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

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), 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 Advisors, 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), 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), and Western Asset Management Company (intervenor),

Petitioners,

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

Index No. 651786-2011

Kapnick, J.

Motion Sequence 15

THE BANK OF NEW YORK MELLON'S OPPOSITION TO THE PETITION TO INTERVENE BY JOSEPH R. BIDEN III, ATTORNEY GENERAL OF THE STATE OF DELAWARE

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Petitioner, The Bank of New York Mellon ("BNYM" or the "Trustee"), solely in its capacity as trustee, respectfully submits this memorandum of law in opposition to the Petition to Intervene ("Pet.") by Joseph R. Biden III, Attorney General of the State of Delaware ("DAG").

PRELIMINARY STATEMENT

The DAG seeks to intervene in an expedited special proceeding addressing a single question—whether the Trustee acted in good faith and within the bounds of reasonableness in entering into the Settlement Agreement.[1] But the DAG can point to no authority supporting intervention, and he asks this Court to confer upon him a type of standing that no other court has ever permitted.

The DAG, like the Attorney General of The State of New York (the "NYAG"), has no standing to object to the Settlement between the Trustee (on behalf of investors who own the certificates that are the subject of the proposed Settlement) and Bank of America and Countrywide. Invoking the doctrine of *parens patriae*, the DAG argues that the Court should permit him to intervene in this Article 77 proceeding (1) to ensure that the interests of Delaware and its citizens and investors are properly represented "and that a fair and reasonable settlement of this matter is achieved" (Pet. ¶ 12); (2) because he has an interest in ensuring that two Delaware trusts "are not being utilized to facilitate violations of law . . . and that claims related to trusts created pursuant to the provisions of the Delaware Statutory Trust Act are resolved by the appropriate procedure" (*id.* ¶ 17); and (3) to preserve certain claims—under the Delaware Securities Act and Deceptive Trade Practices Act—that he "potentially" may have against the Trustee, which supposedly share common issues of fact and law with this Article 77 proceeding

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Trustee's Verified Petition, Dkt No. 1.

(*id.* ¶ 15).[2] None of these alleged interests, however, warrant the DAG's intervention in this Article 77 proceeding. The DAG cannot under any circumstances be a party because—unlike a Certificateholder—he lacks standing to object to the Settlement. If the Court were to countenance the DAG's effort to intervene and object to the Settlement, it would provide the DAG with the right to intervene in virtually any private settlement that involved Delaware citizens or entities without regard to the essential conditions limiting the doctrine of *parens patriae*. The DAG's sweeping assertion of standing is unprecedented and would have significant adverse consequences to private settlements and business transactions. For the reasons discussed below, the DAG's Petition should be denied.[3]

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[2] The DAG also claims that his "intervention is particularly important given the evidence suggesting that BNYM negotiated the settlement on behalf of the trust beneficiaries under a conflict of interest." (Pet. ¶ 14.) No conflict of interest exists and the Trustee respectfully refers the Court to its response to the NYAG's Motion to Intervene, where that same claim is refuted. (Dkt. No. 135 at 20–21.)

[3] The DAG describes this Article 77 proceeding in two ways that the Trustee is compelled to correct at the outset. Both mistakes appear to bolster the DAG's position that his intervention is necessary because Certificateholders cannot act on their own behalf. The first is the assertion that the PSAs "permit . . . participation" in this Article 77 proceeding "only by investors who individually or jointly hold a twenty five percent or greater interest in the trust, typically representing hundreds of millions of dollars." (Pet. ¶ 13.) The PSAs say no such thing, nor does the C.P.L.R. To the contrary, the Order to Show Cause (Dkt. No. 13) gives the opportunity to object to all "Potentially Interested Persons," defined to include all "holders of certificates or notes evidencing various categories of ownership interest in the Trusts." (Ingber Aff., Dkt. No. 11, ¶ 4(a).) And indeed, many of the Intervenors do not hold a twenty-five percent interest in any Trust. There is no twenty-five percent requirement.

Second, the DAG argues that the Trustee seeks to bind all trust beneficiaries "without giving beneficiaries or their representatives the opportunity to challenge BNYM's claim that the proposed settlement is reasonable and within its powers as trustee." (DAG's Memorandum of Law ("DAG MOL") 2.) That statement, too, is wrong. It ignores that the whole purpose of this proceeding is to afford investors an opportunity to be heard. The Trustee, which brought this special proceeding, has not opposed the intervention of ***any*** Certificateholder who seeks to object to the Settlement. It objects to the DAG's intervention only because, like the NYAG, he has no standing to intervene and the intervention would fundamentally alter, unduly expand and needlessly delay the proceeding.

ARGUMENT

I. The Petition to Intervene Must Be Denied, Because the DAG Lacks Standing to Object to the Settlement.

A. The *Parens Patriae* Doctrine Does Not Confer Standing to Intervene.

A basic precept of intervention law is that "[o]nce let in, the intervenor becomes a party for all purposes." David D. Siegel, N.Y. Prac. § 178 (4th ed. 2011 update); *see also Kruger v. Bloomberg*, 1 Misc. 3d 192, 195 (Sup. Ct. N.Y. Cnty. 2003).[4] But the DAG cannot under any circumstances be a "party for all purposes" because—unlike a Certificateholder—he lacks standing to object to the Settlement.[5] The DAG invokes the *parens patriae* doctrine, which he says allows him to litigate "to protect the interests of its citizens and investors in the market," and to "protect[] the interests of all Delaware investors, including those Delaware investors who are beneficiaries of the Covered Trusts." (DAG MOL 4.) But the DAG does not have the authority to object to the settlement of private claims seeking monetary relief[6] on behalf of a

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[4] Not surprisingly, the DAG does not contend that he has greater authority than the NYAG to intervene in this proceeding. Rather, by citing *People v. Grasso* (DAG MOL 4), the DAG appears to concede the applicability of New York law to the determination of whether he has standing to intervene in this Article 77 proceeding. The apparent concession is understandable because "[t]he law of the forum determines the jurisdiction of the courts, the capacity of parties to sue or to be sued, the remedies which are available to suitors and the procedure of the courts." *Mertz v. Mertz*, 271 N.Y. 466, 473 (1936).

[5] "[A]s the Court of Appeals has made clear, '[c]apacity to sue is a threshold matter allied with, but conceptually distinct from, the question of standing.' '[C]apacity concerns a litigant's power to appear and bring its grievance before the court,' and may depend on a litigant's status or . . . authority to sue or be sued.' By contrast, '[s]tanding involves a determination of whether the party seeking relief has a sufficiently cognizable stake in the outcome so as to cast [] the dispute in a form traditionally capable of judicial resolution.'" *People v. Grasso ("Grasso I")*, 54 A.D.3d 180, 190 n.4 (1st Dep't 2010) (citations omitted). Because the DAG appears to base both his standing and his capacity on the *parens patriae* doctrine, and because the absence of either is fatal to his ability to litigate these claims, we address the two issues together and refer to them collectively as "standing."

[6] The Settlement also provides for improvements in servicing and the cure of past document deficiencies, but because these changes are motivated by the Certificateholders'

discrete group of private investors. Any ruling to the contrary would constitute a radical and unprecedented expansion of the DAG's power to intervene in private litigation.

Parens patriae is the State's "nursing quality." *People v. Ingersoll*, 58 N.Y. 1, 30 (1874). It is grounded in a state's need to "care for and protect those who are incapable of caring for themselves, as infants, idiots and the like." *Id.* It does not allow the DAG to represent "private parties who feel aggrieved [and] . . . have ample remedies to redress their wrongs by proceedings in their own names." *Grasso I*, 54 A.D.3d at 193–94 (quoting *People v. Lowe*, 117 N.Y. 175, 195 (1989)). "To invoke the doctrine, the Attorney General must prove a quasi-sovereign interest distinct from that of a particular party and injury to a substantial segment of the state's population." *People v. Grasso ("Grasso II")*, 11 N.Y.3d 64, 69 n.4 (2008) (citing *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 607 (1982)).

This special proceeding is brought to approve the acts of a trustee for mortgage-securitization trusts, in attempting to settle contract disputes between the Trusts and their sophisticated investors, on the one hand, and certain parties to privately-negotiated contracts, on the other. The claims sought to be settled do not implicate financial markets or exchanges, and the Settlement in fact expressly carves out securities claims based on disclosures to potential investors. (Settlement Agreement ¶ 10, Dkt. No. 3.) That the Settlement involves a large dollar figure and has generated media coverage does not mean that a quasi-sovereign interest is at stake. As demonstrated below, the DAG has not made and cannot make the necessary showing to invoke the *parens patriae* doctrine.

The DAG's *parens patriae* standing does not extend to prosecuting claims on behalf of private parties for monetary relief, let alone to preventing such parties from consensually

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interest in maximizing the value of their securities by improving the performance of the trusts, they only reinforce the pecuniary nature of the interests at stake.

settling. Courts have not hesitated to find an attorney general's standing lacking for this reason. *See, e.g.*, *People v. Operation Rescue Nat'l*, 80 F.3d 64, 71 (2d Cir. 1996) ("[State's] standing does not extend to the vindication of the private interests of third parties"). As the U.S. Supreme Court has explained:

> if the State is only a nominal party without a real interest of its own[,] then it will not have standing under the *parens patriae* doctrine. . . . [A] State may, for a variety of reasons, attempt to pursue the interests of a private party, and pursue those interests only for the sake of the real party in interest. Interests of private parties are obviously not in themselves sovereign interests, and they do not become such simply by virtue of the State's aiding in their achievement. In such situations, the State is no more than a nominal party.

Alfred L. Snapp & Son, Inc., 458 U.S. at 600–02.

In *Ingersoll*, the court explained that "[t]he title to and ownership of the money sought to be recovered must determine the right of action, and if the money did not belong to the State, but did belong to some other body having capacity to sue, this action cannot be maintained" by the attorney general. 58 N.Y. at 12–13. Notably, in *Ingersoll*, the Court of Appeals denied the attorney general's effort to intervene even though the money was claimed by a ***municipal*** corporation. In *Lowe*, where "the Attorney General similarly sought to recover money for a private corporation from trustees who allegedly committed misconduct" (described in *Grasso I*, 54 A.D.3d at 199), the Court of Appeals stressed that "[i]t is not sufficient for the People to show that wrong has been done to some one; the wrong must appear to be done ***to the People*** in order to support an action by the People for its redress." *Lowe*, 117 N.Y. at 192 (emphasis added). And in *Grasso I* itself, the court concluded that "to grant standing to the Attorney General to prosecute an action seeking only the recovery of money for a for-profit entity to redress an alleged wrong that was not 'perpetrated directly against the State'" would invite "'grave and doubtful constitutional questions.'" 54 A.D.3d at 199–200 (quoting *Ingersoll*, 58 N.Y. at 13, and *Jones v. United States*, 526 U.S. 227, 239 (1999)). The apparent desire of some private investors

to increase the Settlement Payment or recover damages from the Trustee, therefore, cannot support *parens patriae* standing.

That some investors may not choose to participate in this Article 77 proceeding (DAG MOL 4) does not alter this result. The First Department addressed that notion in *Grasso I* and held that "[t]he parens patriae standing of the Attorney General . . . does not permit him 'to represent the interests of particular citizens who, for whatever reason, cannot represent themselves.'" 54 A.D.3d at 198 (quoting *Alfred L. Snapp & Son, Inc.*, 458 U.S. at 600). Indeed, the rule that "[t]he state cannot merely litigate as a volunteer the personal claims of its competent citizens" pervades the caselaw. *People v. Seneci*, 817 F.2d 1015, 1017 (2d Cir. 1987); *see also Pennsylvania v. New Jersey*, 426 U.S. 660, 665 (1976) ("It has . . . become settled doctrine that a State has standing to sue only when its sovereign or quasi-sovereign interests are implicated and it is not merely litigating as a volunteer the personal claims of its citizens"); *New York v. Cain*, 418 F. Supp. 2d 457, 470 (S.D.N.Y. 2006) ("a state can no more bring suit on behalf of a particular citizen as a personal attorney than it can as an assignee").[7]

Further, any quasi-sovereign interest that the DAG may have in protecting its citizens is not implicated by, and therefore cannot create standing to object to, a private settlement that the DAG believes may not offer private investors adequate pecuniary relief. "[W]hether a plaintiff has standing 'depends in substantial measure on the nature of the relief sought.'" *Grasso I*, 54 A.D.3d at 207 (quoting *Warth v. Seldin*, 422 U.S. 490, 515 (1975)). "Where the complaint only seeks to recover money damages for injuries suffered by individuals, the award of money damages will not compensate the state for any harm done to its quasi-sovereign interests. Thus,

[7] Here, there can be no question of the competency of the Certificateholders. They are, in the main, sophisticated investors, including, for example, proposed intervenor-respondent AIG and the various pension and hedge funds that have sought to intervene. These entities are not and never have been the proper objects of *parens patriae*, the "nursing quality."

the state as *parens patriae* lacks standing to prosecute such a suit." *Seneci*, 817 F.2d at 1017; *see also Grasso I*, 54 A.D.3d at 195–96 ("where, as here, the Attorney General seeks only monetary relief that would inure to the benefit of the owners of a for-profit entity . . . [t]he prosecution of such a cause of action would vindicate only the interests of private parties, not any public interest"). The DAG seeks to ensure that "the interest of the State of Delaware generally, and the interests of Delaware citizens and investors more specifically, . . . are properly represented and that a fair and reasonable settlement of this matter is achieved" (Pet. ¶ 12)—but those "interests" are purely monetary.

It is important to distinguish the DAG's purported interests in objecting to the Settlement, on the one hand, from his interests in his "potential" Delaware Securities Act and Deceptive Trade Practices Act claims, on the other. Although the Trustee believes that any claims under these statutes would be meritless, the DAG may have standing ***outside*** of this proceeding (and state) to bring them. As to the Settlement objection, however, he has no standing—in this or any other proceeding—and the right to assert Delaware statutory claims elsewhere does not provide standing for him to object here. *Cf. Lefkowitz v. Lebensfeld*, 51 N.Y.2d 442, 447 (1980) (even though a statute "allows the Attorney-General to institute proceedings to secure proper administration of [charitable] entities . . . the [statute] does not provide for an action against third parties who are allegedly liable to the charitable organization").

The Petition should be denied for an independent reason. Not surprisingly, the DAG vaguely invokes the "interests of Delaware citizens and investors" (Pet. ¶ 12) that are ostensibly implicated by the Settlement. This amorphous group does not have any cognizable interest in the Trustee's exercise of its discretion, the sole issue in this proceeding. If there are any Certificateholders from Delaware (a showing that the DAG has not made), any cognizable

interest that they may have is purely monetary. With respect to this unidentified subset, the DAG has failed even to allege, let alone establish, the requisite injury to a "substantial segment of the state's population." *Grasso II*, 11 N.Y.3d at 69 n.4. This failure is a fatal deficiency in his application. *See id.* ("the Attorney General must prove a quasi-sovereign interest distinct from that of a particular party *and* injury to a substantial segment of the state's population") (emphasis added).

The DAG's contention that he has standing to object to the Settlement because the "Delaware Department of Justice has a substantial interest in ensuring that Delaware vehicles, including Delaware statutory trusts, are not being used to facilitate violations of law" and that "claims relating to trusts created pursuant to the provisions of the Delaware Statutory Trust Act are resolved by the appropriate procedure under the Act" is equally unavailing. (DAG MOL 8; *see also* Pet. ¶ 17.) As an initial matter, the Trust Agreements to which the DAG refers and which are the instruments created under, and governed by, Delaware law are not implicated in this Article 77 proceeding, because the claims being settled are governed by independent agreements—the Indentures and related Sale and Servicing Agreements—which were executed contemporaneously with the Trust Agreements and which are governed by New York law. (*See* Indentures and Sale and Servicing Agreement, Dkt. No. 11-1 at A-266–267.)

For instance, pursuant to the Indenture, the Delaware statutory trust grants to BNYM, as indenture trustee, *inter alia*:

- "the interest of the Issuer in the Sale and Servicing Agreement and the Purchase Agreement (including the Issuer's right to cause the Mortgage Loans to be repurchased);" (Indenture, Dkt. No. 11-1 at A-266, at Granting Clause)[8]

[8] For the Court's convenience, the relevant pages from the Indenture and Sale and Servicing Agreement are included in an addendum to this memorandum of law.

- "all present and future claims, demands, causes of action, and chooses in action regarding any of the foregoing;" (*Id.*)

Additionally, the Indenture provides the Trustee with the right to "exercise all of the rights of the Issuer to direct actions of the Master Servicer pursuant to the Sale and Servicing Agreement" (*Id.* § 3.07(a)). These provisions, along with other provisions of the Indentures and the related Sale and Servicing Agreements, represent the claims that are addressed by the Settlement Agreement and the key issues that are implicated in this Article 77 proceeding. Accordingly, the Indentures and corresponding Sale and Servicing Agreements are the operative instruments for purposes of this Article 77 proceeding. *See Nat'l Union Fire Ins. Co. of Pittsburgh v. Williams*, 223 A.D.2d 395, 396 (1st Dept. 1996*)* (rejecting argument that agreements executed contemporaneously should be read together and that the choice of law provision in one agreement should be applied to claims arising out of the agreements executed contemporaneously). Notably, these agreements provide that they "shall be governed and construed in accordance with the laws of the State of New York, without reference to its provisions that would result in the application of the laws of another state." (*See, e.g.*, Indenture, Dkt. No. 11-1 at A-266, § 11.13; Sale and Servicing Agreement, Dkt. No. 11-1 at A-267, § 9.02.)

Moreover, neither the Delaware Statutory Trust Act nor any other Delaware statute provides the DAG with the right to object to a private settlement merely because it involves Delaware entities or agreements governed by Delaware law. The Trustee has not found any authority that would support the DAG's claim that he has standing to object to the Settlement on these grounds, nor has the DAG cited any. The wholly speculative possibility that a controversy concerning a Delaware statutory trust may not be resolved "by the appropriate procedures under the Act" does not constitute a quasi-sovereign interest. With respect to that possibility, the Delaware Statutory Trust Act provides that Delaware is not the exclusive jurisdiction for legal

proceedings concerning Delaware statutory trusts. *See* 12 Del. C. § 3804(e) (West 2011) ("In the governing instrument of the statutory trust or other writing, a trustee or beneficial owner or other person may consent to be subject to the *nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction*, or the exclusive jurisdiction of the courts of the State [of Delaware].") (emphasis added). Although this Article 77 proceeding is the appropriate forum in which to seek judicial approval of the Settlement it would not matter if it were not the right forum. After all, even assuming what is doubtful at best, that Delaware Certificateholders may object to the Settlement as a result of their individual decisions to purchase notes through a securitization that employs a vehicle governed by Delaware law (which they do not since, as noted above, the Trust Agreement creating that vehicle is not relevant to this proceeding), they are free to intervene and attempt to object and make that argument.

B. Allowing the DAG's Extraordinary Attempt to Intervene Would Radically and Improperly Expand the DAG's Power.

The DAG has not cited, and the Trustee has not found, any case in which an attorney general has intervened in an Article 77 proceeding or sought to block a private, non-class settlement of any kind. The circumstances in which attorneys general ***have*** made use of the *parens patriae* doctrine underscore the above analysis. In *People v. Merkin*, No. 450879/209, 2010 WL 936208, at *9 (Sup. Ct. N.Y. Cnty. Feb. 8, 2010) and *People v. H&R Block, Inc.*, No. 401110/06, 2007 WL 2330924, at *7 (Sup. Ct. N.Y. Cnty. July 9, 2007), an attorney general relied on *parens patriae* standing as a plaintiff when seeking forward-looking injunctions against continuing conduct directed to retail investors. In other cases, an attorney general intervened pursuant to express authority under C.P.L.R. § 1012(b) and Executive Law § 71 to defend the constitutionality of state statutes (*e.g.*, *Loretto v. Teleprompter Manhattan CATV Corp.*, 53 N.Y.2d 124 (1981)).

The DAG, however, seeks to expand his standing far beyond all previously recognized limits. In fact, the extent of the DAG's purported standing is greater even than that sought by the NYAG in this proceeding. (*See* generally NYAG MOL, Dkt. No. 101-04.) If the DAG can intervene here simply because he believes that a private settlement amount may fail to compensate adequately private investors who are Delaware citizens or that the Settlement is tangentially connected to a Delaware trust, he could intervene in virtually any private litigation settlement that involved Delaware entities, investors, or citizens. Given the large number of corporations that are organized under Delaware law, the consequences of that proposition are breathtaking. Not only would it discourage settlements and subject private litigants to great uncertainty, it would allow the DAG to intervene in areas where private parties can look after their own interests. Indeed, on the DAG's reasoning, the attorney general of every state with a citizen who is a Certificateholder would have standing to object to the Settlement. The court in *In re Baldwin-United Corp.* recognized this risk and warned that "state officials should not be able to frustrate the choices of their residents, when it is the individual policyholder who stands to gain or lose relief." 607 F. Supp. 1312, 1330 (S.D.N.Y. 1985). The DAG's inability to articulate any limiting principle on its authority to sue or its ability to intervene is a warning of the far-reaching consequences of a ruling in his favor.

Moreover, there is no sound policy reason to allow the DAG to intervene. The investors themselves are a diverse group, and while they all share the DAG's ultimate goal of "adequately remedy[ing] the harm" to themselves (Pet. ¶ 13), they have various opinions on how to accomplish that goal. Some strongly support the Settlement: among others, twenty-two of the world's largest institutional investors—with tens of billions of dollars in holdings—have intervened in support of the Settlement and oppose the DAG's petition. (*See* Institutional

Investors' Petition To Intervene, Dkt. No. 14.) Others, including AIG, have sought to intervene as respondents (unopposed by BNYM), objecting to the Settlement on grounds very similar to those asserted by the DAG. (*See, e.g.*, Dkt. Nos. 61, 85, 90, 130–31 .) Yet others may participate while reserving judgment. This is not a case in which the DAG would protect a single block of investors against a trustee (although even that would be unprecedented); this Article 77 proceeding has generated a dispute among groups of sophisticated investors about whether the Trustee acted in good faith and within the bounds of reasonableness in entering into the Settlement. The diversity of participating investors both ensures that all viewpoints will be represented and means that the DAG cannot claim to represent all of the absentees (only some of whom may be Delaware citizens), many of whom likely support the Settlement (and indeed will on that basis choose not to object).[9]

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The conclusion that the DAG lacks authority to object to the Settlement is dispositive of his motion to intervene. Because he lacks standing in this Article 77 proceeding, the DAG cannot intervene based on other potential claims that he is free to bring in a separate lawsuit. In essence, the DAG would manufacture standing by virtue of his "potential" Delaware Securities Act and Deceptive Trade Practices Act claims. As the First Department made clear in *Grasso I*, however, "[a] [party] surely cannot confer authority to sue or standing upon himself by making factual allegations that are not necessary to his case." 54 A.D.3d at 205. On the contrary, "[a] proposed intervenor is not permitted to raise issues which are not before the court in the main action." *E. Side Car Wash, Inc. v. K.R.K. Capital, Inc.*, 102 A.D.2d 157, 160 (1st Dep't 1984).

[9] In fact, the first entities to intervene as respondents in this Article 77 proceeding—the Walnut Place LLC entities—are entities organized under Delaware law represented here by sophisticated counsel. (*See* Dkt. No. 24.)

Because that is exactly what the DAG seeks to do here, the Court need not reach the other suggested grounds for intervention. In short, C.P.L.R. §§ 1012 and 1013 assume the standing of a prospective intervenor to be a party to a pending action, rather than conferring that standing *sub silentio*, and simply regulate the circumstances under which the prospective intervenor may become a party in the action.

II. The DAG Cannot Intervene Based On His Potential Claims.

Although the Court need not and should not consider the "potential" claims proffered by the DAG as a basis for intervention, those inchoate claims do not meet the standards set forth in the C.P.L.R. Contrary to the DAG's argument (DAG MOL 3), no one may intervene as-of-right in a special proceeding, because "[a]fter a proceeding is commenced, no party shall be joined or interpleaded and no third-party practice or intervention shall be allowed, except by leave of court." C.P.L.R. § 401. Thus, intervention is never mandatory. The Advisory Committee Report on Section 401 explains that "[t]he court in a special proceeding is thus given the degree of control over parties necessary to preserve the summary nature of the proceeding." N.Y. Adv. Comm. on Prac. & Proc., Legis. Doc. No. 17, at 155 (1959); *see also* Vincent C. Alexander, Practice Commentaries C401:2 (2010) ("The usual CPLR devices allowing for free joinder of parties after commencement of the action are rendered inoperative by CPLR 401."). Therefore, C.P.L.R. § 1013, and certainly C.P.L.R. § 1012, do not provide the governing standard here. Nonetheless, because the DAG addresses them, and because they may provide useful guidance on the exercise of the Court's discretion, we discuss them as well.

A. The DAG Cannot Intervene As-Of-Right Under C.P.L.R. § 1012(a)(2).

The standard for intervention under C.P.L.R. § 1012(a)(2) has two prongs, although, as just noted, intervention in a special proceeding always requires leave of court. The proposed intervenor must show that "the representation of the person's interests by the parties is or may be

inadequate" **and** that "the person is or may be bound by the judgment." The DAG cannot make either of these necessary showings.

Even where representation of a party's interests is inadequate, intervention is still not allowed where the intervenor "will not be bound by any judgment in the underlying" litigation. *Kaczmarek v. Shoffstall*, 119 A.D.2d 1001, 1002 (4th Dep't 1986). The DAG asserts that he "has a legitimate basis upon which to assume . . . that Delaware's interests may adversely be affected by the proposed settlement . . . because BNYM, Countrywide, or BoA may take the position that the Settlement and the facts found by this court, if made binding upon all beneficiaries, precludes the [DAG] from pursuing certain claims or remedies for such violation." (DAG MOL 5.) That is flatly wrong—the DAG's inchoate Delaware Securities Act and Deceptive Trade Practice Act claims are not released by the Settlement Agreement.

The Settlement Agreement is not binding on the DAG. The Settlement releases only those claims brought "by, through, or on behalf of any of the Trustee, the Investors, or the Covered Trusts or under the Governing Agreements." (Settlement Agreement, Dkt. No. 3, § 9(a).) Indeed, paragraph (o) of the Proposed Final Order, quoted by the DAG, uses similar language. Paragraph (o) shows that the release is limited to "the Bank of America Parties and/or the Countrywide Parties." (Proposed Final Order, Dkt. No. 7, ¶ (o).) New York courts have squarely held that an attorney general's claims are not released by a private settlement. In *State v. McLeod*, the court considered a bankruptcy court release that included "a permanent injunction against 'any entity' from pursuing" certain claims, including for breach of fiduciary duty. No. 403855/02, 2006 WL 1374014, at *7 (Sup. Ct. N.Y. Cnty. Feb. 9, 2006). It held that "the fact that McLeodUSA's shareholders may have discharged their claims against McLeod would not

diminish the State's legal authority to enforce the Martin Act on behalf of the investing public." *Id.* (footnote omitted).

People v. Applied Card Systems is also particularly instructive on this point. In *Applied Card Systems*, the Court of Appeals barred the attorney general from seeking restitution to individual investors who had settled their claims, but it did so precisely because that result "does not . . . substantially prejudice the public interest served by the Attorney General in pursuing this action." 11 N.Y.3d 105, 125 (2008), *cert denied, Cross Country Bank, Inc. v. N.Y.*, 555 U.S. 1136 (2009). The Court of Appeals confirmed that even after settlement "the [attorney general's] claims for injunctive relief, civil penalties, and costs remain undisturbed," the attorney general may "seek restitution on behalf of those not bound by the settlement," and the attorney general "might be able to obtain disgorgement—an equitable remedy distinct from restitution—of profits that respondents derived from all New York consumers, whether within the . . . settlement class or not." *Id.* By finding that so many remedies remain and that loss of the one remedy that was settled does not substantially prejudice the attorney general, *Applied Card Systems* fatally undermines the DAG's attempt to intervene in this case. *See also Olde Discount Corp. v. Tupman*, 1 F.3d 202, 211 (3d Cir. 1993) (finding that although Delaware's statutory right to seek restitution for securities violations was preempted by the Federal Arbitration Act "Delaware [] retains many avenues for the exercise of its proper role in dealing with alleged violations of [the] securities laws") (cited by DAG at DAG MOL 5).

B. Permissive Intervention Under C.P.L.R. § 1013 Is Not Proper Because the DAG's Claims Share No Common Issues With This Proceeding and Would Cause Undue Delay.

C.P.L.R. § 1013 permits the Court, in its discretion, to allow intervention "when the person's claim or defense and the main action have a common question of law or fact." An important consideration, however, is "whether the intervention will unduly delay the

determination of the action or prejudice the substantial rights of any party." Thus, "when deciding whether to grant such a request, a court may properly balance the benefit to be gained by intervention, and the extent to which the proposed intervenor may be harmed if it is refused, against other factors, such as the degree to which the proposed intervention will delay and unduly complicate the litigation." *Pier v. Bd. of Assessment Review*, 209 A.D.2d 788, 789 (3d Dep't 1994). Intervention should be denied where it "would confuse the issues and would not result in benefit to the" parties in interest. *Osman v. Sternberg*, 168 A.D.2d 490, 491 (2d Dep't 1990). Undue delay is a sufficient basis to deny intervention in any case, but it is an especially compelling concern in a special proceeding, which is intended to be expeditious: "Speed, economy and efficiency are the hallmarks of this procedure." Vincent C. Alexander, Practice Commentaries C401:1 (2010) ("The purpose of [Article 77] is to provide for a special proceeding, as an alternative to the procedure by action, in trust accountings in the interests of expedition and economy. In other words, the purpose is to simplify the practice in relation to express trusts and eliminate cumbersome and expensive procedures.") (footnote omitted); 22 Christine M. Gimeno, Carmody-Wait, New York Practice § 131:1 (2d ed. 2011).

In the first place, the nebulous character of the "potential" claims the DAG might bring at some uncertain date in the future under the Delaware Securities Act and Deceptive Trade Practices Act compels denial of his petition to the extent it relies on those claims. Of course, concrete analysis of formless claims lurking somewhere in these statutes is not possible. More importantly, for this reason, the reasoned exercise of discretion required by C.P.L.R. § 1013 also is impossible. Furthermore, the DAG does not disavow any intention of asserting Delaware statutory claims as counterclaims in this proceeding. As discussed above (and below) New York law governing intervention would preclude the DAG from asserting any such counterclaims.

The DAG nonetheless is inviting this Court to authorize him to issue a blank check, good for any claims he regards as sufficiently related under the Delaware Securities Act or the Deceptive Trade Practices Act. That is manifestly unreasonable, and contravenes the express requirement of C.P.L.R. § 1014 that a "motion to intervene . . . be accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought."

The DAG's argument for permissive intervention also is flawed because it rests on two basic misconceptions. The first is the assumption, made without any citation, that "a common question" means only that the intervenor seeks to raise some issue in common with the main case, regardless of the effect on the rest of the case. To the contrary, "[i]t is established law that a proposed intervenor is not permitted to raise issues which are not before the court in the main action." *Pier v. Bd. of Assessment Review*, 158 Misc. 2d 732, 735 (Sup. Ct. Schenectady Cnty. 1993), *aff'd*, 209 A.D.2d 788 (3d Dept. 1994); *see also E. Side Car Wash*, 102 A.D.2d at 160 (same); *City of Rye, Non-Partisan Civic Ass'n v. MTA*, 58 Misc. 2d 932, 938 (Sup. Ct. N.Y. Cnty. 1969), *rev'd on other grounds*, 24 N.Y.2d. 627 (1969) ("This is not an issue raised by plaintiffs in this action and is not properly before this court in the present action. An intervenor should not be permitted to raise issues not involved in the action.").

The DAG's second misconception is his conclusory and unsupported assertion that this Article 77 proceeding and his "potential" claims against the Trustee contain common questions of law or fact. (DAG MOL 7.) Any potential Delaware Securities Act and Deceptive Trade Practice Act claims, on the one hand, and this Article 77 proceeding, on the other, would raise discrete and non-overlapping issues: the Trustee's pre-Settlement conduct with respect to servicing of mortgage loans versus the question of the Trustee's good faith and reasonableness in entering into the Settlement. Any statutory claims under Delaware law based on pre-Settlement

conduct would both rest on shaky foundations and raise a whole host of issues unrelated to the Settlement. The DAG alleges that the Trustee may have violated the Delaware Securities Act and Deceptive Trade Practices Act "insofar as the Trust PSA requires the Trust annually to certify [certain] 'servicing criteria'" and that "Delaware investors in the Trusts may have been misled by BNYM into believing BNYM would review the loan files for the mortgages securing their investment, and that deficiencies would be cured." (DAG MOL 6–7.) But, the alleged servicing obligations that the Trustee allegedly breached do not arise from the Delaware Trust Agreements. The alleged obligations can be found in either the Pooling and Servicing Agreements or Sale and Servicing Agreements, both of which are governed by New York law. (*See, e.g.,* Pooling and Servicing Agreement, Dkt. No. 11-1 A-197, Ex. S; Sale and Servicing Agreement, Dkt. No. 11-1 A-267, Ex. F.)

Even putting aside the DAG's misconception concerning the governing law, he is wrong for other reasons. The Indenture expressly states that "[n]either the Indenture Trustee nor the Co-Trustee shall be responsible for . . . the completeness of any Mortgage Loan [or] the acts or omissions of any of the Depositor, the Master Servicer, any subservicer, or any mortgagor under a Mortgage[.]" (Indenture, Dkt. No. 11-1 at A-266, §6.04.) The servicing certification that the Trustee executed on an annual basis also makes clear that it is "[b]ased solely on the information delivered to the [Trustee] by the Master Servicer" and that the "Trustee is not certifying as to the accuracy, completeness or correctness of the information which it received from the Master Servicer and did not independently verify or confirm the accuracy, completeness or correctness of the information provided by the Master Servicer." (Sale and Servicing Agreement, Dkt. No. 11-1 at A-267, Ex. E-2.)

The Court, of course, need not resolve these issues on the merits now. More importantly for this motion, the Court will have no occasion to decide them in this Article 77 proceeding either. These allegations about the Trustee's pre-Settlement conduct relating to loan documentation have no bearing on the question of whether the Trustee acted reasonably and in good faith in entering into the Settlement. Thus, the Delaware Securities Act and Deceptive Trade Practices Act claims that apparently rest on those allegations are simply irrelevant. (DAG MOL 5–7.) And, as noted above, the Settlement does not release those claims.

In short, even if the DAG had satisfied the threshold requirements of standing (and he has not), none of the arguments made in his application implicate a sufficient basis for this Court to exercise its discretion to allow intervention pursuant to C.P.L.R. § 401.

CONCLUSION

For all of the foregoing reasons, the Court should deny the DAG's Petition to Intervene.

Dated: New York, New York
August 19, 2011

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Hector Gonzalez
James M. McGuire
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New York, New York 10019
(212) 506-2500

Attorneys for Petitioner
The Bank of New York Mellon

ADDENDUM

Execution Copy

CWHEQ REVOLVING HOME EQUITY LOAN TRUST, SERIES 2007-G

Issuer

and

THE BANK OF NEW YORK

Indenture Trustee

INDENTURE

Dated as of August 15, 2007

THIS INDENTURE, dated as of August 15, 2007, between CWHEQ Revolving Home Equity Loan Trust, Series 2007-G, a Delaware statutory trust and the INDENTURE TRUSTEE, as indenture trustee,

WITNESSETH THAT

Each party agrees for the benefit of the other party and for the benefit of the Secured Parties as follows.

GRANTING CLAUSE

The Issuer Grants to the Indenture Trustee for the Classes of Notes and series referred to in the Master Glossary of Defined Terms as of the Closing Date, as Indenture Trustee for the benefit of the relevant Secured Parties, all of the Issuer's interest existing now or in the future in:

- the Mortgage Loans including their Asset Balances (including all Additional Balances) and the Mortgage Files and all property that secures the Mortgage Loans and all property that is acquired by foreclosure or deed in lieu of foreclosure, and all collections received on each Mortgage Loan after the Cut-off Date (excluding payments due by the Cut-off Date);

- the Issuer's rights under hazard insurance policies related to the Mortgage Loans;

- the interest of the Issuer in the Sale and Servicing Agreement and the Purchase Agreement (including the Issuer's right to cause the Mortgage Loans to be repurchased);

- all rights under any guaranty executed in connection with the Mortgage Loans ;

- the Collection Account and the Payment Account maintained to hold collections related to the Mortgage Loans and their contents; and

- all present and future claims, demands, causes of action, and choses in action regarding any of the foregoing and all payments on and all proceeds from any of the foregoing, including all proceeds of their conversion, voluntary or involuntary, into cash or other liquid property, all cash proceeds, accounts, notes, drafts, acceptances, chattel paper, checks, deposit accounts, insurance proceeds, condemnation awards, rights to payment of every kind, and other forms of obligations, instruments, and other property that at any time constitute any part of or are included in the proceeds of any of the foregoing (collectively, the "***Collateral***").

The Issuer agrees that the foregoing Grants are intended to grant in favor of the Indenture Trustee, for the respective benefit of the Secured Parties, a first priority, continuing

- with respect to the execution and filing of any Financing Statements and Continuation Statements

has been taken that is necessary to perfect the Security Interest of this Indenture in the Mortgage Loans, and reciting the details of the action.

(b) By September 30 in each calendar year beginning in 2008, the Issuer shall furnish to the Indenture Trustee an Opinion of Counsel either stating that, in its opinion, no action is necessary to maintain the perfected Security Interest of this Indenture in the Mortgage Loans or stating that, in its opinion, all action has been taken

(i) with respect to the recording, filing, re-recording, and refiling of this Indenture, any indentures supplemental to this Indenture, and any other requisite documents and

(ii) with respect to the execution and filing of any Financing Statements and Continuation Statements

necessary to maintain the perfected Security Interest created by this Indenture in the Mortgage Loans and reciting the details of the action. The Opinion of Counsel shall also describe the recording, filing, re-recording, and refiling of this Indenture, any indentures supplemental to this Indenture, and any other requisite documents and the execution and filing of any Financing Statements and Continuation Statements that will, in counsel's opinion, be required to maintain the perfected Security Interest of this Indenture in the Mortgage Loans until the same date in the following calendar year.

Section 3.07. ***Performance of Obligations.***

(a) The Issuer will not take any action (and will not permit others to take any action) that would release any person from any of their material obligations under any of the Transaction Documents, that would create any Security Interests that are not provided for in the Transaction Documents, or that would change or impair the validity or effectiveness of the Transaction Documents or any Security Interest granted under them, except as expressly provided in the Transaction Documents. The Indenture Trustee, as pledgee of the Mortgage Loans and an assignee of the Issuer's rights under the Sale and Servicing Agreement may exercise all of the rights of the Issuer to direct the actions of the Master Servicer pursuant to the Sale and Servicing Agreement.

(b) The Issuer may contract with other persons to assist it in performing its duties under this Indenture, and the performance of those duties by a person identified to the Indenture Trustee in an Officer's Certificate shall be considered to be action taken by the Issuer.

(c) The Issuer will punctually perform all of its obligations under the Transaction Documents, including properly filing all Financing Statements and Continuation Statements required to be filed by the Transaction Documents. Except as provided in Section 9.01, the Rating Agency Condition must be satisfied in connection with any amendment, termination, or

agreement and the Indenture Trustee will cause payments to be made and notices to be given in accordance with them.

Section 11.07. ***Conflict with Trust Indenture Act.***

If any provision of this Indenture limits, qualifies, or conflicts with another provision of this Indenture that is required to be included in this Indenture by the Trust Indenture Act, the required provision shall control.

The provisions of TIA Sections 310 through 317 that impose duties on any person (including the provisions automatically included in this Indenture unless expressly excluded by this Indenture) are a part of and govern this Indenture, whether or not physically in this Indenture.

Section 11.08. ***Effect of Headings and Table of Contents.***

The Article and Section headings and the Table of Contents are for convenience only and shall not affect the construction of this Indenture.

Section 11.09. ***Successors and Assigns.***

All agreements in this Indenture and the Notes by the Issuer shall bind its successors and assigns, whether so expressed or not. All agreements of the Indenture Trustee in this Indenture shall bind its successors, assigns, co-trustees, and agents.

Section 11.10. ***Separability.***

If any provision in this Indenture or in the Notes is invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this Indenture and the Notes shall not be affected in any way.

Section 11.11. ***Benefits of Indenture.***

Nothing in this Indenture or in the Notes, express or implied, shall give to any person, other than the parties to this Indenture and their successors under this Indenture, the Master Servicer (under Article VIII), any person with an ownership interest in the Trust, and the Noteholders, any benefit or any legal or equitable right under this Indenture.

Section 11.12. ***Legal Holidays.***

If the date on which any payment is due is not a Business Day, then (notwithstanding any other provision of the Notes or this Indenture) payment need not be made on that date, but may be made on the next Business Day with the same force as if made on the date on which nominally due, and no interest shall accrue for the period after the nominal due date.

Section 11.13. ***Governing Law.***

THIS INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER STATE.

Execution Copy

CWHEQ, INC.
Depositor

COUNTRYWIDE HOME LOANS, INC.
Sponsor and Master Servicer

CWHEQ REVOLVING HOME EQUITY LOAN TRUST,
SERIES 2007-G
Trust

THE BANK OF NEW YORK
Indenture Trustee

SALE AND SERVICING AGREEMENT
Dated as of August 15, 2007

REVOLVING HOME EQUITY LOAN ASSET BACKED NOTES,

SERIES 2007-G

constitutes an actual breach of a representation and warranty in Section 2.04, in all cases plus accrued and unpaid interest thereon at the applicable Loan Rate.

The Indenture Trustee as agent for any REMIC created under the Trust Agreement shall adopt and sign such a plan of complete liquidation upon the written request of the Master Servicer and the receipt of the Opinion of Counsel referred to in Section 8.02(a) and take any other action in connection therewith reasonably requested by the Master Servicer.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.01 ***Amendment.***

This Agreement may be amended from time to time by the Sponsor, the Master Servicer, the Depositor, the Owner Trustee, and the Indenture Trustee, if the Rating Agency Condition is satisfied. However, no amendment that significantly changes the permitted activities of the Trust may be promulgated without the consent of a majority of the aggregate Outstanding Amount of the Notes. For this purpose no Notes owned by the Sponsor or any of its affiliates may vote, nor shall their Notes be considered outstanding. This Agreement may also be amended from time to time by the Sponsor, the Master Servicer, the Depositor, the Owner Trustee, and the Indenture Trustee, with the consent of Holders of not less than 66⅔% of the aggregate Outstanding Amount of the Notes.

The Indenture Trustee may enter into any amendment of this Agreement as to which the Rating Agency Condition is satisfied, and when so requested by an Issuer Request, the Indenture Trustee shall enter into any amendment of this Agreement

(1) that does not impose further obligations or liabilities on the Indenture Trustee, and

(2) as to which either the Rating Agency Condition is satisfied or Holders of not less than 66⅔% of the aggregate Outstanding Amount of the Notes have consented.

Before the execution of the amendment, the party to this Agreement requesting the amendment shall notify each Rating Agency of the substance of the amendment.

Section 9.02 ***Governing Law.***

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER STATE.

Section 9.03 ***Notices.***

All notices, demands, instructions, consents, and other communications required or permitted under this Agreement shall be in writing and signed by the party giving the same and shall be personally delivered or sent by first-class or express mail (postage prepaid), national overnight courier service, or by facsimile transmission or other electronic communication

EXHIBIT E-2

FORM OF BACKUP CERTIFICATION
(INDENTURE TRUSTEE)

CWHEQ, INC.,
REVOLVING HOME EQUITY LOAN ASSET-BACKED NOTES,
SERIES 200[ ]-[ ]

I, _____, a _____ of The Bank of New York (the "Company"), certify to Countrywide Home Loans, Inc. (the "Master Servicer") and/or CWHEQ, Inc. (the "Depositor"), as applicable, and their respective officers, directors and affiliates, with the knowledge and intent that they will rely upon this certification in connection with the certification that the Master Servicer or the Depositor is required to file on behalf of the Trust (as defined below) pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, that:

(1) I have reviewed (i) the report on assessment of the Company's compliance with the servicing criteria set forth in Item 1122(d) of Regulation AB (the "Servicing Criteria"), provided in accordance with Rules 13a-18 and 15d-18 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Item 1122 of Regulation AB (the "Company Information"), and the registered public accounting firm's attestation report provided in accordance with Rules 13a-18 and 15d-18 under the Exchange Act and Section 1122(b) of Regulation AB (the "Attestation Report") that were delivered by the Company to the Master Servicer pursuant to the Sale and Servicing Agreement for the Series listed on Exhibit 1 hereto (the "Sale and Servicing Agreement"), and (ii) all reports on Form 10-D containing statements (collectively, the "Distribution Date Statements") to certificateholders filed in respect of the period included in the year covered by the annual report of the trust (the "Trust") formed pursuant to such Sale and Servicing Agreement;

(2) Assuming the accuracy and completeness of the information delivered to the Company by the Master Servicer as provided in the Sale and Servicing Agreement and subject to paragraph (4) below, the distribution information determined by the Company and set forth in the Distribution Date Statements included in the year covered by the annual report of the Trust on Form 10-K for the calendar year 2006 is complete and does not contain any material misstatement of fact with respect to the period of time covered by such annual report;

(3) Based solely on the information delivered to the Company by the Master Servicer as provided in the Sale and Servicing Agreement, (i) the distribution information required under the Sale and Servicing Agreement to be included in the Trust's Distribution Date Statements and (ii) the servicing information required to be provided by the Master Servicer to the Company for inclusion in the Trust's Distribution Date Statements, to the extent received by the Company from the Master Servicer in accordance with the Sale and Servicing Agreement, is included in such Distribution Date Statements;

(4) The Company is not certifying as to the accuracy, completeness or correctness of the information which it received from the Master Servicer and did not

independently verify or confirm the accuracy, completeness or correctness of the information provided by the Master Servicer;

(5) To the best of my knowledge, the Company Information, taken as a whole, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which such statements were made, not misleading with respect to the period of time covered by the Company Information and any material instance of noncompliance with the Servicing Criteria has been disclosed in the Company Information;

(6) I am responsible for reviewing the activities performed by the Company as a person "performing a servicing function" under the Sale and Servicing Agreement and Indenture for the Series listed on Exhibit I (the "Indenture"), and, based on my knowledge and the compliance review conducted in preparing the Company Information, except as disclosed in the Company Information or the Attestation Report, the Company has fulfilled its obligations under the Sale and Servicing Agreement and Indenture in all material respects; and

(7) The Company Information and Attestation Report required to be provided by the Company and any Subcontractor (as defined in the Sale and Servicing Agreement) pursuant to the Sale and Servicing Agreement have been provided to the Master Servicer and the Depositor.

Date:_____

By: _____
Name:
Title:

EXHIBIT F

FORM OF SERVICING CRITERIA TO BE ADDRESSED IN
ASSESSMENT OF COMPLIANCE STATEMENT

The assessment of compliance to be delivered by the Trustee shall address, at a minimum, the criteria identified below as "Applicable Servicing Criteria":

Reference	Servicing Criteria	Applicable Servicing Criteria
	General Servicing Considerations	
1122(d)(1)(i)	Policies and procedures are instituted to monitor any performance or other triggers and events of default in accordance with the transaction agreements.	**X**
1122(d)(1)(ii)	If any material servicing activities are outsourced to third parties, policies and procedures are instituted to monitor the third party's performance and compliance with such servicing activities.	
1122(d)(1)(iii)	Any requirements in the transaction agreements to maintain a back-up servicer for the pool assets are maintained.	
1122(d)(1)(iv)	A fidelity bond and errors and omissions policy is in effect on the party participating in the servicing function throughout the reporting period in the amount of coverage required by and otherwise in accordance with the terms of the transaction agreements.	
	Cash Collection and Administration	
1122(d)(2)(i)	Payments on pool assets are deposited into the appropriate custodial bank accounts and related bank clearing accounts no more than two business days following receipt, or such other number of days specified in the transaction agreements.	**X (as to accounts held by Trustee)**
1122(d)(2)(ii)	Disbursements made via wire transfer on behalf of an obligor or to an investor are made only by authorized personnel.	**X (as to investors only)**
1122(d)(2)(iii)	Advances of funds or guarantees regarding collections, cash flows or distributions, and any interest or other fees charged for such advances, are made, reviewed and approved as specified in the transaction agreements.	
1122(d)(2)(iv)	The related accounts for the transaction, such as cash reserve accounts or accounts established as a form of over collateralization, are separately maintained (e.g., with respect to commingling of cash) as set forth in the transaction agreements.	**X (as to accounts held by Trustee)**
1122(d)(2)(v)	Each custodial account is maintained at a federally insured depository institution as set forth in the transaction agreements. For purposes of this criterion, "federally insured depository institution" with respect to a foreign financial institution means a foreign financial institution that meets the requirements of Rule 13k-1(b)(1) of the Securities	**X [i] (subject to SEC clarification)**

Reference	Servicing Criteria	Applicable Servicing Criteria
	Exchange Act.	
1122(d)(2)(vi)	Unissued checks are safeguarded so as to prevent unauthorized access.	
1122(d)(2)(vii)	Reconciliations are prepared on a monthly basis for all asset-backed securities related bank accounts, including custodial accounts and related bank clearing accounts. These reconciliations are (A) mathematically accurate; (B) prepared within 30 calendar days after the bank statement cutoff date, or such other number of days specified in the transaction agreements; (C) reviewed and approved by someone other than the person who prepared the reconciliation; and (D) contain explanations for reconciling items. These reconciling items are resolved within 90 calendar days of their original identification, or such other number of days specified in the transaction agreements.	**X**

	Investor Remittances and Reporting	
1122(d)(3)(i)	Reports to investors, including those to be filed with the Commission, are maintained in accordance with the transaction agreements and applicable Commission requirements. Specifically, such reports (A) are prepared in accordance with timeframes and other terms set forth in the transaction agreements; (B) provide information calculated in accordance with the terms specified in the transaction agreements; (C) are filed with the Commission as required by its rules and regulations; and (D) agree with investors' or the trustee's records as to the total unpaid principal balance and number of pool assets serviced by the servicer.	X
1122(d)(3)(ii)	Amounts due to investors are allocated and remitted in accordance with timeframes, distribution priority and other terms set forth in the transaction agreements.	X
1122(d)(3)(iii)	Disbursements made to an investor are posted within two business days to the servicer's investor records, or such other number of days specified in the transaction agreements.	X
1122(d)(3)(iv)	Amounts remitted to investors per the investor reports agree with cancelled checks, or other form of payment, or custodial bank statements.	X
	Pool Asset Administration	
1122(d)(4)(i)	Collateral or security on pool assets is maintained as required by the transaction agreements or related pool asset documents.	
1122(d)(4)(ii)	Pool assets and related documents are safeguarded as required by the transaction agreements.	
1122(d)(4)(iii)	Any additions, removals or substitutions to the asset pool are made, reviewed and approved in accordance with any conditions or requirements in the transaction agreements.	X
1122(d)(4)(iv)	Payments on pool assets, including any payoffs, made in accordance with the related pool asset documents are posted to the servicer's obligor records maintained no more than two business days after receipt, or such other number of days specified in the transaction agreements, and allocated to principal, interest or other items (e.g., escrow) in accordance with the related pool asset documents.	
1122(d)(4)(v)	The servicer's records regarding the pool assets agree with the servicer's records with respect to an obligor's unpaid principal balance.	
1122(d)(4)(vi)	Changes with respect to the terms or status of an obligor's pool assets (e.g., loan modifications or re-agings) are made, reviewed and approved by authorized personnel in accordance with the transaction agreements and related pool asset documents.	
1122(d)(4)(vii)	Loss mitigation or recovery actions (e.g., forbearance plans, modifications and deeds in lieu of foreclosure, foreclosures and repossessions, as applicable) are initiated, conducted and concluded in accordance with the timeframes or other requirements established by the transaction agreements.	
1122(d)(4)(viii)	Records documenting collection efforts are maintained during the period a pool asset is delinquent in accordance with the transaction agreements. Such records are maintained on at least a monthly basis, or such other period specified in the transaction agreements, and describe the entity's activities in monitoring delinquent pool assets including, for	

	example, phone calls, letters and payment rescheduling plans in cases where delinquency is deemed temporary (e.g., illness or unemployment).	
1122(d)(4)(ix)	Adjustments to interest rates or rates of return for pool assets with variable rates are computed based on the related pool asset documents.	
1122(d)(4)(x)	Regarding any funds held in trust for an obligor (such as escrow accounts): (A) such funds are analyzed, in accordance with the obligor's pool asset documents, on at least an annual basis, or such other period specified in the transaction agreements; (B) interest on such funds is paid, or credited, to obligors in accordance with applicable pool asset documents and state laws; and (C) such funds are returned to the obligor within 30 calendar days of full repayment of the related pool assets, or such other number of days specified in the transaction agreements.	

1122(d)(4)(xi)	Payments made on behalf of an obligor (such as tax or insurance payments) are made on or before the related penalty or expiration dates, as indicated on the appropriate bills or notices for such payments, provided that such support has been received by the servicer at least 30 calendar days prior to these dates, or such other number of days specified in the transaction agreements.	
1122(d)(4)(xii)	Any late payment penalties in connection with any payment to be made on behalf of an obligor are paid from the servicer's funds and not charged to the obligor, unless the late payment was due to the obligor's error or omission.	
1122(d)(4)(xiii)	Disbursements made on behalf of an obligor are posted within two business days to the obligor's records maintained by the servicer, or such other number of days specified in the transaction agreements.	
1122(d)(4)(xiv)	Delinquencies, charge-offs and uncollectible accounts are recognized and recorded in accordance with the transaction agreements.	
1122(d)(4)(xv)	Any external enhancement or other support, identified in Item 1114(a)(1) through (3) or Item 1115 of Regulation AB, is maintained as set forth in the transaction agreements.	**X**

[NAME OF MASTER SERVICER] [NAME OF INDENTURE TRUSTEE] [NAME OF SUBSERVICER]

Date: _____

By: _____
Name:
Title:

EXECUTION COPY

CWALT, INC.,
Depositor

COUNTRYWIDE HOME LOANS, INC.,
Seller

PARK GRANADA LLC,
Seller

PARK MONACO INC.,
Seller

PARK SIENNA LLC,
Seller

COUNTRYWIDE HOME LOANS SERVICING LP,
Master Servicer

and
THE BANK OF NEW YORK,
Trustee

POOLING AND SERVICING AGREEMENT
Dated as of November 1, 2006

ALTERNATIVE LOAN TRUST 2006-OA19

MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-OA19

EXHIBIT S

[FORM OF]
SERVICING CRITERIA TO BE ADDRESSED IN
ASSESSMENT OF COMPLIANCE STATEMENT

The assessment of compliance to be delivered by [the Master Servicer] [Trustee] [Name of Subservicer] shall address, at a minimum, the criteria identified as below as "Applicable Servicing Criteria":

Servicing Criteria		Applicable Servicing Criteria
Reference	Criteria	
	General Servicing Considerations	
1122(d)(1)(i)	Policies and procedures are instituted to monitor any performance or other triggers and events of default in accordance with the transaction agreements.	
1122(d)(1)(ii)	If any material servicing activities are outsourced to third parties, policies and procedures are instituted to monitor the third party's performance and compliance with such servicing activities.	
1122(d)(1)(iii)	Any requirements in the transaction agreements to maintain a back-up servicer for the mortgage loans are maintained.	
1122(d)(1)(iv)	A fidelity bond and errors and omissions policy is in effect on the party participating in the servicing function throughout the reporting period in the amount of coverage required by and otherwise in accordance with the terms of the transaction agreements.	
	Cash Collection and Administration	
1122(d)(2)(i)	Payments on mortgage loans are deposited into the appropriate custodial bank accounts and related bank clearing accounts no more than two business days following receipt, or such other number of days specified in the transaction agreements.	
1122(d)(2)(ii)	Disbursements made via wire transfer on behalf of an obligor or to an investor are made only by authorized personnel.	
1122(d)(2)(iii)	Advances of funds or guarantees regarding collections, cash flows or distributions, and any interest or other fees charged for such advances, are made, reviewed and approved as specified in the transaction agreements.	
1122(d)(2)(iv)	The related accounts for the transaction, such as cash reserve accounts or accounts established as a form of overcollateralization, are separately maintained (e.g., with respect to commingling of cash) as set forth in the transaction agreements.	
1122(d)(2)(v)	Each custodial account is maintained at a federally insured depository institution as set forth in the transaction agreements. For purposes of this criterion, "federally insured depository institution" with respect to a foreign financial institution means a foreign financial institution that meets the requirements of Rule 13k-1(b)(1) of the Securities Exchange Act.	
1122(d)(2)(vi)	Unissued checks are safeguarded so as to prevent unauthorized access.	

Servicing Criteria		Applicable Servicing Criteria
Reference	Criteria	
1122(d)(2)(vii)	Reconciliations are prepared on a monthly basis for all asset-backed securities related bank accounts, including custodial accounts and related bank clearing accounts. These reconciliations are (A) mathematically accurate; (B) prepared within 30 calendar days after the bank statement cutoff date, or such other number of days specified in the transaction agreements; (C) reviewed and approved by someone other than the person who prepared the reconciliation; and (D) contain explanations for reconciling items. These reconciling items are resolved within 90 calendar days of their original identification, or such other number of days specified in the transaction agreements.	
	Investor Remittances and Reporting	
1122(d)(3)(i)	Reports to investors, including those to be filed with the Commission, are maintained in accordance with the transaction agreements and applicable Commission requirements. Specifically, such reports (A) are prepared in accordance with timeframes and other terms set forth in the transaction agreements; (B) provide information calculated in accordance with the terms specified in the transaction agreements; (C) are filed with the Commission as required by its rules and regulations; and (D) agree with investors' or the trustee's records as to the total unpaid principal balance and number of mortgage loans serviced by the Servicer.	
1122(d)(3)(ii)	Amounts due to investors are allocated and remitted in accordance with timeframes, distribution priority and other terms set forth in the transaction agreements.	
1122(d)(3)(iii)	Disbursements made to an investor are posted within two business days to the Servicer's investor records, or such other number of days specified in the transaction agreements.	
1122(d)(3)(iv)	Amounts remitted to investors per the investor reports agree with cancelled checks, or other form of payment, or custodial bank statements.	
	Pool Asset Administration	
1122(d)(4)(i)	Collateral or security on mortgage loans is maintained as required by the transaction agreements or related mortgage loan documents.	
1122(d)(4)(ii)	Mortgage loan and related documents are safeguarded as required by the transaction agreements.	
1122(d)(4)(iii)	Any additions, removals or substitutions to the asset pool are made, reviewed and approved in accordance with any conditions or requirements in the transaction agreements.	
1122(d)(4)(iv)	Payments on mortgage loans, including any payoffs, made in accordance with the related mortgage loan documents are posted to the Servicer's obligor records maintained no more than two business days after receipt, or such other number of days specified in the transaction agreements, and allocated to principal, interest or other items (e.g., escrow) in accordance with the related mortgage loan documents.	
1122(d)(4)(v)	The Servicer's records regarding the mortgage loans agree with the Servicer's records with respect to an obligor's unpaid principal balance.	
1122(d)(4)(vi)	Changes with respect to the terms or status of an obligor's mortgage loans (e.g., loan modifications or re-agings) are made, reviewed and approved by authorized personnel in accordance with the transaction agreements and related pool asset documents.	
1122(d)(4)(vii)	Loss mitigation or recovery actions (e.g., forbearance plans, modifications and deeds in lieu of foreclosure, foreclosures and repossessions, as applicable) are initiated, conducted and concluded in accordance with the timeframes or other requirements established by the transaction agreements.	

Servicing Criteria		Applicable Servicing Criteria
Reference	Criteria	
1122(d)(4)(viii)	Records documenting collection efforts are maintained during the period a mortgage loan is delinquent in accordance with the transaction agreements. Such records are maintained on at least a monthly basis, or such other period specified in the transaction agreements, and describe the entity's activities in monitoring delinquent mortgage loans including, for example, phone calls, letters and payment rescheduling plans in cases where delinquency is deemed temporary (e.g., illness or unemployment).	
1122(d)(4)(ix)	Adjustments to interest rates or rates of return for mortgage loans with variable rates are computed based on the related mortgage loan documents.	
1122(d)(4)(x)	Regarding any funds held in trust for an obligor (such as escrow accounts): (A) such funds are analyzed, in accordance with the obligor's mortgage loan documents, on at least an annual basis, or such other period specified in the transaction agreements; (B) interest on such funds is paid, or credited, to obligors in accordance with applicable mortgage loan documents and state laws; and (C) such funds are returned to the obligor within 30 calendar days of full repayment of the related mortgage loans, or such other number of days specified in the transaction agreements.	
1122(d)(4)(xi)	Payments made on behalf of an obligor (such as tax or insurance payments) are made on or before the related penalty or expiration dates, as indicated on the appropriate bills or notices for such payments, provided that such support has been received by the servicer at least 30 calendar days prior to these dates, or such other number of days specified in the transaction agreements.	
1122(d)(4)(xii)	Any late payment penalties in connection with any payment to be made on behalf of an obligor are paid from the servicer's funds and not charged to the obligor, unless the late payment was due to the obligor's error or omission.	
1122(d)(4)(xiii)	Disbursements made on behalf of an obligor are posted within two business days to the obligor's records maintained by the servicer, or such other number of days specified in the transaction agreements.	
1122(d)(4)(xiv)	Delinquencies, charge-offs and uncollectible accounts are recognized and recorded in accordance with the transaction agreements.	
1122(d)(4)(xv)	Any external enhancement or other support, identified in Item 1114(a)(1) through (3) or Item 1115 of Regulation AB, is maintained as set forth in the transaction agreements.	

[NAME OF MASTER SERVICER] [NAME OF TRUSTEE] [NAME OF SUBSERVICER]

Date: _____

By: _____
Name:
Title: