Exhibit 95

to
Affidavit of Daniel M. Reilly
in Support of Joint Memorandum of
Law in Opposition to Proposed Settlement

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

I.   Summary of Conclusions

I have been retained by AIG to review and opine on Brian Lin's Opinion Concerning Contemplated Settlement Amount ("Lin Report"), and to consider issues raised by the Lin Report and other matters bearing on the quantification of damages to the Covered Trusts. Based on my expertise and my review of the case materials described herein, I conclude as follows:

A. Mr. Lin Materially and Unjustifiably Undervalued the Damages Suffered By the Covered Trusts

The proposed Settlement Agreement seeks to resolve certain claims, including claims arising from breaches of representations and warranties in the 530 Covered Trusts. I have experience and expertise in the identification of breaches of representations and warranties in residential mortgage loans and pools of residential mortgage loans and the quantification of repurchase liability. In my experience and expert opinion, the most reliable method for establishing actual breaches of representations and warranties in the Covered Trusts is to review the actual loan files and other loan-level information, such as servicing records and data tapes. Alternatively, one may reunderwrite a statistically valid sample of the actual loan files and related loan-level information. This is the standard practice in repurchase disputes, and I am not aware of any repurchase case – other than this one – where this was not done.

To the extent a loan file review were impossible for whatever reason, (e.g., the files were lost or destroyed) an alternative methodology would be to reunderwrite loans similar to those in the subject pools, such as the approach used by the investor group represented by Gibbs & Bruns ("GBIG"), set forth in Exhibit 13 to Docket No. 301 (the "Alternative Approach"). That approach demonstrated that the repurchase liability ranged from approximately $64 billion to $95 billion on nearly $108 billion in realized and expected losses.[1] Because there was no

---

[1] Ex. 13 to Doc. No. 301 (BNYM_CW-00000206 – 207) ("Affirmation of Elaine P. Golin In Support of Memorandum of Non-Parties Bank of America and Countrywide in Opposition to Objectors' Motion to Compel Production of Loan Files") (Dep. Ex. 21). The Alternative Approach was based on 543 trusts, including the 530 Covered Trusts.

analysis of actual loan files in the 530 Covered Trusts, it is my opinion that the Alternative Approach was the most reliable set of data available to Mr. Lin at the time.

I have reviewed the Lin Report and assessed the approach being employed therein. Without looking at any loan files, Mr. Lin used a funnel-like approach, which, based on a series of assumptions, successively narrowed the funnel and reduced the purported repurchase liability and ultimate settlement range. He adopted this approach from the Alternative Approach. While I do not fundamentally disagree with using a funnel-like approach that applies data to produce a figure representing repurchase liability, the reliability of such an approach turns on the appropriate use of accurate data and assumptions. Mr. Lin's data and assumptions were based on information from the GBIG and Bank of America ("BofA"), as well as information from the Trustee and Mr. Lin's own internal research. However, he simply adopted much of BofA's unverified and irrelevant data and ignored much of the data provided by the GBIG. He did so without any sound basis for doing either. The assumptions and techniques Mr. Lin chose are fundamentally and facially flawed and his approach leads to an unsupportable settlement range.

It was not scientifically sound or reliable to attempt to estimate a settlement range in the manner attempted by Mr. Lin. If asked to do so, and restricted to the information Mr. Lin was given, at a minimum, I would have designed a statistically valid analysis that used both data sets presented to me in an effort to approximate the best result possible under the restrictive circumstances. I believe this is the approach that would have been taken under similar circumstances by a reasonable and qualified expert experienced in quantification of repurchase liability. Had Mr. Lin conducted the analysis I have now performed, a very different repurchase liability would have emerged. To be clear, I reach my conclusion using only the limited information Mr. Lin had available to him. It is *not* my conclusion that such an exercise would represent an accurate estimate of the *actual* repurchase liability, only that had Mr. Lin pursued a scientifically sound approach to reconciling the two sets of data available to him, he would have calculated a repurchase liability in line with the results of my analysis.

If I were provided with loan files necessary to conduct a statistically valid sample of loans for the Covered Trusts, I could accurately determine the total repurchase liability. That figure may well

be within the range found by the GBIG under their Alternative Approach - $64 billion to $95 billion. The question can be answered definitively by engaging in the appropriate reunderwriting analysis, which would have revealed the total repurchase liability.

B. The Trustee's Material and Adverse Discount Was Invalid and Mr. Lin Wrongly Included That Discount in His Approach

The Covered Trusts suffer harm as a result of breaches of representations and warranties even when individual mortgage loans do not experience a payment default. The Trustee ignored these harms when it discounted the settlement under Bank of America's theory that payment default is a prerequisite to repurchase. The Lin approach also wrongly assumes that trusts are only harmed when loans default. This assumption caused Mr. Lin to even more severely understate losses to the Covered Trusts.

II.   Qualifications and Compensation

My background covers 40 years of research and study in the areas of statistics, economics, and their application to business problems. I am Managing Partner of Analytic Focus LLC, headquartered in San Antonio, Texas with offices in Birmingham, Alabama and Washington, DC. My firm conducts research for legal matters, including litigation support and expert witness services when requested. Some of our work focuses on measurement of risk for financial intermediaries. The final area of our practice is in support of Federal and State agencies needing economic and financial analysis to pursue their missions. Prior to founding Analytic Focus, I served as Chief Statistician for the Federal Deposit Insurance Corporation. I was also a Director for Price Waterhouse where I headed the Financial Services Group in the Quantitative Methods Division. I served for 12 years at the U.S. Bureau of the Census where I was responsible for the evaluation of the Decennial Census and held the title of Chief of the Survey Design Branch. I am also an adjunct professor in the School of Public Health at the University of Alabama – Birmingham (UAB) and previously served as a professor in the Business School at UAB, as a research professor at the University of Illinois, and in other academic and professional positions. For the past four years, I have been actively involved in numerous RMBS litigation activities. I have worked with all the Federal government entities involved in various lawsuits, including the FDIC, the FHFA, Freddie Mac, Fannie Mae, NCUA, seven of the Federal Home Loan Banks,

The review of actual loan files in the Covered Trusts would have yielded, among other things, a more accurate breach rate than what was used in the Lin Report. Indeed, one of the most significant deficiencies in the Lin Report is the failure to establish a breach rate for the actual loans in the Covered Trusts or, at least, use of a reasonable approximation of those loans. Instead, Mr. Lin and the Trustee relied on the different, indeed, completely irrelevant loans sold to the GSEs. Mr. Lin himself testified that ████████████████████████████████ ██.[3] Loan file review and sampling is a generally accepted and judicially approved method for calculating breach rates in RMBS.

B. Lin's Unreasonable Rejection of the Breach Rate Identified by the GBIG

As an alternative to actual loan file review, another methodology that Mr. Lin and the Trustee could have employed was to obtain breach rates from similar loans or pools of loans. In fact, this is the exercise that the GBIG performed and presented to both ████████████████ and Mr. Lin.[4] The Alternate Approach relied on reunderwriting of 250,000 loan files that, according to Mr. Lin, were similar to the loans in the Covered Trusts. The GBIG identified breach rates at or exceeding 60% and repurchase liability of approximately $64 billion to $95 billion. The GBIG further concluded that a reasonable settlement amount would be $32.3 billion.[5] Without any justification, other than characterizing the GBIG breach rate as "aggressive,"[6] Mr. Lin rejected the actual reunderwriting experience reflected in the Alternative Approach.

C. Summary of the Lin Approach
1. Overview of Mr. Lin's Approach

Brian Lin says he was hired to "render an independent professional opinion relating to the settlement amount of 530 Trusts," which he calls the "Settlement Portfolio."[7] The details of

---

[3] Lin Dep. 90:5–94:9, 218:7-18 (Oct. 16 & 17, 2012).
[4] Ex. 13 to Doc. No. 301 (BNYM_CW-00000206 – 207) (Dep. Ex. 21).
[5] *Id.*
[6] Dep. Ex. 9 (BNYM_CW-00252597–605) at 1 ("Lin Report") (also available at http://www.cwrmbssettlement.com /docs/Opinion%20Concerning%20Contemplated%20Settlement%20Amount%20For%20530%20Trusts.pdf).
[7] Lin Report at 1.

what Mr. Lin did are set forth more fully in the Lin Report and his deposition.[8] Generally stated, Mr. Lin reviewed data from the GBIG and Bank of America ("BofA"), ▮▮▮▮▮▮▮▮▮ ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮ and using this information, developed what he alleges is a reasonable settlement range of $8.8 billion to $11 billion.

Mr. Lin adopted the general approach of the GBIG. He started with four totals for all of the 543 trusts that the GBIG included in its model. The first set was three collateral balances, summarized in three groups: 60+ Days Delinquent, Modified Loans, and Non-Modified Loans. He added one additional total: realized losses. Mr. Lin then "funneled" these total amounts of loss or dollars at risk by application of four assumed rates (Default Rate, Severity Rate, Breach Rate and Success Rate) to obtain his "reasonable" settlement range. Mr. Lin's simple tabular calculation is presented below as Table 1, reproducing the table he presents in his report.

Table 1: Reproduction of Tabular Summary from the Lin Report

Low Range

Description	Balance	Default Rate	Severity Rate	Losses	Breach Rate	Success Rate	Settle-ment
Liquidated Loans				$25.0	36%	40%	$3.6
60+ Delinquent Loans	$72.5	90%	45%	$29.4	36%	40%	$4.2
Mod. Current Loans	$12.8	35%	45%	$2.0	36%	40%	$0.3
Non-Mod. Current Loans	$98.6	11%	45%	$4.9	36%	40%	$0.7
Total							$8.8

High Range

Description	Balance	Default Rate	Severity Rate	Losses	Breach Rate	Success Rate	Settle-ment
Liquidated Loans				$25.0	36%	40%	$3.6
60+ Delinquent Loans	$72.5	90%	60%	$39.2	36%	40%	$5.6
Mod. Current Loans	$12.8	40%	60%	$3.1	36%	40%	$0.4
Non-Mod. Current Loans / D30	$98.6	16%	60%	$9.5	36%	40%	$1.4
Total							$11.0

---

[8] I refer to specific acts by Mr. Lin and his omissions (as discussed in his deposition) only as is necessary to state my opinion.

2. Summary of Mr. Lin's Assumptions

a) Default Rate

The default rate is the percentage of the aggregated loan balances in each delinquency-status bucket for loans that are in default or are likely to go into default based on data made available to or assumptions made by Mr. Lin. Mr. Lin assumed a 90% default rate for loans that are 60-89 days delinquent; 35-40% for current, modified loans; 11-16% for non-modified loans that are either current or up to 59 days delinquent.

b) Severity Rate

Severity is the percentage of loan balance that will result in loss after loss mitigation activities such as foreclosure. Mr. Lin assumed severity rates of 45% and 60% in all delinquency categories.

c) Actual and Expected Losses

After accounting for default and severity rates, Mr. Lin assumed total losses in 543 Countrywide-issued RMBS, including the Settlement Portfolio, of $61.3 billion and $76.8 billion for the low and high ranges, respectively.[9]
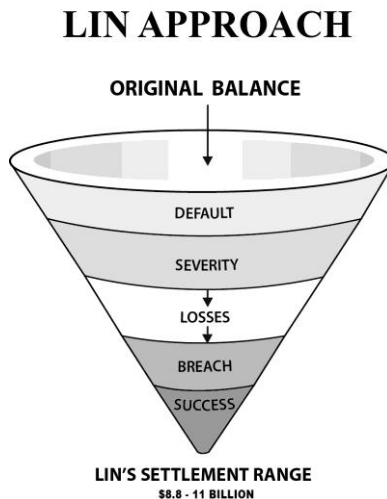
d) Breach Rate

Mr. Lin described, in his deposition, ███████████████████████████████████ ██ In his report, he used a constant breach rate of 36%. However, the application of the breach rate to dollar values in his report should be the proportion of dollars in loans that are in breach, a different calculation than the one described in his deposition or in his report.

e) Success Rate

The success rate represents the percentage of loans in breach that BofA is estimated to agree to repurchase. Mr. Lin used a unified constant success rate of 40%.

---

[9] Lin Report at 8.

Mr. Lin's approach can be viewed as a funnel based on each of the four assumptions, which narrowed the funnel and reduced the repurchase liability and ultimate settlement range. After applying all four assumptions, Mr. Lin determined a "reasonable" settlement range of $8.8 to $11.0 billion.

LIN APPROACH

ORIGINAL BALANCE

DEFAULT

SEVERITY

LOSSES

BREACH

SUCCESS

LIN'S SETTLEMENT RANGE
$8.8 - 11 BILLION

D. The Lin Report Disregards Important Information and Contains Obvious Flaws

There is evidence in the materials that Mr. Lin used or had available that ███████████████ ██████████████████████ In fact, materials in his production ████████████████████ ███████████ Further, the simplistic approach he took in combining the four assumptions guaranteed a minimum value for the settlement range. Mr. Lin assumed the lowest default rate occurs with the lowest severity rate which then occurs simultaneously with a static breach rate AND the lowest success rate. Having all four extremes occur simultaneously defies common sense and probabilistically, is infinitesimally close to zero. Note also that Mr. Lin does not employ an approach that permits him to evaluate the reliability of his outcomes. This section addresses the rates Mr. Lin used; the next section of this report addresses how the rates could have been combined.

1. Default Rate

For the group "60+ delinquent loans," Mr. Lin assumed that the default rate is 90%. However, among the 60+ delinquent loans, there are majority of loans (85.8%[10]) that are 180+ delinquent and essentially are in default. Assuming that Mr. Lin's assumption is true, it is clear that he embeds a default rate for loans that are 60 to 179 days delinquent in his calculation of 29.7%.

Delinquency Status	Proportion in Population	Default Rate
Greater than 180 days	85.8%	100.0%
60-179 days	14.2%	29.7%
Total: 60+ Days	100.0%	90.0%

This proportion, for a substantial proportion of the Settlement Portfolio, is far too low. This value (the 29.7%) is actually even lower than the average default rate for the full population. The actual default rate for this population should exceed 90%. I conservatively use a 90% default rate.

For the modified current loans, Mr. Lin claimed that "[w]ith respect to the default of previously modified current loans, performance has improved dramatically since the first round of loan modification in early 2008 due to aggressive methods taken by both servicers and the government."[11] Mr. Lin further states, "a default rate for previously modified current loans ranging from 35% to 40% is reasonable."[12]

However, according to a report from Amherst Securities ███████████████████ ████████████████████████████████████,[13] the HAMP modifications are likely to be largely ineffective and the re-default rates remain high even with significant payment reduction. Notwithstanding this information, Mr. Lin used a much lower re-default rate (35% or 40%) without any factual basis or calculations showing how his significantly lower re-default rates were derived.

---

[10] Appendices.
[11] Lin Report at 7.
[12] *Id.*
[13] Ex. 19 to Doc. 301 (BNYM_CW-00000278 – 369) at BNYM_CW-00000293-94 (pp. 13-14) (Dep. Ex. 150) (Reliance 1); Lin Dep. 272:15-273:3. Documents referred to in this opinion as Mr. Lin's reliance materials are labeled in the footnotes as "Reliance __".

In actual fact, the re-default rate is 51.4% at 12 months after modification. I would expect the cumulative re-default rate will be much higher than this rate at the maturity of the trust, a factor Mr. Lin apparently did not consider at all. Even for the group "Portfolio Loans" with the lowest re-default rate, the predicted rate will be 53.6%[14] at twenty-four months after modification.

For the non-modified current loans, Mr. Lin assigned a default rate of either 11% or 16%. According to data provided to Mr. Lin by the GBIG,[15] the rate is 50%. The 50% rate was derived from Bank of America's own published information.[16] Moreover, Mr. Lin provided no factual support for his use of 11% or 16%. He provided no calculations supporting his downward adjustment of the publicly available data provided to him.

Further, Mr. Lin repeated an error that he made with the 60+ days delinquent loans. He improperly lumped current loans with loans that were 30-59 days delinquent without distinguishing between the different default characteristics of current and delinquent loans. I am using Mr. Lin's number, with the understanding that it is a conservative value, likely lower than the true weighted average.

Cumulatively, the result of Mr. Lin's facially unsupported default rates results in a drastic understatement of likely defaults when compared with reliable, publicly available data - including data that Mr. Lin and the Trustee had in their possession at or before the issuance of the Lin Report. Since default rates served as the first assumption that reduced the aggregated balances for purposes of deriving estimated losses, understatement of default rates (and severity rates, as discussed below) results in artificially underestimated losses. Underestimated losses result in underestimated repurchase liability. Further, throughout this process, Mr. Lin did not estimate or acknowledge standard measures of reliability used to evaluate such calculations.

---

[14] Appendices.

[15] Ex. 13 to Doc. 301 (BNYM_CW-00000206–207) (Dep. Ex. 21) (Reliance 2).

[16] Ex. 19 to Doc. 301 (BNYM_CW-00000278–369) at BNYM_CW-00000279 (Dep. Ex. 22).

2. Severity Rate

Turning to the issue of severity, Mr. Lin utilized assumptions of 45% and 60% at the low and high ranges, respectively. However, the Alternative Approach shows a "Grand Total" severity rate of 66%.

Under Mr. Lin's assumptions (low range), the loss rate (the expected losses over the current balance) is 19.7%, which is 32.2% lower than the loss rate 28.8% according to Mr. Lin's reliance material (see Table 2 below). Even with Mr. Lin's high range, his loss rate of 28.1% is still lower than 28.8%. In short, Mr. Lin's severity rates are grossly short of the numbers found in his reliance materials.

Table 2: How Mr. Lin Calculates His Loss Rate

Low Range

Description	Balance	Default Rate	Severity Rate	Loss Rate
Liquidated Loans				
60+ Delinquent Loans	$72.5	90%	45%	41%
Mod. Current Loans	$12.8	35%	45%	16%
Non-Mod. Current Loans / D30	$98.6	11%	45%	5%
Total				
	$183.9			19.7%

High Range

Description	Balance	Default Rate	Severity Rate	Loss Rate
Liquidated Loans				
60+ Delinquent Loans	$72.5	90%	60%	54%
Mod. Current Loans	$12.8	40%	60%	24%
Non-Mod. Current Loans / D30	$98.6	16%	60%	10%
Total	$183.9			28.1%

3. Losses

The cumulative effect of these errors and omissions results in low and high estimates from Mr. Lin's approach that significantly underestimates losses.

4. Breach Rate

After calculating losses, Mr. Lin assumed a breach rate of 36.0%. The breach rate represents Bank of America's *unverified* experience in negotiating repurchase claims with the Government Sponsored Enterprises ("GSEs"), Fannie Mae and Freddie Mac. As set forth below, adopting a breach rate from the GSE repurchase experience is completely improper and unjustified. In an earlier section, I also noted that Mr. Lin ███████████████████████████████ ████████████ but the application of this rate is to dollar amounts and so would more properly be computed as the proportion of dollars in loans with breaches relative to the total dollars in loans. My past experience in similar investigations is that the "dollar breach rate" is typically higher ██████████████████████ because loans with higher dollar values are more likely to have breaches, ████████████████████████████████████. For multiple reasons, Mr. Lin's breach rate is fundamentally wrong and undermines the validity of his approach.

5. Success Rate

Finally, Mr. Lin assumed a 40% success rate. This too represents unverified GSE repurchase experience data provided by BofA. Furthermore, this assumption has no place in the Lin Report. As a preliminary matter, the "success rate" appears to be a reflection of ████████████ claims between BofA and the GSEs. As set forth below, there are numerous problems with comparing the GSE loans to the loans in the Covered Trusts. More fundamentally, however, embedded in the very notion of a success rate are various factors parties consider when resolving legal disputes. In my experience, experts offering opinions about the calculation of damages are never involved in the acceptance or non-acceptance of the results. It is highly unusual for any financial expert to offer any opinion on the various factors lawyers and clients consider with respect to litigation. This appears to be why the Trustee hired additional experts to opine on legal arguments that would affect the probability of success on the underlying claims.

Consequently, Mr. Lin's application of a success rate appears to constitute a double discount for litigation considerations.

My Opinion Concerning Mr. Lin's Reliance on Unrelated Repurchase Experiences

There are multiple problems with relying on BofA's GSE repurchase experience, which were clear on the face of the Lin Report and from other data sources then available to Lin and/or the Trustee, including:

1. <u>Neither Lin nor the Trustee did anything to verify the accuracy of BofA's breach and success[17] assumptions.</u>

According to the Lin Report, BofA's repurchase experience reflected a 36% breach rate and a 40% success rate.[18] This information came from BofA.[19] Lin ▮▮▮▮▮▮▮▮ adopted the BofA breach and success rates without verification.[20]

2. <u>The loans that were the subject of the GSE repurchase experience are completely different from the loans in the Covered Trusts.</u>

Mortgage loans, also known as "collateral," vary widely in credit quality. Certain types of loans are far more likely to suffer from breaches of representations and warranties than others. Comparing portfolios comprised of different collateral types is an unreliable way of deriving breach and success rates. The Lin Report acknowledges the problem of comparing GSE and private label loans,[21] and another of the Trustee's experts drew an important distinction between GSE and private label loans in its "Primer" on the subprime meltdown:

> For the most part, the GSEs have dealt with prime mortgages that conform to a relatively narrow set of specifications and cater to borrowers with good credit and complete

---

[17] As set forth above, it is my opinion that a success rate assumption finds no place here. Nevertheless, in order to address Mr. Lin's misuse of the GSE repurchase experience, I discuss both breach and success rates.

[18] Lin Report at 8.

[19] ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮); Lin Report at 8.

[20] Lin Report at 8; ▮▮▮▮▮▮▮▮▮▮▮▮▮

[21] Lin Report at 4 ("I believe it would have been easier to compare two analogous portfolios rather than to utilize a comparison between conforming and non-conforming portfolios.").

documentation. Mortgages that lie outside these parameters are usually issued and securitized by private-label ("non-Agency") companies.[22]

Moreover, Freddie Mac's then-General Counsel, who ████████████████████ ███████████████████████ and was a member of the GBIG, testified that ████████ ██ ██ ██ ██ ████████████████████████████"[23]   The GBIG "████████████████████████████ ██ ████████████████████████████"[24]

3. <u>Embedded in the Freddie Mac portion of the GSE repurchase experience on which Lin and the Trustee relied to establish the breach and success rates were two fundamental problems rendering Lin's and the Trustee's reliance unreasonable: (a) a flawed methodology for identifying loans potentially subject to repurchase by BofA and (b) the influence of on-going business relationships with BofA on Freddie Mac's repurchase prosecution and decision-making.</u>

In September, 2011, the Federal Housing Finance Agency ("FHFA") Office of the Inspector General ("OIG") issued a report on the December 2010 Freddie Mac/BofA repurchase settlement.[25] That report concluded that Freddie Mac's methodology for demanding repurchase of loans purchased from Countrywide was flawed because it failed to consider loans that performed for the first 24 months after origination, in part because Freddie Mac believed "that the need to maintain relationships with loan sellers such as Bank of America was a factor weighing against implementing more expansive loan review and repurchase policies."[26] Freddie

---

[22] Dep. Ex. 393 at 4-5, Dr. Fatan Sabry and Dr. Thomas Schopflocher, "The Subprime Meltdown: A Primer" (June 21, 2007). Notably, the information in this primer was available to the Trustee before it accepted the Settlement.

[23] Bostrom Dep. (Freddie Mac) 262:8-16 (Dec. 18, 2012); *see also* Waterstredt Dep. (MetLife) 57:13-17 (Dec. 5, 2012) ██ Robertson Dep. (BlackRock) 220:4-12 ████████████████████████

[24] Bostrom Dep. (Freddie Mac) 263:25-264:5.

[25] Dep. Ex. 201, Federal Housing Finance Agency Office of Inspector General, "Evaluation of the Federal Housing Finance Agency's Oversight of Freddie Mac's Repurchase Settlement with Bank of America" (Sept. 27, 2011).

[26] *Id*. at 27; *see generally id.* at 16-31.

Mac's then-General Counsel confirmed that ███████████████████████████

██

██.[27]

Although the FHFA OIG's report was not issued until after the settlement agreement was signed, Freddie Mac—a member of the investor group steering committee—███████████████

██

██████████████████.[28] Indeed, Freddie Mac was ████████████████████████

██████████████████████ ████.[29]

4. <u>The Fannie Mae portion of the GSE repurchase experience was incomplete and has since been resolved for an additional $11 billion.</u>

While Freddie Mac resolved all of its Countrywide-related repurchase claims in December, 2010, Fannie Mae resolved only about 75% of its existing claims.[30] This information was ██████ ██ available to the Trustee before it entered into the Settlement.[31] The remaining Fannie Mae claims were resolved on January 6, 2013 for approximately $10.3 billion.[32] Nothing in the Lin Report or the Trustee's reliance on it demonstrates an awareness of or accounting for this additional liability.

In sum, there are three things Mr. Lin and the Trustee could have done to quantify the harm associated with breaches of representations and warranties in the Covered Trusts: reviewed loan files, accepted reunderwriting results of similar loans, or use and properly apply an alternate methodology. They did none of these. At a minimum, when presented with the information

---

[27] Bostrom Dep. (Freddie Mac) 229:7-230:5.

[28] *Id.* at 27:13-30, 33:6-34:14.

[29] *Id.* at 206:8-208:13.

[30] Dep. Ex. 198, Bank of America's Form 8-K (Jan. 21, 2011) (stating that "[b]ased on the models derived from the historical GSE experience, we believe we are 70 to 75% through the receipt of GSE repurchase claims"); Bank of America Corporation Form 10-Q, 46 (March 31, 2011) (stating that "[b]ased on the information derived from the historical GSE experience, including the December 31, 2010 GSE agreements, we believe we are approximately three quarters of the way through the receipt of the GSE repurchase claims that we expect to ultimately receive").

[31] *See* BNYM_CW-00276993–7046 at BNYM_CW-00276993 ████████████████████████

██████████████████████████

[32] Fannie Mae Form 8-K (Jan. 7, 2013).

V.   Adverse Effects on Investors

For any investor, there are deleterious effects of breaches that affect each of the investments made. The loss to the investor starts when the loan is made and applies to all loans with breaches of representations and warranties, not just the defaulted loans. A loan with a breach of representations and warranties should not have been made, meaning it was so risky that the lender's guidelines did not allow the loan (presumably because the risk was too high so the loan could not be adequately priced). Alternatively, for some breaches of representations and warranties, the risk of the loan was higher and this additional risk was reflected in the way the loan should have been priced. For example, a loan that was made to a real estate investor but priced as if the loan were made to a person who represented that the loan was for a primary resident is underpriced. Loans to investors are riskier than to primary owners who will reside in the house. If the risk is higher, a higher interest rate should have been charged for the loan, and this higher interest rate return would have passed through to the investor who was purchasing the loan (and the increased risk) in a pool of loans. Thus, the risk is not just for defaulted loans, but for all loans that have material defects. The proper interest rate should have covered this increased risk.

With respect to how breaches of representations and warranties adversely affect trusts and investors, I describe and conclude that among the consequences of breaches of representations and warranties are:

1. artificially inflated ratings and bond prices together with depressed yields,
2. increased risk of loss, including loss of credit enhancement and credit support, resulting in lower bond values,

---

damages are never involved in the acceptance or non-acceptance of the results. However, in order to quantitatively respond to Mr. Lin's application of a success rate, I note the following applications of a success rate to the $54.79 estimated repurchase liability figure set forth above:

- 40% success rate x $54.79 bn = $21.9 bn (this success rate represents the rate Mr. Lin applied)
- 50% success rate x $54.79 bn = $27.4 bn (this success rate represents the low end of the range from the Alternative Approach)
- 75% success rate x $54.79 bn = $41.1 bn (this success rate represents the high end of the range from the Alternative Approach)

3. lack of confidence in the RMBS market with resulting adverse effects on capital markets more broadly, and

4. overwhelmed protective mechanisms in RMBS, such as the repurchase rights, mortgage insurance, monoline coverage, foreclosure and other loss mitigation mechanisms.

Number 1 is a direct effect of breaches - the securities receive an artificially high rating from the credit rating agencies, prices for the securities are artificially high, and the yield is lower than expected because of increased losses.

Number 2 is a ripple effect that resulted from the initial problems with the mortgage markets. As the mortgage decline worsened, the monoline insurers quit offering credit enhancements or offered such enhancements at a much higher cost which is passed on through the pricing of the securitization to the investor.

Number 3 is another ripple effect, making it increasingly difficult to sell the securities purchased for the investor and forcing the sales to be at greatly reduced prices, continuing the loss for an investor even if they invested a relatively stable security.

Finally, as alleged in numerous suits filed against most of the major lenders, repurchases of defective loans effectively stopped as a flood of repurchases were pursued by investors and trusts. The high rate of defaults swamped lenders and servicers who could not keep up with the greatly increased number of defaults, causing servicing to decline in quality leading to further losses as workouts for borrowers were abandoned. Mortgage insurance was exhausted early in the process, with many mortgage insurers going out of business. These effects are all inter-related, causing a spiral down in the mortgage markets since at each stage the players in the market were overwhelmed with loans that shouldn't have been made, and investors received less than fair value in the returns captured by the trusts and disbursed through the waterfalls.

***