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

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In the matter of the application of

THE BANK OF NEW YORK MELLON (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), BlackRock Financial Management Inc. (intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, LLC (intervenor), Maiden Lane II, LLC (intervenor), Maiden Lane III, LLC (intervenor), Metropolitan Life Insurance Company (intervenor), Trust Company of the West and affiliated companies controlled by The TCW Group, Inc. (intervenor), Neuberger Berman Europe Limited (intervenor), Pacific Investment Management Company LLC (intervenor), Goldman Sachs Asset Management, L.P. (intervenor), Teachers Insurance and Annuity Association of America (intervenor), Invesco Advisers, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), Landesbank Baden-Wuerttemberg (intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING Bank fsb (intervenor), ING Capital LLC (intervenor), ING Investment Management LLC (intervenor), New York Life Investment Management LLC (intervenor), Nationwide Mutual Insurance Company and its affiliated companies (intervenor), AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life insurance Company, and Western Reserve Life Assurance Co. of Ohio (intervenor), Federal Home Loan Bank of Atlanta (intervenor), Bayerische Landesbank (intervenor), Prudential Investment Management, Inc. (intervenor), Western Asset Management Company (intervenor)

Petitioner,

Index No. 651786/11

Assigned to:
Kapnick, J.

for an order, pursuant to CPLR § 7701, seeking judicial instructions and approval of a proposed settlement.

WALNUT PLACE LLC; WALNUT PLACE II LLC; WALNUT PLACE III LLC; WALNUT PLACE IV LLC; WALNUT PLACE V LLC; WALNUT PLACE VI LLC; WALNUT PLACE VII LLC; WALNUT PLACE VIII LLC; WALNUT PLACE IX LLC; WALNUT PLACE X LLC; and WALNUT PLACE XI LLC (proposed intervenors),

Respondents.

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MEMORANDUM OF THE INSTITUTIONAL INVESTORS
IN RESPONSE TO THE WALNUT PLACE PETITION TO INTERVENE

The Institutional Investors,[1] who have previously intervened in this action in support of the Trustee's proposed settlement, file this response to the motion to intervene filed by Walnut Place, LLC, *et al.* ("Walnut Place").

1.
Propriety of Intervention

The Institutional Investors neither oppose nor consent to Walnut Place's motion to intervene. The Court has issued an Order to Show Cause establishing a schedule for interested certificateholders to object or otherwise advise the Court of their views of the Trustee's proposed settlement. Walnut Place, like every other certificateholder, is entitled to appear pursuant to that schedule to be heard on the proposed settlement. Walnut Place need not intervene for that purpose.

The Institutional Investors recognize, however, that Walnut Place is an active litigant whose lawsuit will be affected if the Court grants the Trustee's Petition. This sets Walnut Place apart from the thousands of other certificateholders who have neither filed lawsuits nor sought to invoke rights under the governing agreements. If, in these narrow circumstances, the Court exercises its discretion to allow Walnut Place to intervene, it should nevertheless limit future interventions solely to certificateholders with pending actions. The Court's existing order, which

[1] The Institutional Investors are BlackRock Financial Management Inc., Kore Advisors, L.P., Maiden Lane, LLC, Maiden Lane II, LLC, Maiden Lane III, LLC, Metropolitan Life Insurance Company, Trust Company of the West and affiliated companies controlled by The TCW Group, Inc., Neuberger Berman Europe Limited, PIMCO Investment Management Company LLC, Goldman Sachs Asset Management, L.P., as adviser to its funds and accounts, Teachers Insurance and Annuity Association of America, Invesco Advisers, Inc., Thrivent Financial for Lutherans, Landesbank Baden-Wuerttemberg, LBBW Asset Management (Ireland) plc, Dublin, ING Bank fsb, ING Capital LLC, ING Investment Management LLC, New York Life Investment Management LLC, as investment manager, Nationwide Mutual Insurance Company and its affiliated companies, AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc.; Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, and Western Reserve Life Assurance Co. of Ohio, Federal Home Loan Bank of Atlanta, Bayerische Landesbank, Prudential Investment Management, Inc., and Western Asset Management Company. The Institutional Investors' motion to intervene was granted on July 8, 2011 (Doc. 39).

affords all investors an opportunity to be heard, is otherwise an appropriate and adequate procedural mechanism to gather the views of all other investors.

2.

Response to Allegations in the Walnut Place Petition to Intervene

The Walnut Place petition in intervention contains flawed and false arguments about the Settlement and the circumstances surrounding its negotiation. The Institutional Investors will respond in full to these arguments at the appropriate time. For now, the Institutional Investors offer the following response to set the record straight.

a.

Walnut Place's Allegation that the Institutional Investors Have a Conflict of Interest is False

Shielded by the cloak of its own anonymity, Walnut Place has made the odious allegation that the 22 Institutional Investors willfully subordinated their own interests and those of their clients to "help" Bank of America. This *ad hominem* attack asks the Court to set reality entirely aside. It defies logic (indeed, it defies the realm of the merely plausible) to suggest that 22 separate institutions—each of which independently evaluated and chose to support the settlement—would set aside their own financial interests to benefit Bank of America. Equally implausible is the suggestion that the Institutional Investors who act as fiduciary investment advisors would abandon the interests of their pension fund, mutual fund and individual investor clients in favor of Bank of America's.

One point is obvious: if the Institutional Investors were trying to help Bank of America—rather than remedy injuries they and their investors had suffered—the easy avenue would have been to do nothing. Before the Institutional Investors organized to take action to prosecute the repurchase and servicing claims at issue in the Trustee's Settlement, few investors had tried to do so, and none had done so effectively. When the Institutional Investors publicly

announced their Notice of Non-Performance, it precipitated a 4% decline in the value of Bank of America's stock. After months of hard work, backed by the threat of litigation, the Institutional Investors obtained from Bank of America its agreement: (i) to pay $8.5 billion in cash to settle these claims; (ii) to assume a 100% indemnity for defective mortgage and title documentation; and (iii) to implement far-reaching servicing improvements that will cost Bank of America significant future dollars in cash and write-downs. To suggest that the Institutional Investors took these actions, and imposed billions of dollars of costs on Bank of America, as part of some secret plan to "help" Bank of America is simply ludicrous.

b.
A Procedure to Exclude Trusts from the Settlement Is Neither Permissible Nor Advantageous for Certificateholders

First, Walnut Place's suggests wrongly that the Court must create a "mechanism to permit certificateholders to exclude their trusts from the proposed settlement." *See* Walnut Place Petition at ¶11. No such mechanism can or should be created. The Trustee owns the claims at issue. It has the right to compromise and settle them. Under the governing documents and controlling law, unless the Trustee's action in settling the claims is so unreasonable as to amount to a breach of its fiduciary duty, certificateholders have no right to object or insist that their trusts be excluded from the settlement.

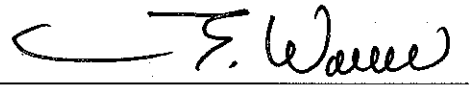
Excluding trusts from the Settlement would also injure the investors in the Trusts' securities. These investors would be forced, involuntarily, to relinquish their existing right to payment from the settlement in return for a speculative chance at a litigation recovery at some unknown date in the future. They would lose the valuable improvements in mortgage servicing and cures of mortgage documentation contained in the Settlement, benefits that cannot be replicated through the "opt out" litigation Walnut Place seeks to pursue. These servicing

improvements and documentation cures are expected to provide significant future benefits to investors in the Covered Trusts by reducing loss severities and providing compensation to the Trusts where Bank of America's servicing falls short of industry standards.

These are important issues, because Walnut Place is not the only investor in the three trusts it seeks to exclude from the settlement. The Institutional Investors have sizeable holdings in all three trusts; indeed, their holdings in Trust OA21 constitute 40% of the unpaid principal balance of that Trust. They should not be deprived of the benefits of the Settlement simply because an anonymously named LLC wishes to gamble other investors' money on the chance that it "might" obtain a "better" settlement than the one the Trustee already has in hand.

Dated: New York, New York
July 11, 2011

WARNER PARTNERS, P.C.

By: 

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