agent, acting pursuant to its appointment by the A77 Court in the Order to Show Cause, hereby agree as follows:

**I. INSTRUCTIONS:**

1. Escrow Property. The Depositor shall deliver the Escrow Amount to the Escrow Agent by internal transfer to the Escrow Account no later than one (1) Business Day (as defined below) following the later of the date hereof and the date on which the Depositor receives the Settlement Payment from Bank of America and/or Countrywide. The Escrow Amount, plus all interest, dividends and other distributions, payments and earnings



thereon and proceeds thereof (collectively the “Escrow Earnings”) received by the Escrow Agent, less any property and/or funds distributed or paid in accordance with this Escrow Agreement, are collectively referred to herein as “Escrow Property,” and shall be held by the Escrow Agent in escrow and disbursed in accordance with the terms and provisions of this Escrow Agreement, the Order to Show Cause and all other orders concerning this Escrow Agreement that the A77 Court may enter from time to time.

2. Investment and Reinvestment of Escrow Property. During the term of this Escrow Agreement, the Escrow Property shall be invested and reinvested by the Escrow Agent (i) pursuant to the investment and reinvestment instructions set out in the Order to Show Cause and (ii) as otherwise directed by the A77 Court from time to time; provided, however, that, in either case, the investments directed by the A77 Court are investments that the Escrow Agent is able to hold. The Escrow Agent shall have no liability for any loss sustained as a result of (x) any investment selected as indicated in the previous sentence, (y) the liquidation of any investment prior to its maturity or (z) the happenstance that the investments directed by the A77 Court are unavailable in sufficient quantities (or at all) or are investments the Escrow Agent is unable to hold. Any part of the Escrow Property that cannot be invested as directed by the A77 Court shall be held uninvested until otherwise instructed by the A77 Court.

3. Distribution of Escrow Property. Unless at any time during the pendency of the A77 Proceeding the A77 Court directs the Escrow Agent otherwise, the Escrow Agent shall hold and distribute the Escrow Property in the following manner:

(a) The Escrow Agent will hold the Escrow Property in the Escrow Account until five (5) Business Days following the date of an unstayed order in the A77 Proceeding that requires that the Escrow Property be released (the “Escrow End Date”).

(b) Unless an order in the A77 Proceeding provides otherwise, no later than one (1) Business Day following the Escrow End Date, the Escrow Agent will transfer the Escrow Property to the Depositor by an internal transfer of the entire Escrow Property to the Depositor’s Internal Operating Account and the Depositor will transfer the Escrow Property from the Internal Operating Account to the Covered Trusts by internal transfers, as follows:

(i) to the Distribution Account or Payment Account of each Covered Trust, as applicable, an amount equal to the Allocable Share of such Covered Trust; and

(ii) to the Distribution Account or Payment Account of each Covered Trust, an amount equal to (x) the Net Loss Percentage of such Covered Trust (as set out in Exhibit A hereto) *multiplied* by (y) the aggregate amount of Escrow Earnings in the Escrow Account.

4. Authorized Persons. The Depositor shall, on the date of this Escrow Agreement, deliver to the Escrow Agent a certificate in the form of Schedule II hereto as to the incumbency and specimen signature of at least two (2) officers or other representatives of the Depositor authorized to act for and give and receive notices, requests and instructions on behalf of the Depositor in connection with this Escrow Agreement (each such officer or other representative, an “Authorized Person”). From time to time, the Depositor may, by delivering to the Escrow Agent a revised certificate in the form of Schedule II, change the information previously given, but the Escrow Agent shall be entitled to rely conclusively on the then-current schedule until receipt of a superseding schedule.

5. Facsimile/Email Instructions. The Depositor hereby provides to the Escrow Agent and agrees with and accepts the authorizations, limitations of liability, indemnities, security procedure and other provisions set forth on Schedule III hereto in connection with the Escrow Agent’s reliance upon and compliance with instructions and directions sent by the Depositor via email, facsimile and other similar unsecured electronic methods.

6. Addresses. Notices, instructions and other communications shall be sent to (a) the Escrow Agent at The Bank of New York Mellon, Corporate Trust Administration, 101 Barclay Street, New York, New York 10286, Attn.: Escrow Unit—Countrywide Settlement Agreement, email: [matthew.louis@bnymellon.com](mailto:matthew.louis@bnymellon.com); and (b) the Depositor at The Bank of New York Mellon, Corporate Trust Administration, 101 Barclay Street, New York,

New York 10286, Attn.: Trust Default Services—Countrywide Settlement Agreement, email: [Loretta.lundberg@bnymellon.com](mailto:Loretta.lundberg@bnymellon.com) (except that statements under Section 6 of the Terms and Conditions should be sent to Steven Chrysanthis, Vice President, Mortgage Backed Securities Team, Corporate Trust, 7 West 101 Barclay Street, New York, NY 10286).

7. Termination. This Escrow Agreement shall terminate upon the distribution or disbursement by the Escrow Agent of all Escrow Property in accordance with the terms hereof.

8. Compensation. The Escrow Agent shall not be entitled to any fees or other compensation for the Escrow Agent's services hereunder; provided, however, that the Escrow Agent shall be entitled to reimburse itself out of Escrow Earnings in the Escrow Account for such reasonable out-of-pocket expenses, disbursements, charges, advances and other amounts incurred by it in connection with its services hereunder, if any, that the A77 Court may approve from time to time.

## II. TERMS AND CONDITIONS:

1. Escrow Agent's Duties. The duties, responsibilities and obligations of the Escrow Agent shall be limited to those expressly set forth herein, and no duties, responsibilities or obligations shall be inferred or implied. The Escrow Agent shall not be subject to, nor required to comply with, nor required to inquire as to the performance by the Depositor of any obligation under, the Governing Agreements, the Settlement Agreement or any other agreement to which the Depositor is a party, even though reference thereto may be made herein, or to comply with any direction or instruction (other than those contained herein or delivered in accordance with this Escrow Agreement) from the Depositor. The Escrow Agent shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

2. Agreement for Benefit of Parties. This Agreement is for the exclusive benefit of the parties hereto and their respective successors hereunder, and shall not be deemed to give, either express or implied, any legal or equitable right, remedy or claim to any other entity or person whatsoever.

3. Escrow Agent's Reliance on Orders, Etc. If at any time the Escrow Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects Escrow Property (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Escrow Property), the Escrow Agent is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if the Escrow Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Escrow Agent shall not be liable to the Depositor, any of the Covered Trusts, any certificateholder or noteholder in the Covered Trusts or any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

### 4. The Escrow Agent.

(a) The Escrow Agent shall not be liable for any action taken or omitted or for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder in the absence of gross negligence or willful misconduct on its part. In no event shall the Escrow Agent be liable (i) for acting in accordance with or relying upon (and shall be fully protected in relying upon) any instruction, notice, demand, certificate or document from the Depositor, any entity acting on behalf of the Depositor or any other person or entity that it reasonably believes to be genuine, (ii) for any indirect, consequential, punitive or special damages, even if advised of the possibility thereof, (iii) for the acts or omissions of its nominees, correspondents, designees, subagents or subcustodians selected by it in good faith, or (iv) for an amount in excess of the value of the Escrow Property.

(b) The Escrow Agent may consult with legal counsel as to any matter relating to this Escrow Agreement, and the Escrow Agent shall not incur any liability in acting in good faith in accordance with any advice from such counsel.

(c) The Escrow Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Escrow Agent (including, but not limited to, any act or provision of any present or future law or regulation or governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility).

5. Collections. Unless otherwise specifically set forth herein, the Escrow Agent shall proceed as soon as practicable to collect any checks or other collection items at any time deposited hereunder. All such collections shall be subject to the Escrow Agent's usual collection practices or terms regarding items received by the Escrow Agent for deposit or collection. The Escrow Agent shall not be required, or have any duty, to notify anyone of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any check, note or security deposited hereunder or to exercise any right or privilege that may be afforded to the holder of any such security.

6. Statements. The Escrow Agent shall provide to the Depositor statements (not less frequently than monthly) reflecting activity in the Escrow Account for the preceding period. No statement need be provided for periods in which no Escrow Account activity occurred. Each such statement shall be deemed to be correct and final upon receipt thereof by the Depositor unless the Escrow Agent is notified in writing to the contrary within thirty (30) Business Days of the date of such statement. A "Business Day" shall mean any day on which the Escrow Agent is open for business. The Depositor shall make all statements received from the Escrow Agent hereunder available on (i) its Global Corporate Trust Investor Reporting website and (ii) the Settlement Agreement website (<http://www.cwrmbssettlement.com/index.php>) within five (5) Business Days of receipt of such statement.

7. Limitation of Escrow Agent's Responsibility. The Escrow Agent shall not be responsible in any respect for the form, execution, validity, value or genuineness of documents or securities deposited hereunder, or for any description therein, or for the identity, authority or rights of persons executing or delivering or purporting to execute or deliver any such document, security or endorsement.

8. Notices. Notices, instructions or other communications shall be in writing and shall be given to the address set forth in the "Addresses" provision herein (or to such other address as may be substituted therefor by written notification to the other party). Notices to the Escrow Agent shall be deemed to be given when actually received by the Escrow Agent's escrow unit. The Escrow Agent is authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by the Depositor or by a person or persons authorized by the Depositor, including persons identified on Authorized Persons schedules delivered pursuant to Section 4 of the Instructions. Whenever under the terms hereof the time for giving a notice or performing an act falls on a Saturday, Sunday or banking holiday, such time shall be extended to the next day on which the Escrow Agent is open for business.

9. Indemnity. The Escrow Agent shall be entitled to reimburse and indemnify itself out of Escrow Earnings in the Escrow Account and hold itself and its affiliates, and its and such affiliates' respective directors, officers, employees, agents, successors and assigns, harmless out of Escrow Earnings in the Escrow Account from and against any and all claims, losses, liabilities, costs, disbursements, damages or expenses (including reasonable attorneys' fees and expenses and court costs) (collectively, "Losses") arising from or in connection with or related to this Escrow Agreement or being the Escrow Agent hereunder (including but not limited to Losses incurred by the Escrow Agent in connection with its successful defense, in whole or in part, of any claim of gross negligence or willful misconduct on its part) if, and only if, the A77 Court approves such Losses for reimbursement and indemnification hereunder; provided, however, that nothing contained herein shall entitle the Escrow Agent to be indemnified for Losses caused by its gross negligence or willful misconduct.

10. Removal and Resignation of Escrow Agent; Successor Escrow Agent.

(a) Subject to a prior direction or authorization from the A77 Court, the Depositor may remove the Escrow Agent at any time by giving to the Escrow Agent forty-five (45) calendar days' prior notice in writing signed by the Depositor. The Escrow Agent may resign at any time by giving forty-five (45) calendar days' prior written notice thereof.

(b) Within ten (10) calendar days after giving the foregoing notice of removal to the Escrow Agent or receiving the foregoing notice of resignation from the Escrow Agent, the Depositor shall select a successor Escrow Agent and seek approval thereof from the A77 Court. If the A77 Court does not approve the selected successor Escrow Agent, the Depositor shall select a different successor Escrow Agent and seek approval thereof from the A77 Court. The Depositor shall repeat this process until the A77 Court approves a selected successor Escrow Agent and upon such approval appoint such successor Escrow Agent as successor Escrow Agent hereunder. If a successor Escrow Agent has not been appointed within forty-five (45) days after the removal or resignation of the Escrow Agent, the Escrow Agent may, in its sole discretion, deliver the Escrow Property to the Depositor at the address provided herein or may apply to the A77 Court for the appointment of a successor Escrow Agent or for other appropriate relief, and thereafter be relieved of all further duties and obligations as Escrow Agent hereunder. The costs and expenses incurred by the Escrow Agent in connection with such proceeding shall be borne by the Escrow Agent unless the A77 Court approves payment of some or all of such costs and expenses (including reasonable attorneys' fees and expenses) from Escrow Earnings in the Escrow Account (the "Approved Costs and Expenses"), in which case the Escrow Agent shall pay itself the Approved Costs and Expenses from Escrow Earnings in the Escrow Account.

(c) Upon receipt of the identity of the successor Escrow Agent, the Escrow Agent shall deliver the Escrow Property then held hereunder to the successor Escrow Agent, less the amount of Approved Costs and Expenses, if any, owed to the Escrow Agent.

(d) Upon delivery of the Escrow Property to the Depositor or, in accordance with the instructions of the A77 Court pursuant to subclause (c) above, to a successor Escrow Agent, the Escrow Agent shall have no further duties, responsibilities or obligations hereunder.

11. Escrow Agent's Obligations in the Event of Ambiguities, Conflicting Claims, Etc.

(a) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Escrow Agent hereunder, the Escrow Agent may, in its sole discretion, refrain from taking any action other than to retain possession of the Escrow Property, unless and until the Escrow Agent receives written instructions, signed by the Depositor, which eliminates such ambiguity or uncertainty.

(b) In the event of any dispute between or conflicting claims by or among any person or entity with respect to any Escrow Property, the Escrow Agent shall be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to such Escrow Property so long as such dispute or conflict shall continue, and the Escrow Agent shall not be or become liable in any way to the Depositor for failure or refusal to comply with such conflicting claims, demands or instructions. The Escrow Agent shall be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in a writing satisfactory to the Escrow Agent, or (ii) the Escrow Agent shall have received security or an indemnity satisfactory to it sufficient to hold it harmless from and against any and all Losses which it may incur by reason of so acting. The Escrow Agent may, in addition, elect, in its sole discretion, to commence an interpleader action or seek other judicial relief or orders as it may deem, in its sole discretion, necessary. The costs and expenses incurred by the Escrow Agent in connection with such proceeding shall be borne by the Escrow Agent unless the A77 Court approves payment of some or all of such costs and expenses (including reasonable attorneys' fees and expenses) from Escrow Earnings in the Escrow Account (the "Approved Costs and Expenses") in which case the Escrow Agent shall pay itself the Approved Costs and Expenses from Escrow Earnings in the Escrow Account.

12. Governing Law; Jurisdiction; Waiver of Right to Trial by Jury. This Escrow Agreement shall be interpreted, construed, enforced and administered in accordance with the internal substantive laws (and not the choice of law rules) of the State of New York. The Depositor hereby submits to the personal jurisdiction of and agrees that all proceedings relating hereto shall be brought in courts located within the City and State of New York

or elsewhere as the Escrow Agent may select. The Depositor hereby waives the right to trial by jury and to assert counterclaims in any such proceedings. To the extent that in any jurisdiction the Depositor may be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (whether before or after judgment) or other legal process, the Depositor hereby irrevocably agrees not to claim, and hereby waives, such immunity. The Depositor waives personal service of process and consents to service of process by certified or registered mail, return receipt requested, directed to it at the address last specified for notices hereunder, and such service shall be deemed completed ten (10) calendar days after the same is so mailed.

13. Amendments, Etc. Except as otherwise permitted herein, this Escrow Agreement may be modified only by a written amendment signed by all the parties hereto and approved by the A77 Court, and no waiver of any provision hereof shall be effective unless expressed in a writing signed by the party to be charged and approved by the A77 Court.

14. Remedies Cumulative. The rights and remedies conferred upon the parties hereto shall be cumulative, and the exercise or waiver of any such right or remedy shall not preclude or inhibit the exercise of any additional rights or remedies. The waiver of any right or remedy hereunder shall not preclude the subsequent exercise of such right or remedy.

15. Representations and Warranties. The Depositor represents and warrants (a) that this Escrow Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other debtor relief laws and that certain equitable remedies may not be available regardless of whether enforcement is sought in equity or at law, and (b) that the execution, delivery and performance of this Escrow Agreement by it do not and will not violate any applicable law or regulation.

16. Illegality, Etc. The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity, legality or enforceability of any other provision; and if any provision is held to be unenforceable as a matter of law, the other provisions shall not be affected thereby and shall remain in full force and effect.

17. Entire Agreement. This Agreement shall constitute the entire agreement of the parties with respect to the subject matter thereof and supersedes all prior oral or written agreements in regard thereto.

18. Survival of Certain Provisions. Section 8 of the Instructions and Sections 8-9, 12 and 21-22 of the Terms and Conditions of this Escrow Agreement shall survive termination of this Escrow Agreement and/or the resignation or removal of the Escrow Agent.

19. Headings. The headings contained in this Escrow Agreement are for convenience of reference only and shall have no effect on the interpretation or operation hereof.

20. Counterparts. This Escrow Agreement may be executed by each of the parties hereto in any number of counterparts, each of which counterpart, when so executed and delivered, shall be deemed to be an original, and all such counterparts shall together constitute one and the same agreement.

21. Certain Tax Matters. The Escrow Agent does not have any interest in the Escrow Property but is serving as escrow holder only, having only possession thereof. The Escrow Agent shall pay from Escrow Earnings in the Escrow Account, or reimburse itself from Escrow Earnings in the Escrow Account for, any transfer taxes or other taxes relating to the Escrowed Property incurred in connection herewith and shall indemnify and hold itself harmless from Escrow Earnings in the Escrow Account for any amounts that it is obligated to pay in the way of such taxes. Any payments of income from this Escrow Account shall be subject to withholding regulations then in force with respect to United States taxes. The parties hereto will provide the Escrow Agent with appropriate W-9 forms for tax I.D., number certifications, or W-8 forms for nonresident alien certifications, and will inform the Escrow Agent as to the proper allocation of income in respect of the Escrow Property for annual and periodic tax and other reporting purposes. It is understood that the Escrow Agent shall be responsible for income reporting only with respect to income earned on investment of funds that are a part of the Escrow Property and is not responsible for any

other reporting.

22. Patriot Act Compliance, Etc. In order to comply with laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering and the Customer Identification Program (“CIP”) requirements under the USA PATRIOT Act and its implementing regulations, pursuant to which the Escrow Agent must obtain, verify and record information that allows the Escrow Agent to identify customers (“Applicable Law”), the Escrow Agent is required to obtain, verify and record certain information relating to individuals and entities that maintain a business relationship with the Escrow Agent. Accordingly, the Depositor agrees to provide to the Escrow Agent upon its request from time to time such identifying information and documentation as may be available for the Depositor in order to enable the Escrow Agent to comply with Applicable Law, including, but not limited to, information as to name, physical address, tax identification number and other information that will help the Escrow Agent to identify and verify the Depositor, such as organizational documents, certificates of good standing, licenses to do business or other pertinent identifying information. The Depositor understands and agrees that the Escrow Agent cannot open the Escrow Account unless and until the Escrow Agent verifies the identity of the Depositor in accordance with its CIP.

23. Shareholder Communication Act, Etc. With respect to securities issued in the United States, the Shareholders Communications Act of 1985 (the “Act”) requires Escrow Agent to disclose to the issuers, upon their request, the name, address and securities position of its Depositor who is (a) the “beneficial owner” (as defined in the Act) of the issuer’s securities, if the beneficial owner does not object to such disclosure, or (b) acting as a “respondent bank” (as defined in the Act) with respect to the securities. (Under the Act, “respondent banks” do not have the option of objecting to such disclosure upon the issuers’ request.) The Act defines a “beneficial owner” as any person who has, or shares, the power to vote a security (pursuant to an agreement or otherwise), or who directs the voting of a security. The Act defines a “respondent bank” as any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with a bank, such as Escrow Agent. Under the Act, Depositor is either the “beneficial owner” or a “respondent bank.”

- Depositor is the “beneficial owner,” as defined in the Act, of the securities to be held by Escrow Agent hereunder.
- Depositor is not the beneficial owner of the securities to be held by Escrow Agent, but is acting as a “respondent bank,” as defined in the Act, with respect to the securities to be held by Escrow Agent hereunder.

IF NO BOX IS CHECKED, ESCROW AGENT SHALL ASSUME THAT DEPOSITOR IS THE BENEFICIAL OWNER OF THE SECURITIES.

For beneficial owners of the securities only:

Depositor objects /  Depositor does not object to the disclosure of its name, address and securities position to any issuer that requests such information pursuant to the Act for the specific purpose of direct communications between such issuer and Depositor.

IF NO BOX IS CHECKED, ESCROW AGENT SHALL RELEASE SUCH INFORMATION UNTIL IT RECEIVES A CONTRARY WRITTEN INSTRUCTION FROM DEPOSITOR.

With respect to securities issued outside of the United States, information shall be released to issuers only if required by law or regulation of the particular country in which the securities are located.

The Depositor agrees to disseminate in a timely manner any proxies or requests for voting instructions, other proxy soliciting material, information statements, and/or annual reports that it receives to any other beneficial owners.

24. Information Sharing. The Bank of New York Mellon Corporation is a global financial organization that provides services to clients through its affiliates and subsidiaries in multiple jurisdictions (the

“BNY Mellon Group”). The BNY Mellon Group may centralize functions including audit, accounting, risk, legal, compliance, sales, administration, product communication, relationship management, storage, compilation and analysis of customer-related data, and other functions (the “Centralized Functions”) in one or more affiliates, subsidiaries and third-party service providers. Depositor consents to the disclosure of and authorizes BNY Mellon to disclose information regarding Depositor to the BNY Mellon Group and to its third-party service providers who are subject to confidentiality obligations with respect to such information, in connection with the Centralized Functions. In addition, the BNY Mellon Group may aggregate Depositor’s data with other data collected and/or calculated by the BNY Mellon Group, and the BNY Mellon Group will own all such aggregated data, provided that the BNY Mellon Group shall not distribute the aggregated data in a format that identifies Depositor, any of the Covered Trusts or Depositor’s data with Depositor. In addition, BNY Mellon may store the names and business addresses of Depositor’s employees on the systems or in the records of the BNY Mellon Group or its service providers for purposes of the Centralized Functions, and Depositor consents and is authorized to consent to such storage and confirms that the disclosure to and storage by the BNY Mellon Group of such information does not violate any relevant data protection legislation.

25. Successors and Assigns of Escrow Agent. Any corporation or other company into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation or other company resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any corporation or other company succeeding to the business of the Escrow Agent shall be the successor of the Escrow Agent hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto, except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

**[Remainder of page intentionally left blank]**

IN WITNESS WHEREOF, each of the parties has caused this Escrow Agreement to be executed by a duly authorized officer as of the day and year first written above.

**THE BANK OF NEW YORK MELLON**, in its capacity as trustee or Indenture trustee of the 530 residential mortgage-backed securitization trusts listed in Schedule I hereto

By: \_\_\_\_\_  
Name:  
Title:

**THE BANK OF NEW YORK MELLON**, as Escrow Agent

By: \_\_\_\_\_  
Name:  
Title:



**Schedule I**

List of Covered Trusts

[Attached]

**Schedule II**

Authorized Officers of Depositor

Name	Signature	Phone Number
<u>Loretta Lundberg</u>	_____	<u>212.815.5373</u>
<u>Gerard Facendola</u>	_____	<u>212.815.2695</u>
<u>Steven Chrysanthis</u>	_____	<u>212.815.8318</u>

## Schedule III

### ELECTRONIC METHODS AUTHORIZATION, LIMITATION OF LIABILITY AND INDEMNITY

**Interested Party Authorization, Limitation of Liability and Indemnity.** Depositor hereby authorizes the Escrow Agent and its affiliates (the “Bank”) to rely upon and comply with instructions and directions sent by it via email, facsimile and other similar unsecured electronic methods (but excluding on-line communications systems covered by a separate agreement (such as the Bank’s Inform or CASH-Register Plus system) (“On-Line Communications Systems”)) (“Electronic Methods”) by persons believed by the Bank to be authorized to give instructions and directions on behalf of Depositor. Except as set forth below with respect to funds transfers, the Bank shall have no duty or obligation to verify or confirm that the person who sent such instructions or directions is, in fact, a person authorized to give instructions or directions on behalf of Depositor (other than to verify that the signature on a facsimile is the signature of a person authorized to give instructions and directions on behalf of Depositor); and the Bank shall have no liability for any losses, liabilities, costs or expenses incurred or sustained by Depositor as a result of such reliance upon or compliance with such instructions or directions. Depositor agrees to assume all risks arising out of the use of Electronic Methods to submit instructions and directions to the Bank, including without limitation the risk of the Bank acting on unauthorized instructions, and the risk of interception and misuse by third parties.

**Funds Transfer Security Procedures.** With respect to any “funds transfer,” as defined in Article 4-A of the Uniform Commercial Code, the following security procedure will apply: Depositor’s payment instruction is to include the name and (in the case of a facsimile) signature of the person initiating the funds transfer request. If the name is listed as an Authorized Person on a certificate in the form of Schedule II hereto delivered pursuant to the Escrow Agreement, the Bank will confirm the instructions by telephone call to any person listed as an Authorized Person, who may be the same person who initiated the instruction. When calling back, the Bank will request from the Depositor’s staff member his or her name. If the name is listed in the Escrow Agent’s records as an Authorized Person, the Bank will confirm the instructions with respect to amount, names and numbers of accounts to be charged or credited and other relevant reference information. Depositor acknowledges that the Bank has offered Depositor other security procedures that are more secure and are commercially reasonable for Depositor, and that Depositor has nonetheless chosen the procedures described in this paragraph. Depositor agrees to be bound by any payment order issued in its name, whether or not authorized, that is accepted by the Bank in accordance with the above procedures. When instructed to credit or pay a party by both name and a unique numeric or alphanumeric identifier (e.g., ABA number or account number), the Bank, and any other bank participating in the funds transfer, may rely solely on the unique identifier, even if it identifies a party different than the party named. This applies to beneficiaries as well as any intermediary bank. Depositor agrees to be bound by the rules of any funds transfer network used in connection with any payment order accepted by the Bank hereunder. The Escrow Agent shall not be obliged to make any payment or otherwise to act on any instruction notified to it under this Escrow Agreement if it is unable to validate the authenticity of the request by telephoning an Authorized Person who has not executed the relevant request or instruction of the Depositor. Payment or otherwise to act on any instruction by an Authorized Person of Depositor will be made by the Escrow Agent within three (3) Business Days (as defined in Section 6 of Terms and Conditions) after Escrow Agent’s verification of instructions as set forth above.

**Authorization.** This authorization shall remain in full force and effect until the earlier of termination of the Escrow Agreement or the date it is canceled, revoked or amended by written notice received by the Escrow Agent; and replaces and supersedes any previous authorization from Depositor to the Bank relating to the giving of instructions by facsimile, email or other similar Electronic Methods (but excluding On-Line Communications Systems) in relation to the Escrow Agreement, and is in addition to all other authorizations. Notwithstanding any revocation, cancellation or amendment of this authorization, any action taken by the Bank pursuant to this authorization prior to the Bank’s actual receipt and acknowledgement of a notice of revocation, cancellation or amendment shall not be affected by such notice.

**Indemnity.** The Bank shall be entitled to indemnify itself and hold itself harmless from Escrow Earnings in the Escrow Account against any and all claims, losses, damages liabilities, judgments, costs and expenses (including reasonable attorneys’ fees) (collectively, “Losses”) incurred or sustained by the Bank as a result of or in connection with the Bank’s reliance upon and compliance with instructions or directions given by the Depositor by

Electronic Methods if, and only if, the A77 Court approves such Losses for indemnification hereunder, provided, however, that such Losses have not arisen from the gross negligence or willful misconduct of the Bank, it being understood that the failure of the Bank to verify or confirm that the person giving the instructions or directions is, in fact, an Authorized Person does not constitute gross negligence or willful misconduct.

**Representation.** Depositor hereby represents and warrants to the Bank that this authorization is properly given and has been duly approved by a resolution of its Board of Directors.

**Exhibit A**

Covered Trusts' Allocable Shares

[Attached]

**Exhibit B**

Order to Show Cause

[Attached]



BNY MELLON

**NOTICE OF A JUDICIAL INSTRUCTION PROCEEDING  
CONCERNING THE PROPER DISTRIBUTION TO CERTIFICATEHOLDERS  
IN THE 530 SETTLEMENT TRUSTS OF THE \$8.5 BILLION SETTLEMENT  
PAYMENT RELATING TO THE COUNTRYWIDE SETTLEMENT AGREEMENT**

NOTICE IS HEREBY GIVEN TO THE HOLDERS AND BENEFICIAL OWNERS (“CERTIFICATEHOLDERS”) OF THE CERTIFICATES AND NOTES (THE “SUBJECT SECURITIES”) ISSUED BY THE FIVE HUNDRED AND THIRTY (530) COUNTRYWIDE MORTGAGE-BACKED SECURITIZATION TRUSTS LISTED IN SCHEDULE I HERETO (THE “COVERED TRUSTS”) AND OTHER PERSONS POTENTIALLY INTERESTED IN THE COVERED TRUSTS. THIS NOTICE (THE “NOTICE”) CONTAINS IMPORTANT INFORMATION CONCERNING THE IMPLEMENTATION OF THE SETTLEMENT AGREEMENT, DATED JUNE 28, 2011 (THE “COUNTRYWIDE SETTLEMENT AGREEMENT”), BETWEEN THE BANK OF NEW YORK MELLON, AS TRUSTEE OR INDENTURE TRUSTEE FOR THE COVERED TRUSTS ON THE ONE HAND AND BANK OF AMERICA CORPORATION, COUNTRYWIDE HOME LOANS, INC., COUNTRYWIDE FINANCIAL CORPORATION, AND BANK OF AMERICA, N.A. (AS SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP) ON THE OTHER.

**TO DEPOSITORIES, NOMINEES, CUSTODIANS AND OTHER INTERMEDIARIES:** THIS NOTICE CONTAINS IMPORTANT INFORMATION THAT IS OF INTEREST TO BENEFICIAL OWNERS OF THE SUBJECT SECURITIES. ALL DEPOSITORIES, NOMINEES, CUSTODIANS, AND OTHER INTERMEDIARIES RECEIVING THIS NOTICE ARE REQUESTED TO EXPEDITE RETRANSMITTAL TO THE BENEFICIAL OWNERS OF SUCH SECURITIES OR OTHER SUCH REPRESENTATIVES WHO ARE AUTHORIZED TO TAKE ACTION IMMEDIATELY. YOUR FAILURE TO ACT PROMPTLY IN COMPLIANCE WITH THIS PARAGRAPH MAY IMPAIR THE ABILITY OF THE BENEFICIAL OWNERS ON WHOSE BEHALF YOU ACT TO TAKE APPROPRIATE ACTIONS CONCERNING THE MATTERS DESCRIBED IN THIS NOTICE.

**TO CERTIFICATEHOLDERS AND OTHER NOTICE RECIPIENTS:** YOU SHOULD READ THIS NOTICE AND THE MATERIALS ATTACHED HERETO AND/OR REFERENCED HEREIN THOROUGHLY AND CAREFULLY. YOUR RIGHTS MAY BE AFFECTED. ANY INSTRUCTIONS GIVEN BY THE COURT AS PART OF THE JUDICIAL INSTRUCTION PROCEEDING DESCRIBED IN THIS NOTICE COULD MATERIALLY AFFECT YOUR INTERESTS. YOU SHOULD DISCUSS THE INFORMATION HEREIN WITH YOUR ATTORNEY AND/OR OTHER ADVISORS. IF YOU DO NOT HAVE AN ATTORNEY OR ADVISOR, YOU MAY WISH TO ENGAGE ONE. YOU SHOULD NOT RELY ON THIS NOTICE AS YOUR SOLE SOURCE OF INFORMATION.

February [●], 2016

This Notice is given by The Bank of New York Mellon, as trustee or indenture trustee (the “Trustee”) under the Pooling and Servicing Agreements and Indentures and related Sales and Servicing Agreements (collectively, the “Governing Agreements”) governing the Covered Trusts. Capitalized terms used but not defined in this Notice shall have the meanings ascribed to them in the Governing Agreements or the Countrywide Settlement Agreement, as applicable.

## **I. Background**

Pursuant to Subparagraph 3(a) of the Countrywide Settlement Agreement<sup>1</sup>, Bank of America and/or Countrywide are required to pay or cause to be paid, no later than February 10, 2016<sup>2</sup>, an aggregate settlement payment of eight billion five hundred million dollars (\$8,500,000,000) (the “Settlement Payment”) to the Covered Trusts. It is the Trustee’s understanding that Bank of America and/or Countrywide intend to wire such payment on or about, but no later than, February 10, 2016.

The Countrywide Settlement Agreement requires the Trustee to distribute the Allocable Share of each Covered Trust<sup>3</sup> to the certificateholders or noteholders in such Covered Trust in accordance with the provisions of the Governing Agreements.

In preparing for the distribution of the Allocable Shares to Certificateholders, the Trustee has observed that due to the unusually large amounts of Subsequent Recoveries resulting from the Allocable Shares, the requirement of the Settlement Agreement of “paying first, and writing-up second”—which has been the Trustee’s approach with regard to regular Subsequent Recoveries—raises certain contractual issues that affect the distribution of billions of dollars among Certificateholders. These contractual questions are subject to competing interpretations and their resolution bears directly upon the proper distribution of the Allocable Shares to Certificateholders. While the Trustee has no economic stake or interest in the ultimate resolution of these contractual questions, resolution of these contractual questions is needed before the Allocable Shares of the Covered Trusts can be distributed to Certificateholders.

## **II. Notice of a Judicial Instruction Proceeding**

The Trustee hereby gives notice that, on the date hereof, the Trustee filed the Verified Petition attached as Exhibit A hereto (the “Petition”) and commenced a judicial instruction proceeding pursuant to CPLR § 7701, captioned *In the matter of the application of The Bank of New York Mellon*, (Index No. [●]) (the “Article 77 Proceeding”), in the Supreme Court of the

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<sup>1</sup> The Countrywide Settlement Agreement is available at: <http://www.cwrmbssettlement.com/docs/Exh%20B.pdf>.

<sup>2</sup> The “Approval Date” of the Countrywide Settlement Agreement occurred on October 13, 2015 (see <http://www.cwrmbssettlement.com/docs/10-13-15NoticeConcerningOccurrenceofApprovalDate.pdf>). February 10, 2016 is the 120th day following the “Approval Date.”

<sup>3</sup> For a list of the Allocable Shares of the Covered Trusts (or, if applicable, their Loan Groups) see: [http://www.cwrmbssettlement.com/docs/1.11.16\\_Informational\\_Note\\_Concerning\\_Expert\\_Allocation\\_Report.pdf](http://www.cwrmbssettlement.com/docs/1.11.16_Informational_Note_Concerning_Expert_Allocation_Report.pdf).



State of New York, County of New York (the “Court”). In the Article 77 Proceeding, the Trustee is seeking, *inter alia*, Court instruction concerning the contractual questions set out in the Petition. The contractual questions described in the Petition relate to the distribution provisions of the Governing Agreements. The resolution of these contractual questions bears directly upon the proper distribution of the Allocable Shares to Certificateholders and will dictate how – and to whom – the Allocable Shares of the Covered Trusts will be distributed.

The Court’s disposition of the Article 77 Proceeding will affect the rights and interests of certain Certificateholders in the Covered Trusts and their successors-in-interest and assigns. All Certificateholders in the Covered Trusts will be bound by the Article 77 Proceeding whether or not they appeared or made any submission in the matter.

The Petition, any submissions and responses thereto, any orders entered by the Court in the Article 77 Proceeding, and any other documents filed with the Court will be available at the Court’s website: <http://iapps.courts.state.ny.us/iscroll/>.

**YOU ARE URGED TO REVIEW THE PETITION CAREFULLY AND TO CONSULT WITH YOUR ADVISORS.**

### **III. Notice of Order to Show Cause and Approval of Escrow Agreement**

The Trustee hereby gives notice that, on the date hereof, the Court entered the Order to Show Cause attached as Exhibit B hereto (the “Order to Show Cause”) which provides, *inter alia*, that:

- a preliminary status conference with counsel (the “Preliminary Status Conference”) will be held on [●][●], 2016 at [●] [A.M./P.M.] at IAS Part [●] in Room [●] of the Supreme Court of the State of New York, County of New York, 60 Centre Street, New York, New York 10007. No Interested Person (as defined below) will be heard at the Preliminary Status Conference unless such person’s counsel has filed a notice of appearance by the time of the conference;
- a hearing on the Petition (the “Final Hearing”) will be held on [●][●], 2016 at [●] [A.M./P.M.] at IAS Part [●] in Room [●] of the Supreme Court of the State of New York, County of New York, 60 Centre Street, New York, New York 10007. Any person claiming an interest in any of the Covered Trusts (“Interested Person” and, all such persons, collectively, “Interested Persons”) who wishes to be heard on the merits of the questions presented by the Petition may appear by counsel or (subject to the limitations imposed by CPLR 321(a)) in person at the Final Hearing and present such evidence or argument as may be proper and relevant; provided, however, that, except for good cause shown, no Interested Person shall be heard and nothing submitted by any Interested Person shall be considered by the Court unless such Interested Person has filed an answer to the Verified Petition, and any supporting papers (“Merits Submissions”), on or before [●][●], 2016;
- responses to Merits Submissions may be filed electronically within ten (10) days after the deadline for Merits Submissions;

- any Interested Person who fails to appear at the Final Hearing in the manner described in the Order to Show Cause shall be deemed to have waived the right to be heard on the questions presented by the Petition (including any right of appeal) and shall forever be barred from raising the right to be heard on such questions in the Article 77 Proceeding or any other action or proceeding, unless the Court orders otherwise;
- the entire Settlement Payment will be held in escrow during the pendency of the Article 77 Proceeding, or until such other time as directed by the Court, pursuant to an escrow agreement substantially in the form of the draft escrow agreement attached as Exhibit C hereto (the “Escrow Agreement”);
- the Trustee is directed to enter into the Escrow Agreement and to transfer the entire Settlement Payment into the escrow account identified therein (the “Escrow Account”), The Bank of New York Mellon is appointed as escrow agent under the Escrow Agreement (the “Escrow Agent”), and the Escrow Agent is authorized and instructed to use commercially reasonable efforts to keep the Settlement Payment invested and reinvested in the following short-term United States Treasury money market mutual funds, with all earned interest inuring to the benefit of Certificateholders:
  - Goldman Sachs Financial Square Treasury Instruments Fund Institutional (Ticker: FTIXX)
  - Morgan Stanley Institutional Liquidity Funds Treasury Securities Portfolio Institutional (Ticker: MSUXX)
  - Blackrock Liquidity Funds Treasury Trust Institutional Shares (Ticker: TTTXX)
  - Federated U.S. Treasury Cash Reserves Institutional (Ticker: UTIXX)
  - Western Asset Institutional U.S. Treasury Reserves Institutional Shares (Ticker: CIIXX)
  - Fidelity Institutional Money Market Funds Treasury Only Portfolio Class 1 (Ticker: FSIXX)
- the Court retains exclusive jurisdiction over the Trustee, the Covered Trusts and all Interested Persons (whether past, present, or future) for all matters relating to the Article 77 Proceeding.

**YOU ARE URGED TO REVIEW THE ORDER TO SHOW CAUSE CAREFULLY AND TO CONSULT WITH YOUR ADVISORS.**

#### **IV. Miscellaneous**

If you have any questions regarding this Notice, please contact the Trustee by email at [Questions@cwrmbssettlement.com](mailto:Questions@cwrmbssettlement.com) or by telephone at (866) 294-7876 or (614) 569-0289.

This Notice summarizes the Article 77 Proceeding and is not a complete statement of the Article 77 Proceeding or a summary or statement of relevant law or of relevant legal procedures. Certificateholders and other potentially interested persons are urged to carefully consider the implications of the Article 77 Proceeding and to consult with their own legal and financial advisors.

Certificateholders and other persons interested in the Covered Trusts should not rely on the Trustee, Trustee's counsel, experts or other advisors retained by the Trustee, as their sole source of information.

THE TRUSTEE MAY CONCLUDE THAT A SPECIFIC RESPONSE TO PARTICULAR INQUIRIES FROM INDIVIDUAL CERTIFICATEHOLDER IS NOT CONSISTENT WITH EQUAL AND FULL DISSEMINATION OF MATERIAL INFORMATION TO ALL CERTIFICATEHOLDERS. NOTHING HEREIN IS INTENDED TO, OR SHALL, WAIVE ANY TERM OR PROVISION OF ANY GOVERNING AGREEMENT, OR ANY RIGHTS OF THE TRUSTEE THEREUNDER, ALL OF WHICH ARE HEREBY FULLY RESERVED.

NOTE, THE TRUSTEE MAKES NO RECOMMENDATIONS AND GIVES NO INVESTMENT ADVICE HEREIN OR AS TO THE SUBJECT SECURITIES GENERALLY. FURTHERMORE, THE TRUSTEE MAKES NO REPRESENTATION AND ACCEPTS NO RESPONSIBILITY OR LIABILITY AS TO THE COMPLETENESS OR ACCURACY OF THE INFORMATION PROVIDED HEREIN. THIS NOTICE DOES NOT CONSTITUTE ACCOUNTING, LEGAL, OR TAX ADVICE; YOU SHOULD SEEK YOUR OWN ADVICE ON THIS MATTER.

NOTICE PURSUANT TO IRS CIRCULAR 230. THIS DISCUSSION IS NOT INTENDED OR WRITTEN BY THE TRUSTEE OR ITS COUNSEL TO BE USED, AND CANNOT BE USED, BY ANY PERSON FOR THE PURPOSE OF AVOIDING TAX PENALTIES THAT MAY BE IMPOSED UNDER U.S. TAX LAWS. EACH PERSON SHOULD SEEK ADVICE BASED ON THE PERSON'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR CONCERNING THE POTENTIAL TAX CONSEQUENCES OF ACTIONS DESCRIBED HEREIN.

THE BANK OF NEW YORK MELLON, as  
Trustee for the Covered Trusts

**SCHEDULE I**

**LIST OF COVERED TRUSTS**

**[Attached]**

**EXHIBIT A**

**ARTICLE 77 PETITION**

**[Attached]**

**EXHIBIT B**

**ORDER TO SHOW CAUSE**

[Attached]

**EXHIBIT C**

**ESCROW AGREEMENT**

**[Attached]**