

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

Index No. 651786/2011

Kapnick, J.

Petitioner,

for an order, pursuant to CPLR § 7701, seeking judicial instructions and approval of a proposed settlement;

-against-

FEDERAL HOME LOAN BANK OF BOSTON, FEDERAL HOME LOAN BANK OF CHICAGO, FEDERAL HOME LOAN BANK OF INDIANAPOLIS, FEDERAL HOME LOAN BANK OF PITTSBURGH, FEDERAL HOME LOAN BANK OF SAN FRANCISCO and FEDERAL HOME LOAN BANK OF SEATTLE (proposed intervenors);

-and-

TM1 INVESTORS, LLC (proposed intervenor);

-and-

V RE-REMIC LLC (proposed intervenor);

Respondents.

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**THE BANK OF NEW YORK MELLON'S RESPONSE TO
PETITIONS TO INTERVENE**

Petitioner The Bank of New York Mellon (“BNY Mellon” or “Trustee”) submits this response to (i) the petition to intervene filed by Federal Home Loan Bank of Boston, Federal Home Loan Bank of Chicago, Federal Home Loan Bank of Indianapolis, Federal Home Loan Bank of Pittsburgh, Federal Home Loan Bank of San Francisco and Federal Home Loan Bank of Seattle (collectively, “FHLB”), dated July 13, 2011; (ii) the petition to intervene filed by TM1 Investors LLC (“TM1”), dated July 13, 2011; and (iii) the petition to intervene filed by V Remic, LLC (“Remic”), dated July 14, 2011 (FHLB, Remic and TM1 will collectively be referred to herein as “Proposed Intervenors”; their petitions will be referred to as “Petitions to Intervene”).¹

The Trustee takes no position on the Petitions to Intervene, but offers the following two points for the Court’s consideration:

First, the Proposed Intervenors state that they require additional information in order to determine whether or not to object to the Settlement. Since the filing of the Petitions to Intervene, the Trustee has made available at www.cwrmbssettlement.com – the website created and maintained by the Trustee for this Article 77 Proceeding – all of the expert reports submitted to the Trustee in connection with the Settlement. These include (i) a report analyzing the methodology for arriving at the Settlement Payment, and providing a settlement range that the expert views as reasonable (without taking into account legal defenses); (ii) a report analyzing the servicing improvements and document cure features of the Settlement; (iii) an opinion analyzing the significance of the contractual requirement that a breach of representation or warranty “materially and adversely affect[] the interests of certificateholders” in a mortgage loan; (iv) an opinion concerning the financial ability of Countrywide to pay a judgment; and (v)

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in BNY Mellon’s Verified Petition, dated June 28, 2011 (“Verified Petition”) or the Affirmation of Matthew D. Ingber, dated June 28, 2011.

an opinion analyzing the likelihood that Bank of America would defeat the Trustee's successor liability claims.

Second, the Proposed Intervenors object to the proposed order submitted by the Trustee in response to earlier petitions to intervene, arguing that the Trustee has sought to prevent them from intervening as respondents in this Article 77 Proceeding.² That is not the case. The Trustee took no position on those petitions to intervene, but sought only to hold in abeyance any requests for additional information, or other requests for relief, until notice of the Settlement had been provided and all potential objectors had an opportunity to object. The purpose of the proposed order is to create a process that would allow the Trustee to respond to all requests more efficiently, and to avoid the type of piecemeal requests that would be disruptive to the process expressly contemplated in the Preliminary Order.

Dated: New York, New York
July 19, 2011

MAYER BROWN LLP

By: 

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² The earlier petitions to intervene were filed by eleven "Walnut Place" entities on July 5, 2011 and various pension fund entities on July 6, 2011.