

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

In the matter of the application of	)	Index No. 651786/11
	)	
	)	
THE BANK OF NEW YORK MELLON (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures),	)	<b><u>NOTICE OF PETITION TO INTERVENE</u></b>
	)	
Petitioner,	)	Assigned to:
	)	Kapnick, J.
-against-	)	
	)	
POLICEMEN’S ANNUITY & BENEFIT FUND OF CHICAGO, WESTMORELAND COUNTY EMPLOYEE RETIREMENT SYSTEM, CITY OF GRAND RAPIDS GENERAL RETIREMENT SYSTEM, and CITY OF GRAND RAPIDS POLICE AND FIRE RETIREMENT SYSTEM (proposed intervenors),	)	
	)	
Respondents,	)	
	)	
for an order, pursuant to CPLR § 7701, seeking judicial instructions and approval of a proposed settlement.	)	
	)	

PLEASE TAKE NOTICE that upon the affidavit of Joseph P. Guglielmo (the “Guglielmo affidavit”), sworn to July 6, 2011, the petition of the Trustee that commenced this proceeding and notice of petition, the instant petition filed herewith and the accompanying memorandum of law, and all pleadings and proceedings filed heretofore and herein, the proposed intervenors, the “Public Pension Fund Committee,” listed *infra*, will move this Court by their undersigned attorneys at the Motion Submission Part thereof, Room 130, located at 60 Centre Street, New York, New York, on July 14, 2011, at 9:30 a.m., or as soon thereafter as counsel may be heard, pursuant to CPLR §§ 401, 1012 and 1013, for an Order permitting the Policemen’s Annuity & Benefit Fund of Chicago, the Westmoreland County Employee Retirement System, City of Grand Rapids General Retirement System and City of Grand Rapids Police and Fire Retirement System, collectively, the “Public

Pension Fund Committee,” to intervene in the above-captioned proceeding, directing that the Public Pension Fund Committee be added as respondents, directing that the Trustee’s petition and notice of petition be amended by adding the Public Pension Fund Committee as intervenors-respondents, permitting discovery to proceed as specified in the accompanying papers and granting such other and further relief as may be just, proper, and equitable.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR § 403(b), answering papers, if any, must be served upon the undersigned no later than two (2) days prior to the return date of this motion.

DATED: New York, New York  
July 6, 2011



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David R. Scott  
Beth A. Kaswan  
Joseph P. Guglielmo  
Donald A. Broggi  
SCOTT+SCOTT LLP  
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*Counsel to Public Pension Fund Committee*

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), ) **VERIFIED PETITION**  
) **TO INTERVENE**  
)  
Petitioner, )  
)  
-against- )  
)  
)  
POLICEMEN’S ANNUITY & BENEFIT FUND OF )  
CHICAGO, WESTMORELAND COUNTY EMPLOYEE )  
RETIREMENT SYSTEM, CITY OF GRAND RAPIDS )  
GENERAL RETIREMENT SYSTEM, and CITY OF )  
GRAND RAPIDS POLICE AND FIRE RETIREMENT )  
SYSTEM (proposed intervenors), )  
)  
Respondents, )  
)  
)  
for an order, pursuant to CPLR § 7701, seeking judicial )  
instructions and approval of a proposed settlement. )  
)  
)

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Index No. 651786/11

Assigned to:  
Kapnick, J.

Respondent intervenors, the Policemen’s Annuity & Benefit Fund of Chicago, the Westmoreland County Employee Retirement System, City of Grand Rapids General Retirement System and City of Grand Rapids Police and Fire Retirement System (collectively, the “Public Pension Fund Committee” or the “Committee”), by and through their attorneys, Scott+Scott LLP, submit this Petition to Intervene, pursuant to CPLR §§ 401, 1012 and 1013, and respectfully allege as follows:

**INTRODUCTION**

1. The Public Pension Fund Committee consists of public pension and retirement funds that invested in Countrywide residential mortgage backed securities (“Countrywide MBS”) that are

at issue in this action. The Committee has colorable claims that will be released if the Court approves the proposed settlement (the “Proposed Settlement”) that Bank of New York Mellon (“BNY Mellon”) entered into with Bank of America Corporation and Bank of America Home Loans Servicing, LP (collectively, “Bank of America”) and Countrywide Financial Corporation and Countrywide Home Loans, Inc. (collectively, “Countrywide”).

2. Importantly, under the terms of the Proposed Settlement, investors in Countrywide MBS will be asked to decide whether or not to object to the Proposed Settlement. In addition, investors in Countrywide MBS may seek to modify certain terms of the Proposed Settlement. Without discovery, the Public Pension Fund Committee respectfully submits that it will be difficult for investors in Countrywide MBS to evaluate the fairness of the Proposed Settlement and decide whether or not to object or seek to modify the terms of the Proposed Settlement.

3. Discovery is especially warranted here given that:

- No public pension funds were included in the group of twenty-two large corporate investors that negotiated the Proposed Settlement in private, even though their interests may not be directly aligned with those of the large corporate investors who negotiated the Proposed Settlement.
- Many of the twenty-two corporate investors that negotiated the Proposed Settlement appear to have significant ongoing business dealings with Bank of America, raising conflict-of-interest concerns.
- The Proposed Settlement appears to release claims belonging to former investors – *i.e.*, investors who purchased Countrywide MBS in the initial offerings and have since sold their MBS holdings at a significant loss – without appearing to provide these investors with consideration for the release of their claims.
- Under the terms of the Proposed Settlement, the settlement fund is allocated among investors in accordance with the “payment waterfall” set forth in the Pooling and Servicing Agreements, which may provide some investors with a windfall and may not appropriately compensate others for their actual loss.
- The Proposed Settlement does not appear to give investors the opportunity to opt out of the Proposed Settlement and does not appear to provide notice of the Proposed Settlement to former investors in Countrywide MBS.

- The Proposed Settlement appears to give BNY Mellon broad indemnification rights for the role that it played as trustee for the Countrywide MBS, but does not appear to specifically carve out claims against BNY Mellon from the release.
- The Proposed Settlement carves out “Individual Securities Claims” from the release, but fails to address the securities claims asserted in the class action securities lawsuits that are currently pending before the Hon. Mariana Pfaelzer in the United States District Court for the Central District of California.

4. Potential discovery topics include, among other things: (1) whether the negotiations were conducted at arm’s-length, (2) whether the parties that participated in the settlement negotiations had any apparent or actual conflicts of interest, (3) whether the parties that negotiated the settlement took any informal discovery to assess the likelihood of success if they litigated the claims that they have agreed to release in the Proposed Settlement, and, if so, what documents and evidence the parties reviewed and considered, (4) whether the substantive terms of the Proposed Settlement are fair, reasonable, and in the best interests of the class, (5) whether the scope of the release is appropriately tailored, (6) whether the consideration to be paid as part of the Proposed Settlement is sufficient in light of the merits of the claims that could be asserted if this case were litigated, (7) whether the Proposed Settlement is fair in light of the settlement that Bank of America and Countrywide reached with the federal government to settle virtually identical claims belonging to Fannie Mae and Freddie Mac, and (8) whether the proposed plan for allocating the settlement fund is fair and appropriately compensates investors in Countrywide MBS for their loss.

5. In light of the foregoing, the Public Pension Fund Committee – both on its own behalf and on behalf of similarly situated institutional investors – respectfully requests that it be allowed to intervene in this action so that it can take document and deposition discovery on the fairness of the Proposed Settlement. A copy of the Public Pension Fund Committee’s document requests are attached to this Petition as Exhibit A.

## **BACKGROUND**

6. On June 29, 2011, Bank of America, Countrywide, BNY Mellon and a group of twenty-two large corporate investors in Countrywide MBS – which included the likes of Goldman Sachs, BlackRock, and PIMCO, among others – announced that they had negotiated a Proposed Settlement that would release certain claims that could be asserted by investors in Countrywide MBS. The Proposed Settlement would release claims that investors in Countrywide MBS have against Bank of America and Countrywide for making false representations and warranties about the residential mortgages that were bundled into Countrywide MBS and then sold to investors. The Proposed Settlement would also release claims relating to the servicing obligations under the governing agreements for the Countrywide MBS.

7. Notably, the twenty-two corporate investors that negotiated and finalized the Proposed Settlement were able to finalize a settlement with Bank of America and Countrywide after negotiating with Bank of America and Countrywide in private, without having to file a lawsuit asserting the false representation and warranty claims. Moreover, no public pension funds were included in the group of twenty-two corporate investors that negotiated the deal – even though public pension funds have purchased and hold billions of dollars of Countrywide MBS. In fact, the Public Pension Fund Committee and other investors in Countrywide MBS did not learn about the Proposed Settlement until June 29, 2011, which is the date when the attorneys for the twenty-two corporate investors issued a press release announcing the Proposed Settlement.

8. That release, dated June 29, 2011, stated as follows:

**22 INSTITUTIONAL INVESTORS IN COUNTRYWIDE-  
ISSUED RMBS ANNOUNCE GLOBAL SETTLEMENT OF  
MORTGAGE REPURCHASE AND SERVICING CLAIMS  
FOR 530 COUNTRYWIDE-ISSUED RMBS TRUSTS**

Houston, June 29, 2011 – Today, 22 institutional investors represented by Gibbs & Bruns LLP (“Institutional Investors”) announced they had achieved a settlement with Bank of America and Countrywide of repurchase and mortgage servicing claims on 530 Countrywide-issued residential mortgage backed securities trusts (the “Covered Trusts”) for which BNY Mellon serves as the Trustee.

The settlement, which is subject to court approval, includes the following key terms:

1. Payment by Bank of America and/or Countrywide of \$8.5 billion to settle mortgage repurchase and servicing claims owned by the 530 Covered Trusts;
2. Implementation of servicing changes and improvements, described in greater detail below, that are expected to improve outcomes for borrowers and investors;
3. The filing by BNY Mellon as Trustee of a proceeding seeking court approval of the settlement; and,
4. An agreement by the Institutional Investors to intervene in that proceeding and use their best efforts to obtain approval of the settlement.

\* \* \*

***The Institutional Investors, through their counsel, led the settlement negotiations with Bank of America and BNY Mellon, as Trustee. They requested that the Trustee enter into the settlement and will appear in court to support the Trustee’s request that the Court approve it. The Institutional Investors are parties to a separate Institutional Investor Agreement with the Bank of America and Countrywide Parties and BNY Mellon that confirms their support for the settlement.***

\* \* \*

The Settlement is subject to court approval. Before court approval is granted, we expect the court in which the Trustee seeks approval to order the Trustee to give notice of all interested holders of securities issued by the Covered Trusts. We expect the court will afford all investors an ample opportunity to evaluate the settlement and advise the court of any questions or concerns they may have. Once all interested investors have had an opportunity to be heard, and any

objections to the settlement have been resolved, the court will decide whether to approve the settlement.

June 29, 2011 Press Release (emphasis added).

9. The attorneys for the twenty-two corporate investors also uploaded a copy of the Proposed Settlement Agreement to the firm's website. The Settlement Agreement itself is interesting in several respects. For instance, although the attorneys for the corporate investors characterized the Proposed Settlement as a release of "mortgage repurchase and servicing claims," the language in the Proposed Settlement Agreement itself shows that far more than mortgage repurchase and servicing claims are being released by the Proposed Settlement. Specifically, the Proposed Settlement provides in relevant part:

**Release.**

(a) Effective as of the Approval Date, except as set forth in Paragraph 10, the Trustee on behalf of itself *and all Investors*, the Covered Trusts, *and/or any Persons claiming* by, through, or on behalf of any of the Trustee, the Investors, or the Covered Trusts or *under the Governing Agreements* (collectively, the Trustee, Investors, Covered Trusts, and such Persons being defined together as the "Precluded Persons"), irrevocably and unconditionally grant a full, final, and complete release, waiver, and discharge of all alleged or actual claims, counterclaims, defenses, rights of setoff, rights of rescission, liens, disputes, liabilities, Losses, debts, costs, expenses, obligations, demands, claims for accounting or audits, alleged Events of Default, damages, rights and causes of action of any kind or nature whatsoever, whether asserted or unasserted, known or unknown, suspected or unsuspected, fixed or contingent, in contract, tort, or otherwise, secured or unsecured, accrued or unaccrued, whether direct, derivative, or brought in any other capacity that the Precluded Persons may now or may hereafter have against any or all of the Bank of America Parties and/or Countrywide Parties *arising out of or relating to (i) the origination, sale, or delivery of Mortgage Loans to the Covered Trusts, including the representations and warranties in connection with the origination, sale, or delivery of Mortgage Loans to the Covered Trusts or any alleged obligation of any Bank of America Party and/or Countrywide Party to repurchase or otherwise compensate the Covered Trusts for any Mortgage Loan on the basis of any representations or warranties or otherwise or failure to cure*

*any alleged breaches of representations and warranties, including all claims arising in any way from or under Section 2.03 (“Representations, Warranties and Covenants of the Sellers and Master Servicer”) of the Governing Agreements, (ii) the documentation of the Mortgage Loans held by the Covered Trusts (including the documents and instruments covered in Sections 2.01 (“Conveyance of Mortgage Loans”) and 2.02 (“Acceptance by the Trustee of the Mortgage Loans”) of the Governing Agreements and the Mortgage Files) including with respect to alleged defective, incomplete, or non-existent documentation, as well as issues arising out of or relating to recordation, title, assignment, or other matters relating to legal enforceability of a Mortgage or Mortgage Note ....*

Proposed Settlement at 32-33 (emphasis added).

10. This language in the Proposed Settlement Agreement appears to attempt to release and waive any claim that any current or former Countrywide MBS holder has that in any way relates to the representations and warranties that Countrywide made to investors regarding the mortgage loans that were bundled together into Countrywide MBS and sold to investors. This is of critical importance because it is the false representations and warranties that Countrywide made regarding the mortgage loans – representations and warranties that were false at the time they were made – that form the basis for many of the claims that investors could assert against Countrywide and Bank of America in this action.

11. Critically, the false representation and warranty claims belong not just to current holders of Countrywide MBS, but to former Countrywide MBS holders who purchased Countrywide MBS in the initial offerings and have since sold their Countrywide MBS holdings to other investors at a substantial loss. Bank of America and Countrywide know this, which is almost certainly why they drafted the release to cover not just those claims that could be asserted by “Investors,” but also to include claims that could be asserted by “any Persons.” Yet the Proposed Settlement does not appear to provide any consideration to former Countrywide MBS holders – even though, in many instances, they have suffered significant losses as a result of the false representations and warranties

that Countrywide made regarding the mortgages that were bundled together in the Countrywide MBS. The Proposed Settlement does not provide any consideration to this group of investors because the entire \$8.5 billion settlement fund goes entirely to current Countrywide MBS holders.

12. Moreover, the Proposed Settlement appears to favor certain current Countrywide MBS holders more than others. Indeed, there appears to be a serious problem with the proposed plan for allocating the \$8.5 billion settlement fund because, as the corporate investors acknowledged in their June 29, 2011 press release: “The settlement proceeds will, upon court approval, be allocated by the Trustee’s expert among the Covered Trusts based on each Trust’s then-current and estimated future net losses. ***Each Covered Trust’s allocable share of the settlement payment will flow down its payment waterfall in accordance with the Pooling and Servicing Agreement for that Trust.*** The Institutional Investors will participate in the settlement, like every other investor, based on the seniority of the securities they own.” June 29, 2011 Press Release, at 2 (emphasis added).

13. It is unusual that the group of twenty-two corporate investors had chosen a plan of allocation that is tied to the “payment waterfall” in the Pooling and Servicing Agreement, as opposed to a plan of allocation that is more directly tied to the investors’ actual loss. This provides a windfall for those investors who purchased Countrywide MBS in the secondary market for cents on the dollar after the false representations and warranties about the mortgage loans were partially or fully known – and, thus, have not suffered a real loss – to the detriment of other investors who purchased their Countrywide MBS in the initial offering for one-hundred cents on the dollar and have suffered a real and far more substantial loss. The unusual nature of the plan of allocation begs the obvious question: why did the group of twenty-two corporate investors link the payment of the \$8.5 billion settlement fund to the “payment waterfall” in the Countrywide MBS, as opposed to a more typical

(and some would say more equitable) plan for allocating the settlement funds that is tied to the investors' actual loss?

14. Certain other provisions in the Proposed Settlement are also worth highlighting:

- The provisions that purport to give BNY Mellon broad indemnification rights for the role that it played in negotiating the Proposed Settlement (*see* Proposed Settlement, at 36) and for the role that it played as Trustee for the Countrywide MBS (*see* Proposed Settlement, at 39), and the fact that there is no specific carve-out for claims against the Trustee in the “Class Not Released” section of the Proposed Settlement (*see* Proposed Settlement, at 34-35).
- The fact that the Proposed Settlement purports to exclude “Certain Individual Investors’ Claims” from the release, but fails to mention the class-action securities lawsuits that investors in Countrywide MBS are asserting against Countrywide and Bank of America – cases that are currently pending in the United States District Court for the Central District of California.
- The fact that the Proposed Settlement purports to release all “unknown claims” that investors in Countrywide MBS may have against Bank of America and/or Countrywide, but it does not provide any evidence to show that Bank of America or Countrywide paid any separate consideration for the release of unknown claims.
- The fact that the parties to the Proposed Settlement included a draconian “Confidential” provision in the Proposed Settlement that attempts to keep other investors in Countrywide MBS from learning about “all matters relating to the negotiations of [the] Settlement.”
- The fact that the Proposed Settlement does not appear to provide for notice to former investors in Countrywide MBS (*see* Proposed Settlement, at 7), even though the language in the release purports to cover their claims.

15. Because of these potential problems with the Proposed Settlement, the Public Pension Fund Committee believes that it needs to take discovery on the negotiations and terms of the Proposed Settlement to make an informed decision regarding the fairness of the Proposed Settlement. Allowing the Public Pension Fund Committee to take discovery is particularly appropriate here because the Proposed Settlement itself asks investors in Countrywide MBS to decide whether or not to object to the Proposed Settlement. In addition, investors in Countrywide MBS may seek to modify certain terms of the Proposed Settlement. As noted above, without

discovery, the Public Pension Fund Committee respectfully submits that it will be difficult for investors in Countrywide MBS to evaluate the fairness of the Proposed Settlement and decide whether or not to object or seek to modify the terms of the Proposed Settlement.

16. Accordingly, pursuant to the intervention provisions of CPLR §§ 401, 1012 and 1013, the Public Pension Fund Committee now petitions to intervene to take discovery on the fairness of the Proposed Settlement. The Public Pension Fund Committee respectfully submits that discovery is needed so that it can – on its own behalf and on behalf of other similarly situated investors – evaluate the fairness of the Proposed Settlement and decided whether or not to object or seek to modify the terms of the Proposed Settlement.

**RELIEF REQUESTED**

WHEREFORE, the Public Pension Fund Committee – both on its own behalf and on behalf of similarly situated institutional investors – respectfully requests that it be allowed to intervene in this action so that it can take document and deposition discovery on the fairness of the Proposed Settlement. A copy of the Public Pension Fund Committee’s document requests are attached to this Petition as Exhibit A.

DATED: New York, New York  
July 6, 2011

Respectfully submitted,



David R. Scott  
Beth A. Kaswan  
Joseph P. Guglielmo  
Donald A. Broggi  
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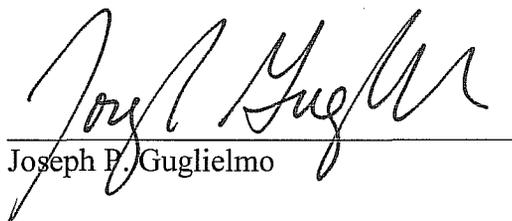
*Counsel to Public Pension Fund Committee*

## VERIFICATION

I, Joseph P. Guglielmo, hereby affirm under the penalty of perjury that the following is true and correct:

I am a member of the bar of this Court and of Scott+Scott LLP, attorneys for proposed intervenors Policemen's annuity & Benefit Fund of Chicago, and the Westmoreland County Employee Retirement System, City of Grand Rapids General Retirement System and City of Grand Rapids Police and Fire Retirement System. I have read the foregoing Verified Petition and know the contents thereof. All statements of fact therein are true and correct to the best of my knowledge and belief. I am making this affirmation in lieu of a verification by the proposed intervenors because the proposed intervenors are not within New York County, where Scott+Scott LLP maintains its offices.

Executed this 6th day of July, 2011, in New York, New York.

  
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Joseph P. Guglielmo

# **EXHIBIT A**

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

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In the matter of the application of	:	Index No. 651786/11
	:	
THE BANK OF NEW YORK MELLON (as Trustee under	:	
various Pooling and Servicing Agreements and Indenture	:	
Trustee under various Indentures),	:	
	:	Assigned to: Kapnick, J.
PETITIONER,	:	
	:	
-against-	:	
	:	
POLICEMEN’S ANNUITY & BENEFIT FUND OF	:	
CHICAGO, WESTMORELAND COUNTY EMPLOYEE	:	
RETIREMENT SYSTEM, CITY OF GRAND RAPIDS	:	
GENERAL RETIREMENT SYSTEM, and CITY OF	:	
GRAND RAPIDS POLICE AND FIRE RETIREMENT	:	
SYSTEM (proposed intervenors)	:	
	:	
RESPONDENTS,	:	
	:	
for an order, pursuant to CPLR § 7701, seeking judicial	:	
instructions and approval of a proposed settlement	:	

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**PUBLIC PENSION FUND COMMITTEE INTERVENORS’ FIRST SET OF REQUESTS  
FOR PRODUCTION TO ALL DEFENDANTS**

Pursuant to Rule 3120(1)(i) of the New York CPLR, Intervenors, The Policemen’s Annuity & Benefit Fund of Chicago, the Westmoreland County Employee Retirement System, City of Grand Rapids General Retirement System and City of Grand Rapids Police and Fire Retirement System (collectively, the “Public Pension Fund Committee”), request that You produce the following documents for inspection and copying at the offices of Scott+Scott LLP, 500 Fifth Avenue, 40th Floor, New York, New York 10110, no later than fourteen (14) days from the date of service of these Requests for Production (the “Requests”).

## **DEFINITIONS**

1. “All” means “any and all” and the word “any” means “any and all.”
2. The terms “and” and “or” are to be read interchangeably so as to give a particular request in which either or both is used the broadest possible meaning.
3. “Bank of New York Mellon” means The Bank of New York Mellon f/k/a Bank of New York, its present and former directors, officers, employees, attorneys, agents, subsidiaries, affiliates, acquisitions, successors or predecessors, and any other person acting in whole or in part on behalf of Bank of New York Mellon as the trustee for residential mortgage backed securitizations identified in the Settlement Agreement.
4. “Bank of America” means the Bank of America Corporation, its present and former directors, officers, employees, attorneys, agents, subsidiaries, affiliates, acquisitions, successors or predecessors, and any other person acting in whole or in part on behalf of Bank of America.
5. “BAC HLS” and “Bank of America Home Loans Servicing, LP” mean Bank of America Home Loans Servicing, LP, its present and former directors, officers, employees, attorneys, agents, subsidiaries, affiliates, acquisitions, successors or predecessors, and any other person acting in whole or in part on behalf of Bank of America Home Loans Servicing, LP.
6. “CFC,” “Countrywide Financial Corporation” and “Countrywide” mean Countrywide Financial Corporation, and Countrywide Home Loans, Inc. their present and former directors, officers, employees, attorneys, agents, subsidiaries, affiliates, acquisitions, successors or predecessors, and any other person acting in whole or in part on behalf of Countrywide Financial Corporation and/or Countrywide Home Loans.

7. “Corporate Investor Group” means AEGON, Bayerische Landesbank, BlackRock Financial Management, Inc., Federal Home Loan Bank of Atlanta, Goldman Sachs Asset Management L.P., ING Investment Management L.L.C., ING Bank fsb, ING Capital LLC, Invesco Advisers, Inc., Kore Advisors, L.P., Landesbank Baden-Wutteremberg and LBBW Asset Management LOC, Dublin Maiden Lane, LLC, Maiden Lane II, LLC, and Maiden Lane III, LLC, Metropolitan Life Insurance Company, Nationwide Mutual Insurance Company, New York Life Investment Management LLC, Neuberger Berman Europe Limited, Pacific Investment Management, Inc., Teachers Insurance and Annuity Association of America, Thrivent Financial for Lutherans, Trust Company of the West and Western Asset Management Company, including, without limitation, each of the above referenced entities’ present and former directors, officers, employees, attorneys, agents, subsidiaries, affiliates, acquisitions, successors or predecessors, and any other person acting in whole or in part on the entities’ behalf.

8. “Settlement Agreement” means the Settlement Agreement entered into by and among Bank of New York Mellon, Bank of America Corporation, Bank of America Home Loans Servicing, LP, Countrywide Financial Corporation and Countrywide Home Loans dated June 28, 2011.

9. “Institutional Investor Agreement” means the Institutional Investor Agreement entered into by and among Bank of New York Mellon, AEGON, Bayerische Landesbank, BlackRock Financial Management, Inc., Federal Home Loan Bank of Atlanta, Goldman Sachs Asset Management L.P., ING Investment Management L.L.C., ING Bank fsb, ING Capital LLC, Invesco Advisers, Inc., Kore Advisors, L.P., Landesbank Baden-Wutteremberg and LBBW Asset Management LOC, Dublin Maiden Lane, LLC, Maiden Lane II, LLC, and Maiden Lane III, LLC, Metropolitan Life Insurance Company, Nationwide Mutual Insurance Company, New

York Life Investment Management LLC, Neuberger Berman Europe Limited, Pacific Investment Management, Inc., Teachers Insurance and Annuity Association of America, Thrivent Financial for Lutherans, Trust Company of the West and Western Asset Management Company and Bank of America Corporation, Bank of America Home Loans Servicing, LP, Countrywide Financial Corporation and Countrywide Home Loans dated June 28, 2011.

10. “Communication” includes all oral, written or other exchanges or transmissions of information (in the form of facts, ideas, opinions, inquiries or otherwise) whether in person, by telephone, or by electronic or any other means.

11. “Concerning” means concerning, relating to, referring to, reflecting, describing, evidencing or constituting.

12. “Document” or “documents” shall be synonymous in meaning and equal in scope to the usage of this term and include, but is not limited to, written, printed, photocopied, computer-generated or electronically transmitted materials including, but not limited to e-mails, writing, publications, messages, communications, facsimiles, computer tapes, microfilm or microfiche, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained, and translated if necessary, by you into reasonably usable and searchable form, including information in native format. A draft or non-identical copy is considered a separate document.

13. “Governing Agreements” means Countrywide Home Loan Trust 2004-SD2, CW ABS Asset-Backed Notes Trust 2004-SD3, CW ABS Asset-Backed Notes Trust 2004-SD4, CW ABS Asset-Backed Notes Trust 2005-SD1, CW ABS Asset-Backed Notes Trust 2005-SD2, CW ABS Asset-Backed Notes Trust 2005-SD3, CW ABS Asset-Backed Notes Trust 2006-SD1, CW ABS Asset-Backed Notes Trust 2006-SD2, CW ABS Asset-Backed Notes Trust 2006-SD3, CW

ABS Asset-Backed Notes Trust 2006-SD4, CW ABS Asset-Backed Notes Trust 2007-SD1, CW ABS Asset-Backed Notes Trust 2007-SEA1, CW ABS Asset-Backed Notes Trust 2007-SEA2, CWHEQ Revolving Home Equity Loan Trust Series 2006-A and CWHEQ Revolving Home Equity Loan Trust Series 2007-G.

14. “Including” means including without limitation.

15. “Person” means any natural person, public or private corporation, whether or not organized for profit, governmental entity, partnership, association, cooperative, joint venture, sole proprietorship, or other legal entity. With respect to a business entity, the term “person” includes any natural person acting formally or informally as a director, trustee, officer, agent, attorney or other representative of the business entity.

16. “You” and “Your” means the Bank of New York Mellon (as defined above), Bank of America (as defined above), BAC HLS, CFC (as defined above) and the Corporate Investor Group (as defined above).

17. The use of the singular form of any word includes the plural and vice versa, and the use of any tense of any verb shall also include within its meaning all other tenses of the verb.

18. Unless otherwise described above, Intervenor incorporates the Definitions from the Settlement Agreement.

## INSTRUCTIONS

1. You are requested to produce any and all responsive documents in your possession, custody or control. A document shall be deemed to be in your control if you have the right or power, directly or indirectly, to obtain the document or copy thereof from another person having possession or custody thereof.

2. Documents are to be produced in full. If any requested document cannot be produced in full, produce it to the extent possible, indicating which document, or portion of that document, is being withheld, and the reason that document is being withheld.

3. Documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained. All documents shall be produced intact in their original files, without disturbing the organization of documents employed during the conduct of the ordinary course of business and during the subsequent maintenance of the documents.

4. Documents shall be produced in such fashion as to identify the department, branch, office or custodian 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).

5. Electronic documents (except native format productions) shall be produced as single-page Group IV TIFF images and shall be provided using at least 300 DPI print setting. Alternatively, documents may be produced as PDF images. Each image shall have a unique file name, which is the Bates number of the document. Original document orientation shall be maintained (*i.e.*, portrait-to-portrait and landscape-to-landscape). TIFFs will show any and all text and images which would be visible to the reader using the native software that created the document.

6. For each document, a single text file shall be provided along with the image files and metadata. The text file name shall be the same as the page Bates/control number of the first page of the document. File names shall not have any special characters or embedded spaces. Electronic text must be extracted directly from the native electronic file unless the document was redacted, an image file, or a physical file. In these instances a text file created using OCR will be produced in lieu of extracted text. Under no circumstances shall the receiving party be required to rely upon a less accurate version of the text than the producing party. For example, if the producing party has access to extracted text from electronic document files, the receiving party shall receive extracted text as well, instead of OCR'd text generated from an image file.

7. Electronic documents attached to an e-mail or e-document, or separate hard copy documents attached to a hard copy document, are to be produced contemporaneously and sequentially immediately after the parent document. Parent-child relationships (the association between an attachments and its parent document) shall be preserved. The parent document must be produced with the "BegAttach" and "EndAttach" fields, listing the unique beginning and ending number for the range of attachments or embedded documents included in the data load file. E-attachments must be produced with the unique beginning and ending number of that attachment's parent listed in the "ParentBeg" and "ParentEnd" fields of the data load file.

8. Each of the metadata and coding fields that can be extracted from a document shall be produced for that document. Fields which are not populated shall be left with null values and not populated with fillers or spaces.

9. Hard copy documents shall be produced with the following information provided in the data load file at the same time that the TIFF or PDF images and the Optical Character

Recognition (OCR)-acquired text files are produced. Each metadata field shall be labeled as listed below:

- (a) ProdBeg,
- (b) ProdEnd
- (c) BegAttach
- (d) EndAttach
- (e) Page Count,
- (f) Custodian,
- (g) Custodian ID,
- (h) Location,
- (i) Attachment Count,
- (j) Confidentiality,
- (k) Document Type,
- (l) Redacted,
- (m) Replacement,
- (n) ParentBeg, and
- (o) ParentEnd.

10. Hard copy documents shall be produced with a copy of any original file folder or envelope in which the documents are kept or maintained.

11. Hard copy documents with affixed notes shall be imaged and produced first with all notes affixed and then re-imaged with all notes removed and produced with unique Bates numbers contemporaneously and sequentially immediately after the version with notes affixed.

12. When subjecting physical documents to an OCR process, the settings of the OCR software shall maximize text quality over process speed. Any settings such as “auto-skewing,” “auto-rotation” and the like should be turned on when documents are run through the process.

13. Documents attached to each other should not be separated.

14. Documents not otherwise responsive to this discovery request shall be produced if such documents mention, discuss, refer to, or explain the documents which are called for by these requests, or if such documents are attached to documents called for by this discovery

request and constitute routing slips, transmittal memoranda, or letters, comments, evaluations or similar materials.

15. When an objection is made to the production of any document described herein, the objection shall state all grounds with specificity. If only a portion of a document request is objected to, produce all documents responsive to all portions of the request to which you do not object.

16. If any document is withheld, in whole or in part, for any reason, including, without limitation, any claim of privilege, whether work-product or attorney-client, confidentiality or trade secret, set forth separately with respect to each such document:

- a. the nature of the privilege or ground of confidentiality claimed;
- b. the type of documents;
- c. the authors of the document;
- d. all persons who received copies of the document;
- e. the date of the document; and
- f. the general subject matter of the document.

If a claim of attorney client privilege or attorney work product is made, identify those persons who are attorneys, and the employer of each author, addressee and person who received copies of the document at the time that the document was created and transcribed.

17. 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, and include the information provided in ¶ 8 above.

18. You are required to produce the original of each document requested together with all non-identical copies and drafts of that document. If the original of any document cannot be located, provide a copy in lieu thereof, which shall be legible and bound or stapled in the same manner as the original.

19. These requests are continuing requests and require further and supplemental production by you as and whenever you acquire or locate additional documents between the time of this request and the final resolution of this action.

#### **RELEVANT TIME PERIOD**

Unless otherwise stated within a specific request for production, the relevant time period for these Requests is January 1, 2005 to the present.

#### **DOCUMENTS REQUESTED**

1. All insurance policies (including but not limited to D&O policies) from any source, including Bank of New York Mellon, Bank of America, BAC HLS and CFC that could be used to cover potential liability of any of the mortgage-backed securitizations identified in the Settlement or any claim which could be asserted by any person covered by the Settlement.

2. All Documents, including legal opinions concerning the purpose or the rights of investors pursuant to the Settlement Agreement, including whether any Investor or Person who purchased and sold shares of any of the mortgage-securitization trusts identified in the Settlement are entitled to any of the Settlement Agreement.

3. All Documents concerning whether the definition of losses in the Settlement includes any Person who purchased and sold at a lower price shares in any of the mortgage-securitization trusts identified in the Settlement.

4. All Documents evidencing any consideration provided for purchasers who sold their shares in any of the mortgage-securitization trusts identified in the Settlement.

5. All agreements between and amongst You and any party to the Settlement Agreement and/or the Institutional Investor Agreement concerning the allocation of any amounts of the Settlement to any particular trust of the Mortgage Securitization Trusts identified in the Settlement.

6. All drafts of the Settlement Agreement and/or the Institutional Investor Agreement.

7. All Documents concerning the plan of allocating any monies from the Settlement Agreement, including but not limited to documents concerning any consideration for investor sales or losses arising from the Mortgage Securitization Trusts.

8. All Documents concerning Your consideration of any public pension fund's: a) claims against You; b) potential or actual claims arising from the Mortgage Securitization Trusts; c) potential or actual damages arising from the Mortgage Securitization Trusts; or d) potential or actual claims as it relates to the Settlement Agreement.

9. All Documents identifying and describing Your business relationships with any party to the Settlement Agreement or the Institutional Investor Agreement, including but not limited to documents identifying the business dealings You have had with such entities or individuals during the Relevant Time Period, the dollar amount or value of such business dealings, and how the Settlement Agreement or the Institutional Investor Agreement relates to such business relationships.

10. All Documents describing or identifying the “Individual Securities Claims” described in the Settlement Agreement or the Institutional Investor Agreement, including any consideration identified or otherwise provided for Individual Securities Claims.

11. All Documents supporting the methodology accounting for past and expected future losses associated with the Mortgage Loans in each Trust as described in the Settlement.

12. All Documents reflecting the daily value of each Trust from January 1, 2005 to present.

13. All Documents evidencing the purchase, sales, dates, amounts, purchase price of any of the mortgage-securitization trusts by any Party to the Settlement or the Institutional Investor Agreement.

14. All Documents which You contend support the adequacy of the Settlement Agreement, or the Institutional Investor Agreement.

15. All Documents which You contend support that this proceeding, and/or the Settlement satisfies C.P.L.R. Article 9.

16. Documents sufficient to identify the parties involved in the drafting and/or negotiation of the Settlement Agreement or the Institutional Investor Agreement.

17. All Documents supporting Your contention that the Settlement Agreement benefits all similarly-situated Certificate holders equally.

18. All Documents supporting the methodology for determining existing and estimated future net losses as described in the Settlement.

19. Any and all fairness opinions relating to the Settlement Agreement or the Institutional Investor Agreement.

20. Any and all side deals or side agreements relating to the Settlement Agreement or the Institutional Investor Agreement.

21. All Documents relating to the plan of allocation in the Settlement Agreement or the Institutional Investor Agreement.

22. All Documents provided to any expert or consultant relating or otherwise concerning the Settlement Agreement or the Institutional Investor Agreement

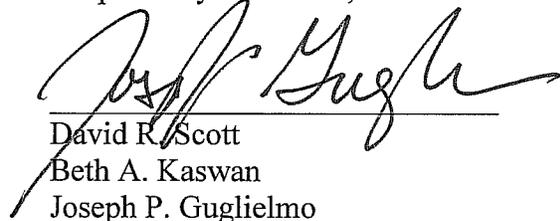
23. All Documents that You reviewed to assess the relative strengths and weaknesses of the claims that have been released in the proposed settlement agreement.

24. All Documents relating to the settlement between Bank of America and Freddie Mac and Fannie Mae that, according to Bank of America's June 29, 2011 press release "substantially resolved the existing pipeline of repurchase and make-whole claims outstanding as of September 20, 2010 arising from alleged breaches of selling representations and warranties related to loans sold by legacy Countrywide."

25. All Documents describing or identifying whether You intend to provide notice of the Settlement to Persons who purchased and sold their shares of any of the mortgage-securitization trusts identified in the Settlement.

Dated: July 6, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph P. Guglielmo", is written over a horizontal line.

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*Counsel to Public Pension Fund Committee*