

# **EXHIBIT 135**

**TO AFFIRMATION OF DANIEL M. REILLY IN SUPPORT OF  
CONSOLIDATED REPLY IN OPPOSITION TO THE  
PROPOSED SETTLEMENT**

Consolidated Expert Report of Charles D. Cowan, Ph.D.

Rebuttal to BNY Mellon Expert Reports and Reply in Support of Initial Report

April 11, 2013

viable. Parties who are actually interested in negotiating a reasonable resolution of representation and warranty liability can, for example, use statistical sampling and extrapolation, as discussed in my Report and as has been used in a number of cases. Further, a trustee who, like BNY Mellon had a contractual right to access to loan files and other loan-level information, could, for example:

- Employ a loan review hierarchy in which it would sequence its review according to the likelihood in which breaches will be found. Indeed, Mr. Burnaman would acknowledge that loans experiencing payment defaults in the first year or two are more likely to suffer from breaches than loans that default later.<sup>46</sup>
- Conduct a similar review by prioritizing by loan product and documentation types to increase the likelihood of identifying loans suffering from breaches of representations and warranties.
- Gain access to Countrywide's underwriting databases and files to identify loans containing red flags such as multiple automated underwriting submissions and approvals outside of acceptable, documented variances.

46. Importantly, loan file review is not as subjective as they suggest. My team has identified numerous loans from within the small sample BofA provided in this case in which no reasonable reunderwriter could disagree with the material underwriting deviations identified. Moreover, my team has taken an extremely conservative reunderwriting approach by referring only to what the original underwriters had in the files at the time. Had we accessed other data sources and contacted borrowers, I am convinced that we would have found even more breaches of representations and warranties in the sample.

47. Further, Mr. Burnaman's reliance on a Royal Bank of Scotland report to argue that loan file review is unduly burdensome not only ignores these cost-saving techniques but is misplaced

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<sup>46</sup> Burnaman Report at 14.

as it does not account for RBS's interest in reaching such a conclusion. RBS has been sued for representation and warranty liability; no wonder it would argue against loan file review.

48. Mr. Burnaman also incorrectly recasts my opinion to be that "loan file review is both absolutely necessary and absolutely conclusive" or "the only valid approach to determining a reasonable settlement amount."<sup>47</sup> This is a misrepresentation, as I said neither. Rather, my Report opines that loan file review is the best method, not the only method, and that if one is not going to review loan files—as neither Mr. Lin nor Mr. Burnaman did—then they should use the most relevant data available. As discussed above and consistent Topic 820, Mr. Burnaman should agree with that proposition. My opinion is that Mr. Lin did not use the most relevant data and that the Trustee was aware of the inapplicability of the GSE repurchase experience.

**E. Nothing in the Trustee's Expert Report Alters the Fact that Many of the Deficiencies in the Lin Report were Apparent on its Face and from Information then Available to Mr. Lin and the Trustee**

49. As set forth in my Report, the substantial flaws in the Lin Report were apparent on its face. As discussed above, Mr. Burnaman's report further highlights those flaws and reveals others.

**II. The Settlement Amount is Inadequate and Unreasonable**

50. As set forth in my Report, and based solely on the information then available to Mr. Lin and the Trustee, I believe the best available estimate of BofA's repurchase liability is \$64-95 billion.<sup>48</sup> Even using Mr. Burnaman's loss calculations (\$84.7 billion), and applying a scientifically valid methodology for estimating breach rates based on the information available to Mr. Lin and the Trustee at the time (50.5%), the repurchase liability would be \$42.8 billion.

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<sup>47</sup> Burnaman Rebuttal at 2.

<sup>48</sup> Cowan Report at 2-3.