

Exhibit 101
to
Affidavit of Daniel M. Reilly
in Support of Joint Memorandum of
Law in Opposition to Proposed Settlement

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

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In the matter of the application of	:	
THE BANK OF NEW YORK MELLON,	:	Index No. 651786/2011
(as Trustee under various Pooling and Servicing	:	
Agreements and Indenture Trustee under various	:	Assigned to: Kapnick, J.
Indentures),	:	
	:	
Petitioner,	:	
	:	
for an order, pursuant to CPLR § 7701, seeking	:	
judicial instructions and approval of a proposed	:	
settlement.	:	
	:	
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**Rebuttal Opinion of
Phillip R. Burnaman, II
The GreensLedge Group LLC**

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

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consensus resulting from a matured process or development of a practice over an extensive set of disputes based upon successful and proven techniques. To the contrary, the still-developing practice of loan file review in repurchase disputes⁶ and the continuing litigation around many of these disputes reveals a hopelessly time-consuming, expensive and divisive process that leads not to definitive conclusions, but only to an even greater number of individual disputes.

The determination of an actual breach rate, after curable breaches have been addressed, is a highly subjective exercise fraught with the prospect of protracted disputes. This is particularly so given the inherent subjectivity in “re-underwriting” specific loans years after origination without access to the borrower, the actual underwriter, or in some cases the information available to the actual underwriter. This complexity is compounded by the fact that underwriting is often dependent on subjective standards, in no small part because underwriting exceptions and “compensating factors”⁷ are a part of the ordinary course of business and are recognized and permitted in underwriting guidelines.⁸

The Cowan Report fails to acknowledge that any of these issues exist when seeking to calculate a definitive breach rate, but others have recognized the flaws in Dr. Cowan’s hypothesis. Prior to the settlement, Royal Bank of Scotland published a research report⁹ investigating the “Practical Considerations” of a potential loan file review for 78,168 Countrywide loans. RBS concluded that: “the entire process would take at least two years and could potentially take much longer. We estimate that without litigation, the cost could range from \$24 million to \$88 million, and with litigation could be substantially higher.” If litigated, RBS concludes, the process “can go back and forth interminably.” *Id.*

Dr. Cowan himself advocates that an analysis of approximately 50,000 loans could have been performed. But he fails to acknowledge that the time required for such a review would likely be measured in years, not months. Based on my knowledge of the industry, the time and resources required to complete a loan file review of this magnitude would be considerable. There would also be considerable expense—by Dr. Cowan’s figures (\$200-300 per loan file), approximately \$10 million-\$15 million, and of course that is only for reviewers for the plaintiff, in this type of dispute two and possibly three sets of reviewers would be utilized, easily doubling Dr. Cowan’s estimate. The expense could conceivably be much higher: as much as \$56 million if one were to apply the cost figures estimated by RBS.¹⁰

⁶ Affidavit of Peter Kempf, *In the matter of the application of The Bank of New York Mellon, et al.* (Supreme Court of the State of New York, Index No. 651786-2011), May 2, 2012, ¶ 16 (“...there is no single established industry standard with respect to the specific details of a reunderwriting process...”).

⁷ Prospectus, CWALT 2007-OA6, S-35 and others.

⁸ Kempf Aff. ¶ 21-29.

⁹ “Non-Agency MBS Loan Repurchases: Practical Considerations” RBS Non-Agency MBS Strategy, September 17, 2010.

¹⁰ My estimate would be \$25 million to \$35 million based on discussions with former colleagues currently in the loan file review business.

and banks that failed or required government intervention in 2008 were those that had excessive leverage, inadequate liquidity, or both.

Nothing in the report submitted by Dr. Cowan would lead me to change or modify the opinions and conclusions set out in my March 14, 2013 report.

Dated: March 28, 2013
New York, New York

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by 'R', 'B', and 'II' in a cursive script, ending with a flourish.

Phillip R. Burnaman, II