Exhibit 115

to

Affidavit of Daniel M. Reilly
in Support of Consolidated Response to
Statements in Support of the Proposed Settlement

CONFIDENTIAL

EXPERT REBUTTAL REPORT OF PROFESSOR ADAM J. LEVITIN

In the matter of the application of The Bank of New York Mellon
No. 651786/2011 (N.Y. Sup. Ct.)

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Lin Dep. at 98. Nor was Mr. Lin requested to reunderwrite the loan files. Lin Dep. at 98-99. Instead, BONY simply provided Mr. Lin and RRMS [redacted] Lin Dep. at 73-74, 97-98.

166. Mr. Lin also does not appear to have considered [redacted] Lin Dep. at 528-529. His report was also based on a series of assumptions from unrelated repurchase experiences of the GSEs. [redacted] He did not determine [redacted] Lin Dep. at 559-60. He also failed [redacted] was affected by the GSEs' on-going business relationship with BofA. Lin Dep. at 442-44. As Dr. Cowan has explained in his report, the GSEs' repurchase experience was obviously distinct and therefore a poor basis for Mr. Lin's modeling assumptions. Cowan Report at 13-16.

167. Similarly, Mr. Lin apparently never considered the Covered Trusts' potential direct claims on BofA for servicing and documentation exceptions or its ability to recover from BofA under contractual successor liability per PSA §§ 6.02 and 6.04. Mr. Lin's report on servicing "improvements" did not cover liability for past servicing breaches, although [redacted] Lin Dep. at 484-89.

168. BONY [redacted] and then "relied" on the resulting report. As with the other Settlement Expert reports, this is not a true expert report on which reliance is justified.

F. BONY Failed to Pursue or Even Value Servicing Breaches and Documentation Exceptions, but Released Both in the Settlement Anyway

1. BONY Failed to Investigate or Value Servicing Breaches and Documentation Exceptions

169. The Inside Investors' letters to BONY regarding the Event of Default repeatedly mentioned deficiencies in servicing and loan documentation (Dep. Exs. 18 & [redacted]), not just breaches of representations and warranties relating the underwriting of the mortgage loans.

170. Prior to approving the Proposed Settlement, however, BONY [redacted] Bailey Dep. at 226-35, 237-39, 246-47; Lundberg Dep. at 329-30, 361-62, 377-79; Stanley Dep. at 189-91.

171. [redacted] despite consenting to the release of these claims in the Proposed Settlement. Nothing I have seen in the discovery record indicates that [redacted] although it is released in the Proposed Settlement.

172. None of the Settlement Expert Reports on which BONY relied—those of Professor Adler, Professor Daines, Capstone, and RRMS—addressed BofA's direct liability for

J. The Proposed Settlement's Servicing Provisions Have Zero Value Because They Replicate Bank of America's Pre-Existing Legal Duties

218. I have reviewed the Proposed Settlement's servicing provisions and conclude that the servicing provisions have virtually no material value because with one exception they merely recreate pre-existing legal duties for BofA, and the value of that exception depends on the quality of BofA's future servicing, which cannot be determined. Accordingly, the servicing provisions are largely, if not completely, illusory.

219. Moreover, the servicing provisions of the Proposed Settlement amend the PSAs without the requisite consent of a majority of certificateholders, despite (and indeed indicated by) the provision in the Proposed Settlement that deems the servicing provisions not to amend the PSAs. Settlement § 5(g).

220. Finally, the servicing provisions include a vague commercial impracticability provision that may permit BofA to avoid compliance, including on the basis of existing government regulations. Settlement § 5(h).

221. The Proposed Settlement has five major provisions dealing with mortgage servicing.[25] Mr. Burnaman's report, BONY's sole Litigation Expert report dealing with servicing, addresses only one of those five provisions, namely the Settlement § 5(a)-(b) requirement that BAC transfer the servicing of "High Risk" loans to specialty subservicers. Mr. Burnaman contends that the "the incremental out-of-pocket cost which BANA agreed to bear in order to transfer certain delinquent and defaulted loans to Subservicers is a direct and quantifiable benefit to the Covered Trusts." Burnaman Report at 7. He calculates its value as between $98 million and $411 million. *Id.*

222. Mr. Burnaman's valuation of the servicing transfer provision is incorrect. The value of the servicing transfer provision is zero.

223. It would appear that Mr. Burnaman does not impute any value to any of the other four provisions, as he does not discuss them in his report. To the extent that this is his opinion, I concur with it. None of the servicing provisions in the settlement have any certain material value to the trusts.

224. Table 1, below, presents a summary of the Proposed Settlement's servicing provisions and their valuation. It shows that all but one of the provisions have a value of zero (or close thereto) because BofA is already subject to existing legal duties based on federal law (the CFPB's Mortgage Servicing Rule), the National Mortgage Servicing Settlement, the OCC's Consent Order with BofA, or the PSA's prudent servicing standard, which is generally thought to incorporate relevant Fannie Mae/Freddie Mac servicing standards. The other provision, § 5(c), has uncertain, but possibly zero value, as explained below.

[25] BONY's Verified Petition ¶ 46 seems to treat cures of document deficiencies in loan files as part of servicing improvements, although it is included under a separate provision in the Proposed Settlement. To the extent that the document deficiency provisions are a servicing improvements, they have no value because they merely oblige BofA to do *less* than what it is already contractually obligated to do under PSA § 2.02 and what would be consistent with prudent servicing. *See infra* ¶ 180-187.

Table 1. Summary of Servicing Provision Valuation

Settlement Provision	Summary of Settlement Provision	Value of Settlement Provision	Basis of Valuation
§ 5(a)-(b)	Requires transfer of high-risk loans to subservicers.	$0	Already required by: • Prudent Servicing Standard (PSA § 3.01); • 12 C.F.R. § 1024.38(a)-(b); • Nat'l Mtg. Settlement §§ II.A, IV.H; • OCC Consent Order §§ III(3), IV(1)(l)-(p), IX(1)(f); • Freddie Mac Seller/Servicer Guide § 51.3.
§ 5(c)	Requires benchmarking of servicing and servicing expense reimbursement recoveries adjusted.	Dependent on loan performance, BofA's servicing performance & PSA interpretation.	Express terms of Proposed Settlement.
§ 5(d)	Requires evaluation of borrowers for modifications within 60 days of receipt of documentation.	$0	Already required by: • 12 C.F.R. § 1024.38(b)(2)(v); • Nat'l Mtg. Settlement § IV.F.4.; • OCC Consent Order § IX(1)(b); • Freddie Mac Seller/Servicer Guide § 64.6(d)(5); • Fannie Mae Single Family 2012 Servicing Guide § 205.08.
§ 5(e)	Requires prudent servicing.	$0	Already required by: • Prudent Servicing Standard (PSA § 3.01) • Nat'l Mtg. Settlement, § IV.A.2; • Freddie Mac Seller/Servicer Guide § 65.1
§ 5(f)	Requires compliance attestations and audit.	$0	Already required by: • PSA §§ 3.16, 3.17 • 12 C.F.R. §§ 1024.38(a)-(b)(1)(iv).

1. Subservicing of High Risk Loans, Settlement § 5(a)-(b)

225. Settlement § 5(a)-(b) requires BofA to transfer certain "High Risk" loans to specialty subservicers. Settlement § 5(a)-(b). BONY's Litigation Expert Mr. Burnaman values this provision as between $98-$411 million because BofA must shoulder the costs of the subservicing. Burnaman Report at 7, 45. Mr. Burnaman's valuation is incorrect because BofA is under an existing legal duty to engage in prudent servicing, which would include use of specialty subservicers to the extent that it was incapable of adequately servicing the mortgages.

226. Mr. Burnaman correctly notes that there is no requirement in the PSAs for BofA as master servicer to use subservicers. Burnaman Report at 32. Mr. Burnaman neglects to mention, however, that BofA is under an existing legal duty to use subservicers. This existing legal duty stems from several sources: federal mortgage servicing regulations; the April 4, 2012 National Mortgage Settlement; the Office of the Comptroller of the Currency's March 29, 2011 Consent Order regarding BofA; and the PSA's prudent servicing standard (interpreted in reference to Fannie Mae/Freddie Mac servicing guidelines).

227. Regulation X under the Real Estate Settlement Procedures Act, 12 C.F.R. Pt. 1024, imposes federal regulatory requirements on mortgage servicers. Among these requirements are that servicers adopt policies and procedures that ensure that it "*Properly evaluat[es] loss mitigation applications," "provid[es] timely and accurate information," and "[f]acilitates oversight of, and compliance by, service providers."* 12 C.F.R. § 1024.38(a)-(b). In other words, federal regulations require competent servicing. To the extent that BofA cannot itself provide such servicing for High Risk loans, BofA would need to engage subservicers in order to comply with Regulation X. The cost of subservicing transfers is one that is normally borne by the Master Servicer and is a risk that a Master Servicer presumably prices into its servicing fee, as higher risk loan pools generally have higher servicing fees.

228. In February 9, 2012, BofA entered into a settlement agreement (the "National Mortgage Settlement") with the federal government and 49 states regarding its mortgage servicing practices. On April 4, 2012, the United States District Court for the District of Columbia entered an order approving the settlement. The National Mortgage Settlement requires BofA to "maintain adequate staffing and systems". NMS § IV.H.1-2. The National Mortgage Settlement further requires BofA to "oversee and manage" various subservicers and other third-party providers of servicing activities, including by (1) performing due diligence of third-party qualifications and expertise; (2) amending agreements with third-party providers to require them to comply with the attorney general settlement; (3) ensuring that all agreements provide for adequate and timely oversight; (4) providing accurate and complete information to all third-party providers; (5) conducting periodic reviews of third-party providers; and (6) implementing appropriate remedial measures when problems and complaints arise. NMS § II.A.

229. To the extent that BofA lacks the internal capacity to adequately service the High Risk loans, compliance with the National Mortgage Settlement would require the use of subservicers.

230. On March 29, 2011 BofA agreed to a Consent Order with the Office of Comptroller of the Currency regarding its mortgage servicing practices. *In the Matter of: Bank of America, N.A. Charlotte, N.C.*, AA-EC-11-12. The Consent Order requires BofA:

- "to develop and implement an adequate infrastructure to support existing and/or future Loss Mitigation and foreclosure activities";
- to have an "organizational structure, managerial resources, and staffing to support existing and/or future Loss Mitigation and foreclosure activities";
- to have "processes to ensure the qualifications of current management and supervisory personnel responsible for mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation and loan modification, are appropriate and a determination of whether any staffing changes or additions are needed;"
- to have "processes to ensure that staffing levels devoted to mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation, and loan modification, are adequate to meet current and expected workload demands;"
- to have "processes to ensure that workloads of mortgage servicing, foreclosure and Loss Mitigation, and loan modification personnel, … are reviewed and managed";
- To have "processes to ensure that the risk management, quality control, audit, and compliance programs have the requisite authority and status within the organization so that appropriate reviews of the Bank's mortgage servicing, Loss Mitigation, and foreclosure activities and operations may occur and deficiencies are identified and promptly remedied;"
- To have "appropriate training programs for personnel involved in mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation, and loan modification, to ensure compliance with applicable Legal Requirements and supervisory measures to ensure that staff are trained specifically in handling mortgage delinquencies, Loss Mitigation, and loan modifications;"

In the Matter of: Bank of America, N.A. Charlotte, N.C., AA-EC-11-12 (Mar. 29, 2011), §§ III(3), IV(1)(l)-(p), IX(1)(f).

231. Additionally, BofA is required to service the loans "in accordance with the terms of this Agreement and customary and usual servicing standards of practice of prudent mortgage loan servicers," PSA § 3.01. This includes "represent[ing] and protect[ing] the interests of the Trust Fund in the same manner as it protects its own interest in mortgage loans in its own portfolio". PSA § 3.01. The PSAs also explicitly contemplate the possibility of subservicing. PSA § 3.02 ("Subservicing; Enforcement of the Obligations of Subservicers"). Mr. Burnaman neglects to mention this in his report.

232. It is my opinion—based on my academic study of the mortgage servicing industry and government service—that prudent mortgage loan servicing would require the use of subservicers if a master servicer's own operations are inadequate to handle the task.

233. Prudent servicing standards are often measured against the requirements of Fannie Mae and Freddie Mac for their servicers. Freddie Mac, for instance, requires that servicers warrant that they "will maintain adequate facilities and experienced staff and will take all actions necessary to" properly service the mortgages. Freddie Mac Seller/Servicer Guide § 51.3.

234. BofA is under an existing legal duty (from several sources) to adequately and prudently service the mortgage loans in the Covered Trusts. Adequate or prudent servicing would include subservicing when necessary.

2. Benchmark Adjusted Recovery of Servicing Advances, Settlement § 5(c)

235. Section 5(c) of the Proposed Settlement requires BofA to benchmark and report its servicing performance on non-High-Risk loans. BofA's ability to recover servicing Advances is adjusted based on how its monthly performance compares with the benchmarks on a net Trust-by-Trust basis. Thus, if BofA underperforms the benchmark on some loans, those are offset against the loans for which it outperforms the benchmark to derive a net effect.

236. BofA is obligated under the PSAs to make servicing Advances. This means that if a mortgagor fails to make a required monthly payment, BofA, as Master Servicer, is obligated to advance the payment to the Trust. BofA is entitled to recover its Advances from recoveries first on the individual mortgage for which it advanced and then, if that is insufficient, from payments on other mortgages. PSA §§ 3.08(a)(ii)-(iii), (v), 4.01. No interest is paid on these servicing Advances. BofA is not required, however, to make advances that it deems nonrecoverable. PSA § 4.01, definition of "Advance".

237. If BofA's net benchmark performance for a Covered Trust in any given month is severely negative, then section 5(c) of the Proposed Settlement reduces BofA's right recover the servicing Advances it makes to the Trust that month. As servicing Advances are reimbursed prior to any payment to certificateholders, a reduction in servicing Advance reimbursement frees up more cash for the certificateholders at the bottom of the cashflow waterfall (but has no effect on other certificateholders).

238. Section 5(c) does not have any necessary value to the Covered Trusts. Its value is captured only by the junior-most in-the-money tranche of certificateholder. More importantly, its value is dependent upon both the mortgages' future performance and BofA's future servicing performance. To the extent the mortgages perform, there is no Advancing required, so section 5(c)'s value is dependent on the mortgages performing poorly.

239. Moreover, the value of section 5(c) depends on BofA's future performance on a cherry-picked group of loans relative to it's the servicing industry overall. If BofA's future servicing performance for *non-High Risk loans* reasonably matches *overall* industry performance, BofA's servicing advances will not be reduced. The exclusion of the High-Risk loans from the section 5(c) benchmarks reduces the likelihood that BofA will fail to perform up to industry benchmarks and thus reduces the potential value of section 5(c) to the Covered Trusts.

240. Furthermore, the reduction of servicing Advances under section 5(c) may well be entirely illusory, not merely contingent. PSA § 3.08(a)(v) permits BofA to recover "unreimbursed Servicing Advances" at a separate point in the cashflow waterfall than "Servicing Advances". If section 5(c) only limits recovery of Servicing Advances, BofA may still be able to recover the same advances as "unreimbursed Servicing Advances" under a separate cashflow waterfall provision that would still be paid before the certificateholders. It is unclear how section 5(c) will be interpreted by BofA and BONY in light of PSA § 3.08(a)(v), but there is a quite plausible interpretation that will effectively render section 5(c) meaningless, as BofA will be prohibited from recovering of Advances under one PSA provision and instead recover them under another PSA provision, still with priority over the certificateholders. Accordingly, no certain value can be assigned to section 5(c), and BONY's Litigation Expert Mr. Burnaman assigns no value to the provision in his report.

3. Consideration of Borrowers for Loan Modifications, Settlement § 5(d)

241. Section 5(d) of the Proposed Settlement requires that for all borrowers considered for loan modification programs, BofA must consider them for all modification programs available. Settlement § 5(d). It also requires that BofA make a decision regarding a loan modification within 60 days of receiving all requested documentation from the borrower. Settlement § 5(d).

242. Section 5(d) of the Proposed Settlement provides no material value to the Covered Trusts because BofA is already under an existing legal duty to make loan modification evaluations within 60 days *or less*. Regulation X under the Real Estate Settlement Procedures Act requires that a servicer "[p]roperly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options for which the borrower may be eligible…" 12 C.F.R. § 1024.38(b)(2)(v). Regulation X also requires that

> If a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, then, within 30 days of receiving a borrower's complete loss mitigation application, a servicer shall:
>
> (i) Evaluate the borrower for all loss mitigation options available to the borrower; and
>
> (ii) Provide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage loan.

12 C.F.R. § 1024.41(c)(1). Given that Regulation X prohibits foreclosure procedures from commencing until a mortgage is at least 120 days delinquent, 12 C.F.R. § 1024.41(f), the borrower will always have the possibility of submitting a loss mitigation application prior to the foreclosure sale. This means section 5(d) of the Proposed Settlement merely requires BofA to comply with a less stringent rule than is required by federal law. Likewise, the National Mortgage Settlement requires that BofA "shall review the complete first lien loan modification application submitted by

borrower and shall determine the disposition of borrower's trial or preliminary loan modification request no later than 30 days after receipt of the complete loan modification application, absent compelling circumstances beyond Servicer's control." National Mortgage Settlement, § IV.F.4.

243. Similarly, the OCC Consent Order requires BofA to set "appropriate deadlines for responses to borrower communications and requests for consideration of Loss Mitigation, including deadlines for decision-making on Loss Mitigation Activities, with the metrics established not being less responsive than the timelines in the HAMP program". OCC Consent Order § IX(1)(b).

244. The HAMP program requires servicers to evaluate borrower eligibility within 30 days of receiving sufficient documentation. Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages, § 4.6. Thus, the OCC Consent Order already obligates BofA to evaluate borrowers for loan modifications within 30 days, rather than the 60 days required under section 5(d) of the Proposed Settlement.

245. The Prudent Servicing Standard also suggests that an evaluation of all possible modification options is required and must be done in a timely fashion. *See* Freddie Mac Seller/Servicer Guide § 64.6(d)(5); Fannie Mae Single Family 2012 Servicing Guide § 205.08.

246. In short, BofA is already under multiple existing legal duties to perform the evaluation required by section 5(d) of the Proposed Settlement Agreement. Accordingly, section 5(d) confers no new material value to the Covered Trusts.

4. Consideration of Prudent Servicing Factors, Settlement § 5(e)

247. Section 5(e) of the Proposed Settlement requires BofA to consider several factors in its loss mitigation decisions. These include maximization of the net present value of the mortgage, the likelihood of a mortgage re-performing, whether the borrower is acting strategically, alternatives to foreclosure, the requirements of the PSA, "such other factors as would be deemed prudent in its judgment" and "all requirements imposed by applicable Law." Proposed Settlement § 5(e).

248. All that section 5(e) does is spell out the Prudent Servicing Standard in more detail. BofA was already obligated to consider all of these factors under PSA § 3.01. It is also required to consider net present value under the National Mortgage Settlement, and the Freddie Mac Seller/Servicer Guide (as applied through the Prudent Servicing Standard). Nat'l Mtg. Settlement, § IV.A.2; Freddie Mac Seller/Servicer Guide § 65.1.

249. Section IV of the National Mortgage Settlement has extensive loss mitigation requirements, including that BofA: (a) send pre-foreclosure notices that will include a summary of loss mitigation options offered; (b) thoroughly evaluate lenders for all available loss mitigation options before foreclosure referral, thereby preventing "dual tracks" where a lender may be subject to foreclosure and loan modification; (c) consider the net present value of each mortgage (and specifically a requirement that banks offer a loan modification if NPV is positive); (d) possess certain loss mitigation obligations, including customer outreach and communications, time lines to respond

to loss mitigation applications, and e-portals for borrowers to keep informed of loan modification status; (e) establish an easily accessible and reliable single point of contact for each potentially-eligible first lien mortgage borrower so that the borrower has access to an employee of the servicer to obtain information; and (f) maintain adequate trained staff to handle the demand for loss mitigation relief. NMS § IV. Section 5(e) of the Settlement does not appear to add anything to this list.

250. Accordingly, section 5(e) of the Proposed Settlement provides no new material value to the Covered Trusts.[26]

5. Compliance Attestation, Settlement § 5(f)

251. Finally, section 5(f) of the Settlement requires BofA to make monthly compliance Settlement attestations to BONY and to undergo an annual compliance audit by an auditor of BofA's choice. Settlement § 5(f). This provision adds virtually nothing to BofA's existing legal duties and accordingly should be valued at zero.

252. BofA is already required to make annual compliance attestations under the PSAs. PSA § 3.16. It is also required to have an annual compliance audit.[27] PSA § 3.17. The benefit of going from annual to monthly self-attestation is virtually zero, particularly given that most failures to comply with the Settlement's servicing requirements are deemed not to be a material breach of the Settlement. Settlement § 5(j). Because of BofA's existing legal duties, the Covered Trusts receive no new material value from section 5(f) of the Proposed Settlement.

253. In all, the servicing provisions of the Proposed Settlement provide virtually no new material value to the Covered Trusts. Mr. Burnaman's estimate of the servicing provisions value is simply incorrect because he does not recognize that BofA is already legally obligated to perform the duties required by the Proposed Settlement.

K. The Proposed Settlement Improperly Passes Modification Costs and Losses to the Covered Trusts

254. One other servicing provision is worthy of note.[28] It is perhaps the most troubling

[26] Indeed, Settlement § 5(e) arguably reduces the Proposed Settlement by deeming compliance with § 5(e) sufficient to satisfy the Prudent Servicing Standard and thereby limiting BofA's liability.

[27] The recent experience with the "independent" foreclosure review mandated by the OCC Consent Order underscores the dubious value of the annual compliance audit. Under section 5(f)(i), BofA gets to select this auditor (subject to veto by BONY). This is exactly what BofA was permitted to do under the OCC Consent Order and it produced an unjustifiably favorable audit of BofA by Promontory Financial. US Gov't Accountability Office, *Foreclosure Review: Lessons Learned Could Enhance Continuing Reviews and Activities under Amended Consent Orders*, GAO-13-277, Mar. 2013. *See also* YVES SMITH, WHISTLEBLOWERS REVEAL HOW BANK OF AMERICA DEFRAUDED HOMEOWNERS AND PAID FOR A COVER UP—ALL WITH THE HELP OF "REGULATORS" (2013). Accordingly, there should be significant skepticism about the "independence" and hence value of such an outside audit. A more effective audit would involve an auditor selected by the certificateholders.

[28] Additionally, section 5(h) gives a commercially impracticable "out" to BofA to the extent that the "Law," which includes consent decrees and settlement agreements with the government changes. Thus, the Covered Trusts cannot be sure that they will in fact get the servicing "improvements" promised under the Proposed Settlement.

provision in the entire Proposed Settlement.

255. Section 5(i) places the costs of the servicing "improvements" on BofA, but contains an enormous carve-out for "any modification or loss mitigation strategy that may be required or permitted by Law" and "any Advance that is required or permitted by Law," and "any Realized Loss associated with the implementation of such modification or loss mitigation strategy." All of these costs "shall be borne by the relevant Covered Trust." Proposed Settlement § 5(i).

256. **On its face, this provision means that the Covered Trusts must bear the cost of BofA complying with its obligations under the Law—a term defined under the Settlement Agreement, to include the National Mortgage Settlement and BofA's various other settlements with the OCC and various state Attorneys General.** In other words, the Proposed Settlement makes the Covered Trusts liable for BofA's alleged wrongdoing as a mortgage servicer or as an originator *in violation of the PSAs.*

257. Thus not only do the servicing provisions in the Proposed Settlement fail to create value for the Covered Trusts, but they appear to shift enormous liability onto the Covered Trusts.

258. BofA is currently obligated to perform as much as $17.82 billion in loan modifications under various settlements:

- BofA's modification requirements under the National Mortgage Settlement are up to $7.63 billion. Nat'l Mortgage Settlement Consent Judgment ¶5.
- BofA's modification requirements under the amended OCC Consent Order are up to $1.76 billion. OCC Amended Consent Order § IV(1).
- Countrywide's 2008 settlement with state Attorneys General includes approximately $8.43 billion in loan modifications. *See* Press Release, Oct. 6, 2008, *Attorney General Brown Announces Landmark $8.68 Billion Settlement with Countrywide, available at* http://oag.ca.gov/news/press-releases/attorney-general-brown-announces-landmark-868-billion-settlement-countrywide.

259. While the Covered Trusts are not the entire universe of loans that BofA can modify, the Proposed Settlement actually incentivizes BofA to put as much of the modification cost on the Covered Trusts as possible. The potential cost to the Covered Trusts may exceed the $8.5 billion that BofA will contribute to the Covered Trusts under the Proposed Settlement. **Put succinctly, section 5(i) of the Proposed Settlement could potentially render the Proposed Settlement of *negative value* to the Covered Trusts.** BofA may be coming out *ahead* with the Proposed Settlement.

260. I have not seen any evidence that BONY made an attempt to value this servicing provision or even to investigate it.