

Exhibit 118
to
Affidavit of Daniel M. Reilly
in Support of Consolidated Response to
Statements in Support of the Proposed Settlement

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, (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), BlackRock Financial Management Inc. (intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, LLC (intervenor), Metropolitan Life Insurance Company (intervenor), Trust Company of the West and affiliated companies controlled by The TCW Group, Inc. (intervenor), Neuberger Berman Europe Limited (intervenor), Pacific Investment Management Company LLC (intervenor), Goldman Sachs Asset Management, L.P. (intervenor), Teachers Insurance and Annuity Association of America (intervenor), Invesco Advisors, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), Landesbank Baden-Wuerttemberg (intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING Bank fsb (intervenor), ING Capital LLC (intervenor), ING Investment Management LLC (intervenor), Nationwide Mutual Insurance Company and its affiliated companies (intervenor), AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, and Western Reserve Life Assurance Co. of Ohio (intervenor), Federal Home Loan Bank of Atlanta (intervenor), Bayerische Landesbank (intervenor), Prudential Investment Management, Inc. (intervenor), and Western Asset Management Company (intervenor),

Petitioners,

for an order, pursuant to C.P.L.R. § 7701, seeking judicial instructions and approval of a proposed settlement.

Index No. 651786-2011

Kapnick, J.

**RESPONSES AND
OBJECTIONS OF NON-
PARTY BANK OF
AMERICA
CORPORATION TO
THE STEERING
COMMITTEE'S
SUBPOENA**

Pursuant to Rule 3122 of the New York Civil Practice Law and Rules (“C.P.L.R”), non-party Bank of America Corporation (“Bank of America”) hereby responds and objects to the subpoena of the Steering Committee of Intervenor-Respondents and Objectors (the “Steering Committee”), dated September 14, 2012 (the “Subpoena”), and the production of documents requested therein (individually, the “Request,” and collectively, the “Requests” or the “Subpoena”), as follows:

GENERAL OBJECTIONS

The following General Objections apply to each individually numbered Request, Definition and Instruction set forth in the Subpoena and shall have the same force and effect as if set forth in full in response to each Request, Definition and Instruction:¹

1. Bank of America objects to the timing and scope of the Subpoena. The Steering Committee waited more than fourteen months since the commencement of this expedited special proceeding, and more than six months since this case was remanded to this Court, to serve this Subpoena. And the Steering Committee waited until after the Court had set a discovery cut-off date (of December 14, 2012) to serve this Subpoena — seemingly in an effort to fabricate a basis for contending that further delay was necessary.

2. There is no justification for the Steering Committee's delay. The Steering Committee has engaged in a pattern of delay, coupled with an effort to seek expansive discovery far in excess of the limited discovery that is consonant with the purpose and scope of this special proceeding, which — as the Court has repeatedly noted — does not encompass litigation of the underlying merits of the claims being settled. The sole issue in this proceeding is whether the Trustee acted in good faith and within the bounds of its reasonable discretion.

3. The present Subpoena is yet another attempt by the Steering Committee to further delay resolution of this proceeding, both by its tardiness and by its effort to expand discovery far beyond what is appropriate, all as part of the Steering Committee's pattern and strategy of delay:

- On November 18, 2011, an intervenor/objector predecessor group of the Steering Committee, including the AIG entities, served an overbroad and burdensome

¹ Capitalized terms used in the Settlement Agreement and not otherwise defined herein have the same meanings as defined in the Settlement Agreement.

subpoena on Bank of America. The subpoena contained nineteen separate requests with no date restrictions seeking millions of pages of documents not relevant to the Trustee's decision to enter into the Settlement Agreement and the settlement contemplated thereby (the "Settlement"). Among other things, the subpoena demanded a "sample" of 530,000 loan files.

- On December 16, 2011, Bank of America served its responses and objections to that subpoena.
- On January 31, 2012, Bank of America participated in a meet-and-confer with the Steering Committee, during which the representatives of the Steering Committee and Bank of America discussed various alternative proposals, and in which the representatives of the Steering Committee agreed to revert to Bank of America with limitations and/or alternatives to a number of the disputed requests.
- Following that meet-and-confer, the Steering Committee went silent. It failed to comply with its promise to respond to the issues that had been discussed. During 7 ½ **months** between the January 31, 2012 meet-and-confer, and the September 14, 2012 service of this subpoena, the Steering Committee never followed up on any of the open items from the meet-and-confer, or otherwise pressed any discovery demand directed to Bank of America, other than its repeated demands for production of thousands of loan files.
- On March 2, 2012, this case was remanded to this Court. During the following six months, there were five discovery-related conferences with the Court. During these conferences, the Steering Committee raised numerous discovery disputes

with The Bank of New York Mellon (the “Trustee”) and with the Institutional Investors.

- During this six-month period following the remand to this Court, the Steering Committee was silent. It did absolutely nothing to seek discovery from Bank of America other than continuing to press for the production of thousands of loan files. That issue was raised with the Court on May 8 and June 14, 2012, and was also the subject of numerous meet-and-confers between Bank of America and the Steering Committee. On July 27, 2012, pursuant to the guidance given by the Court on May 8 and June 14 and Bank of America’s proposal to provide a small number of files in order to demonstrate the uselessness of loan file review, Bank of America, Countrywide Financial Corporation, Countrywide Home Loans, Inc. and the parties to this proceeding entered into a stipulation for the production of loan materials relating to 150 loans (the “Loan Materials Stipulation”), which was so ordered by the Court on August 8, 2012. Pursuant to the Loan Materials Stipulation, the first phase of loan file production was completed on August 23, 2012, and the entire production will be completed by October 25, 2012.
- At no time during any of the meet-and-confers on loan files, or on weekly loan file production status calls that began on August 6, 2012 between Bank of America and the Steering Committee, did any representative of the Steering Committee raise any other discovery-related issues.
- On September 14, 2012, some 7 ½ months after the meet-and-confer on the prior subpoena, the Steering Committee served this burdensome and overbroad

Subpoena, containing 21 separate requests and subparts, purportedly returnable on October 4, 2012.

4. Bank of America objects to the Subpoena as many of the Requests are largely duplicative of, or encompassed by, requests in the prior subpoena, to which Bank of America responded and engaged in a meet-and-confer process that was abandoned 7 ½ months ago by the Steering Committee. To the extent Bank of America produces documents or information in response to the Subpoena, it is on the basis that any such production will not be used by the Steering Committee to cause further delay in this proceeding, including, without limitation, by recalling witnesses that have already been deposed.

5. Bank of America objects to the Subpoena as many of the Requests are designed to litigate the merits of the settled claims even though this is a summary special proceeding pursuant to C.P.L.R. Article 77 regarding a settlement.

6. Bank of America objects to the Subpoena insofar as it is contrary to the Court's rulings and directions on several discovery issues. Most notably, the Subpoena demands production of a "random sample" of between 4,630 and 6,470 loan files, notwithstanding the Court's guidance at the May 8 and June 14, 2012 hearings and the subsequent entry into the agreed-upon Loan Materials Stipulation. Similarly, the Subpoena calls for the production of Bank of America's bilateral Settlement communications with the Institutional Investors, even though the Court has to date sustained the Institutional Investors' position that such documents should not be produced. And in numerous respects, the Subpoena flies in the face of the Court's guidance that this proceeding is not the same as other cases in which the merits of various claims are the subject of litigation. (Unabashedly, the

Subpoena goes so far as to demand the production in this case of the discovery record or expert reports from such other litigations.)

7. Bank of America objects to the Subpoena to the extent that it purports to impose requirements greater than or different from those set forth in the C.P.L.R., and any other applicable rules, laws, statutes, or orders.

8. Bank of America objects to the Requests as seeking documents or information that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence insofar as such documents and information have no bearing on whether the decision by the Trustee to enter into the Settlement was within its reasonable discretion. This special proceeding under C.P.L.R. Article 77 does not encompass litigation of the underlying merits of the claims proposed to be settled by the Trustee pursuant to the Settlement.

9. Bank of America objects to the Requests to the extent that they seek documents or information that, while of marginal or no relevance to this proceeding and outside the scope of appropriate discovery herein, are being sought by objectors that are pursuing separate actions (pending in this and other courts) against Bank of America, Countrywide Financial Corporation and/or their affiliates.

10. Bank of America objects to the Subpoena as overly broad, unduly burdensome and expensive, unreasonable in scope and calculated to harass.

11. Bank of America objects to the Requests to the extent that they are vague, ambiguous, confusing, unintelligible or so phrased as to require Bank of America to speculate concerning the meaning intended by the Steering Committee.

12. Bank of America objects to the Subpoena to the extent it contains erroneous or argumentative factual or legal allegations, conclusions, characterizations or

assumptions, and insofar as it purports to require Bank of America to reach legal conclusions (or to accept the unsubstantiated legal conclusions advanced by the Steering Committee). Nothing contained in these responses or in any production by Bank of America is intended as, or shall be deemed, an admission, agreement or acceptance of any factual or legal allegation, conclusion, characterization or assumption in the Subpoena or otherwise advanced by the Steering Committee or other parties in this proceeding.

13. Bank of America objects to each Request to the extent it is duplicative of other Requests.

14. Bank of America objects to the Requests to the extent that they seek documents or information not in Bank of America's possession, custody or control and/or to the extent that they seek documents or information in the possession, custody or control of any party to the proceeding. Bank of America further objects to the Subpoena to the extent that it purports to require Bank of America to search the records of its outside attorneys, accountants, or other advisors or consultants.

15. Bank of America objects to the Subpoena to the extent it calls for documents or information that do not relate to the subject matter of the proceeding.

16. Bank of America objects to the Subpoena on the ground that it fails to allow reasonable time for compliance in light of the broad scope of discovery sought. Bank of America reserves the right to produce documents on a rolling basis.

17. Bank of America objects to the Subpoena as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it fails to provide any time frame for which documents and information are sought. Unless otherwise specified in the responses, and subject to and without waiving any objections,

Bank of America will construe the relevant time period to be from October 18, 2010 to June 28, 2011 (the "Relevant Period").

18. Bank of America objects to the Subpoena to the extent it expressly or impliedly seeks documents or information protected from disclosure by the attorney-client privilege, work-product doctrine or any other legally cognizable privilege or immunity. In the event that Bank of America does produce or is required to produce documents or information, the production of any such documents or information is without waiver of any privilege, immunity or claim of confidentiality. In the event that Bank of America does produce privileged documents or information, the production of any such documents or information is inadvertent and does not constitute a waiver of any privilege, immunity or claim of confidentiality.

19. Bank of America objects to the Requests to the extent they expressly or impliedly seek information that is confidential or proprietary in nature, or that constitutes protected commercial, financial and/or trade secret information of Bank of America or third parties. In the event Bank of America does or is required to produce documents or information, it will only agree to do so pursuant to the Protective Order entered in this proceeding on June 14, 2012 or another mutually agreeable confidentiality agreement and protective order.

20. Bank of America objects to the Requests to the extent that they seek documents or information subject to confidentiality or nondisclosure agreements with third parties.

21. Bank of America objects to the Requests to the extent they seek information containing confidential, personal and/or financial information protected from disclosure by statutes governing the privacy rights of consumers and other persons including, but not limited to, the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801, *et seq.* In the event that Bank of

America does or is required to produce documents or information, Bank of America reserves the right to redact any such information.

22. Bank of America objects to the Subpoena as unduly burdensome to the extent it seeks, without reasonable limitation, the production of “all documents” or “all communications” containing, concerning or relating to a given subject matter.

23. Bank of America objects to the Subpoena as unduly burdensome and expensive to the extent it seeks the production of documents that would have to be restored from backup tapes, archived sources or are otherwise not reasonably accessible.

24. Bank of America objects to the Requests to the extent that they seek documents containing information in a manner other than that in which such information is maintained by Bank of America in the ordinary course of business.

25. Bank of America objects to the Requests to the extent that they seek information or data that is (a) cumulative or duplicative; (b) already, or should be, sought from the Trustee, other parties to this proceeding or their affiliates; (c) already in the possession, custody or control of the Steering Committee or their counsel; (d) available publicly or from some other source that is more convenient, less burdensome or less expensive; or (e) as readily available to the Steering Committee as to Bank of America.

26. Bank of America objects to the Subpoena to the extent that it seeks the production of documents previously filed in this proceeding or in any other action pending in this Court or any other court.

27. Any present or future undertaking by Bank of America to produce documents or provide information in response to a particular request is not to be construed as an admission that any document or information exists within any requested category or categories,

but rather solely as an assertion that Bank of America will produce (consistent with the objections raised herein or hereafter) any responsive documents or information within its possession, custody or control should any such documents or information be found.

28. The production of documents or information by Bank of America will be without waiver of or prejudice to its rights at any later time to object to: (a) the competence, use, relevance, materiality, privilege or admissibility of (i) the Requests or any part thereof, (ii) statements made in these or any future responses and objections to the Subpoena or any part thereof, or (iii) any document or information produced by Bank of America; or (b) any other demand for discovery involving or relating to the matters raised in the Subpoena.

29. Bank of America objects to the Subpoena to the extent that it seeks documents containing settlement communications that are confidential and/or inadmissible under federal and state law to prove the validity or invalidity of a claim or amount of damages. If Bank of America produces such settlement communications, it reserves the right at any later time to raise further objections to their admissibility.

30. Bank of America objects to the Subpoena to the extent it calls for a privilege log as impractical, unduly burdensome and costly. Because the Requests seek the production of irrelevant documents that could comprise millions of pages, including a substantial number of documents that are privileged, confidential and/or otherwise protected from production, because the Subpoena does not contain any reasonable time limitation and because the Steering Committee has otherwise failed to take reasonable measures to minimize undue burden and expense on Bank of America, the creation of a privilege log would impose an extraordinary burden on Bank of America. Accordingly, Bank of America will not produce any such log.

31. Bank of America's responses and objections are based upon information presently known to Bank of America and are set forth without prejudice to Bank of America's right to assert additional objections or supplemental responses. Bank of America reserves the right to amend, supplement, correct or clarify its responses and objections set forth herein.

32. Bank of America, a non-party, reserves the right to recover reasonable production expenses from the Steering Committee pursuant to C.P.L.R. 3122(d).

33. All objections, including, without limitation, objections as to relevance, authenticity, or admissibility are expressly reserved.

34. Bank of America remains available to meet and confer concerning the Subpoena and these responses and objections, and offers to do so at a mutually convenient time.

OBJECTIONS TO THE DEFINITIONS AND INSTRUCTIONS

The following Objections to the Definitions and Instructions incorporate the General Objections, apply to each individually numbered Request set forth in the Subpoena and shall have the same force and effect as if set forth in full in response to each Request:

35. Bank of America objects to the defined terms "You," "Your," and "BofA" as vague, overly broad and unduly burdensome to the extent that they purport to include any person or entity not under Bank of America's direct control, including attorneys, accountants, advisors or other agents or representatives. Bank of America further objects to these defined terms to the extent they purport to include subsidiaries and affiliates, their employees, and agents or representatives that would not reasonably be expected to have documents or communications relevant to the issues in this matter.

36. Bank of America objects to the defined terms "BNYM" and "Trustee" as vague, overly broad and unduly burdensome to the extent that they purport to include any person

or entity not under the direct control of The Bank of New York Mellon, including attorneys, accountants, advisors or other agents or representatives. Bank of America further objects to these defined terms to the extent that they purport to encompass The Bank of New York Mellon (or any of its successors and assigns, including their officers, employees, agents and/or any person or entity acting on their behalf) acting in any capacity other than as Trustee of the 530 trusts covered by the Settlement (the "Covered Trusts").

37. Bank of America objects to the defined term "Inside Institutional Investor" as vague, overly broad and unduly burdensome to the extent that it purports to include any person or entity not under the direct control of parties to this proceeding, including attorneys, accountants, advisors or other agents or representatives. Bank of America further objects to this defined term as it does not agree to any implication or characterization that may be intended by the Steering Committee in its use of this defined term.

38. Bank of America objects to the defined term "Countrywide" as vague, overly broad and unduly burdensome to the extent that it purports to include any person or entity not under Countrywide's direct control, including attorneys, accountants, advisors or other agents or representatives.

39. Bank of America objects to the defined term "Event of Default" to the extent that it purports to require Bank of America to reach legal conclusions.

40. Bank of America objects to the defined term "Proposed Settlement" as vague, overly broad and unduly burdensome, including, without limitation, to the extent that it purports to include documents, materials or information that were not communicated between parties to the Settlement Agreement and/or the Institutional Investor Agreement.

41. Bank of America objects to the defined term “Notice of Non-Performance” to the extent this characterization is intended to imply that the October 18, 2010 letter from Gibbs & Bruns LLP had any legal or other significance.

42. Bank of America objects to the defined term “Document” as overly broad and unduly burdensome.

43. Bank of America objects to Instructions Nos. 1-5, 7-9, 10-15 as unduly burdensome, expensive and unfeasible to the extent that they purport to impose a duty to provide, produce, organize, label or identify responses and/or documents in a manner more onerous than required by the C.P.L.R. and any other applicable rules, laws, statutes, or orders. Bank of America expressly reserves the right to amend, supplement, correct or clarify its responses and objections set forth herein.

44. Bank of America further objects to Instruction No. 10 to the extent that it seeks documents subject to statutes, regulations, judicial orders or agreements with federal, state or local governmental authorities governing their confidentiality or nondisclosure.

45. Bank of America objects to Instructions No. 6 and 16 as vague, overly broad, unduly burdensome, expensive and unfeasible to the extent that they call for Bank of America to conduct anything other than a reasonably diligent search of its files as maintained in the ordinary course of business to identify responsive documents or otherwise purport to impose a duty to respond to the Requests in a manner more onerous than required by the C.P.L.R. and any other applicable rules, laws, statutes, or orders.

SPECIFIC RESPONSES AND OBJECTIONS

Request No. 1:

All documents—including but not limited to documents produced or deposition testimony in *MBIA Insurance Corp. v. Countrywide Home Loans, Inc., et al.*, Index No. 08/602825 (N.Y. Sup. Ct.)—concerning the following topics:

Response to Overall Request (Further Responses to Subparts set forth below):

Bank of America incorporates its General Objections and Objections to the Definitions and Instructions and further objects to this Request (including its subparts) to the extent that it seeks documents that are neither relevant to the Trustee's decision to enter into the Settlement nor reasonably calculated to lead to the discovery of admissible evidence. By way of example, this Request would purport to require discovery of Bank of America's internal communications, analysis and consideration of the Settlement, or any such analysis or consideration that was communicated only to or with its own advisors. Furthermore, *MBIA Insurance Corp. v. Countrywide Home Loans, Inc., et al.*, Index No. 08/602825 (N.Y. Sup. Ct.) does not involve the Settlement at issue in this proceeding or any of the Covered Trusts. That case, rather, involves the litigation on the merits of claims different from those settled in the Settlement and in which counsel that is apparently advising the Steering Committee represents the plaintiff. The request for discovery made in that litigation reflects a total misapprehension of the limited nature of the single issue involved in this special proceeding under Article 77, and abusively seeks to create the incorrect impression that this special proceeding and that litigation are related. Bank of America further objects to this Request (including its subparts) as vague, overbroad, unduly burdensome, and duplicative of other Requests. Bank of America further objects to this Request (including its subparts) as seeking documents protected by the attorney-client privilege, work-product doctrine and/or other privileges and immunities, and to the extent it seeks documents within the possession, custody or control of parties to the proceeding. Bank of America further

objects to this request insofar as it calls for the production of bilateral communications between Bank of America and the Institutional Investors as the Court has to date sustained the Institutional Investors' position that such documents should not be produced. Subject to and without waiving the foregoing objections, Bank of America will produce documents as provided in the responses to Request No. 1 subparts below.

- a. Forbearance Agreement. This includes, but is not limited to, all information concerning the drafting, editing, negotiation, and execution of the Forbearance Agreement.

Response: Bank of America incorporates its General Objections, Objections to the Definitions and Instructions, and its other Objections to Request No. 1. Subject to and without waiving the foregoing Objections, Bank of America will produce Settlement communications between Bank of America and the Trustee, or among Bank of America, the Trustee and the Institutional Investors, concerning the Forbearance Agreement.

- b. Event of Default. This includes, but is not limited to, all information concerning any Event of Default, including but not limited to, information concerning the prevention, curing, waiving, or tolling of any Event of Default.

Response: Bank of America incorporates its General Objections, Objections to the Definitions and Instructions, and its other Objections to Request No. 1. Bank of America further objects to this Request to the extent that it purports to require Bank of America to reach legal conclusions. Subject to and without waiving the foregoing Objections, Bank of America will produce Settlement communications between Bank of America and the Trustee, or among Bank of America, the Trustee and the Institutional Investors, concerning the so-called Notice of Non-Performance, as well as communications during the Relevant Period with other investors concerning a purported Event of Default. The production of documents in response to this

Request is not intended as, and shall not be deemed, an admission, agreement or acceptance of any allegation that any Event of Default has occurred.

- c. Indemnification. This includes, but is not limited to, all information concerning any indemnification obligation(s) of the Inside Institutional Investors, the Trustee or You pursuant to the terms of the governing Pooling and Servicing Agreements. This includes, but is not limited to, all information concerning the release or attempted release, or shift or attempted shift, of any such indemnification obligation(s).

Response: Bank of America incorporates its General Objections, Objections to the Definitions and Instructions, and its other Objections to Request No. 1. Bank of America further objects to this Request to the extent that it purports to require Bank of America to reach legal conclusions, and is based on some undefined and pejorative reference to some imagined attempt to “shift” or “attempted shift” of indemnification obligations. Subject to and without waiving the foregoing Objections, Bank of America will produce Settlement communications between Bank of America and the Trustee, or among Bank of America, the Trustee and the Institutional Investors, concerning indemnification of the Trustee.

- d. Settlement Payment. This includes, but is not limited to, all information concerning the negotiation of the Settlement Payment, including but not limited to, information concerning any dollar figure(s) proposed as an alternative to the agreed upon \$8.5 billion Settlement Payment.

Response: Bank of America incorporates its General Objections, Objections to the Definitions and Instructions, and its other Objections to Request No. 1. Subject to and without waiving the foregoing Objections, Bank of America will produce Settlement communications between Bank of America and the Trustee, or among Bank of America, the Trustee and the Institutional Investors, concerning the Settlement Payment.

- e. Notice to Certificateholders. This includes, but is not limited to, all information concerning any Notice to Certificateholders, including but not limited to, all communications in which the Settlement Proponents discussed, discouraged, or attempted to preclude any Notice to Certificateholders.

Response: Bank of America incorporates its General Objections, Objections to the Definitions and Instructions, and its other Objections to Request No. 1. Bank of America further objects to this Request because the terms “Notice” and “Certificateholders” are vague, ambiguous, and undefined. Bank of America will construe the term “Notice to Certificateholders” as notice by the Trustee to holders of certificates or notes evidencing various ownership interests in the Covered Trusts regarding the Settlement. Subject to and without waiving the foregoing Objections, Bank of America will produce Settlement communications between Bank of America and the Trustee, or among Bank of America, the Trustee and the Institutional Investors, concerning Notice to the Certificateholders as defined above.

- f. The Number of Covered Trusts. This includes, but is not limited to, all information concerning the number of trusts covered by, or excluded from, the Proposed Settlement or the Settlement Agreement. This information includes, but is not limited to, all deliberations or negotiations concerning which trusts would be covered by, or excluded from, the Proposed Settlement or the Settlement Agreement.

Response: Bank of America incorporates its General Objections, Objections to the Definitions and Instructions, and its other Objections to Request No. 1. Subject to and without waiving the foregoing Objections, Bank of America will produce Settlement communications between Bank of America and the Trustee, or among Bank of America, the Trustee and the Institutional Investors, concerning the number of Covered Trusts.

- g. Attorneys Fees. This includes, but is not limited to, all information concerning the fees to be paid to counsel for the Inside Institutional Investors in connection with the Proposed Settlement or the Settlement Agreement. This also includes, but is not limited to, all information concerning Your decision to pay any or all of those fees.

Response: Bank of America incorporates its General Objections, Objections to the Definitions and Instructions, and its other Objections to Request No. 1. Subject to and without waiving the foregoing Objections, Bank of America will produce Settlement communications between Bank of America and the Trustee, or among Bank of America, the Trustee and the Institutional Investors, concerning the fees to be paid to counsel for the Institutional Investors in connection with the Settlement.

- h. The Proposed Final Order and Judgment. This includes, but is not limited to, all information concerning drafts of the Proposed Final Order and Judgment, including but not limited to, all information concerning any contemplated or proposed terms of the Proposed Final Order and Judgment.

Response: Bank of America incorporates its General Objections, Objections to the Definitions and Instructions, and its other Objections to Request No. 1. Subject to and without waiving the foregoing Objections, Bank of America will produce Settlement communications between Bank of America and the Trustee, or among Bank of America, the Trustee and the Institutional Investors, concerning the Proposed Final Order and Judgment.

- i. Your Liability to the Covered Trusts. This includes, but is not limited to, all information concerning any analysis or discussion of Your liability as successor to Countrywide, breaches of representations and warranties, document exceptions, servicing errors, and indemnification of others, including BNYM, with respect to the Covered Trusts. This also includes, but is not limited to, all information concerning reserves, and the amount of reserves taken by You with respect to any potential liability to the Covered Trusts.

Response: Bank of America incorporates its General Objections, Objections to the Definitions and Instructions, and its other Objections to Request No. 1. Bank of America

further objects to this Request to the extent that it purports to require Bank of America to reach legal conclusions. Subject to and without waiving the foregoing Objections, Bank of America will produce Settlement communications between Bank of America and the Trustee, or among Bank of America, the Trustee and the Institutional Investors, concerning liability to the Covered Trusts and will also produce presentations to unaffiliated third parties concerning liability to the Covered Trusts, as well as cost-sharing agreements between Bank of America and Countrywide in connection with the Settlement. The production of documents in response to this Request, if any, is not intended as and shall not be deemed, an admission, agreement or acceptance of any allegation that Bank of America has any specific liability to the Covered Trusts or is a successor to Countrywide.

Request No. 2:

All documents concerning communications, whether internally at BofA or between You, on the one hand, and any third party other than BNYM on the other, concerning the topics listed in Request 1.a.-i. This request includes, but is not limited to, hand-written or electronic notes concerning such communications.

Response: Bank of America incorporates its General Objections and Objections to the Definitions and Instructions and further objects to this Request to the extent that it seeks documents that are neither relevant to the Trustee's decision to enter into the Settlement nor reasonably calculated to lead to the discovery of admissible evidence. By way of example, this Request would purport to require discovery of Bank of America's internal analysis and consideration of the Settlement, or any such analysis or consideration that was communicated only to or with its own advisors. Bank of America further objects to this Request as seeking documents protected by the attorney-client privilege, work-product doctrine and/or other privileges and immunities, and to the extent it seeks documents within the possession, custody or control of parties to the proceeding. Bank of America will not produce handwritten notes or

electronic notes of attorneys or in connection with communications with attorneys because such documents are protected by the attorney-client privilege and/or the work product doctrine and such production would also be unduly burdensome. Bank of America further objects to this request insofar as it calls for the production of bilateral communications between Bank of America and the Institutional Investors as the Court has to date sustained the Institutional Investors' position that such documents should not be produced. Bank of America further objects to this Request as vague, overbroad, unduly burdensome, and duplicative of other Requests, particularly Request No. 1. Therefore, Bank of America will not produce documents in response to Request No. 2.

Request No. 3:

Documents sufficient to show all business relationships involving two or more corporations or partnerships between You, on the one hand, and BNYM, on the other, between October 19, 2010 and the present, including but not limited to relationships in which BNYM serves or served as a trustee, administrator, and/or agent.

Response: Bank of America incorporates its General Objections and Objections to the Definitions and Instructions and further objects to this Request to the extent that it seeks documents that are neither relevant to the Trustee's decision to enter into the Settlement nor reasonably calculated to lead to the discovery of admissible evidence. Bank of America further objects to this Request as vague, overbroad, and unduly burdensome to the extent that it requests documents or information concerning "all business relationships" between October 19, 2010 and the present. Bank of America further objects to this Request as the phrase "all business relationships" is unintelligible. Bank of America further objects to this Request to the extent it seeks information available publicly (for example on BNYM's corporate trust investor reporting

website) or within the possession, custody or control of parties to the proceeding. Therefore, Bank of America will not produce documents in response to Request No. 3.

Request No. 4:

A random sample of between 4,630 and 6,470 loan files from the Covered Trusts. For purposes of this request, the term “loan files” means: (i) the loan origination documents, including but not limited to, the credit reports, underwriting work sheets, underwriting exceptions granted, appraisal or valuation results, title commitment and policy, final AUS findings, loan approval, loan application (Form 1008 and all supporting documents), mortgage note, mortgage or deed of trust, mortgage insurance certificate and HUD1; (ii) closing loan tapes, to the extent not publicly available; (iii) loan servicing records, including, but not limited, call notes, foreclosure files including communications with borrowers, loan modifications, and loss mitigation files; and (iv) entries from the PAT/CLAIMS System reflecting external communications relating to a mortgage-insurance claim denial and/or a repurchase demand on the loans.

Response: Bank of America incorporates its General Objections and Objections to the Definitions and Instructions and further objects to this Request to the extent that it seeks documents that are neither relevant to the Trustee’s decision to enter into the Settlement nor reasonably calculated to lead to the discovery of admissible evidence. Bank of America further objects to this Request as overbroad, unduly burdensome and unfeasible because, *inter alia*, it purports to seek the production of files that could comprise millions of pages of documentary material. Bank of America further objects to this Request as seeking documents protected by the attorney-client privilege, work-product doctrine and/or other privileges and immunities. Bank of America further objects to this Request as seeking documents or information containing confidential and/or personally identifying information. Bank of America further objects to this Request to the extent it is duplicative of other Requests. Bank of America further objects to this Request to the extent that the term “random sample” is vague and/or susceptible to more than one interpretation. Bank of America further objects to this Request as seeking documents beyond the scope of the Loan Materials Stipulation. The Steering Committee has made repeated

motions for the production of thousands of loan files. The Court provided clear guidance at the May 8 and June 14 hearings that such requests are inappropriate. The Steering Committee subsequently entered into the Loan Materials Stipulation, which provided for the production of loan materials relating to 150 loans. Bank of America has already produced 331,000 pages in relation to the 150 loans that are the subject of the Loan Materials Stipulation. Bank of America will not produce loan materials beyond those agreed to in that stipulation.

Request No. 5:

All documents concerning the allegations contained in numbered paragraphs 1-6, including subparagraphs, on pages 2-4 of the Notice of Non-Performance.

Response: Bank of America incorporates its General Objections and Objections to the Definitions and Instructions and further objects to this Request to the extent that it seeks documents that are neither relevant to the Trustee's decision to enter into the Settlement nor reasonably calculated to lead to the discovery of admissible evidence. Bank of America further objects to this Request as vague, overbroad, unduly burdensome, and duplicative of other Requests. Bank of America further objects to this Request as seeking documents protected by the attorney-client privilege, work-product doctrine and/or other privileges and immunities, and to the extent it seeks documents within the possession, custody or control of parties to the proceeding. Subject to and without waiving the foregoing Objections, Bank of America will produce Settlement communications between Bank of America and the Trustee, or among Bank of America, the Trustee and the Institutional Investors, concerning the so-called Notice of Non-Performance.

Request No. 6:

All documents concerning Your right and/or option to withdraw from the Settlement Agreement.

Response: Bank of America incorporates its General Objections and Objections to the Definitions and Instructions and further objects to this Request to the extent that it seeks documents that are neither relevant to the Trustee's decision to enter into the Settlement nor reasonably calculated to lead to the discovery of admissible evidence. Bank of America further objects to this Request as vague, overbroad, unduly burdensome, and duplicative of other Requests. Bank of America further objects to this Request as seeking documents protected by the attorney-client privilege, work-product doctrine and/or other privileges and immunities, and to the extent it seeks documents within the possession, custody or control of parties to the proceeding. Bank of America further objects to this Request to the extent that responding to this Request purports to require Bank of America to reach legal conclusions. Bank of America further objects to this Request to the extent that the Settlement Agreement speaks for itself. Subject to and without waiving the foregoing Objections, Bank of America will produce Settlement communications between Bank of America and the Trustee, or among Bank of America, the Trustee and the Institutional Investors, concerning Bank of America's right to withdraw from the Settlement Agreement.

Request No. 7:

All documents concerning any portion of the settlement payment You anticipate or estimate will be paid to You, whether directly, indirectly, or by withholding any portion of the settlement payment.

Response: Bank of America incorporates its General Objections and Objections to the Definitions and Instructions and further objects to this Request to the extent that it seeks documents that are neither relevant to the Trustee's decision to enter into the Settlement nor

reasonably calculated to lead to the discovery of admissible evidence. Bank of America further objects to this Request as vague, overbroad, unduly burdensome, and duplicative of other Requests. Bank of America further objects to this Request as seeking documents protected by the attorney-client privilege, work-product doctrine and/or other privileges and immunities, and to the extent it seeks documents within the possession, custody or control of parties to the proceeding. Bank of America further objects to this Request to the extent that the Settlement Agreement speaks for itself and refers the Steering Committee to § 3(d)(i) of the Settlement Agreement, among other sections. Therefore, Bank of America will not produce documents in response to Request No. 7.

Request No. 8:

For all modifications to loans held by the Covered Trusts, documents sufficient to show the pre- and post- modification (i) interest rate and (ii) outstanding principal balance.

Response: Bank of America incorporates its General Objections and Objections to the Definitions and Instructions and further objects to this Request to the extent that it seeks documents that are neither relevant to the Trustee's decision to enter into the Settlement nor reasonably calculated to lead to the discovery of admissible evidence. Bank of America further objects to this Request as vague, overbroad, unduly burdensome, and duplicative of other Requests. Bank of America further objects to this Request as seeking documents protected by the attorney-client privilege, work-product doctrine and/or other privileges and immunities, and to the extent it seeks documents within the possession, custody or control of parties to the proceeding. Bank of America further objects to this Request as seeking publicly available information: for those deals that are public, the Trustee publicly reports the pre- and post-modification interest rate and outstanding principal balance for modified loans held by the

Covered Trusts. Furthermore, Bank of America has already produced documents sufficient to show the pre- and post-modification interest rate and outstanding principal balance, where applicable, for the 150 loans that are the subject of the Loan Materials Stipulation. Therefore, Bank of America will not produce additional documents in response to Request No. 8.

Request No. 9:

All communications between or among You, BNYM and/or the Inside Institutional Investors concerning loan modifications in the Covered Trusts.

Response: Bank of America incorporates its General Objections and Objections to the Definitions and Instructions and further objects to this Request to the extent that it seeks documents that are neither relevant to the Trustee's decision to enter into the Settlement nor reasonably calculated to lead to the discovery of admissible evidence. Bank of America further objects to this Request as vague, overbroad, unduly burdensome, and duplicative of other Requests. Bank of America further objects to this Request as seeking documents within the possession, custody or control of parties to the proceeding. Bank of America further objects to this Request as unduly burdensome to the extent it seeks routine business reporting concerning loan modifications between Bank of America and the Trustee. Bank of America further objects to this request insofar as it calls for the production of bilateral communications between Bank of America and the Institutional Investors as the Court has to date sustained the Institutional Investors' position that such documents should not be produced. Subject to and without waiving the foregoing Objections, Bank of America will produce Settlement communications between Bank of America and the Trustee, or among Bank of America, the Trustee and the Institutional Investors, concerning loan modifications.

Request No. 10:

With respect to loans held by the Covered Trusts that were modified, documents sufficient to identify the mortgagor(s) or other lender(s) holding a mortgage or other lien secured by the same property, and the servicer of such other mortgage loan(s) or lien(s).

Response: Bank of America incorporates its General Objections and Objections to the Definitions and Instructions and further objects to this Request to the extent that it seeks documents that are neither relevant to the Trustee's decision to enter into the Settlement nor reasonably calculated to lead to the discovery of admissible evidence. Bank of America further objects to this Request as vague, overbroad, unduly burdensome, and duplicative of other Requests. Bank of America further objects to this Request as seeking documents protected by the attorney-client privilege, work-product doctrine and/or other privileges and immunities, and to the extent it seeks documents within the possession, custody or control of parties to the proceeding. Furthermore, where Bank of America's servicing record reflects a mortgagor(s) or other lender(s) holding a mortgage or other lien secured by the same property, those records have already been produced for modified loans among the 150 loans that are the subject of the Loan Materials Stipulation. Therefore, Bank of America will not produce additional documents in response to Request No. 10.

Request No. 11:

Documents evidencing the practices, processes, guidelines, or requirements for originating, underwriting, performing due diligence, selling, securitizing, packaging, or bundling (i) loans offered for sale or sold to Government Sponsored Entities and (ii) loans in private label RMBS, including any documents comparing or contrasting the practices, processes, guidelines, or requirements for originating, underwriting, performing due diligence, selling, securitizing, packaging, or bundling (i) loans offered for sale or sold to Government Sponsored Entities and (ii) loans in private label RMBS.

Response: Bank of America incorporates its General Objections and Objections to the Definitions and Instructions and further objects to this Request to the extent that it seeks documents that are neither relevant to the Trustee's decision to enter into the Settlement nor reasonably calculated to lead to the discovery of admissible evidence. Bank of America further objects to this Request as vague, overbroad, unduly burdensome, and duplicative of other Requests. Bank of America further objects to this Request as seeking documents protected by the attorney-client privilege, work-product doctrine and/or other privileges and immunities, and to the extent it seeks documents within the possession, custody or control of parties to the proceeding. Bank of America further objects to this Request as Bank of America has already produced 146,186 pages of underwriting guidelines pursuant to the Loan Materials Stipulation. The underwriting guidelines already produced include guidelines applicable to loans offered or sold to Government Sponsored Entities and to loans in private label RMBS. Therefore, Bank of America will not produce additional documents in response to Request No. 11.

Request No. 12:

Documents sufficient to identify the author(s) of the January 27, 2010, February 10, 2010, and April 11, 2010, presentations to Gibbs & Bruns.

Response: Bank of America incorporates its General Objections and Objections to the Definitions and Instructions and further objects to this Request to the extent that it seeks

documents that are neither relevant to the Trustee's decision to enter into the Settlement nor reasonably calculated to lead to the discovery of admissible evidence. Bank of America further objects to this Request as vague, overbroad, unduly burdensome, and duplicative of other Requests. Bank of America further objects to this Request as seeking documents protected by the attorney-client privilege, work-product doctrine and/or other privileges and immunities, and to the extent it seeks documents within the possession, custody or control of parties to the proceeding. Bank of America states that Thomas M. Scrivener was the primary substantive draftsman of the January 27, 2011, February 10, 2011, and April 11, 2011 presentations to Gibbs & Bruns.

Request No. 13:

All re-underwriting reports, analyses, and/or any documents related to re-underwriting conducted by third parties in your possession from litigation involving Countrywide loans, including but not limited to the following cases: *Ambac Assurance Corp. v. Countrywide Home Loans, Inc., et al.*, Index No. 10/651612 (N.Y. Sup. Ct.); *Financial Guaranty Insurance Co. v. Countrywide Home Loans, Inc.*, Index No. 09/650736 (N.Y. Sup. Ct.); *MBIA Insurance Corp. v. Countrywide Home Loans, Inc., et al.*, Index No. 08/602825 (N.Y. Sup. Ct.); *Syncora Guarantee, Inc. v. Countrywide Home Loans, Inc., et al.*, 09/650042 (N.Y. Sup. Ct.); *United Guaranty Mortgage Indemnity Co. v. Countrywide Financial Corp., et al.*, Case No. 09-1888 (C.D. Cal.); and *U.S. Bank, N.A. v. Countrywide Home Loans, Inc., et al.*, Case No. 11-6223 (S.D.N.Y.).

Response: Bank of America incorporates its General Objections and Objections to the Definitions and Instructions and further objects to this Request to the extent that it seeks documents that are neither relevant to the Trustee's decision to enter into the Settlement nor reasonably calculated to lead to the discovery of admissible evidence. Bank of America further objects to this Request as vague, overbroad, unduly burdensome, and duplicative of other Requests. Bank of America further objects to this Request as seeking documents protected by the attorney-client privilege, work-product doctrine and/or other privileges and immunities, and

to the extent it seeks documents within the possession, custody or control of parties to the proceeding. Bank of America further objects to this request as these contested cases are completely irrelevant to the matters at issue in this summary settlement proceeding and most of these litigations do not even relate to any Covered Trusts. Accordingly, Bank of America will not produce documents in response to Request 13.

WACHTELL, LIPTON, ROSEN & KATZ

By: 
Theodore N. Mirvis
Elaine P. Golin

*Attorneys for Non-Party Bank of America
Corporation*

51 West 52nd Street
New York, New York 10019
Telephone: (212) 403-1000
Facsimile: (212) 403-2000

Dated: October 4, 2012
New York, New York

CERTIFICATE OF SERVICE

I, Vladislav Vainberg, hereby certify that on October 4, 2012, I caused the foregoing Responses and Objections of Non-Party Bank of America Corporation to the Steering Committee's Subpoena to be served by e-mail upon:

Daniel Reilly
Michael Rollin
Reilly Pozner LLP
1900 Sixteenth St., Suite 1700
Denver, Colorado 80202
Telephone: (303) 893-6100
Fax: (303) 893-1500
dreilly@rplaw.com
mrollin@rplaw.com

John G. Moon
Claire L. Huene
Miller & Wrubel P.C.
570 Lexington Avenue
New York, New York 10022
Telephone: (212) 336-3500
Fax: (212) 336-3555
jmoon@mw-law.com
chuene@mw-law.com

Derek W. Loeser
David J. Ko
Keller Rohrback LLP
1201 Third Avenue, Suite 3200
Seattle, Washington 98101
Telephone: (206) 623-1900
Fax: (206) 623-3384
dloeser@kellerrohrback.com
dko@kellerrohrback.com

Attorneys for the Steering Committee



Vladislav Vainberg