

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the matter of the application of	:	
THE BANK OF NEW YORK MELLON, (as Trustee under	:	
various Pooling and Servicing Agreements and Indenture	:	Case No.: 11-CV-5988 (WHP)
Trustee under various Indentures) <i>et al.</i> ,	:	
	:	
Petitioners,	:	
	:	
-against-	:	
	:	
WALNUT PLACE LLC <i>et al.</i> ,	:	
	:	
Intervenor-Respondents.	:	
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**JOINT CASE MANAGEMENT REPORT**

In its October 19, 2011 Memorandum & Order (“Memorandum and Order”), the Court directed the parties “to submit a joint case management report” by October 31, 2011. (Dkt. 116 at 20.) The parties have conferred regarding how this matter should proceed in federal court and jointly submit their respective proposals.

**I. The Nature of Proceedings in Federal Court**

**A. Proposal of BNYM as Trustee and the Institutional Investors**

This proceeding was commenced by BNYM in New York state court as a special proceeding under Article 77 of New York’s Civil Practice Law and Rules. The relief sought by BNYM – judicial instructions and approval of a settlement – is a well-recognized form of equitable relief that is not unique to New York state practice, and is of the type that this Court is empowered to provide.<sup>1</sup> Accordingly, there should be no change in the form of action brought

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<sup>1</sup> See, e.g., *In re Application of IBJ Schroeder Bank & Trust Co.*, Index No. 101530/1998, slip op. at 6 (Sup. Ct. N.Y. Cnty. Aug. 16, 2000) (holding that “the trustee’s *decision* to compromise the . . . action is within the scope of the trustee’s powers, is reasonable and prudent, and is entitled to judicial deference”) (emphasis added); *Redmond v. Commerce Trust Co.*, 144

by BNYM, or the relief to which it would be entitled upon a proper showing: it shall remain an equitable action in which the issue presented is whether the settlement should be approved.

As for the procedures to be applied in such an equitable proceeding, the Court can and should make use of its “inherent power to supervise and control its own proceedings to ensure that cases are disposed of orderly and without unnecessary delay[.]”<sup>2</sup> to replicate as closely as possible the procedural mechanisms and controls that would have applied to the case had it not been removed to federal court. For example, consistent with the purpose and procedures applicable to Article 77 special proceedings, this Court should: (i) manage the case in a manner consistent with the goal of providing the trustee and trust beneficiaries with an expeditious and efficient means for resolving trust-related issues;<sup>3</sup> and (ii) refuse to permit litigants to convert this proceeding into an adversary, plenary action involving claims for damages or for other relief.<sup>4</sup> Proceeding in this manner will ensure that the substantive right to have questions of trust

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F.2d 140, 154-55 (8th Cir. 1944) (“Where it is reasonably prudent, in the exercise of good faith sound judgment, to make a contract of compromise, the trustee may do so, but, if such compromise is made without proper court approval, the trustee takes the risk of his good faith and sound judgment being attacked successfully by the beneficiaries. If the compromise is made only upon proper court approval, the trustee may safely do so and such is binding upon the beneficiaries”) (citations omitted); RESTATEMENT (SECOND) OF TRUSTS § 192 cmt. d. (2010) (“If the trustee is in doubt whether he should compromise or submit to arbitration a claim, he may ask the instruction of the court or he may agree thereto conditionally upon the subsequent approval of the court.”).

<sup>2</sup> *Rafter v. Bank of America*, No. 04 Civ. 3341, 2011 WL 2897331, at \*6 (S.D.N.Y. June 28, 2011) (citation omitted).

<sup>3</sup> *See, e.g., In re Bucherer’s Trust*, 196 N.Y.S.2d 439, 440-41 (Sup. Ct. Suffolk Cnty. 1959) (“The summary proceeding relating to express trusts made by living persons or by last will and testament was intended to dispense with the cumbersome details of a plenary action in regard to settlement of accounts and construction of the trust.”); CPLR § 401, Practice Commentaries (McKinney 2010) (noting that “[s]peed, economy and efficiency are the hallmarks of” a special proceeding.).

<sup>4</sup> *See, e.g., In re Houston’s Trust*, 294 N.Y.S.2d 225, 227 (3d Dep’t. 1968) (denying joinder of affirmative claims against trustee in Article 77 proceeding because a “special

administration adjudicated in a summary proceeding and resolved in an efficient and expeditious manner is preserved.

**B. Proposal of the Intervenor-Respondents and Objectors**<sup>5</sup>

BNYM concedes that this Court has the power to hear actions for equitable relief (including, of course, equitable actions that include a component of monetary relief) as part of a civil action under the Federal Rules of Civil Procedure. That is precisely what this action has become, now that it is pending in federal court. Signing Respondents also agree that this Court has “inherent power to supervise and control its own proceedings to ensure that cases are disposed of orderly and without unnecessary delay.” Signing Respondents respectfully request that this Court exercise its inherent power to fashion a proceeding that provides a framework for a fair and efficient adjudication of the merits of the wide-ranging relief that BNYM and the “Institutional Investors” are seeking in this action.

The relief BNYM and the “Institutional Investors” seek in their proposed Order and Decree extends far beyond the fundamental and complex question of whether the terms of the proposed settlement should be approved “in all respects.” Proposed Final Order and Judgment filed in the Art. 77 Proceeding ¶ n. The relief sought also includes, among other things, requests for findings and orders by the Court:

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proceeding brought under article 77 is not one adaptable to the type of adversary plenary litigation envisioned by the action brought by executors” (emphasis added) (citation omitted); *Great Park Corp. v. Goldberger*, 246 N.Y.S.2d 810, 812-13 (Civ. Ct. N.Y. Cnty. 1964) (emphasis added) (granting severance in special proceeding and noting that “[i]t is essential, however, to vest the court with broad powers to control such joinder or interposition of claims and to order severances when the summary nature of the special proceeding would be jeopardized”) (citation omitted).

<sup>5</sup> Intervenor-Respondents and Objectors (“Signing Respondents”) refer to those parties, other than BNYM and the “Institutional Investors,” whose signatures appear below on the signature pages.

- that the trust beneficiaries have had a “full and fair opportunity” to “object to the Settlement” and “the actions of the Trustee,” and to participate in the judicial proceedings. *Id.* ¶ e;
- that the Court approves “the actions of the Trustee in entering into the Settlement Agreement in all respects.” *Id.* ¶ l;
- that “[t]he Trustee acted in good faith, within its discretion, and within the bounds of reasonableness in determining that the Settlement Agreement was in the best interests of the Covered Trusts.” *Id.* ¶ k;
- that all claims by trust beneficiaries against the Bank of America Parties and the Countrywide Parties are forever barred and enjoined. *Id.* ¶ p;
- that all claims by trust beneficiaries against the trustee “arising from or in connection with the Trustee’s entry into the Settlement” are forever barred and enjoined. *Id.*; and
- that entry into “the Settlement Agreement . . . is a matter within the Trustee’s discretion.” *Id.* ¶ g.

In light of the relief BNYM seeks, and the secrecy that still shrouds critical terms of the proposed settlement, Signing Respondents request that the Court enter a case management order that provides full discovery to the Signing Respondents and affords the Court a fair opportunity to adjudicate this matter.

Certain Signing Respondents also believe that the Court should fashion an order that provides a clear and well-defined right to opt out of the proposed Settlement Agreement.<sup>6</sup> In the event the Court is inclined to allow certificateholders and/or trusts to opt out, Signing

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<sup>6</sup> Section 4(a) of the Settlement Agreement, which is attached as Exhibit B to BNYM’s petition, expressly contemplates that one or more trusts may be excluded from the proposed settlement. Section 4(b) of the agreement even provides that Bank of America and Countrywide may scuttle the entire settlement if the unpaid principal balance of “Excluded Trusts” exceeds a certain “confidential percentage” of the total unpaid principal balance of all 530 trusts. But neither the Settlement Agreement nor the Order to Show Cause provides any mechanism for trusts or trust beneficiaries to exclude themselves from the proposed settlement. In any event, at the present time, certificateholders are without sufficient information to make an informed decision about whether they would want to use an opt-out right.

Respondents respectfully suggest that they not be required to make the decision until after substantial discovery has been conducted.

Signing Respondents strongly object to BNYM's suggestion that this Court should use its inherent power to replicate Article 77 under the Federal Rules of Civil Procedure. As the Court noted in its order denying BNYM's motion to remand, there is no authority to suggest that Article 77 was a proper vehicle for the relief that BNYM was seeking even when this proceeding was still in state court. Certainly there is no reason that this Court should be constrained by what was at best a questionable use of an arcane state procedural mechanism in federal court. Especially in this case, where BNYM as trustee disclaimed any fiduciary duties and has many overt conflicts of interest, the Court should give no deference to its settlement proposal. Similarly, the "Institutional Investors," who in open court claimed to be the architects of this proposed settlement and the self-appointed representatives of all certificateholders in all 530 trusts, are not entitled to any deference. The issues of whether the "Institutional Investors" actually acted in and protected the interests of all certificateholders should be subjected to thorough scrutiny under this Court's broad equitable powers.

More important, the Federal Rules of Civil Procedure expressly apply to this action, *see* Fed. R. Civ. P. 81(c), not the procedural rules of New York Supreme Court. The Court should not, as BNYM suggests, "replicate as closely as possible the procedural mechanisms and controls that would have applied to the case had it not been removed to federal court." There is a strong presumption that the Federal Rules of Civil Procedure should not be supplanted by state rules. *In re Currency Conversion Fee Antitrust Litigation*, 361 F. Supp. 2d 237, 255 (S.D.N.Y. 2005) ("[T]he Federal Rules carry a heavy presumption of validity.") (Pauley, J.); 19 Charles Alan Wright et. al., *Federal Practice & Procedure* § 4510 (2d ed.) (noting "strong presumption

that the Civil Rules govern, even in the face of conflicting state rules of decision, as to all matters they address”). Because BNYM cannot overcome this presumption, this Court should apply the Federal Rules, and not Article 77.

## **II. The Parties’ Proposed Case Management Schedules**

Non-signatories to this Joint Case Management Report have not expressed an opinion on the pre-trial schedule. Below are two proposals for the Court to consider.

### **A. Case Management Proposal of BNYM as Trustee and the Institutional Investors**

1. Discovery should commence on the following schedule:
  - a. On or before **November 22, 2011**, the parties shall: (i) submit written discovery requests on the parties from whom they seek discovery; and (ii) issue and serve subpoenas on non-parties;
  - b. On or before **December 22, 2012**, the parties shall: (i) provide written responses and objections to the discovery requests served on them; and (ii) produce documents for which no objection is lodged;
  - c. On or before **January 20, 2012**, after good faith meet and confer sessions, the parties shall file and serve motions to compel to seek to enforce discovery requests for which an objection has been lodged;
2. Until such time as the Second Circuit Court of Appeals shall either affirm the ruling of the Court on remand, or deny the applications of BNYM and the Institutional Investors for leave to appeal the Court’s remand ruling, the Court shall stay the consideration of any substantive matter, including without limitation any ruling on: (i) any motion to intervene by a non-party; (ii) any motion to assert new or additional claims or causes of action by a party; (iii) any motion seeking to modify or amend the scope of relief requested by BNYM or the form of action by which such request for relief is adjudicated; or (iv) any motion requiring the Court to rule on the proper scope of discovery in this proceeding.
3. Ten days after, if ever, the Second Circuit Court of Appeals shall either affirm the ruling of the Court on remand, or deny the applications of BNYM and the Institutional Investors for leave to appeal the Court’s remand ruling, the parties shall submit a joint case management plan to the Court for proceedings necessary to fully and finally resolve this matter. Thereafter, at a date to be set by the Court, the Court shall convene a status conference to enter a final case management order.

**B. Case Management Proposal of the Intervenor-Respondents and Objectors**

All Signing Respondents oppose any attempt to halt the proceeding, including discovery, during BNYM's anticipated appeal. Substantial progress can and should be made in the upcoming months to shed light on the merits of the multiple forms of relief sought by BNYM and the "Institutional Investors." The numerous questions generated by the proposed settlement have been pending now for months and will have to be answered by BNYM and the Institutional Investors (and Bank of America) no matter in what court the settlement proponents seek judicial blessing of the settlement and their related conduct. To ask this Court and Signing Respondents to wait months to learn the as yet undisclosed details of the settlement negotiations runs directly contrary to BNYM's concession that this Court can and should use its inherent power to dispose of this case "without undue delay."

Significant and fundamental disputes about the scope of discovery are certain. Signing Respondents assert that discovery about the settlement negotiations and communications among BNYM, the "Institutional Investors," and Bank of America is plainly calculated to lead to the discovery of admissible evidence. *See* Fed. R. Civ. P. 26(b)(1). This seems particularly true here because no lawsuit was ever filed, there are no pleadings, no documents, and no testimony to review and assess. Nothing articulates the impending dispute better than paragraph 17 of the proposed settlement agreement, in which the settlement proponents unilaterally declare that "[a]ll matters relating to the negotiation" of the proposed settlement agreement shall be confidential and "shall not be disclosed to anyone other than the parties" to the settlement agreement and their counsel, *except in response to a court order*. Intervenor asserts that if ever there was an appropriate case to order that settlement negotiations are not confidential, it is this case. *See In re General Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106, 1124 (7th Cir. 1979) (holding that district court abused its discretion when it refused to permit a party who would be

bound by a settlement to obtain discovery of the settlement negotiations because “the conduct of the negotiation was relevant to the fairness of the settlement”). In a proceeding to assess the reasonableness of a proposed settlement, parties who were excluded from settlement negotiations and supposedly represented by counsel they never retained but who will nonetheless be bound by the terms of the proposed settlement, are entitled to discovery about the negotiations from the settlement proponents to dispel concerns about possible collusion and potential conflicts of interest. *See id.* (cited with approval in *Newman & Assocs. v. J.K. Harris & Co.*, No. 04 Civ. 9264 (RJH) (MHD), 2005 WL 3610140, at \*2 (S.D.N.Y. Dec. 15, 2005) (generally no privilege to preclude discovery of settlement negotiations)); *see also Plummer v. Chem. Bank*, 668 F.2d 654, 659 (2d Cir. 1982) (“Although we do not expect district judges to convert settlement hearings into trials on the merits, we do expect them to explore the facts sufficiently to make intelligent determinations concerning adequacy and fairness.”).

The Signing Respondents have attached, as Exhibit A to this agreement, copies of the requests for production, requests for admission, and interrogatories they intend to serve upon BNYM. As set forth below in Signing Respondents’ proposed schedule, respondents ask that this Court grant leave to serve these requests on November 10, 2011. These discovery requests fall generally within five categories of information:

1) Communications and documents relating to the negotiation, content, and approval of the proposed settlement (*see, e.g.*, Requests for Production Nos. 1, 2, and 3).

2) The meaning of terms used in the proposed settlement agreement which need clarification (*see, e.g.*, Requests for Production Nos. 6, 10, 15).

3) BNYM’s compliance with its fiduciary duties with respect to the trusts (*see, e.g.*, Requests for Production Nos. 9, 11, and 22).



4) The additional consideration afforded to BNYM in the proposed settlement agreement (*see, e.g.*, Request for Production No. 18).

5) Legal issues regarding the liability of parties to the settlement (*see, e.g.*, Requests for Production Nos. 13, 14, and 17).

Signing Respondents believe that these categories of information are all proper topics for discovery in an action that will determine whether the trustee has acted reasonably, in good faith, and in conformance with its fiduciary duties.

Signing Respondents thus propose the following discovery schedule.

- 1) The parties shall submit an agreed upon protective order, or shall submit proposed protective orders, on **November 10, 2011**.
- 2) The parties may serve their first request for production of documents, first set of interrogatories, and first requests for admission, if any, on or after **November 10, 2011**.
- 3) Depositions of the parties may commence on or after **January 9, 2012**, at mutually convenient dates and times.
- 4) The parties may serve subpoenas on any third party witnesses on or after **November 10, 2011**, seeking the production of documents and/or depositions.
- 5) Fact discovery shall be completed by **April 2, 2012**.
- 6) The parties shall serve any expert reports on issues for which that party bears the burden of proof by **April 16, 2012**.
- 7) The parties shall serve any responsive expert reports or expert reports for which a party does not bear the burden of proof on **May 16, 2012**.
- 8) The parties shall serve any rebuttal expert reports on **June 1, 2012**.
- 9) Expert discovery shall close no later than **June 15, 2012**.

**CONCLUSION**

In accordance with the Court's directive (Dkt. 116 at 20), the parties respectfully submit this Joint Case Management Report for the Court's consideration in addressing the manner in which this matter will proceed.

Dated: New York, New York  
October 31, 2011

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# **Exhibit A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT 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), *et al.*,

Petitioners,

-against-

WALNUT PLACE LLC, *et al.*,

Intervenor- Respondents.

**INTERVENOR-RESPONDENTS' FIRST REQUESTS FOR PRODUCTION TO  
BANK OF NEW YORK MELLON**

Intervenor-Respondents, by their undersigned counsel, hereby request that Bank of New York Mellon respond to the following requests for production within 30 days of service.

**DEFINITIONS**

1. "Bank of America" means Bank of America Corporation and BAC Home Loans Servicing, LP.
2. "BNY Mellon" means The Bank of New York Mellon
3. "Communication" and "communications" mean a transmission or receipt of information of any kind through any means, or any document embodying the transmission or receipt of information.
4. "Countrywide" means Countrywide Financial Corporation and Countrywide Home Loans, Inc.
5. "Covered Trusts" means the 530 residential mortgage-securitization trusts listed on Exhibit A to the Settlement Agreement.
6. "Document" means any writing, report, memorandum, file communication, transmission of ESI (defined herein) through Electronic Media (defined herein), correspondence, study, minutes, bulletin, instruction, literature, notes, notebook, diary, data sheet, work sheet,

recording, drawing, graph, index, chart, telephone record, photograph or other graphic matter, including any drafts of the foregoing items and any copy or reproduction of any of the foregoing items upon which any notation, work, figure, or form is recorded or has been made which has any knowledge or information.

7. “Electronic Media” means any magnetic, optical, or other storage media device used to record ESI. Electronic Media devices may include, but are not limited to, computer memories, hard disks, floppy disks, hard drives, memory sticks, CDs, CD-ROMs, DVDs, personal digital assistance devices (e.g., Palm, Blackberry, iPhone, iPad or other “smart phones” or tablet computers), magnetic tapes of all types or any other means for digital storage and/or transmittal.

8. “ESI” means any original and any non-identical copies resulting from the use of any software program (e.g., word processing documents, spreadsheets, worksheets, database files, charts, graphs, slides, and outlines), electronic mail, PDF files or ASCII files, regardless of the Electronic Media on which they reside and regardless of whether the ESI consists of an active file, backup file, deleted file, or file fragment. ESI also includes, without limitation, any items stored on Electronic Media in files, folder tabs, or containers and labels appended to or associated with any physical storage device associated with each original and each copy.

9. “Institutional Investors” means the entities listed under Roman numeral (ii) in the first paragraph of the Institutional Investor Agreement (defined herein).

10. “Institutional Investors Agreement” means the Institutional Investors Agreement between BNY Mellon, Bank of America, Countrywide, and the Institutional Investors executed on June 28, 2011.

11. “Master Servicer” means the same as “master servicer,” as defined in the third Whereas clause in the Settlement Agreement (defined herein).

12. “Proposed Settlement” means the agreement to settle potential claims that is memorialized in the Settlement Agreement (defined herein), and in the Institutional Investors Agreement (defined herein).



13. “Related to” or “relating to” means containing any information about, constituting, concerning, evidencing, mentioning, discussing, summarizing, describing, referring to, arising out of, created in connection with, or involving the subject specified.

14. “Settlement Agreement” means the Settlement Agreement between BNY Mellon, Bank of America, and Countrywide executed on June 28, 2011, and all exhibits to the Settlement Agreement.

15. “Trustee” means BNY Mellon.

16. “You” means BNY Mellon.

### INSTRUCTIONS

1. In responding to these requests for production, set forth the language of each request immediately prior to Your response to that request.

2. Documents shall be produced as they are kept in the usual course of business or the documents shall be organized and labeled to correspond to the categories in these requests. In the case of documents that were already produced pursuant to federal, state, local government, or administrative requests, investigations, or subpoenas, those documents should be produced in the same manner as they were previously produced by You.

3. Documents shall be produced in such fashion as to identify the department, branch or office in whose possession it was located and, where applicable, the natural person in whose possession it was found and the business address of each document’s custodian(s).

4. You are required to produce the original of each document requested together with all non-identical copies and drafts of each document. If the original of any document cannot be located and/or produced, provide a copy in lieu thereof, which shall be legible and bound or stapled in the same manner as the original, and produce all other non-identical copies that differ from the original and from the other copies produced for any reason, including without limitation, the making of notes thereon.

5. Documents attached to each other in their original form should not be separated

when produced. Any attachments to email messages should be produced with, and linked to, the attaching email.

6. If You are unable to respond fully to any document request, respond to the extent possible, and specify the reasons for Your inability to respond in full and describe to the best of Your knowledge, information and belief, and with as much particularity as possible, those portions of the document that are not being produced.

7. When an objection is made to any request, the objection shall state with specificity all corresponding grounds.

8. If any document is withheld, in whole or in part, for any reason, including, but not limited to, any claim of privilege, whether work-product or attorney-client, common interest, confidentiality, or trade secret, You shall provide a privilege log setting forth separately with respect to each document: (a) the nature of the privilege or the ground of confidentiality claimed; (b) the type of document; (c) the authors of the document, including title and affiliation; (d) the addressees of the document, including title and affiliation; (e) all persons who received copies of the document, including titles and affiliations; (f) the date of the document; (g) the subject matter of the document; and (h) the Bates and/or control number(s) assigned to the document.

9. If a document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without thereby disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a document, You must clearly indicate the portions as to which the privilege is claimed in accordance with the procedure outlined above.

10. If a document responsive to the requests was at any time in Your possession, custody or control, but is no longer available for production, state as to each such document the following information:

- a. whether the document is missing or lost;
- b. whether the document has been destroyed;

- c. whether the document has been transferred or delivered to another person or entity and, if so, to whom and at whose request;
- d. whether the document has been otherwise disposed of; and
- e. a precise statement of the circumstances surrounding the disposition of the document and the date of its disposition.

11. All documents shall be Bates stamped and include the following metadata (to the extent applicable):

- a. Document Date:
- b. Document Created Date:
- c. Document Modified Dates:
- d. Time Sent:
- e. To:
- f. From:
- g. Cc:
- h. Bcc:
- i. Subject
- j. Filename
- k. Doctype
- l. Beg Bates
- m. End Bates

12. Documents not otherwise responsive to these requests shall be produced if such documents mention, discuss, refer to, or explain the documents that are called for by these requests, or if such documents are attached to documents called for by the requests and constitute routing slips, transmittal memoranda or letters, comments, evaluations or similar materials.

## **REQUESTS FOR PRODUCTION**

You are requested to produce the following:

1. All documents BNY Mellon considered in reaching the Proposed Settlement and/or deciding to sign the Settlement Agreement.
2. All requests for information made by BNY Mellon or its experts in connection with the Settlement, and all responses to these requests.
3. All documents describing or discussing the Proposed Settlement and/or the communications that preceded the Proposed Settlement, including but not limited to all drafts of the Settlement Agreement, including drafts of text of any provisions considered by the Trustee, the Institutional Investors, or Bank of America, whether adopted or omitted in the final version Settlement Agreement.
4. All documents relating to the decision by BNY Mellon to seek approval of the Proposed Settlement and Settlement Agreement through a proceeding under Article 77 of the New York Civil Practice Law and Rules.
5. All documents related to the Proposed Settlement or the claims to be resolved by the Proposed Settlement that were provided to You by the Institutional Investors, Bank of America, Countrywide, or any other third party including, without limitation, experts retained by You.
6. All “factual information provided to the Trustee, its counsel, and its experts in connection with the negotiation of the Settlement Agreement” described in Section 13(b) of the Settlement Agreement, including the CD-ROM provided to the Trustee’s counsel and experts on June 3, 2011.
7. All documents related to the Proposed Settlement or the claims to be resolved by the Proposed Settlement that were provided by You to the Institutional Investors, Bank of America, Countrywide, or any other third party including, without limitation, experts retained by You.
8. All communications related to the Proposed Settlement and/or Settlement Agreement exchanged between You and any of (a) Countrywide, (b) Bank of America, (c) any

Institutional Investor, (d) any expert witness (and their agents and staff), including without limitation the experts whose reports accompany the BNY Mellon's court filings in Article 77 proceeding, and/or (e) any other third party including, without limitation, any rating agency or government entity.

9. All communications between and among BNY Mellon and any certificateholder in the Covered Trusts, including, but not limited to, demands by certificateholders that the Trustee take action on their behalf or on behalf of a Covered Trust and the Trustee's response to such demands.

10. All of the "confidential materials" exchanged between You, Bank of America, Countrywide and the Institutional Investors that are referred to in the ninth "WHEREAS" clause on page 2 of the Settlement Agreement and in the sixth "WHEREAS" clause on page 2 of the Institutional Investor Agreement, and all other documents You consider confidential under paragraph 17 of the Institutional Investor Agreement.

11. All analyses performed by You or documents received by You regarding the loans within each Trust that have or will have deficiencies, and were the subject of repurchase or substitution requests, or are or will be subject to repurchase by Countrywide or Bank of America, including but not limited to:

- a. all documents relating to actual and/or potential damages from (i) breaches of representations and warranties, (ii) document exceptions, and/or (iii) servicing-related liability, including any Event of Default in each and all of the Covered Trusts, and (iv) loan defects identified in foreclosure proceedings; and
- b. the loan level exception reports for the Covered Trusts provided by the Trustee to the Master Servicer on April 14, 2011, April 27, 2011, and April 28, 2011 that are described in Section 6(a)(iv) of the Settlement Agreement, and all documents reflecting whether the loans on the exception reports were cured, substituted or repurchased.

Please segregate the foregoing requested documents into agency loans and non-agency loans.

12. All certificates and opinions provided to the Trustee or which the Trustee provided with respect to compliance with the requirements of the pooling and servicing

agreement (“PSA”) for each Covered Trust.

13. Any documents relating to or analyzing Bank of America’s successor liability for any Countrywide entity, including, without limitation, (a) deal documents and government or regulatory filings in connection with Bank of America’s acquisition of Countrywide, and (b) any documents produced or transcripts of depositions taken in *MBIA Insurance Corp. v. Countrywide Home Loans, Inc., et al.*, Index No. 08/602825 (N.Y. Sup. Ct.) regarding Bank of America’s successor liability.

14. Any documents assessing or valuing claims against Bank of America for misconduct occurring after its acquisition of Countrywide, including for servicing defaults and self-dealing.

15. All documents relating to how the Settlement Payment, as that term is defined in Section 3 of the Settlement Agreement, will or may be allocated among the Covered Trusts and among certificateholders in the Covered Trusts.

16. All documents that discuss or analyze any other settlement proposals (besides the Proposed Settlement or Settlement Agreement) to resolve potential claims belonging to the Covered Trusts, the Institutional Investors, or any other certificateholder in the Covered Trusts.

17. All documents relating to potential liability to BNY Mellon, Bank of America, or Countrywide from claims involving Trusts or certificateholders not included in the Settlement Agreement.

18. All documents relating to liability of BNY Mellon for which it will be released or indemnified by the Proposed Settlement and Settlement Agreement, including all communications about and drafts of the proposed final order attached as an exhibit to the June 28, 2011 settlement agreement.

19. All documents that discuss known, potential, or anticipated objections to the Proposed Settlement or Settlement Agreement by certificateholders, government entities, or any third party.

20. All documents relating to Your acceptance of, and commencement of Your

position as, Trustee for the Covered Trusts, including, but not limited to, business acceptance forms and evaluations concerning the acceptance of the position of Trustee in the covered trusts.

21. All minutes of any internal BNY Mellon committee, group, or department responsible for overseeing BNY Mellon's trusteeship of the Covered Trusts.

22. Any document where You stated, discussed, or evaluated whether BNY Mellon had a fiduciary duty to the Covered Trusts or to the beneficiaries of the Covered Trusts.

23. A statistically significant sampling of loan files for defaulted loans in each of the Covered Trusts. For purposes of this request, the term "loan files" means (i) the complete loan originator, servicer, and master servicer file, including but not limited to origination credit reports, underwriting work sheets, underwriting exceptions granted, appraisal or valuation results, title commitment and policy, AUS findings, loan approval, loan application (Form 1008 and all supporting documents), mortgage note, mortgage or deed of trust, mortgage insurance certificate, HUD1, etc.; (ii) applicable underwriting guidelines; (iii) closing loan tapes and mortgage loan schedules; (iv) evidence of all conveyances and assignments; (v) all loan servicing records, including without limitation, call notes, foreclosure files and communications, loss mitigation files; (vi) all mortgage insurance rescission-related documents; (vii) all records related to repurchase analysis, demands, investigations, communications; and (viii) servicing guidelines and procedures. For the purposes of this request, a "defaulted loan" is a loan that (i) is, or has been 90 days or more delinquent, (ii) constitutes a first payment default or early payment default under any applicable agreement, or (iii) would be defined as in default or subject to default in the loan's mortgage or deed of trust. Please segregate the loan files by agency loans and non-agency loans.

24. All policies and procedures of the Master Servicer and subservicers on the covered pools relating to delinquent or defaulted loans, loss mitigation procedures, modifications under HAMP or otherwise and including processing of loan modifications for loans at imminent risk of default and the foreclosure of defaulted loans' mortgages and the transfer of title of foreclosed properties, and REO handling.

25. All Final Certifications (as that term is defined in the Pooling & Servicing Agreements and Sale & Servicing Agreements) with respect to Initial Mortgage Loans and Supplemental Mortgage Loans for each of the Covered Trusts.

26. All documents and communications relating to the Final Certifications (as that term is defined in the Pooling & Servicing Agreements and Sale & Servicing Agreements) with respect to Initial Mortgage Loans and Supplemental Mortgage Loans for each of the Covered Trusts, including, but not limited to, documents and communications relating to exceptions noted on the Final Certifications.

27. All documents relating to the certificate holdings of the Institutional Investors, Bank of America, or Countrywide in the Covered Trusts, including, but not limited to, documents relating to the voting rights held by the Institutional Investors, Bank of America, or Countrywide.

28. All documents which discuss the treatment of investors holding REMIC residual interests.

29. All documents discussing whether to provide consideration to any investor who sold his position but sustained damages.

30. All documents related to and disclosing settlements of breach of representation and warranty claims, including the amount of such settlements, the loans to which the settlement pertained, who received settlement payments and in what amounts, whether the settlement involved the repurchase of certificates or compensation for the loss in value of certificates, and whether the settlement was paid to a trust and distributed through the waterfall.

31. If You deny any of the requests for admission served on You in the Intervenors' First Set of Requests for Admission to Bank of New York Mellon and You base Your denial on facts or information contained within documents, produce all documents that contain the facts or information upon which Your denial is based.



DATED: October \_\_, 2011

REILLY POZNER LLP

By: \_\_\_\_\_

Michael A. Rollin  
Daniel M. Reilly (pro hac vice pending)  
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*Attorneys for AIG Entities*

[INSERT SIGNATURE BLOCKS FOR  
INTERVENORS JOINING THE  
DISCOVERY]



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT 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), *et al.*,

Petitioners,

-against-

WALNUT PLACE LLC, *et al.*,

Intervenor- Respondents.

**INTERVENOR-RESPONDENTS' FIRST SET OF INTERROGATORIES TO  
BANK OF NEW YORK MELLON**

Intervenor-Respondents, by their undersigned counsel, hereby request that Bank of New York Mellon answer the following interrogatories within 30 days of service.

**DEFINITIONS**

1. "Bank of America" means Bank of America Corporation and any BAC Home Loans Servicing, LP.
2. "BNY Mellon" means The Bank of New York Mellon.
3. "Communication" and "communications" mean a transmission or receipt of information of any kind through any means, or any document embodying the transmission or receipt of information.
4. "Countrywide" means Countrywide Financial Corporation and Countrywide Home Loans, Inc.
5. "Covered Trusts" means the 530 residential mortgage-securitization trusts listed on Exhibit A to the Settlement Agreement.
6. "Document" means any writing, report, memorandum, file communication, transmission of ESI (defined herein) through Electronic Media (defined herein), correspondence,

study, minutes, bulletin, instruction, literature, notes, notebook, diary, data sheet, work sheet, recording, drawing, graph, index, chart, telephone record, photograph or other graphic matter, including any drafts of the foregoing items and any copy or reproduction of any of the foregoing items upon which any notation, work, figure, or form is recorded or has been made which has any knowledge or information.

7. “Electronic Media” means any magnetic, optical, or other storage media device used to record ESI. Electronic Media devices may include, but are not limited to, computer memories, hard disks, floppy disks, hard drives, memory sticks, CDs, CD-ROMs, DVDs, personal digital assistance devices (e.g., Palm, Blackberry, iPhone, iPads or other “smart phones” or tablet computers), magnetic tapes of all types or any other means for digital storage and/or transmittal.

8. “ESI” means any original and any non-identical copies resulting from the use of any software program (e.g., word processing documents, spreadsheets, worksheets, database files, charts, graphs, slides, and outlines), electronic mail, PDF files or ASCII files, regardless of the Electronic Media on which they reside and regardless of whether the ESI consists of an active file, backup file, deleted file, or file fragment. ESI also includes, without limitation, any items stored on Electronic Media in files, folder tabs, or containers and labels appended to or associated with any physical storage device associated with each original and each copy.

9. “Identify,” with respect to a natural person, means to state that person’s: (a) name, (b) address, (c) telephone number, (d) e-mail address, (e) employer, and (f) job title or position.

10. “Identify,” when referring to a document, shall mean to set forth: (a) the Bates number or range; (b) the type of document; (c) the general subject matter of the document; (d) the date of the document; and (e) the document’s author(s), addressee(s) and recipient(s).

11. “Identify,” with respect to a communication, means to state the date of the meeting, document or conversation; and to identify the speaker or author and all others present at the meeting or receiving information from the speaker or author.

12. “Institutional Investors” means the entities listed under Roman numeral “(ii)” in

the first paragraph of the Institutional Investor Agreement (defined herein).

13. "Institutional Investors Agreement" means the Institutional Investors Agreement between BNY Mellon, Bank of America, Countrywide, and the Institutional Investors executed on June 28, 2011.

14. "Master Servicer" means the same as "master servicer," as defined in the third Whereas clause in the Settlement Agreement (defined herein).

15. "Proposed Settlement" means the agreement to settle potential claims that is memorialized in the Settlement Agreement (defined herein), and in the Institutional Investors Agreement (defined herein).

16. "Related to" or "relating to" means containing any information about, constituting, concerning, evidencing, mentioning, discussing, summarizing, describing, referring to, arising out of, created in connection with, or involving the subject specified.

17. "Settlement Agreement" means the Settlement Agreement between BNY Mellon, Bank of America, and Countrywide executed on June 28, 2011, and all exhibits to the Settlement Agreement.

18. "Trustee" means BNY Mellon.

19. "You" means BNY Mellon.

### INSTRUCTIONS

1. In responding to each interrogatory, set forth the language of each interrogatory immediately prior to your response.

2. You are to provide full and complete responses to the following interrogatories, after conducting a diligent and thorough investigation into all information within your possession, custody, and control. If you cannot provide a full and complete response to any interrogatory, you should respond to the interrogatory to the extent possible, specifying the portion of the request you are unable to answer and providing whatever information you have regarding the unanswered portion.

3. Your answers to these interrogatories must be signed by an officer or agent of

BNY Mellon in the manner required by Fed. R. Civ. P. 33(b)(1).

4. Any response made by reference to documents shall identify by Bates number or litigation document control number each referenced document.

5. Unless otherwise indicated, the term “identify”:

- a. when used in connection with documents, means to furnish the Bates number or litigation document control number, a brief description of the nature and contents of the document, its title or identifying symbol, its date, its present location and custodian, and the names and addresses of the author and recipients;
- b. when used in connection with a person, means to furnish a statement of the full name, job title or function, employer, and the last known business and home address;
- c. when used in connection with things, including products or other physical objects, means to furnish a complete description of the things, including its common designation, its composition, its physical characteristics, and any other distinguishing characteristics.

6. If you object to any interrogatory on the ground of attorney-client privilege or attorney work product, or for any other reason, for each objection, state the basis for withholding the information and provide an explanation in a manner that is sufficient for the Court to determine the validity of the privilege asserted or basis for withholding the information.

7. If you provide an answer to an interrogatory, then that answer will be deemed full and complete. If you cannot answer an interrogatory in full, then answer to the extent possible and provide an explanation of why you cannot answer in full that is sufficient for the Court to determine the validity of your failure to answer in full.

8. These interrogatories shall be deemed continuing and supplemental responses should be provided as additional information becomes available. You are under a duty to supplement all responses to these requests to include information acquired after service of the

responses, even if such responses were correct when first provided.

### **INTERROGATORIES**

You are requested to answer the following interrogatories:

1. Identify the persons who led the negotiations for each of the entities signing the Settlement Agreement.
2. Identify all persons known to you who have personal knowledge of the negotiation of the Proposed Settlement and the Settlement Agreement.
3. Identify each individual at BNY Mellon who reviewed and approved the Settlement.
4. Identify each document you considered in negotiating and/or approving the Settlement.
5. Identify all persons who participated on the Institutional Investor steering committee.
6. Identify each communication in which the proposed Settlement was negotiated or discussed.
7. Identify each document provided to the New York Attorney General with respect to its investigation of You or the Covered Trusts.
8. Identify all documents relating to transactions considered, proposed, and/or consummated between any of the Institutional Investors and (a) BNY Mellon or its affiliates, (b) Countrywide or its affiliates, or (c) Bank of America or its affiliates.
9. For each Covered Trust in which an Institutional Investor holds a certificate, identify all documents that show (a) each class of certificate held by the Institutional Investor in the Trust, (b) the amount of each class of certificate held by the Institutional Investor (both in terms of total dollar amount and as a percentage of the total class of certificate), (c) the percentage of all voting rights in the trust held by the Institutional Investor, and (d) the percentage of all voting rights in each class held by the Institutional Investor.
10. For each Covered Trust, identify all documents that show (a) the original principal

balance and current remaining principal balance of the mortgage loans therein; (b) the recognized losses incurred to date; (c) the allocation of the remaining principal balances to the outstanding Trust certificates; (d) current or recent (within the last seven months) price, quote or value estimate for the securities issued in connection with or collateralized by the Trust; (e) and the current amounts of loans (by remaining principal balance or as a percentage of remaining principal amount) delinquent, in bankruptcy, and/or in the process of foreclosure.

11. Identify each person employed by You who:

- a. Reviewed mortgage loan files for the Covered Trusts;
- b. Prepared or reviewed exception reports for mortgage loans included in any of the Covered Trusts;
- c. Reviewed reports or other documents from the master servicer or others involved in the foreclosure of mortgage loans in the Covered Trusts, identifying mortgage loans with defects in title or which violated the representations and warranties in the Covered Trusts' governing documents;
- d. Had the responsibility to provide notices of default for the Covered Trusts.

12. Identify all communications with the Master Servicer for the Covered Trusts with respect to the Settlement Agreement.

13. Identify the "qualified financial advisor" that the Trustee has retained or will retain to make the "determinations" and "calculation" described in section 3(c) of the Settlement Agreement, titled "Allocation Formula."

14. Identify all documents that disclose the "confidential percentage of the total unpaid principal balance of the Covered Trusts" that was "provided to the Trustee by Bank of America and Countrywide prior to the execution of the Settlement Agreement" and that is referred to in Section 4(b) of the Settlement Agreement, titled "Withdrawal From Settlement."

15. State whether any document or information relating to the Proposed Settlement has been destroyed. If any document or information relating to the Proposed Settlement has been destroyed, identify (a) who caused the destruction, (b) when the destruction occurred, (c) how the



destruction occurred, and (d) the subject matter and contents of the document or information destroyed.

16. Identify all experts or consultants with whom BNY Mellon consulted regarding the Proposed Settlement and/or Settlement Agreement.

17. Identify all persons with knowledge of any efforts by the Trustee to mitigate losses in the Covered Trusts since January 2007.

18. Identify all persons with knowledge of any efforts by BNY Mellon, or any person acting on its behalf, to mitigate or insure against or hedge against loss to its own portfolio of residential mortgage loans and/or residential mortgage-backed securities since January 2007.

19. Identify all instruments obtained by which BNY Mellon stood to obtain a benefit from residential mortgage loan defaults and/or a decrease in residential mortgage-backed bond values.

DATED:

REILLY POZNER LLP

By:

\_\_\_\_\_  
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Daniel M. Reilly  
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dreilly@rplaw.com  
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*Attorneys for AIG Entities*

[ADD SIGNATURE BLOCK FOR ALL  
INTERVENORS JOINING THE  
DISCOVERY]

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT 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), *et al.*,

Petitioners,

-against-

WALNUT PLACE LLC, *et al.*,

Intervenor- Respondents.

**INTERVENOR-RESPONDENTS' FIRST SET OF REQUESTS FOR ADMISSION TO  
BANK OF NEW YORK MELLON**

Intervenor-Respondents, by their undersigned counsel, hereby request that Bank of New York Mellon respond to the following requests for admission within 30 days of service.

**DEFINITIONS**

1. "Bank of America" means Bank of America Corporation and BAC Home Loans Servicing, LP.
2. "BNY Mellon" means The Bank of New York Mellon.
3. "Communication" and "communications" mean a transmission or receipt of information of any kind through any means, or any document embodying the transmission or receipt of information.
4. "Countrywide" means Countrywide Financial Corporation and Countrywide Home Loans, Inc.
5. "Covered Trusts" means the 530 residential mortgage-securitization trusts listed on Exhibit A to the Settlement Agreement.
6. "Document" means any writing, report, memorandum, file communication, transmission of ESI (defined herein) through Electronic Media (defined herein), correspondence, study, minutes, bulletin, instruction, literature, notes, notebook, diary, data sheet, work sheet,

recording, drawing, graph, index, chart, telephone record, photograph or other graphic matter, including any drafts of the foregoing items and any copy or reproduction of any of the foregoing items upon which any notation, work, figure, or form is recorded or has been made which has any knowledge or information.

7. “Electronic Media: means any magnetic, optical, or other storage media device used to record ESI. Electronic Media devices may include, but are not limited to, computer memories, hard disks, floppy disks, hard drives, memory sticks, CDs, CD-ROMs, DVDs, personal digital assistance devices (e.g., Palm, Blackberry, iPhone or other “smart phones”), magnetic tapes of all types or any other means for digital storage and/or transmittal.

8. “ESI” means any original and any non-identical copies resulting from the use of any software program (e.g., word processing documents, spreadsheets, worksheets, database files, charts, graphs, slides, and outlines), electronic mail, PDF files or ASCII files, regardless of the Electronic Media on which they reside and regardless of whether the ESI consists of an active file, backup file, deleted file, or file fragment. ESI also includes, without limitation, any items stored on Electronic Media in files, folder tabs, or containers and labels appended to or associated with any physical storage device associated with each original and each copy.

9. “Institutional Investors” means the entities listed under Roman numeral “(ii)” in the first paragraph of the Institutional Investor Agreement (defined herein).

10. “Institutional Investors Agreement” means the Institutional Investors Agreement between BNY Mellon, Bank of America, Countrywide, and the Institutional Investors executed on June 28, 2011.

11. “Proposed Settlement” means the agreement to settle potential claims that is memorialized in the Settlement Agreement (defined herein).

12. “Related to” or “relating to” means containing any information about, constituting, concerning, evidencing, mentioning, discussing, summarizing, describing, referring to, arising out of, created in connection with, or involving the subject specified.

13. “Settlement Agreement” means the Settlement Agreement between BNY Mellon,

Bank of America, and Countrywide executed on June 28, 2011.

14. "Trustee" means BNY Mellon.

15. "You" means BNY Mellon.

### **INSTRUCTIONS**

1. In responding to each request for admission, set forth the language of each request immediately prior to Your response.

2. Any response made that includes a reference to documents shall identify by Bates number or litigation document control number each referenced document.

3. If a matter is not admitted, the answer must specifically deny it or state in detail why You cannot truthfully admit or deny it.

4. If You object to any request on the ground of attorney-client privilege or attorney work product, or for any other reason, for each objection, state the basis for withholding the information with particularity and provide an explanation in a manner that is sufficient for the Court to determine the validity of the privilege asserted or basis for withholding the information.

5. These requests for admission shall be deemed continuing and supplemental responses should be provided as additional information becomes available. You are under a duty to supplement all responses to these requests to include information acquired after service of the responses, even if such responses were correct when first provided.

### **REQUESTS FOR ADMISSION**

You are asked to respond to the following requests for admission:

1. Admit that no certificateholders or counsel for certificateholders participated in the negotiations that led to the Proposed Settlement and Settlement Agreement, except for the Institutional Investors and their counsel, Gibbs & Bruns.

2. Admit that counsel for the Institutional Investors led the negotiation of the Proposed Settlement on behalf of the Covered Trusts.

3. Admit that neither BNY Mellon nor any of its agents, consultants, or experts reviewed loan files for loans in the Covered Trusts in connection with negotiating the Proposed

Settlement or Settlement Agreement.

4. Admit that BNY Mellon has provided no consideration to or for the benefit of certificateholders with respect to the Settlement.

5. Admit that neither Bank of America nor Countrywide made the release of claims against BNY Mellon a condition of the Settlement.

6. Admit that BNY Mellon required Bank of America to agree to indemnify BNY Mellon as a condition to BNY Mellon's participation in the Settlement.

7. Admit that, apart from the potential liability of Bank of America as a successor to Countrywide, neither BNY Mellon nor any of its agents, consultants or experts valued the claims against Bank of America to be released in the Settlement.

8. Admit that the release in the Settlement will, apart from certain exceptions specifically identified in the Settlement Agreement, release certificateholders' direct, as well as derivative, claims against Bank of America and Countrywide.

9. Admit that the release in the Settlement will release direct claims of former certificateholders without providing them any direct or indirect consideration for the release.

10. Admit that neither BNY Mellon nor any of its agents, consultants or experts valued the direct claims in Request No. 8 or 9.

11. Admit that under the allocation plan in the Settlement, the settlement proceeds will be paid to or for the benefit of certificateholders without regard to the amount they paid for their certificates.

DATED:

REILLY POZNER LLP

By: \_\_\_\_\_

Michael A. Rollin  
Daniel M. Reilly (pro hac vice pending)  
1900 Sixteenth Street, Suite 1700  
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*Attorneys for AIG Entities*

[ADD SIGNATURE BLOCK FOR ALL  
INTERVENORS JOINING THE  
DISCOVERY]