

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY 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), 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 BadenWuerttemberg (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),

Petitioners,

-against-

TRIAXX PRIME CDO 2006-1, LTD., TRIAXX PRIME CDO 2006-2, LTD. and TRIAXX PRIME CDO 2007-1, LTD.
(Proposed Intervenor-Respondents),

Respondents.

Index No: 651786/2011

Assigned to Kapnick, J.

**NOTICE OF INTENTION TO
APPEAR AND OBJECT
AND NOTICE OF
PETITION TO INTERVENE**

PLEASE TAKE NOTICE that, Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd., and Triaxx Pime CDO 2007-1, Ltd. (together, the “Triaxx Respondents”), as Potentially Interested Persons in the above-captioned Article 77 proceeding before this Court, intend to appear and object to the Settlement proposed by Bank of New York Mellon (the “Trustee”), pursuant to this Court’s Order dated August 5, 2011, upon the grounds that the Triaxx Respondents do not have sufficient information to evaluate the Settlement.

PLEASE TAKE FURTHER NOTICE that, upon the affirmation of John G. Moon dated August 24, 2011, the petition of the Trustee, the Petition to Intervene filed herewith and Memorandum of Law in support thereof, and all previous papers and proceedings in this proceeding, the Triaxx Respondents will move this Court on September 1, 2011, at 9:30 a.m., in submission part room 130 at 60 Centre Street, New York, New York, or as soon thereafter as counsel may be heard, for an order pursuant to CPLR 401, 1012, and 1013 permitting the Triaxx Respondents to intervene as respondents in this proceeding, and granting such other and further relief as may be just, proper, and equitable.

Dated: August 24, 2011
New York, New York

MILLER & WRUBEL P.C.



By: Joel M. Miller
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*Attorneys for the Triaxx
Respondents*

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Petitioners,

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TRIAXX PRIME CDO 2006-1, LTD., TRIAXX PRIME CDO
2006-2, LTD. and TRIAXX PRIME CDO 2007-1, LTD.
(Proposed Intervenor-Respondents),

Respondents.

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Assigned to Kapnick, J.

VERIFIED
PETITION TO INTERVENE

For its petition pursuant to CPLR 401, 1012, and 1013 to intervene as respondents in this Article 77 proceeding, proposed intervenor-respondents Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd. and Triaxx Pime CDO 2007-1, Ltd. (together, the “Triaxx Respondents”) state and allege as follows:

1. On June 29, 2011, the Bank of New York Mellon (the “Trustee”), as trustee for 530 RMBS trusts containing mortgages sold and/or serviced by Countrywide Home Loans, Inc. and its affiliates (together, “Countrywide”), filed with this Court a petition (the “Proposed Settlement Petition”) seeking judicial instructions and approval of a proposed settlement with Countrywide and its parent, Bank of America Corporation (together with its affiliates “Bank of America”).

2. The terms of the proposed settlement include, *inter alia*, the payment of \$8.5 billion by Bank of America into the trusts in exchange for a release of all claims against Bank of America and Countrywide related to the 530 RMBS trusts (“Covered Trusts”), purportedly binding on all investors and other persons.

3. The Triaxx Respondents currently own notes in 26 of the Covered Trusts (listed in Exhibit A of the Proposed Settlement Petition), having an original unpaid principal balance of approximately \$2.2 billion. The Triaxx Respondents have potential claims against the Trustee, Countrywide and Bank of America based on breaches of representations and warranties, deficient loan servicing, and other unlawful actions.

4. Given losses suffered by the Triaxx Respondent in the Covered Trusts and the bar which would be imposed upon them under the terms of the proposed settlement submitted for this Court’s approval by the Trustee, the Triaxx Respondents have an interest in this Article 77 proceeding.

5. The proposed settlement was allegedly the product of a year-long negotiation between the Trustee, Countrywide and Bank of America, and 22 institutional investors (the “Institutional Investors”). The existence of these negotiations was not disclosed to the Triaxx Respondents until the Trustee’s public announcement on June 29, 2011.

6. The Triaxx Respondents seek to review all documents and communications exchanged between the Trustee and the Institutional Investors and to otherwise pursue discovery related to their potential claims before they are barred. For example, the negotiating parties are alleged to have exchanged documents and information “related to potential liabilities and defenses, and alleged damages” that have never been disclosed to investors in the Covered Trusts. See Settlement Agreement at 2 (Docket No. 3, June 29, 2011).

7. Moreover, the proposed settlement does not provide an opt-out mechanism, and therefore purportedly would force all investors to be bound, despite the informational asymmetries between the Institutional Investors and other investors in the Covered Trusts.

8. Although the Trustee has stated that it has made available “all of the expert reports submitted to the Trustee in connection with the Settlement,” *see* Trustee’s Response to Petitions to Intervene, at 1 (Docket No. 69), the Triaxx Respondents seek review of all underlying communications and data that were exchanged during the year-long negotiations which led to the creation of those reports so that the Triaxx Respondents can evaluate the proposed settlement for itself.

9. Moreover, the participants in the settlement negotiations may not adequately represent the interests of the Triaxx Respondents.

10. First, Countrywide and Bank of America are adverse to all potential claimants with respect to the proposed settlement and cannot, therefore, represent the Triaxx Respondents' interests.

11. Second, the Trustee has expressly recognized "that some Certificateholders may disagree with the Trustee's judgment that the Settlement is reasonable" and that "different groups of Certificateholders may wish to pursue remedies for alleged breaches in different ways, creating the potential for conflicts among Certificateholders." See Trustee's Petition, ¶¶ 13-14. The Trustee, therefore, also may not adequately represent the Triaxx Respondents' interests in this proceeding.

12. Third, the composition of the Institutional Investors' investments vary from those of the Triaxx Respondents. Therefore, the interests of the Institutional Investors in supporting the proposed settlement might not align with the interests of the Triaxx Respondents.

13. Fourth, the attorneys for the Institutional Investors seek receive \$85 million dollars under the proposed settlement agreement, in addition to their ongoing monthly fees and expenses that are also being paid by Bank of America as of June 28, 2011. See Settlement Agreement, Exh. F (Docket No. 3, June 29, 2011). This amount is disproportionate to the amount of work conducted, even considering the "dozens of face to face meetings" during the negotiation process. See Proposed Settlement Petition, ¶35 (Docket No. 1, June 29, 2011). Therefore, the proposed settlement creates a strong economic incentive for counsel to the Institutional Investors to recommend a premature

settlement and not extract a full recovery for all investors. Furthermore, as the Triaxx Respondents are paying for their own counsel, its interests are not aligned with that of the Institutional Investors which would receive payment of its legal fees from Bank of America as part of the settlement agreement.


14. In order to protect their interests as described above and in the accompanying Memorandum of Law, the Triaxx Respondents submit this Petition to Intervene so that they may participate in discovery to evaluate the proposed settlement and otherwise exercise their rights as a party in this proceeding.

RELIEF REQUESTED

15. Proposed intervenor-respondents, Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd. and Triaxx Prime CDO 2007-1, Ltd. respectfully request that the Court grant their petition to intervene in this Article 77 proceeding.

Dated: August 24, 2011
New York, New York

MILLER & WRUBEL P.C.


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Claire L. Huene
Corban S. Rhodes
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*Attorneys for the Triaxx
Respondents*

VERIFICATION

I, John G. Moon, hereby affirm under the penalty of perjury that the following is true and correct:

1. I am a member of the bar of this Court and an attorney with Miller & Wrubel P.C., attorneys for the proposed intervenor-respondents, Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd. and Triaxx Prime CDO 2007-1, Ltd.

2. I have read the foregoing Verified Petition to Intervene and know the contents thereof. All statements of fact therein are true and correct to the best of my knowledge and belief.

3. I am making this affirmation in lieu of a verification by the proposed intervenor-respondents, pursuant to CPLR 3020(d), because the proposed intervenor-respondents are united in interest and pleading together and none of them is within New York County, where Miller & Wrubel P.C. maintains its offices.

Dated: August 24, 2011
New York, New York


John G. Moon