EXHIBIT R-1458

From:	Ingber, Matthew D. <MIngber@mayerbrown.com>
Sent:	Wednesday, November 17, 2010 5:26 PM
To:	Kevin.McCarthy@BNYMellon.com
Cc:	Kravitt, Jason H. P. <JKravitt@mayerbrown.com>; Espana, Mauricio <MEspana@mayerbrown.com>; Hakim, David <DHakim@mayerbrown.com>
Subject:	Revised Scenario Analysis
Attach:	DVComparison_#17657674v3_NYDB01_ - BNYM Roadmap v.3-#17657674v5_NYDB01_ - BNYM Roadmap v.5.pdf; BNYM Scenario Analysis.docx

Kevin – Attached is a revised scenario analysis that incorporates your edits and several of our own, along with a blackline reflecting changes from the last version you received. We are also continuing to think through the issues raised by Kathy's disclosure yesterday regarding the CWABS deals. We can either supplement this memo or send you a separate analysis of that issue.

Please feel free to call us with any questions or comments.

Thanks,

Matt

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MEMORANDUM

November ~~12,~~ **17,** 2010

VIA ELECTRONIC MAIL

TO: The Bank of New York Mellon
FROM: Mayer Brown LLP
RE: BNYM ~~Roadmap~~**Scenario Analysis** for RMBS Issues

You have asked us to analyze the potential scenarios that could arise out of our negotiations with Kathy Patrick of Gibbs & Bruns on behalf of a subgroup of Certificateholders ("Holders") of certain pools of mortgage-backed securities. Of particular note is the impact of the Holders' October 18, 2010 letter to the Master Servicer and The Bank of New York Mellon ("BNYM") purporting to provide notice of the Master Servicer's non-compliance with the PSA and triggering a 60-day cure period.

Before setting forth these scenarios, we offer a few observations.

First, it is not obvious to us that ~~the October 18 letter triggers the cure period that, in turn, triggers~~ an Event of Default ~~under Section 7.01(ii) of the PSA. The letter~~**will have occurred at the end of the 60-day cure period triggered by the October 18 notice. The notice** makes a number of allegations of the Master Servicer's failure to perform certain covenants ~~and agreements~~ and states "that if they continue for an additional sixty days from the date of this letter, each of them . . . will constitute an Event of Default~~.~~**,**" ~~but~~ **But** those allegations are not supported by documents or other evidence ~~that the Master Servicer in fact breached any PSA~~**of a** covenant **breach**. We ~~are continuing to research~~**have been researching** the question of whether these ~~types of~~ allegations ~~are sufficient to~~**can** trigger an Event of Default~~, and the answer to that question may guide how BNYM should respond to the various scenarios outlined below. This memorandum assumes that the October 18 letter provided notice to BNYM and the Master Servicer of events that, absent a cure, will become an Event of Default~~ at the end of the 60-day cure period. **Perhaps not surprisingly, implicit in all of the cases we reviewed is that there can be no Event of Default without *evidence* of a breach. As a procedural matter, the**

question of whether an Event of Default has occurred is typically resolved only if an Event of Default is declared, litigation is commenced, and evidence is submitted on that question.

For purposes of this memorandum, the relevant question may not be whether there is, or is not, an actual Event of Default; indeed, the Holders and the Master Servicer will maintain different positions on that question, and BNYM will be best served by remaining neutral. But the 60-day period may well expire without the Holders withdrawing their notice, and this memorandum, among other things, seeks to present options for BNYM to consider at that time.

Second, it is arguably not in the Holders' interest to formally declare (or instruct BNYM to declare) an Event of Default at the end of the 60-day cure period**,** or ~~in their interest, if an Event of Default does exist,~~ to instruct BNYM to replace the Master Servicer.[†] An Event of Default places BNYM in a position of determining whether to terminate the rights and obligations of the Master Servicer, and we think the Holders are less interested in replacing the Master Servicer than in forcing it to satisfy any repurchase obligations that it might have~~. The letter, as Kathy Patrick has told us, was intended to push the process forward. Replacing the Master Servicer is not in the Holders' interest because it would require them~~ **and to perform its servicing obligations in the appropriate manner. Although the Holders may wield this option as leverage, the actual replacement of the Master Servicer would only delay the resolution that the Holders seek (the Master Servicer would almost certainly commence a lawsuit to prevent its termination), and may require the Holders** to indemnify BNYM for any costs or expenses that it ~~incurred~~**incurs** in transitioning ~~the Master Servicer~~ to a replacement servicer or ~~one or more back-up servicers. Additionally, because of the current state of the industry, it is unlikely that~~**a back-up servicer. That, coupled with the difficulty in finding** a replacement servicer **that** would agree to perform the Master Servicer's obligations under the PSA for the current Master Servicing Fee~~. Instead, a replacement servicer would most likely demand a premium above the Master Servicing Fee, which neither the trust nor BNYM is required to pay. Therefore, the~~

[†] ~~As discussed above, because the October 18 letter only provides notice of alleged non-compliance with PSA covenants and does not state that an Event of Default has occurred, the Holders have not yet taken a position as to whether an Event of Default has in fact occurred.~~

~~Holders would also need to indemnify BNYM for these additional expenses.~~, would make termination of the Master Servicer impracticable on a number of levels.[1] The October 18 letter, as Kathy Patrick (counsel to the Holders) has told us, was intended to push the process forward, and not necessarily to trigger the events that would culminate in the replacement of the Master Servicer.

Finally, we have set forth below five scenarios that we need to consider, focused principally on events through the expiration of the cure period. There are various scenarios that we need to consider beyond that date, and if you agree, we can add an analysis of those scenarios to our to-do list.

* * *

Scenario 1: Holders issue Letter of Instruction (LOI); BNYM requests loan files from Master Servicer; Master Servicer turns over loan files to BNYM; Holders withdraw October 18 notice.

This scenario is the one we hope to achieve and are working toward. This delays any decision by BNYM on whether an Event of Default has occurred, requires BNYM to follow only those duties specifically set forth in the PSA without triggering the "prudent person" standard, and allows the investigation to proceed.

Once the investigation is completed and the Holders (presumably) seek to enforce the Seller's repurchase obligations with respect to some number of allegedly faulty loans, BNYM will be faced with another set of decisions if, as we can expect, the Seller refuses to repurchase the loans or many of the loans. The Seller's refusal would not constitute an Event of Default; rather, it would constitute an alleged breach of Section 2.03 of the PSA. Absent a settlement, the Holders likely would instruct BNYM to commence litigation against the Master Servicer, and likely request that BNYM retain Gibbs & Bruns to handle the litigation.

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[1] Although the PSA does not require the Holders to pay any premium to the replacement servicer above the Master Servicer Fee, BNYM would likely seek an indemnity from the Holders to cover that expense.

Scenario 2: Holders issue ~~LOD~~LOI; BNYM requests loan files from Master Servicer on behalf of the Holders; Master Servicer refuses to turn over loan files to BNYM.

Based on conversations with BofA, this appears to be ~~the most likely~~**a reasonably possible** scenario. This would shut down an investigation by BNYM and force the parties into court in relatively short order.

We believe the events would play out in one of two ways:

~~1. Immediately commence litigation against the Master Servicer.~~

1. Event of Default Followed by Litigation

◊ The Holders would ~~instruct BNYM to assert a claim for breach of contract against the Master Servicer – namely, breach of covenants embodied in Section 3.07 and 10.09 of the PSA – and seek a mandatory injunction directing the Master Servicer to turn over the loan files to BNYM.~~**provide notice to the Master Servicer and BNYM that the Master Servicer has failed to comply with Sections 3.07 and 10.09 of the PSA, and that, absent a cure within 60 days, an Event of Default will have occurred. That notice would trigger the cure period under Section 7.01(ii). (Note that if the October 18 notice has been withdrawn, this new notice will trigger a separate window within which the Master Servicer must cure its newly identified breaches. If the October 18 notice has not been withdrawn, the Holders may declare an Event of Default – prior to the expiration of this second cure period – that is focused on the breaches identified in the October 18 notice. But we believe the Holders would be best served by withdrawing the October 18 notice and focusing their efforts on the Master Servicer's failure to provide access to the loan files. It is a much clearer covenant breach, and an easier way to trigger an Event of Default.)**

~~◊ This option avoids having to wait for the expiration of a 60-day cure period before taking any action against the Master Servicer. Although the Master Servicer may object to our claim on the basis that it is premature to seek an injunction, such an objection would be hypertechnical and unconvincing.~~

~~2. Proceed to declare an Event of Default after the 60-day cure period.~~

~~◊ The Holders would provide notice to the Master Servicer and BNYM that an Event of Default has occurred – namely, breach of covenants embodied in Section 3.07 and 10.09 of the PSA. That notice would trigger the 60-day cure period under Section 7.01(ii).~~

◊ At the end of the ~~cure~~**60-day** period, **absent a cure,** the Holders would **formally declare an Event of Default,** instruct BNYM to assert a claim ~~for breach of contract~~ against the Master Servicer **for breach of contract**, and ~~to~~ seek a ~~mandatory injunction~~**court order** directing the Master Servicer to turn over the loan files.

◊ ~~The~~**It is unlikely that the** Holders would ~~not~~ instruct BNYM to terminate the Master Servicer's rights and obligations under the PSA (for the reasons discussed above), but pursuant to Section 8.01, the "prudent person" standard would be triggered.

◊ Applying that standard, BNYM would have to determine whether to exercise the option of terminating the rights and obligations of the Master Servicer. (Many of the PSAs provide that BNYM "may" terminate the Master Servicer upon an Event of Default, even absent an instruction from the Holders.) To that end, as discussed during our recent call, BNYM should consider obtaining opinions from experts (and perhaps legal counsel) on the question of whether replacing the Master Servicer would be prudent.

2. Immediate Commencement of Litigation

◊ **Without providing notice of non-compliance or waiting for the 60-day cure period to expire, the Holders could instruct BNYM to assert a claim for breach of contract against the Master Servicer and seek a court order directing the Master Servicer to turn over the loan files to BNYM.**

◊ **This option avoids having to wait for the expiration of a 60-day cure period before taking any action against the Master Servicer. Although the Master Servicer may object on the basis that the lawsuit is premature absent a formal declaration of an Event of**

Default and an opportunity to cure, such an objection might be viewed as hypertechnical and unconvincing if the Master Servicer has no intention of curing – that is, turning over the loan files – within the 60-day window.

Recommendation: Under these circumstances, we believe that BNYM would have only one ~~less risky~~ option—i.e., to follow the Holders' instructions **either to commence litigation, or to first declare an Event of Default and then sue the Master Servicer**. On the question of whether it would be prudent to terminate the Master Servicer without instructions, the Bank would need to consider (with the assistance of experts and counsel) the consequences of that step.

~~**Scenario 2: Holders issue LOD; BNYM requests loan files from Master Servicer; Master Servicer turns over loan files to BNYM; Holders withdraw October 18 notice of non-compliance**~~

~~This scenario is the one we hope to achieve. This delays any decision by BNYM on whether an Event of Default has occurred, requires BNYM to follow only those duties specifically set forth in the PSA without triggering the "prudent person" standard, and allows the investigation to proceed.~~

~~Once the investigation is completed and the Holders (presumably) seek to enforce the Seller's repurchase obligations, BNYM will be faced with another set of decisions if, as we can expect, the Seller refuses to comply. The Seller's refusal would not constitute an Event of Default; rather, it would constitute a breach of Section 2.03 of the PSA. Absent a settlement, the Holders likely would instruct BNYM to commence litigation against the Master Servicer, triggering BNYM's engagement of Gibbs & Bruns.~~

Scenario 3: Holders issue ~~LOD~~LOI; BNYM requests loan files from Master Servicer; Master Servicer turns over loan files to BNYM; Holders do not withdraw October 18 notice ~~of non-compliance~~; Holders are silent at expiration of cure period.

This **scenario** seems unlikely if we are able to negotiate an ~~LOD~~**LOI** and secure the loan files from the Master Servicer. ~~Nonetheless, if~~**If, however,** the Holders refuse to withdraw the October 18 notice ~~of non-compliance~~ **– perhaps to maintain leverage –** and are silent as to whether the alleged non-compliance has been cured ~~(which triggers the Event of Default), there~~ is an open question as to,

BNYM will be faced with a difficult decision about whether an Event of Default has occurred. On the one hand, the October 18 ~~letter puts BNYM on~~ notice ~~of~~**identifies** events that**, if true and** absent a cure**,** will become ~~an Event~~**Events** of Default ~~and there will be no evidence of a cure~~. On the other hand, **the allegations in the October 18 notice would still be allegations, and** one can infer that if the Holders wanted an Event of Default to be triggered at the end of the cure period, they would say so. In any event, at the end of the 60-day cure period**,** BNYM would be faced with the following options:

1. Do nothing. We can stand down until we receive further instructions from the Holders. BNYM has not **yet** taken a position on whether the Master Servicer breached any covenants**, and it can continue to remain neutral on that question**.

   ◊ There is risk in doing nothing if an Event of Default has, in fact, occurred, but the only parties that would complain—the Holders—would be hard pressed to argue that we should have done more absent an instruction from them, even if the prudent person standard applied.

   ◊ A benefit in doing nothing is that the issue of whether an Event of Default has occurred does not come to a head.

2. Request that the Holders withdraw the October 18 notice.

   ◊ The only risk in making the request is that it may bring to a head the question of whether an Event of Default has occurred, especially if the Holders refuse to withdraw the notice.

   ◊ The obvious benefit is that the Holders could say yes, which takes us back to Scenario ~~2~~**1.**

3. Request that the Holders take a position on whether the alleged covenant breaches identified in the October 18 ~~letter~~**notice** have been cured, and whether an Event of Default has occurred. If an Event of Default has occurred, ask for support **that it has occurred**.

   ◊ One benefit is that it places the burden on the Holders to come forward with evidence of a covenant breach. The inability or failure of the Holders to comply strengthens our position if we decide to do nothing

(absent instruction) ~~in the face of~~**at** the expiration of the cure period. If they do come forward with evidence, we have more information with which to ~~make a decision about whether~~**evaluate the Holders' position that** an Event of Default has ~~actually~~ occurred.

◊ The risk is that in response to our request for support, the Holders fall back on the October 18 ~~letter~~**notice**, leaving BNYM to decide whether **the** allegations ~~are sufficient to~~**in the notice, coupled with silence by the Holders at the expiration of the cure period, can still** give rise to an Event of Default.

4. Take a position on whether an Event of Default has occurred. If we determine that it has not occurred, we can await further instructions from the Holders. If we determine that it has, certain rights and obligations will flow from that decision. See Scenario 4 below.

◊ BNYM's default position should be that it takes no position on the underlying question of whether an Event of Default has occurred, i.e., that it is a conduit and nothing more. The risk of taking a position—rather than leaving it to the Holders to decide and following their instructions—is that we compromise that position and no longer stay above the fray. We see little (if any) upside in taking an affirmative position on this issue.

Recommendation: Request that the Holders withdraw the October 18 notice. If they do not, await further instructions from the Holders. If our experts ~~advice~~**advise** us that, from the Holders' point of view, it makes little sense to replace the Master Servicer, it becomes less risky to do nothing while we await further instructions from the Holders.

Scenario 4: Holders issue ~~LOD~~LOI; BNYM requests loan files from Master Servicer; Master Servicer turns over loan files to BNYM; Holders take position that the events from October 18 ~~letter~~notice have not been cured and constitute an Event of Default; Holders do not instruct BNYM to terminate Master Servicer's rights and obligations under PSA.

This **scenario**, too, seems unlikely if the Master Servicer has turned over the loan files and the investigation is proceeding. In addition, a declaration of an Event of Default would not appear to serve the Holders' interests. As discussed, they have

little reason to seek a replacement Master Servicer, and formally declaring an Event of Default would only force BNYM into a position of having to consider that option. But it is possible that the Holders would create this scenario so that they can have it both ways—i.e., they can declare an Event of Default to trigger the "prudent person" duty, hold off on instructing BNYM to take any action, and then fall back on the "prudent person" duty if things go badly for the Holders.

~~Lets say~~**In the event** the Holders do declare an Event of Default~~—i.e., the covenant breaches have not been cured during the~~ **at the end of the 60-day** cure period, BNYM will be faced with the following options:

1. Assume that an Event of Default has, in fact, occurred**, but remain neutral publicly**.

   ◊ An acceptance of the Holders' position that an Event of Default has occurred brings with it certain obligations under the PSA.

      ○ First, pursuant to Section 8.01, BNYM must exercise the same degree of care and skill as a prudent person would under the circumstances.

      ○ Second, most of the PSAs provide that BNYM "may" terminate the rights and obligations of the Master Servicer upon an Event of Default. BNYM will have to consider what is "prudent" under the circumstances, taking into account what experts might offer on that question.

2. Take a position that an Event of Default has, or has not, occurred.

   ◊ See Scenario 3, option 4 regarding the risks of this approach.

   ◊ If our position is that an Event of Default has occurred, the rights/obligations discussed immediately above would be triggered.

   ◊ If our position is that no Event of Default has occurred (presumably because the declaration is premature or unsubstantiated), the burden shifts to the Holders to take action against BNYM. But it is difficult to conceive of what action the Holders might take if they never instructed BNYM to terminate the Master Servicer.

3. ~~Seek~~**Wait until the Master Servicer files** a declaratory judgment **action**

   ◊ A declaratory judgment action will provide certainty on the question of whether an Event of Default has occurred, and leave little doubt about whether the "prudent person" standard applies and whether BNYM needs to consider the replacement servicer question.

   ◊ The court could find a case or controversy by virtue of the Holders and the Master Servicer (presumably) taking different positions on the question of whether an Event of Default has occurred.

   ◊ ~~But absent an~~**If the Holders declare an Event of Default, presumably the Master Servicer would immediately file a declaratory judgment action of its own, thus leaving in the court's hands—and taking out of BNYM's hands—resolution of the Event of Default issue. BNYM may be best served by waiting (at least for short period of time) for the Master Servicer to take the first step.**

4. Wait until the Holders instruct BNYM to file a declaratory judgment action

   ◊ **If the Holders believe the Master Servicer will file a declaratory judgment action, they may try to do so first by instructing BNYM to file an action on their behalf.**

5. Seek a declaratory judgment

   ◊ **If BNYM files a declaratory judgment on its own (i.e., without any** instruction ~~from the Holders to pursue litigation~~**)**, the court might find no ~~case or~~**actual** controversy—or at least not one involving BNYM—and view a declaratory judgment action by BNYM as an attempt to seek an advisory opinion. **But based on our initial research, the Bank would have a good argument that because any action it takes upon an Event of Default might result in litigation against it, for purposes of a declaratory judgment, there is an "actual controversy" concerning its contingent rights and obligations.**

◊ This option also raises complicated questions. For example, **would the litigation be funded by the Holders absent an instruction to proceed? And** absent an instruction, who, precisely, would the Bank sue~~—~~ – the Holders, the Master Servicer, or both? ~~Would the litigation be funded by the Holders absent an instruction to proceed? This is an option that we (Mayer Brown) need to consider more thoroughly~~**We are still considering all of these questions—our preliminary conclusion is that both the Holders and the Master Servicer would be defendants—but they may end up being moot for the reasons discussed above – namely, that both the Holders and the Master Servicer are likely to seek resolution of the issue**.

Recommendation: ~~Option~~**Options** 3 **and 4** will provide the most certainty ~~(assuming the court hears the issue), but option 1 may be the best course for now. Much~~**and, perhaps, the least amount of risk for BNYM. If BNYM considers option 1, much** will depend on what an expert (perhaps coupled with a legal opinion) might say about the wisdom of BNYM terminating the rights and obligations of the Master Servicer.

Scenario 5: Holders issue ~~LOD~~LOI; BNYM requests loan files from Master Servicer; Master Servicer turns over loan files to BNYM; Holders take position that the events from October 18 ~~letter~~notice have not been cured and constitute an Event of Default; Holders instruct BNYM to terminate Master Servicer's rights and obligations under PSA.

This, too, seems unlikely for all the reasons previously stated – ~~namely,~~**above, including** that **it may not be in** the Holders ~~would not be well served by terminating~~**' interest to terminate** the Master Servicer. Nonetheless, the options here are more straightforward:

1. Assume that an Event of Default has occurred, and follow instruction to terminate (assuming the requisite percentage of Voting Rights are represented**), but remain neutral publicly.**[2] ~~).~~

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[2] BNYM can proceed to terminate the Master Servicer~~, pursuant to the Holders' instructions, only~~ "at the direction of the Holders of Certificates evidencing not less than 66 2/3% of the Voting Rights evidenced by such Certificates . . . ." (PSA § 7.01.) **Certain of the deals – in particular**
(cont'd)

- ◊ The benefit of this option is that BNYM would be following the instruction of the Holders, and any costs, liabilities, etc. arising out of BNYM's actions will be covered by the indemnity in the ~~LOD~~**LOI**.

- ◊ The risk is that this action will (presumably) lead to litigation between the Master Servicers and the Holders. The risks are mitigated by the indemnity, but the obvious burdens associated with litigation should not be ignored.

2. Take a position that an Event of Default has, or has not, occurred.

   - ◊ See Scenario 3, option 4 regarding the risks of this approach.

3. ~~Seek~~**Wait until the Master Servicer files** a declaratory judgment ~~(presumably on behalf and at direction of Holders)~~**action.**

   - ◊ See Scenario 4, option ~~3 above.~~ **3.**

   - ~~◊ The court is more likely to find a case or controversy because the litigation would ostensibly be filed by the Holders against the Master Servicer. Both sides would have different views on whether an Event of Default has occurred, and whether termination of the Master Servicer is the proper remedy.~~

4. Wait until the Holders instruct BNYM to file a declaratory judgment action.

   - ◊ **See Scenario 4, option 4.**

5. Seek a declaratory judgment.

   - ◊ **See Scenario 4, option 5.**

(... cont'd)

the CWABS deals – require BNYM to terminate the Master Servicer at the direction of Holders evidencing only 25% of the Voting Rights.

Recommendation: Litigation is inevitable under this scenario, and options ~~1~~**1, 3, 4** and ~~3~~**5** lead to the same result. Option 1 is probably a prerequisite to option ~~3.~~**3, 4 and 5.**

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Deletions	86
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	192

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MEMORANDUM

November 17, 2010

VIA ELECTRONIC MAIL

TO: The Bank of New York Mellon

FROM: Mayer Brown LLP

RE: BNYM Scenario Analysis for RMBS Issues

You have asked us to analyze the potential scenarios that could arise out of our negotiations with Kathy Patrick of Gibbs & Bruns on behalf of a subgroup of Certificateholders ("Holders") of certain pools of mortgage-backed securities. Of particular note is the impact of the Holders' October 18, 2010 letter to the Master Servicer and The Bank of New York Mellon ("BNYM") purporting to provide notice of the Master Servicer's non-compliance with the PSA and triggering a 60-day cure period.

Before setting forth these scenarios, we offer a few observations.

First, it is not obvious to us that an Event of Default will have occurred at the end of the 60-day cure period triggered by the October 18 notice. The notice makes a number of allegations of the Master Servicer's failure to perform certain covenants and states "that if they continue for an additional sixty days from the date of this letter, each of them . . . will constitute an Event of Default." But those allegations are not supported by documents or other evidence of a covenant breach. We have been researching the question of whether these allegations can trigger an Event of Default at the end of the 60-day cure period. Perhaps not surprisingly, implicit in all of the cases we reviewed is that there can be no Event of Default without *evidence* of a breach. As a procedural matter, the question of whether an Event of Default has occurred is typically resolved only if an Event of Default is declared, litigation is commenced, and evidence is submitted on that question.

For purposes of this memorandum, the relevant question may not be whether there is, or is not, an actual Event of Default; indeed, the Holders and the Master

Servicer will maintain different positions on that question, and BNYM will be best served by remaining neutral. But the 60-day period may well expire without the Holders withdrawing their notice, and this memorandum, among other things, seeks to present options for BNYM to consider at that time.

Second, it is arguably not in the Holders' interest to formally declare (or instruct BNYM to declare) an Event of Default at the end of the 60-day cure period, or to instruct BNYM to replace the Master Servicer. An Event of Default places BNYM in a position of determining whether to terminate the rights and obligations of the Master Servicer, and we think the Holders are less interested in replacing the Master Servicer than in forcing it to satisfy any repurchase obligations that it might have and to perform its servicing obligations in the appropriate manner. Although the Holders may wield this option as leverage, the actual replacement of the Master Servicer would only delay the resolution that the Holders seek (the Master Servicer would almost certainly commence a lawsuit to prevent its termination), and may require the Holders to indemnify BNYM for any costs or expenses that it incurs in transitioning to a replacement servicer or a back-up servicer. That, coupled with the difficulty in finding a replacement servicer that would agree to perform the Master Servicer's obligations under the PSA for the current Master Servicing Fee, would make termination of the Master Servicer impracticable on a number of levels.[1] The October 18 letter, as Kathy Patrick (counsel to the Holders) has told us, was intended to push the process forward, and not necessarily to trigger the events that would culminate in the replacement of the Master Servicer.

Finally, we have set forth below five scenarios that we need to consider, focused principally on events through the expiration of the cure period. There are various scenarios that we need to consider beyond that date, and if you agree, we can add an analysis of those scenarios to our to-do list.

* * *

[1] Although the PSA does not require the Holders to pay any premium to the replacement servicer above the Master Servicer Fee, BNYM would likely seek an indemnity from the Holders to cover that expense.

Scenario 1: Holders issue Letter of Instruction (LOI); BNYM requests loan files from Master Servicer; Master Servicer turns over loan files to BNYM; Holders withdraw October 18 notice.

This scenario is the one we hope to achieve and are working toward. This delays any decision by BNYM on whether an Event of Default has occurred, requires BNYM to follow only those duties specifically set forth in the PSA without triggering the "prudent person" standard, and allows the investigation to proceed.

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Scenario 2: Holders issue LOI; BNYM requests loan files from Master Servicer on behalf of the Holders; Master Servicer refuses to turn over loan files to BNYM.

Based on conversations with BofA, this appears to be a reasonably possible scenario. This would shut down an investigation by BNYM and force the parties into court in relatively short order.

We believe the events would play out in one of two ways:

1. Event of Default Followed by Litigation

   ◊ The Holders would provide notice to the Master Servicer and BNYM that the Master Servicer has failed to comply with Sections 3.07 and 10.09 of the PSA, and that, absent a cure within 60 days, an Event of Default will have occurred. That notice would trigger the cure period under Section 7.01(ii). (Note that if the October 18 notice has been withdrawn, this new notice will trigger a separate window within which the Master Servicer must cure its newly identified breaches. If the October 18 notice has not been withdrawn, the Holders may

declare an Event of Default – prior to the expiration of this second cure period – that is focused on the breaches identified in the October 18 notice. But we believe the Holders would be best served by withdrawing the October 18 notice and focusing their efforts on the Master Servicer's failure to provide access to the loan files. It is a much clearer covenant breach, and an easier way to trigger an Event of Default.)

- ◊ At the end of the 60-day period, absent a cure, the Holders would formally declare an Event of Default, instruct BNYM to assert a claim against the Master Servicer for breach of contract, and seek a court order directing the Master Servicer to turn over the loan files.

- ◊ It is unlikely that the Holders would instruct BNYM to terminate the Master Servicer's rights and obligations under the PSA (for the reasons discussed above), but pursuant to Section 8.01, the "prudent person" standard would be triggered.

- ◊ Applying that standard, BNYM would have to determine whether to exercise the option of terminating the rights and obligations of the Master Servicer. (Many of the PSAs provide that BNYM "may" terminate the Master Servicer upon an Event of Default, even absent an instruction from the Holders.) To that end, as discussed during our recent call, BNYM should consider obtaining opinions from experts (and perhaps legal counsel) on the question of whether replacing the Master Servicer would be prudent.

2. Immediate Commencement of Litigation

- ◊ Without providing notice of non-compliance or waiting for the 60-day cure period to expire, the Holders could instruct BNYM to assert a claim for breach of contract against the Master Servicer and seek a court order directing the Master Servicer to turn over the loan files to BNYM.

- ◊ This option avoids having to wait for the expiration of a 60-day cure period before taking any action against the Master Servicer. Although the Master Servicer may object on the basis that the lawsuit is premature absent a formal declaration of an Event of Default and an

opportunity to cure, such an objection might be viewed as hypertechnical and unconvincing if the Master Servicer has no intention of curing – that is, turning over the loan files – within the 60-day window.

Recommendation: Under these circumstances, we believe that BNYM would have only one option—i.e., to follow the Holders' instructions either to commence litigation, or to first declare an Event of Default and then sue the Master Servicer. On the question of whether it would be prudent to terminate the Master Servicer without instructions, the Bank would need to consider (with the assistance of experts and counsel) the consequences of that step.

Scenario 3: Holders issue LOI ; BNYM requests loan files from Master Servicer; Master Servicer turns over loan files to BNYM; Holders do not withdraw October 18 notice; Holders are silent at expiration of cure period.

This scenario seems unlikely if we are able to negotiate an LOI and secure the loan files from the Master Servicer. If, however, the Holders refuse to withdraw the October 18 notice – perhaps to maintain leverage – and are silent as to whether the alleged non-compliance has been cured, BNYM will be faced with a difficult decision about whether an Event of Default has occurred. On the one hand, the October 18 notice identifies events that, if true and absent a cure, will become Events of Default. On the other hand, the allegations in the October 18 notice would still be allegations, and one can infer that if the Holders wanted an Event of Default to be triggered at the end of the cure period, they would say so. In any event, at the end of the 60-day cure period, BNYM would be faced with the following options:

1. Do nothing. We can stand down until we receive further instructions from the Holders. BNYM has not yet taken a position on whether the Master Servicer breached any covenants, and it can continue to remain neutral on that question.

    ◊ There is risk in doing nothing if an Event of Default has, in fact, occurred, but the only parties that would complain – the Holders – would be hard pressed to argue that we should have done more absent an instruction from them, even if the prudent person standard applied.

◊ A benefit in doing nothing is that the issue of whether an Event of Default has occurred does not come to a head.

2. Request that the Holders withdraw the October 18 notice.

◊ The only risk in making the request is that it may bring to a head the question of whether an Event of Default has occurred, especially if the Holders refuse to withdraw the notice.

◊ The obvious benefit is that the Holders could say yes, which takes us back to Scenario 1.

3. Request that the Holders take a position on whether the alleged covenant breaches identified in the October 18 notice have been cured, and whether an Event of Default has occurred. If an Event of Default has occurred, ask for support that it has occurred.

◊ One benefit is that it places the burden on the Holders to come forward with evidence of a covenant breach. The inability or failure of the Holders to comply strengthens our position if we decide to do nothing (absent instruction) at the expiration of the cure period. If they do come forward with evidence, we have more information with which to evaluate the Holders' position that an Event of Default has occurred.

◊ The risk is that in response to our request for support, the Holders fall back on the October 18 notice, leaving BNYM to decide whether the allegations in the notice, coupled with silence by the Holders at the expiration of the cure period, can still give rise to an Event of Default.

4. Take a position on whether an Event of Default has occurred. If we determine that it has not occurred, we can await further instructions from the Holders. If we determine that it has, certain rights and obligations will flow from that decision. See Scenario 4 below.

◊ BNYM's default position should be that it takes no position on the underlying question of whether an Event of Default has occurred, i.e., that it is a conduit and nothing more. The risk of taking a position—rather than leaving it to the Holders to decide and following their

instructions—is that we compromise that position and no longer stay above the fray. We see little (if any) upside in taking an affirmative position on this issue.

Recommendation: Request that the Holders withdraw the October 18 notice. If they do not, await further instructions from the Holders. If our experts advise us that, from the Holders' point of view, it makes little sense to replace the Master Servicer, it becomes less risky to do nothing while we await further instructions from the Holders.

Scenario 4: Holders issue LOI; BNYM requests loan files from Master Servicer; Master Servicer turns over loan files to BNYM; Holders take position that the events from October 18 notice have not been cured and constitute an Event of Default; Holders do not instruct BNYM to terminate Master Servicer's rights and obligations under PSA.

This scenario, too, seems unlikely if the Master Servicer has turned over the loan files and the investigation is proceeding. In addition, a declaration of an Event of Default would not appear to serve the Holders' interests. As discussed, they have little reason to seek a replacement Master Servicer, and formally declaring an Event of Default would only force BNYM into a position of having to consider that option. But it is possible that the Holders would create this scenario so that they can have it both ways—i.e., they can declare an Event of Default to trigger the "prudent person" duty, hold off on instructing BNYM to take any action, and then fall back on the "prudent person" duty if things go badly for the Holders.

In the event the Holders do declare an Event of Default at the end of the 60-day cure period, BNYM will be faced with the following options:

1. Assume that an Event of Default has, in fact, occurred, but remain neutral publicly.
    - ◊ An acceptance of the Holders' position that an Event of Default has occurred brings with it certain obligations under the PSA.
        - ○ First, pursuant to Section 8.01, BNYM must exercise the same degree of care and skill as a prudent person would under the circumstances.

- Second, most of the PSAs provide that BNYM "may" terminate the rights and obligations of the Master Servicer upon an Event of Default. BNYM will have to consider what is "prudent" under the circumstances, taking into account what experts might offer on that question.

2. Take a position that an Event of Default has, or has not, occurred.

   ◊ See Scenario 3, option 4 regarding the risks of this approach.

   ◊ If our position is that an Event of Default has occurred, the rights/obligations discussed immediately above would be triggered.

   ◊ If our position is that no Event of Default has occurred (presumably because the declaration is premature or unsubstantiated), the burden shifts to the Holders to take action against BNYM. But it is difficult to conceive of what action the Holders might take if they never instructed BNYM to terminate the Master Servicer.

3. Wait until the Master Servicer files a declaratory judgment action

   ◊ A declaratory judgment action will provide certainty on the question of whether an Event of Default has occurred, and leave little doubt about whether the "prudent person" standard applies and whether BNYM needs to consider the replacement servicer question.

   ◊ The court could find a case or controversy by virtue of the Holders and the Master Servicer (presumably) taking different positions on the question of whether an Event of Default has occurred.

   ◊ If the Holders declare an Event of Default, presumably the Master Servicer would immediately file a declaratory judgment action of its own, thus leaving in the court's hands—and taking out of BNYM's hands—resolution of the Event of Default issue. BNYM may be best served by waiting (at least for short period of time) for the Master Servicer to take the first step.

4. Wait until the Holders instruct BNYM to file a declaratory judgment action

- ◊ If the Holders believe the Master Servicer will file a declaratory judgment action, they may try to do so first by instructing BNYM to file an action on their behalf.

5. Seek a declaratory judgment

   - ◊ If BNYM files a declaratory judgment on its own (i.e., without any instruction), the court might find no actual controversy—or at least not one involving BNYM—and view a declaratory judgment action by BNYM as an attempt to seek an advisory opinion. But based on our initial research, the Bank would have a good argument that because any action it takes upon an Event of Default might result in litigation against it, for purposes of a declaratory judgment, there is an "actual controversy" concerning its contingent rights and obligations.

   - ◊ This option also raises complicated questions. For example, would the litigation be funded by the Holders absent an instruction to proceed? And absent an instruction, who, precisely, would the Bank sue – the Holders, the Master Servicer, or both? We are still considering all of these questions—our preliminary conclusion is that both the Holders and the Master Servicer would be defendants—but they may end up being moot for the reasons discussed above – namely, that both the Holders and the Master Servicer are likely to seek resolution of the issue.

Recommendation: Options 3 and 4 will provide the most certainty and, perhaps, the least amount of risk for BNYM. If BNYM considers option 1, much will depend on what an expert (perhaps coupled with a legal opinion) might say about the wisdom of BNYM terminating the rights and obligations of the Master Servicer.

Scenario 5: Holders issue LOI; BNYM requests loan files from Master Servicer; Master Servicer turns over loan files to BNYM; Holders take position that the events from October 18 notice have not been cured and constitute an Event of Default; Holders instruct BNYM to terminate Master Servicer's rights and obligations under PSA.

This, too, seems unlikely for all the reasons previously stated above, including that it may not be in the Holders' interest to terminate the Master Servicer. Nonetheless, the options here are more straightforward:

1. Assume that an Event of Default has occurred, and follow instruction to terminate (assuming the requisite percentage of Voting Rights are represented), but remain neutral publicly.[2]

   ◊ The benefit of this option is that BNYM would be following the instruction of the Holders, and any costs, liabilities, etc. arising out of BNYM's actions will be covered by the indemnity in the LOI.

   ◊ The risk is that this action will (presumably) lead to litigation between the Master Servicers and the Holders. The risks are mitigated by the indemnity, but the obvious burdens associated with litigation should not be ignored.

2. Take a position that an Event of Default has, or has not, occurred.

   ◊ See Scenario 3, option 4 regarding the risks of this approach.

3. Wait until the Master Servicer files a declaratory judgment action.

   ◊ See Scenario 4, option 3.

4. Wait until the Holders instruct BNYM to file a declaratory judgment action.

   ◊ See Scenario 4, option 4.

5. Seek a declaratory judgment.

   ◊ See Scenario 4, option 5.

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[2] BNYM can proceed to terminate the Master Servicer "at the direction of the Holders of Certificates evidencing not less than 66 2/3% of the Voting Rights evidenced by such Certificates . . . ." (PSA § 7.01.) Certain of the deals – in particular the CWABS deals – require BNYM to terminate the Master Servicer at the direction of Holders evidencing only 25% of the Voting Rights.

Recommendation: Litigation is inevitable under this scenario, and options 1, 3, 4 and 5 lead to the same result. Option 1 is probably a prerequisite to option 3, 4 and 5.