

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

In the matter of the application of

Index No. 651786/2011

THE BANK OF NEW YORK MELLON (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), *et al.*

Assigned to: Kapnick, J.

Petitioners,

for an order, pursuant to C.P.L.R. § 7701, seeking judicial instructions and approval of a proposed settlement.

STIPULATED FACTS IN LIEU OF WILLIAM FREY'S LIVE TESTIMONY

1. The Institutional Investors, BNY Mellon, as Trustee, and Respondent AIG offer the following stipulation in lieu of William Frey's live testimony.

2. Mr. Frey became involved in the securitization of mortgages in the early 1980s. Mr. Frey worked in the industry as a banker, trader, researcher and salesperson for firms including Morgan Stanley, Smith Barney, and Bear Stearns. Mr. Frey is now the principal of Greenwich Financial Services, LLC. Greenwich Financial Services has been heavily involved in the residential mortgage backed securities (RMBS) industry, and Mr. Frey has substantial personal knowledge regarding, and experience in, the industry. Among other things, Greenwich Financial Services has purchased individual mortgages and structured them into RMBS, purchased RMBS, served as a financial advisor to the Government National Mortgage Association (Ginnie Mae). On December 1, 2008, Greenwich Financial Services Distressed Mortgage Fund 3, LLC and QED LLC brought a class action in New York Supreme Court seeking a declaratory judgment that either Countrywide Home Loans Servicing LP or Countrywide Home Loans, Inc. was required to purchase modified mortgage loans in 373

Countrywide trusts covered by the proposed Article 77 settlement. The complaint in that case is attached as Exhibit “A” to this Stipulation. In addition, as set forth below, Greenwich Financial Services has obtained, reviewed, and developed substantial documents and information regarding the 530 Covered Trusts.

3. On June 4, 2010, Mr. Frey, on behalf of his company, Greenwich Financial Services LLC, entered a consulting expert agreement with Talcott Franklin PC on behalf of its clients in what was then known as the Clearing House. The Clearing House was formed to provide investors incurring losses in RMBS with information and analysis about claims they might bring against RMBS sellers and servicers, like Bank of America. Clients of the Clearing House were investors in certain RMBS, including the 530 Covered Trusts. Investors who joined the Clearing House retained control of their bonds. They were not obligated to pursue any particular initiative the Clearing House might propose and were free to withdraw from the Clearing House at any time.

4. Limitations in Pooling and Servicing Agreements (PSAs) generally prevent investors from directing trustees to pursue such claims unless they have a specified percentage of holdings and the identities of certificateholders is unknown to other certificateholders in RMBS. The Clearing House provided a possible way for certificateholders to organize and receive analysis about potential collective action to recover on their losses. Mr. Frey was retained by the Clearing House to review loan tapes and remittance reports to analyze Countrywide’s loan modification and other servicing practices to determine the strength of claims that could be brought. Mr. Frey performed a review of defaults in the Countrywide RMBS trusts.

5. Mr. Frey wanted to aggressively pursue these claims in order to avoid the long-term harm to the United States mortgage market that would result from (a) investors suffering

largely uncompensated losses and (b) systemic servicer fraud. Prior to his engagement by the Clearing House, Mr. Frey was concerned that some investors would be unable to aggressively pursue the claims because of business relationships with Bank of America.

6. By August 4, 2010, and in reliance upon Mr. Frey's analysis, the Clearing House was on the verge of sending a notice to BNY Mellon concerning alleged events of default by the Master Servicer under the applicable PSAs in some of the Covered Trusts. BlackRock and PIMCO were then members of the Clearing House. Without the holdings of Blackrock and PIMCO, the other investors in the Clearing House lacked sufficient voting rights to send this notice.

7. Before the proposed Clearing House notice was sent, PIMCO and BlackRock, together with other investors, retained Gibbs & Bruns LLP to serve as their counsel to pursue an independent strategy to enforce repurchase and servicing claims involving Countrywide RMBS Trusts. The strategy was one that did not involve the Clearing House. Mr. Frey and Greenwich were not engaged as a consulting expert on behalf of Gibbs & Bruns or its clients. Mr. Frey and Greenwich had no communications with Gibbs & Bruns regarding this independent strategy or how it would be pursued.

8. By August 2010, PIMCO and BlackRock had learned that some members of the Clearing House, represented by Mr. Franklin, intended to send BNY Mellon, as Trustee, the above-mentioned certificateholder notice, relying in part on PIMCO and Blackrock's holdings. PIMCO and Blackrock did not authorize Mr. Franklin to send the Clearing House notice on their behalf or authorize the Clearing House to use their holdings to reach the percentages required to send the notice. AIG was then a member of the Clearing House. The Clearing House lacked

sufficient voting rights to send the notice to BNY Mellon under the applicable PSAs, and so it was not sent. No notice was ever sent to BNY Mellon by the Clearing House.

9. On October 3, 2011, Bloomberg published an article about the Clearing House's alternative default effort. The article included the contents of an August 4, 2010 privileged email that Gibbs & Bruns LLP, as counsel, sent to its clients. Gibbs & Bruns and its clients did not authorize the release of this email to Bloomberg. They do not know how Bloomberg came to possess it. Without waiver of any privilege associated with that email, the Parties agree that Exhibit "B" to this stipulation, which is also marked as Exhibit R-510, is an authentic copy of the email that was published by Bloomberg. The Parties stipulate to the admission of Exhibit R-510.

10. The approach taken by the Institutional Investors and BNYM to settle the claims of the 530 Covered Trusts is different than the approach the Clearing House was intending to take, including the planned investigation and assessment of the recoverable damages.

11. For clarification, nothing in this stipulation is intended to, and no signatory shall argue that it does, constitute a waiver of any privilege. It is further agreed that in argument concerning the efforts of the Clearing House, the proposed Clearing House notice described herein, or Exhibit R-510, counsel for the Institutional Investors shall not assert facts not already in the hearing record or in this stipulation.

Dated: New York, New York
October 29, 2013

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EXHIBIT “A”

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

GREENWICH FINANCIAL SERVICES
DISTRESSED MORTGAGE FUND 3, LLC,
and QED LLC, on behalf of themselves and all
other persons similarly situated,

Plaintiffs,

-against-

COUNTRYWIDE FINANCIAL
CORPORATION, COUNTRYWIDE HOME
LOANS, INC., and COUNTRYWIDE HOME
LOANS SERVICING LP,

Defendants.

Index No.

COMPLAINT

Plaintiffs allege:

1. To settle allegations of widespread predatory lending made against it by the Attorneys General of at least 15 States, Countrywide Financial Corporation has agreed to reduce payments due on hundreds of thousands of mortgage loans by a total of up to \$8.4 billion. Most of these loans are owned not by Countrywide, but rather by trusts to which Countrywide sold the loans in the process of securitization. To pay Countrywide for the loans, those trusts in turn sold securities (often called “certificates” and sold in different classes or “tranches”) to investors. Countrywide plans not to absorb the \$8.4 billion reduction in mortgage payments itself (even though it was Countrywide’s own conduct of which the Attorneys General complained in the proceedings that Countrywide has now settled), but rather to pass most or all of that reduction on to the trusts that purchased mortgage loans from Countrywide. If the trusts are forced to absorb the

reduction in payments occasioned by Countrywide's settlement of the allegations against it, then the value of the securities that those trusts sold to investors will decline.

2. This action relates to two series of Countrywide securitizations known as the CWL series and the CWALT series.

3. By this action, plaintiffs seek a declaratory judgment that, under the agreements that govern the administration of the loans that Countrywide sold to trusts in these two series of securitizations (including the trust that issued the securities that plaintiffs own), Countrywide is required to purchase every mortgage loan on which it agrees to reduce the payments. **Plaintiffs make no complaint about the settlement between the Attorneys General and Countrywide, nor do plaintiffs take any position about whether the cost of reducing payments on loans other than those that Countrywide sold in the CWL and CWALT securitizations may be passed to the trusts that purchased those loans. The sole object of this action is a declaration that, under the substantially identical agreements that govern the trust that sold the securities owned by plaintiffs and the 373 other trusts in the CWL and CWALT securitizations that sold the securities owned or held by other members of the plaintiff class, Countrywide is required to purchase any loan on which it agrees to reduce the payments.**

THE PARTIES

4. Plaintiff Greenwich Financial Services Distressed Mortgage Fund 3, LLC, is a limited liability company organized under the laws of Delaware with its principal place of business in Connecticut.

5. Plaintiff QED LLC is a limited liability company organized under the laws of Delaware with its principal place of business in Connecticut.

6. Each plaintiff owns certificates in the CWALT 2005-36 securitization.

7. Defendant Countrywide Financial Corporation is a corporation organized under the laws of Delaware with its principal place of business in California. This defendant is referred to in this complaint as **Countrywide Financial**. Countrywide Financial and all its subsidiaries and affiliates are referred to together as **Countrywide**.

8. Defendant Countrywide Home Loans, Inc., is a corporation organized under the laws of New York with its principal place of business in California. This defendant is referred to in this complaint as **Countrywide Home Loans**. Countrywide Home Loans is a wholly owned subsidiary of Countrywide Financial.

9. Defendant Countrywide Home Loans Servicing LP is a limited partnership organized under the laws of Texas with its principal place of business in Texas. This defendant is referred to in this complaint as **Countrywide Servicing**. Countrywide Servicing is a wholly owned subsidiary of Countrywide Financial.

THE JURISDICTION OF THIS COURT

10. This Court has jurisdiction of this action under CPLR § 301 because Countrywide Home Loans is a New York corporation and has appointed an agent for service of process and has consented to the jurisdiction of courts within the State. In addition, defendants are registered and/or licensed to do business within the State and have agreed to the jurisdiction of the courts within the State over matters arising out of their activities within the State. Defendants have offices and regularly transact business

within the State, and defendants have participated in negotiations and other activities within the State that led to the transactions that give rise to the claims in this complaint.

11. A justiciable controversy exists between plaintiffs and defendants because plaintiffs assert, and defendants deny, that either defendant Countrywide Home Loans or defendant Countrywide Servicing is required to purchase all loans in the CWL and CWALT securitizations that Countrywide modifies. Countrywide has stated that “modified loans [pursuant to the settlement with the State Attorneys General] are not subject to repurchase due to such modification.” The resolution of this controversy by a declaratory judgment will materially affect the value of certificates owned by plaintiffs and members of the class on whose behalf plaintiffs bring this action.

CLASS ACTION ALLEGATIONS

12. Plaintiffs bring this action as a class action under CPLR § 901 on behalf of a class consisting of all persons or entities that own or hold certificates in one or more of the following securitizations.

103 CWL Securitizations

CWL 2004-1	CWL 2004-AB2	CWL 2005-6
CWL 2004-10	CWL 2004-ECC1	CWL 2005-7
CWL 2004-11	CWL 2004-ECC2	CWL 2005-8
CWL 2004-12	CWL 2005-1	CWL 2005-9
CWL 2004-13	CWL 2005-10	CWL 2005-AB1
CWL 2004-14	CWL 2005-11	CWL 2005-AB2
CWL 2004-15	CWL 2005-12	CWL 2005-AB3
CWL 2004-2	CWL 2005-13	CWL 2005-AB4
CWL 2004-3	CWL 2005-14	CWL 2005-AB5
CWL 2004-4	CWL 2005-15	CWL 2005-BC4
CWL 2004-5	CWL 2005-16	CWL 2005-BC5
CWL 2004-6	CWL 2005-17	CWL 2005-IM1
CWL 2004-7	CWL 2005-2	CWL 2005-IM2
CWL 2004-8	CWL 2005-3	CWL 2005-IM3
CWL 2004-9	CWL 2005-4	CWL 2005-SD1
CWL 2004-AB1	CWL 2005-5	CWL 2005-SD2

CWL 2005-SD3	CWL 2006-26	CWL 2007-12
CWL 2006-1	CWL 2006-3	CWL 2007-13
CWL 2006-10	CWL 2006-4	CWL 2007-2
CWL 2006-11	CWL 2006-5	CWL 2007-3
CWL 2006-12	CWL 2006-6	CWL 2007-4
CWL 2006-13	CWL 2006-8	CWL 2007-5
CWL 2006-14	CWL 2006-9	CWL 2007-6
CWL 2006-15	CWL 2006-ABC1	CWL 2007-7
CWL 2006-16	CWL 2006-BC1	CWL 2007-8
CWL 2006-17	CWL 2006-BC2	CWL 2007-9
CWL 2006-18	CWL 2006-BC3	CWL 2007-BC1
CWL 2006-19	CWL 2006-BC4	CWL 2007-BC2
CWL 2006-2	CWL 2006-BC5	CWL 2007-BC3
CWL 2006-20	CWL 2006-IM1	CWL 2007-QH1
CWL 2006-21	CWL 2006-QH1	CWL 2007-QH2
CWL 2006-22	CWL 2006-QH2	CWL 2007-QX1
CWL 2006-23	CWL 2007-1	CWL 2007-S1
CWL 2006-24	CWL 2007-10	
CWL 2006-25	CWL 2007-11	

271 CWALT Securitizations

CWALT 2004-J1	CWALT 2004-12CB	CWALT 2005-IM1
CWALT 2004-J10	CWALT 2004-13CB	CWALT 2005-J1
CWALT 2004-J11	CWALT 2004-14T2	CWALT 2005-J10
CWALT 2004-J12	CWALT 2004-15	CWALT 2005-J11
CWALT 2004-J13	CWALT 2004-16CB	CWALT 2005-J12
CWALT 2004-J2	CWALT 2004-17CB	CWALT 2005-J13
CWALT 2004-J3	CWALT 2004-18CB	CWALT 2005-J14
CWALT 2004-J4	CWALT 2004-20T1	CWALT 2005-J2
CWALT 2004-J5	CWALT 2004-22CB	CWALT 2005-J3
CWALT 2004-J6	CWALT 2004-24CB	CWALT 2005-J4
CWALT 2004-J7	CWALT 2004-25CB	CWALT 2005-J5
CWALT 2004-J8	CWALT 2004-26T1	CWALT 2005-J6
CWALT 2004-J9	CWALT 2004-27CB	CWALT 2005-J7
CWALT 2004-1T1	CWALT 2004-28CB	CWALT 2005-J8
CWALT 2004-2CB	CWALT 2004-29CB	CWALT 2005-J9
CWALT 2004-3T1	CWALT 2004-30CB	CWALT 2005-1CB
CWALT 2004-4CB	CWALT 2004-31T1	CWALT 2005-2
CWALT 2004-5CB	CWALT 2004-32CB	CWALT 2005-3CB
CWALT 2004-6CB	CWALT 2004-33	CWALT 2005-4
CWALT 2004-7T1	CWALT 2004-34T1	CWALT 2005-6CB
CWALT 2004-8CB	CWALT 2004-35T2	CWALT 2005-7CB
CWALT 2004-9T1	CWALT 2004-36CB	CWALT 2005-9CB
CWALT 2004-10CB	CWALT 2005-AR1	CWALT 2005-10CB

CWALT 2005-11CB	CWALT 2005-58	CWALT 2006-OA16
CWALT 2005-12R	CWALT 2005-59	CWALT 2006-OA17
CWALT 2005-13CB	CWALT 2005-59R	CWALT 2006-OA18
CWALT 2005-14	CWALT 2005-60T1	CWALT 2006-OA19
CWALT 2005-16	CWALT 2005-61	CWALT 2006-OA2
CWALT 2005-17	CWALT 2005-62	CWALT 2006-OA21
CWALT 2005-18CB	CWALT 2005-63	CWALT 2006-OA22
CWALT 2005-19CB	CWALT 2005-64CB	CWALT 2006-OA3
CWALT 2005-20CB	CWALT 2005-65CB	CWALT 2006-OA6
CWALT 2005-21CB	CWALT 2005-66	CWALT 2006-OA7
CWALT 2005-22T1	CWALT 2005-67CB	CWALT 2006-OA8
CWALT 2005-23CB	CWALT 2005-69	CWALT 2006-OA9
CWALT 2005-24	CWALT 2005-70CB	CWALT 2006-OC1
CWALT 2005-25T1	CWALT 2005-71	CWALT 2006-OC10
CWALT 2005-26CB	CWALT 2005-72	CWALT 2006-OC11
CWALT 2005-27	CWALT 2005-73CB	CWALT 2006-OC2
CWALT 2005-28CB	CWALT 2005-74T1	CWALT 2006-OC3
CWALT 2005-29CB	CWALT 2005-75CB	CWALT 2006-OC4
CWALT 2005-30CB	CWALT 2005-76	CWALT 2006-OC5
CWALT 2005-31	CWALT 2005-77T1	CWALT 2006-OC6
CWALT 2005-32T1	CWALT 2005-79CB	CWALT 2006-OC7
CWALT 2005-33CB	CWALT 2005-80CB	CWALT 2006-OC8
CWALT 2005-34CB	CWALT 2005-81	CWALT 2006-OC9
CWALT 2005-35CB	CWALT 2005-82	CWALT 2006-2CB
CWALT 2005-36	CWALT 2005-83CB	CWALT 2006-4CB
CWALT 2005-37T1	CWALT 2005-84	CWALT 2006-5T2
CWALT 2005-38	CWALT 2005-85CB	CWALT 2006-6CB
CWALT 2005-40CB	CWALT 2005-86CB	CWALT 2006-7CB
CWALT 2005-41	CWALT 2006-HY10	CWALT 2006-8T1
CWALT 2005-42CB	CWALT 2006-HY11	CWALT 2006-9T1
CWALT 2005-43	CWALT 2006-HY12	CWALT 2006-11CB
CWALT 2005-44	CWALT 2006-HY13	CWALT 2006-12CB
CWALT 2005-45	CWALT 2006-HY3	CWALT 2006-13T1
CWALT 2005-46CB	CWALT 2006-J1	CWALT 2006-14CB
CWALT 2005-47CB	CWALT 2006-J2	CWALT 2006-15CB
CWALT 2005-48T1	CWALT 2006-J3	CWALT 2006-16CB
CWALT 2005-49CB	CWALT 2006-J4	CWALT 2006-17T1
CWALT 2005-50CB	CWALT 2006-J5	CWALT 2006-18CB
CWALT 2005-51	CWALT 2006-J6	CWALT 2006-19CB
CWALT 2005-52CB	CWALT 2006-J7	CWALT 2006-20CB
CWALT 2005-53T2	CWALT 2006-J8	CWALT 2006-21CB
CWALT 2005-54CB	CWALT 2006-OA1	CWALT 2006-22R
CWALT 2005-55CB	CWALT 2006-OA10	CWALT 2006-23CB
CWALT 2005-55CW	CWALT 2006-OA11	CWALT 2006-24CB
CWALT 2005-56	CWALT 2006-OA12	CWALT 2006-25CB
CWALT 2005-57CB	CWALT 2006-OA14	CWALT 2006-26CB

CWALT 2006-27CB	CWALT 2007-HY7C	CWALT 2007-6
CWALT 2006-28CB	CWALT 2007-HY8C	CWALT 2007-7T2
CWALT 2006-29T1	CWALT 2007-HY9	CWALT 2007-8CB
CWALT 2006-30T1	CWALT 2007-J1	CWALT 2007-9T1
CWALT 2006-31CB	CWALT 2007-J2	CWALT 2007-10CB
CWALT 2006-32CB	CWALT 2007-OA10	CWALT 2007-11T1
CWALT 2006-33CB	CWALT 2007-OA11	CWALT 2007-12T1
CWALT 2006-34	CWALT 2007-OA2	CWALT 2007-13
CWALT 2006-35CB	CWALT 2007-OA3	CWALT 2007-14T2
CWALT 2006-36T2	CWALT 2007-OA4	CWALT 2007-15CB
CWALT 2006-39CB	CWALT 2007-OA6	CWALT 2007-16CB
CWALT 2006-40T1	CWALT 2007-OA7	CWALT 2007-17CB
CWALT 2006-41CB	CWALT 2007-OA8	CWALT 2007-18CB
CWALT 2006-42	CWALT 2007-OA9	CWALT 2007-19
CWALT 2006-43CB	CWALT 2007-OH1	CWALT 2007-20
CWALT 2006-45T1	CWALT 2007-OH2	CWALT 2007-21CB
CWALT 2006-46	CWALT 2007-OH3	CWALT 2007-22
CWALT 2007-AL1	CWALT 2007-1T1	CWALT 2007-23CB
CWALT 2007-HY2	CWALT 2007-2CB	CWALT 2007-24
CWALT 2007-HY3	CWALT 2007-3T1	CWALT 2007-25
CWALT 2007-HY4	CWALT 2007-4CB	
CWALT 2007-HY6	CWALT 2007-5CB	

13. The class is so numerous that joinder of all members is impracticable.

Although plaintiffs do not know the exact number of members of the proposed class, plaintiffs believe that there are thousands of them, because there are hundreds of securitizations, each of which issued dozens of certificates.

14. There are questions of law or fact common to the class which predominate over any questions affecting only individual members. Among the questions of law or fact common to the class are:

(a) Whether, under the agreements governing the trusts that sold certificates owned or held by members of the plaintiff class, either Countrywide Home Loans or Countrywide Servicing must purchase every loan that Countrywide modifies; and

(b) The price at which Countrywide Home Loans or Countrywide Servicing must purchase loans that Countrywide modifies.

15. Plaintiffs' claims are typical of the claims of the class, because all members of the class would be similarly affected by the declaratory judgment sought in this action.

16. Plaintiffs will fairly and adequately protect the interests of the members of the class and have retained counsel competent and experienced in class litigation.

17. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impracticable. There will be no difficulty in the management of this action as a class action.

NOTICE REQUIREMENT INAPPLICABLE

18. In most securitizations (including all that are covered by this action), a contract known as a Pooling and Servicing Agreement (or PSA) governs the rights and duties of the participants in the securitization.

19. Section 10.08 of the PSAs that govern the CWL and CWALT certificates states:

No Certificateholder shall have any right by virtue or by availing itself of any provisions of this Agreement to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Agreement, unless such Holder previously shall have given to the Trustee a written notice of an Event of Default and of the continuance thereof, as hereinbefore provided, the Holders of Certificates evidencing not less than 25% of the Voting Rights shall also have made written request to the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder . . .; it being understood and intended, and being expressly covenanted by each Certificateholder with every other Certificateholder and the Trustee, that no one or more Holders of Certificates shall have any right in any manner whatever by virtue or by availing itself or themselves of any provisions of this Agreement to affect, disturb or prejudice the

rights of the Holders of any other of the Certificates, or to obtain or seek to obtain priority over or preference to any other such Holder or to enforce any right under this Agreement, except in the manner herein provided and for the common benefit of all Certificateholders.

20. Plaintiffs bring this action as a class action for the common benefit of all certificateholders in the plaintiff class.

21. The declaratory judgment sought in this action will apply equally to all certificateholders in the plaintiff class, and, therefore, will not affect, disturb, or prejudice the rights of any individual certificateholder or permit any certificateholder to gain priority or preference over any other certificateholder.

22. For these reasons, the requirements of Section 10.08 do not apply to this action.

FIRST CAUSE OF ACTION (DECLARATORY JUDGMENT)

23. Countrywide makes mortgage loans. To raise money to lend, Countrywide securitized some of its loans. When loans are securitized, they are sold to a trust. When borrowers then pay interest and principal on their mortgage loans, those payments go to the trust, rather than to the lender that made the mortgage loans initially but then sold them to the trust.

24. To raise the money to pay for the loans, the trust sells certificates to investors. (These certificates are securities, hence the term "securitization.") Each certificate entitles its owner to payment of the principal, or face, amount of the certificate, plus interest at an agreed rate until the principal is paid.

25. Certificates are divided into classes, or tranches. The certificates in different classes give their owners different claims on the cash that is flowing into the trust from payments of interest and principal on the mortgage loans that the trust owns.

26. In addition to the mortgage lender, the trust, and the investors in the certificates, there are other participants in a securitization. One is the master servicer, which administers the mortgage loans on behalf of the certificateholders.

27. This action relates to 374 securitizations in the two series known as CWL and CWALT. In all of these securitizations, Countrywide Servicing is the master servicer. Representative examples of the PSAs that govern the CWL and CWALT securitizations are attached as Exhibits A and B.

*

28. Beginning in the summer of 2008, the Attorneys General of California, Illinois, and at least five other States filed lawsuits accusing Countrywide of violating laws against predatory lending. Their complaints allege that Countrywide engaged in many deceptive sales practices, charged unlawful fees and interest rates, and made mortgage loans that Countrywide had no reasonable basis to think that the borrowers could afford, all in violation of the predatory lending laws of the United States and those five States. The complaints against Countrywide filed by the States of California and Illinois are attached as Exhibits C and D. The Attorneys General of at least eight States in addition to the five that sued Countrywide were also investigating Countrywide's lending practices based upon allegations of similar misconduct.

29. To settle the accusations of the Attorneys General, on October 6, 2008, Countrywide agreed to a Multistate Settlement Term Sheet, a copy of which is attached

as Exhibit E. Final judgments embodying the Term Sheet have been entered against Countrywide by the courts of California, Illinois, and several other States. Copies of the California and Illinois judgments are attached as Exhibits F and G.

30. Under the Term Sheet and the judgments that embody it, Countrywide is required to modify numerous mortgage loans (at least 50,000 by March 31, 2009, and potentially as many as 400,000) that (i) Countrywide services and (ii) meet agreed financial criteria. Countrywide services all loans in the CWL and CWALT securitizations, in which plaintiffs and members of the plaintiff class own or hold certificates. Thus, under the Term Sheet and judgments, Countrywide may well be modifying the loans in those securitizations that meet the criteria agreed to in the Term Sheet.

31. For example, the Term Sheet and the judgments require Countrywide to restore low introductory interest rates (so-called “teaser” rates) on certain categories of loans that are currently subject to substantially higher interest rates and to write down the principal of certain other categories of loans.

32. Modifying a mortgage loan almost always means reducing or delaying payments due on that loan. Reducing or delaying those payments in turn entails a reduced or delayed flow of funds into the trusts to which those loans were sold in securitizations. A reduced or delayed flow of funds into those trusts reduces the value of the certificates that those trusts sold to investors. Plaintiffs believe and allege that, depending on the resolution of the questions on which they seek a declaratory judgment, the value of all certificates held by members of the plaintiff class will be affected by billions of dollars.

*

33. Under the PSAs that govern the CWL securitizations, any mortgage loan that is modified must be purchased from the trust. Section 3.12(a) of most of these PSAs states: “The Master Servicer may agree to a modification of any Mortgage Loan (the ‘Modified Mortgage Loan’) if ... CHL [Countrywide Home Loans] purchases the Modified Mortgage Loan from the Trust Fund immediately following the modification” The PSAs that govern certain of the CWL certificates contain an alternate form of Section 3.12(a) that requires modified loans to be purchased by the Master Servicer (Countrywide Servicing) rather than Countrywide Home Loans. In these PSAs, Section 3.12(a) states: “The Master Servicer may agree to a modification of any Mortgage Loan (the ‘Modified Mortgage Loan’) if ... the Master Servicer [Countrywide Servicing] purchases the Modified Mortgage Loan from the Trust Fund” No provision of any of the PSAs permits Countrywide Servicing or Countrywide Home Loans to modify any loan without triggering the requirement that either Countrywide Home Loans or Countrywide Servicing purchase the loan.

34. Under the PSAs that govern the CWALT securitizations, any mortgage loan that is modified must be purchased from the trust. Section 3.11(b) of most of these PSAs states: “Countrywide may agree to a modification of any Mortgage Loan (the ‘Modified Mortgage Loan’) if ... Countrywide purchases the Modified Mortgage Loan from the Trust Fund” The PSAs that govern certain of the CWALT certificates contain an alternate form of Section 3.11(b) that requires modified loans to be purchased by the Master Servicer (Countrywide Servicing) rather than Countrywide Home Loans. In these PSAs, Section 3.11(b) states: “The Master Servicer may agree to a modification

of any Mortgage Loan (the ‘Modified Mortgage Loan’) if ... the Master Servicer purchases the Modified Mortgage Loan from the Trust Fund” No provision of any of the PSAs permits Countrywide Servicing or Countrywide Home Loans to modify any loan without triggering the requirement that either Countrywide Home Loans or Countrywide Servicing purchase the loan.

35. Plaintiffs and all other members of the plaintiff class are entitled to a judgment pursuant to CPLR § 3001 declaring that, under the PSA governing each of plaintiffs’ certificates and each other trust that sold certificates owned or held by any member of the plaintiff class, Countrywide Home Loans or Countrywide Servicing must purchase every loan that Countrywide Servicing or Countrywide Home Loans modifies.

SECOND CAUSE OF ACTION
(DECLARATORY JUDGMENT)

36. Plaintiffs repeat paragraphs 1 through 35.

37. The PSAs that govern the CWL and CWALT certificates define the “Purchase Price” at which modified mortgage loans must be repurchased from the trusts as “an amount equal to the sum of (i) 100% of the unpaid principal balance ... of the Mortgage Loan as of the date of such purchase, [plus] (ii) accrued interest thereon”

38. Plaintiffs and all other members of the class are entitled to a judgment pursuant to CPLR § 3001 declaring that the price at which Countrywide Home Loans or Countrywide Servicing must purchase every modified loan is not less than 100% of the unpaid principal balance of, and any accrued interest on, that loan immediately before modification.

WHEREFORE, on behalf of themselves and the other members of the class, plaintiffs respectfully demand judgment:

(a) declaring that under the PSAs governing the trusts that sold certificates owned or held by members of the plaintiff class, either Countrywide Home Loans or Countrywide Servicing must purchase every loan that Countrywide Home Loans or Countrywide Servicing modifies;

(b) declaring that the price at which Countrywide Home Loans or Countrywide Servicing must purchase every modified loan is not less than 100% of the unpaid principal balance of, and any accrued interest on, that loan immediately before modification;

(c) allowing recovery of attorneys' fees from the opponents of the class pursuant to CPLR § 909; and

(d) granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
December 1, 2008

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EXHIBIT “B”

From: Kathy D. Patrick [kpatrick@gibbsbruns.com]
Sent: Wednesday, August 04, 2010 7:22 PM
To: Roman.Shimonov@ny.frb.org; Edward S Abrams; Robert Lawrence; Aaron J Pas; amit.senapaty@blackrock.com; arthur.rublin@blackrock.com; David Kessler; gkosinski@koreacapital.com; Gregory Leahy; Janine.Tramontana@ny.frb.org; James Harrington; Kathy Patrick; Kent.Smith@pimco.com; kfinnegan@metlife.com; Lenore Stanton Kelly; rick.lebrun@pimco.com; scott.schuman@blackrock.com; Stephanie.Heller@ny.frb.org; Stephen.Ahrens@blackrock.com; terrence.glomski@nb.com; wding@metlife.com; Zachary.Taylor@ny.frb.org
Cc: Kathy D. Patrick; Scott A. Humphries
Subject: BONY Alternate Communication

Hi,

As a follow-up to my discussion about press initiatives on Monday, I'd like to raise two issues that have come to my attention concerning Bank of New York and Countrywide.

Alternative Default Effort re BONY

Several of you have contacted me to indicate that the alternative clearinghouse organized by Tal Franklin may be on the verge of sending a letter to Bank of New York declaring BONY in default of its obligations under the Countrywide PSAs. I am very concerned that the issuance of a conflicting instruction, purporting to put BONY in default, will cause it to freeze in place and do nothing. That is not in your interests. It will set back significantly the progress we have made to get BONY to consider an alternative rep and warranty strategy, including their willingness to pursue from the Master Servicer the costs of the re-underwriting effort. There is much work yet to be done, but it would be a terrible shame to waste the traction we have gained with BONY by sending them a default letter at this critical stage.

Since some of you were previously in the Clearinghouse, it may be that Mr. Franklin believes (mistakenly) that he is authorized to send a notice of default on your behalf. If you have not already done so, it is important that you promptly advise him that he is not authorized to send a notice of default on your behalf with regard to CW or BONY. You should also make clear that he should not include your bonds in the count of any bonds he uses to reach the percentages required to tender such a notice. If BONY receives conflicting notices from two firms, purporting to act on behalf of the same bondholders, they will again freeze in place and simply do nothing.

Please let me know promptly when you have withdrawn any authority

In re BNYM
Index No. 651786/11
Trial Exhibit
R-510

R0510-001

R4179-023

previously granted to Mr. Franklin so that I can clarify that with BONY should the need arise. I am skeptical that he will have the required percentages without your holdings; even if he does, however, I want to be able to distance this effort from any declaration of default so that we can continue to try to work constructively with Bank of New York. We don't want to be forced to go to war with them if there is an opportunity to achieve victory by different means.

Press Report re Involvement of Fed in Rep and Warranty Strategy

Some of you have also asked about the recent press report concerning the Fed's involvement in the rep and warranty strategy. This report was a direct result of the earlier press strategy initiated by Mr. Franklin. As a public entity, the Fed could not leave the inquiry unanswered, so they answered in the prudent manner that you saw. The strategy discussed in the article regarding CW and Bank of America is the BONY strategy that we presented, and we are pressing forward to achieve it.

Instructions and Next Steps

By Monday, I hope to have a draft instruction for you to review. I will likely schedule a follow up call for Monday or Tuesday to discuss the instruction and next steps.

In the interim, consistent with Stephanie Heller's suggestion, please let me know if the confidentiality agreements BONY has requested are acceptable. Lenore Kelly from Freddie Mac is going to send me some appropriate language preserving the right to disclose issues to regulators--as that is an issue for many of you--and I will redline the appropriate confi to include it when I have received it. Setting aside that issue, please let me know if there are any other issues with BONY's and CW/BofA's proposed confidentiality agreements. If we can take those off the table as a contested issue with BONY, we ought to do that. In case you've misplaced your copies, I've attached additional copies above.

As always, if you have any questions, please don't hesitate to give me a call.

Warm regards,

Kathy

R0510-002

R4179-024