

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT 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), 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 BadenWuerttemberg (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), and Western Asset Management Company (intervenor),

Petitioners,

-against-

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, WALNUT PLACE XI LLC, POLICEMEN'S ANNUITY & BENEFIT FUND OF CHICAGO, THE WESTMORELAND COUNTY EMPLOYEE RETIREMENT SYSTEM, CITY OF GRAND RAPIDS GENERAL RETIREMENT SYSTEM, CITY OF GRAND RAPIDS POLICE

11 Civ. 5988

ECF Case

**CERTIFICATE
OF SERVICE**

AND FIRE RETIREMENT SYSTEM, TM1 INVESTORS, LLC, FEDERAL HOME LOAN BANK OF BOSTON, FEDERAL HOME LOAN BANK OF CHICAGO, FEDERAL HOME LOAN BANK OF INDIANAPOLIS, FEDERAL HOME LOAN BANK OF PITTSBURGH, FEDERAL HOME LOAN BANK OF SAN FRANCISCO, FEDERAL HOME LOAN BANK OF SEATTLE, V RE-REMIC, LLC, THE WESTERN AND SOUTHERN LIFE INSURANCE COMPANY, WESTERN-SOUTHERN LIFE ASSURANCE COMPANY, COLUMBUS LIFE INSURANCE COMPANY, INTEGRITY LIFE INSURANCE COMPANY, NATIONAL LIFE INSURANCE COMPANY, FORT WASHINGTON INVESTMENT ADVISORS, INC. on behalf of FORT WASHINGTON ACTIVE FIXED INCOME LLC, CRANBERRY PARK LLC, and CRANBERRY PARK II LLC,

Intervenor-Respondents.

I, Corban S. Rhodes, hereby certify that true and correct copies of the attached NOTICE OF INTENTION TO APPEAR AND OBJECT AND NOTICE OF PETITION TO INTERVENE (Exhibit A hereto), AFFIRMATION OF JOHN G. MOON IN SUPPORT OF THE PETITION TO INTERVENE AND NOTICE OF INTENTION TO APPEAR AND OBJECT, (Exhibit B hereto), MEMORANDUM OF LAW IN SUPPORT OF NOTICE OF INTENTION TO APPEAR AND OBJECT AND PETITION TO INTERVENE (Exhibit C hereto), and PROPOSED ORDER GRANTING PETITION TO INTERVENE (Exhibit D hereto) were served on counsel in the pre-removal state court proceeding, In re Bank of New York Mellon, et al., No. 651786/2011 (Sup. Ct. New York Co.) (Kapnick, J.), on August 24, 2011, as described in the electronic-filing confirmation (Exhibit E hereto), and upon counsel for the Bank of New York Mellon by overnight delivery on August 30, 2011 at Mayer Brown LLP, Matthew D. Ingber, 1675 Broadway, New York, NY 10019.

Dated: August 30, 2011
New York, New York



Corban S. Rhodes (CR-2397)

Exhibit A

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

Petitioners,

-against-

TRIAXX PRIME CDO 2006-1, LTD., TRIAXX PRIME CDO 2006-2, LTD. and TRIAXX PRIME CDO 2007-1, LTD.
 (Proposed Intervenor-Respondents),

Respondents.

Index No: 651786/2011

Assigned to Kapnick, J.

**NOTICE OF INTENTION TO
 APPEAR AND OBJECT
 AND NOTICE OF
 PETITION TO INTERVENE**

PLEASE TAKE NOTICE that, Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd., and Triaxx Pime CDO 2007-1, Ltd. (together, the “Triaxx Respondents”), as Potentially Interested Persons in the above-captioned Article 77 proceeding before this Court, intend to appear and object to the Settlement proposed by Bank of New York Mellon (the “Trustee”), pursuant to this Court’s Order dated August 5, 2011, upon the grounds that the Triaxx Respondents do not have sufficient information to evaluate the Settlement.

PLEASE TAKE FURTHER NOTICE that, upon the affirmation of John G. Moon dated August 24, 2011, the petition of the Trustee, the Petition to Intervene filed herewith and Memorandum of Law in support thereof, and all previous papers and proceedings in this proceeding, the Triaxx Respondents will move this Court on September 1, 2011, at 9:30 a.m., in submission part room 130 at 60 Centre Street, New York, New York, or as soon thereafter as counsel may be heard, for an order pursuant to CPLR 401, 1012, and 1013 permitting the Triaxx Respondents to intervene as respondents in this proceeding, and granting such other and further relief as may be just, proper, and equitable.

Dated: August 24, 2011
New York, New York

MILLER & WRUBEL P.C.



By: Joel M. Miller
John G. Moon
Claire L. Huene
Corban S. Rhodes
570 Lexington Avenue
New York, New York 10022
(212) 336-3500

*Attorneys for the Triaxx
Respondents*

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

Petitioners,

-against-

TRIAXX PRIME CDO 2006-1, LTD., TRIAXX PRIME CDO 2006-2, LTD. and TRIAXX PRIME CDO 2007-1, LTD.
(Proposed Intervenor-Respondents),

Respondents.

Index No: 651786/2011

Assigned to Kapnick, J.

VERIFIED
PETITION TO INTERVENE

For its petition pursuant to CPLR 401, 1012, and 1013 to intervene as respondents in this Article 77 proceeding, proposed intervenor-respondents Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd. and Triaxx Pime CDO 2007-1, Ltd. (together, the “Triaxx Respondents”) state and allege as follows:

1. On June 29, 2011, the Bank of New York Mellon (the “Trustee”), as trustee for 530 RMBS trusts containing mortgages sold and/or serviced by Countrywide Home Loans, Inc. and its affiliates (together, “Countrywide”), filed with this Court a petition (the “Proposed Settlement Petition”) seeking judicial instructions and approval of a proposed settlement with Countrywide and its parent, Bank of America Corporation (together with its affiliates “Bank of America”).

2. The terms of the proposed settlement include, *inter alia*, the payment of \$8.5 billion by Bank of America into the trusts in exchange for a release of all claims against Bank of America and Countrywide related to the 530 RMBS trusts (“Covered Trusts”), purportedly binding on all investors and other persons.

3. The Triaxx Respondents currently own notes in 26 of the Covered Trusts (listed in Exhibit A of the Proposed Settlement Petition), having an original unpaid principal balance of approximately \$2.2 billion. The Triaxx Respondents have potential claims against the Trustee, Countrywide and Bank of America based on breaches of representations and warranties, deficient loan servicing, and other unlawful actions.

4. Given losses suffered by the Triaxx Respondent in the Covered Trusts and the bar which would be imposed upon them under the terms of the proposed settlement submitted for this Court’s approval by the Trustee, the Triaxx Respondents have an interest in this Article 77 proceeding.

5. The proposed settlement was allegedly the product of a year-long negotiation between the Trustee, Countrywide and Bank of America, and 22 institutional investors (the “Institutional Investors”). The existence of these negotiations was not disclosed to the Triaxx Respondents until the Trustee’s public announcement on June 29, 2011.

6. The Triaxx Respondents seek to review all documents and communications exchanged between the Trustee and the Institutional Investors and to otherwise pursue discovery related to their potential claims before they are barred. For example, the negotiating parties are alleged to have exchanged documents and information “related to potential liabilities and defenses, and alleged damages” that have never been disclosed to investors in the Covered Trusts. See Settlement Agreement at 2 (Docket No. 3, June 29, 2011).

7. Moreover, the proposed settlement does not provide an opt-out mechanism, and therefore purportedly would force all investors to be bound, despite the informational asymmetries between the Institutional Investors and other investors in the Covered Trusts.

8. Although the Trustee has stated that it has made available “all of the expert reports submitted to the Trustee in connection with the Settlement,” *see* Trustee’s Response to Petitions to Intervene, at 1 (Docket No. 69), the Triaxx Respondents seek review of all underlying communications and data that were exchanged during the year-long negotiations which led to the creation of those reports so that the Triaxx Respondents can evaluate the proposed settlement for itself.

9. Moreover, the participants in the settlement negotiations may not adequately represent the interests of the Triaxx Respondents.

10. First, Countrywide and Bank of America are adverse to all potential claimants with respect to the proposed settlement and cannot, therefore, represent the Triaxx Respondents' interests.

11. Second, the Trustee has expressly recognized "that some Certificateholders may disagree with the Trustee's judgment that the Settlement is reasonable" and that "different groups of Certificateholders may wish to pursue remedies for alleged breaches in different ways, creating the potential for conflicts among Certificateholders." See Trustee's Petition, ¶¶ 13-14. The Trustee, therefore, also may not adequately represent the Triaxx Respondents' interests in this proceeding.

12. Third, the composition of the Institutional Investors' investments vary from those of the Triaxx Respondents. Therefore, the interests of the Institutional Investors in supporting the proposed settlement might not align with the interests of the Triaxx Respondents.

13. Fourth, the attorneys for the Institutional Investors seek receive \$85 million dollars under the proposed settlement agreement, in addition to their ongoing monthly fees and expenses that are also being paid by Bank of America as of June 28, 2011. See Settlement Agreement, Exh. F (Docket No. 3, June 29, 2011). This amount is disproportionate to the amount of work conducted, even considering the "dozens of face to face meetings" during the negotiation process. See Proposed Settlement Petition, ¶35 (Docket No. 1, June 29, 2011). Therefore, the proposed settlement creates a strong economic incentive for counsel to the Institutional Investors to recommend a premature

settlement and not extract a full recovery for all investors. Furthermore, as the Triaxx Respondents are paying for their own counsel, its interests are not aligned with that of the Institutional Investors which would receive payment of its legal fees from Bank of America as part of the settlement agreement.


14. In order to protect their interests as described above and in the accompanying Memorandum of Law, the Triaxx Respondents submit this Petition to Intervene so that they may participate in discovery to evaluate the proposed settlement and otherwise exercise their rights as a party in this proceeding.

RELIEF REQUESTED

15. Proposed intervenor-respondents, Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd. and Triaxx Prime CDO 2007-1, Ltd. respectfully request that the Court grant their petition to intervene in this Article 77 proceeding.

Dated: August 24, 2011
New York, New York

MILLER & WRUBEL P.C.


By: Joel M. Miller
John G. Moon
Claire L. Huene
Corban S. Rhodes
570 Lexington Avenue
New York, New York 10022
(212) 336-3500

*Attorneys for the Triaxx
Respondents*

VERIFICATION

I, John G. Moon, hereby affirm under the penalty of perjury that the following is true and correct:

1. I am a member of the bar of this Court and an attorney with Miller & Wrubel P.C., attorneys for the proposed intervenor-respondents, Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd. and Triaxx Prime CDO 2007-1, Ltd.

2. I have read the foregoing Verified Petition to Intervene and know the contents thereof. All statements of fact therein are true and correct to the best of my knowledge and belief.

3. I am making this affirmation in lieu of a verification by the proposed intervenor-respondents, pursuant to CPLR 3020(d), because the proposed intervenor-respondents are united in interest and pleading together and none of them is within New York County, where Miller & Wrubel P.C. maintains its offices.

Dated: August 24, 2011
New York, New York



John G. Moon

Exhibit B

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

Petitioners,

-against-

TRIAXX PRIME CDO 2006-1, LTD., TRIAXX PRIME CDO 2006-2, LTD. and TRIAXX PRIME CDO 2007-1, LTD.
 (Proposed Intervenor-Respondents),

Respondents.

Index No: 651786/2011

Assigned to Kapnick, J.

**AFFIRMATION OF
 JOHN G. MOON
 IN SUPPORT OF THE
 PETITION TO INTERVENE
 AND NOTICE OF INTENTION
 TO APPEAR AND OBJECT**

I, John G. Moon, hereby affirm under the penalty of perjury that the following is true and correct:

1. I am a member in good standing of the bar of this Court and an attorney with Miller & Wrubel P.C., counsel to proposed intervenor-respondents Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd., and Triaxx Prime CDO 2007-1, Ltd. (together, the “Triaxx Respondents”). I submit this affirmation in support of the Triaxx Respondents’ Verified Petition to Intervene in the above-captioned Article 77 proceeding, and Notice of Intent to Appear and Object.

2. The Bank of New York Mellon (the “Trustee”), as trustee for 530 residential mortgage-backed securities trusts, commenced this proceeding on June 29, 2011 seeking judicial instructions and approval of a proposed settlement with Countrywide Home Loans, Inc. (together with affiliates, “Countrywide”) and Bank of America Corporation (together with affiliates, “Bank of America”).


3. The proposed settlement provides for an \$8.5 billion payment by Bank of America into the trusts in exchange for a full release of all claims against Countrywide and Bank of America related to the 530 trusts with limited exceptions.

4. Together, the Triaxx Respondents currently own notes issued by 26 of the 530 trusts that would be subject to the proposed settlement, having an original unpaid principal balance of approximately \$2.2 billion.

5. The proposed settlement was the product of negotiations between the Trustee, Countrywide and Bank of America, and 22 institutional investors (the “Institutional Investors”). The Triaxx Respondents did not participate in those negotiations and were not aware of them until after the Trustee announced the proposed settlement on June 29, 2011.

6. The Triaxx Respondents have made no previous application for this relief.

Dated: August 24, 2011
New York, New York



John G. Moon, Esq.

Exhibit C

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

Petitioners,

-against-

TRIAXX PRIME CDO 2006-1, LTD., TRIAXX PRIME CDO 2006-2, LTD. and TRIAXX PRIME CDO 2007-1, LTD.
 (Proposed Intervenor-Respondents),

Respondents.

Index No: 651786/2011

Assigned to Kapnick, J.

**MEMORANDUM OF LAW
 IN SUPPORT OF
 NOTICE OF INTENTION TO
 APPEAR AND OBJECT AND
 PETITION TO INTERVENE**

Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd., and Triaxx Prime CDO 2007-1, Ltd. (together, the “Triaxx Respondents”) submit this Memorandum of Law in support of their Notice of Intention to Appear and Object and Petition to Intervene in the Article 77 proceeding instituted by the Bank of New York Mellon (the “Trustee”), as trustee for 530 residential mortgage-backed securities trusts (the “Covered Trusts”) containing mortgages sold and/or serviced by Countrywide Home Loans, Inc. and its affiliates (together, “Countrywide”), seeking judicial instructions and approval of a proposed settlement with Countrywide and its parent, Bank of America Corporation (together with its affiliates, “Bank of America”). The proposed settlement would bind all persons who may have claims against the Trustee, Countrywide and Bank of America with respect to the Covered Trusts, including the Triaxx Respondents.

The Triaxx Respondents should be permitted to intervene in this action, because: (1) the proposed settlement affects the property and claims for damages of the Triaxx Respondents; (2) the existing parties may not adequately represent the interests of the Triaxx Respondents; and (3) the proposed settlement and the claims of the Triaxx Respondents share common issues of law and fact. The Triaxx Respondents respectfully request that the Court enter an order pursuant to CPLR 401, 1012, and 1013 to permit the Triaxx Respondents to intervene as respondents in this proceeding, and to exercise their rights, including “the right to examine the trustee[] . . . as to any matter relating to [its] administration of the trust,” as provided by CPLR 7701. The Triaxx Respondents seek to review not just the finalized terms of the expert reports and other documents that have been disclosed, but also the data and communications that

led to the proposed settlement, prior to deciding whether or not to agree to the permanent bar of their claims.¹

Statement of Facts

Countrywide sold millions of loans to trusts. Those trusts in turn sold notes to a wide variety of investors, including the Triaxx Respondents, which purchased approximately \$2.2 billion of original notional value in 26 of the Covered Trusts. To assure investors that the loans it was selling were of good quality, Countrywide made representations and warranties concerning the character of the loans and the creditworthiness of the borrowers. In each of the relevant agreements governing the Covered Trusts, Countrywide agreed to repurchase loans from the trusts that did not comply with those representations and warranties. Additionally, Countrywide continued to service many of the loans after they had been securitized. In its capacity as servicer, Countrywide assumed obligations under the various pooling and servicing agreements.

On June 29, 2011, the Trustee disclosed that it had entered into a proposed settlement agreement with Countrywide and Bank of America to settle all potential claims belonging to the Covered Trusts. The proposed settlement was negotiated by 22 institutional investors (the “Institutional Investors”), but it would bind all persons with potential claims against Countrywide or Bank of America, with no opt-out provision. The Trustee filed this Article 77 proceeding on the same day, seeking judicial approval of the terms of the proposed settlement agreement.

¹ The Triaxx Respondents do not seek to obtain discovery ahead of the schedule set forth in this Court’s August 5, 2011 Order. The Triaxx Respondents reserve all their rights, however, to seek appropriate discovery during and after the meet and confer process described in that Order.

It has been widely reported in the news media, congressional hearings and regulatory and civil lawsuits that many of the loans that Countrywide sold to the trusts did not, in fact, comply with the representations and warranties that it made about them. Additionally, the Institutional Investors and others have alleged various “violations of prudent servicing obligations.” *See* Trustee’s Petition, ¶¶ 27-34 (Docket No. 1, June 29, 2011); Memorandum of Law in Support of Trustee’s Verified Petition, at 3-4 (Docket No. 12, June 29, 2011).

Many observers, including proposed intervenor Attorney General of the State of New York, estimate that “the proposed cash payment is far less than the massive losses investors have faced and will continue to face.” *See* Verified Pleading in Intervention (Docket No. 101-2). Indeed, the \$8.5 billion settlement amount represents only about 2% of the \$424 billion original principal balance of the Covered Trusts. Negotiations allegedly took place over the course of approximately one year. During this time, those parties exchanged documents and information which has never been disclosed to the other investors that are affected by the proposed settlement, including the Triaxx Respondents.

Argument

The Triaxx Respondents should be permitted to intervene in this Article 77 proceeding. CPLR 1012(a) permits a party to intervene in an action as of right if “the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment” or if “the representation of the person’s interest by the parties is or may be inadequate and the person is or may be bound by the judgment.” Additionally, CPLR 1013 permits a party to intervene with the permission of the Court if “the person’s claim or defense and the main action have a common question of law or fact.” Courts have consistently held that “[w]hether intervention is sought as a matter of right

under CPLR 1012(a), or as a matter of discretion under CPLR 1013, is of little practical significance since a timely motion for leave to intervene should be granted, in either event, where the intervenor has a real and substantial interest in the outcome of the proceedings.” Wells Fargo Bank, Natl. Assn. v McLean, 70 A.D.3d 676, 677 (2d Dep’t 2010); Bernstein v. Feiner, 842 N.Y.S. 2d 556, 558 (2d Dep’t 2007) (“As a general matter, intervention should be permitted where the intervenor has a real and substantial interest in the outcome of the proceedings.”); see also Teleprompter Manhattan CATV Corp. v. State Board of Equalization & Assessment, 34 A.D.2d 1033, 1033 (3d Dep’t 1970) (“Intervention should be liberally allowed.”).

The Triaxx Respondents qualify as intervenors under any of these three standards; therefore, the Court should grant their Petition to Intervene.

I.

THE ARTICLE 77 PROCEEDING WILL DIRECTLY AFFECT THE PROPERTY INTERESTS THAT THE TRIAXX RESPONDENTS POSSESS

CPLR 1012(a)(3) allows a party to intervene as of right where “the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment.” As holders of certificates having an original unpaid balance of \$2.2 billion in 26 of the Covered Trusts, the Triaxx Respondents may possess claims against the Trustee, Countrywide and/or Bank of America based on false representations and warranties, deficient loan servicing, and other unlawful actions. Although the Triaxx Respondents would share in the award of the proposed settlement, they would be forced to relinquish these claims, which are potentially worth far more than the small percentage of the \$8.5 billion settlement that they would receive. Indeed, this Court’s June

29, 2011 Order to Show Cause recognizes that certificate-holders, such as the Triaxx Respondents, are “Potentially Interested Persons” that may have an interest in these proceedings.² The Triaxx Respondents fall squarely within the class of persons whose property rights will be affected by the judgment in this action, and who are, therefore, permitted to intervene in this proceeding as of right under CPLR 1012(a)(3).

II.

THE TRIAXX RESPONDENTS’ INTERESTS MAY NOT BE ADEQUATELY REPRESENTED IN THIS PROCEEDING

In addition, the Triaxx Respondents may intervene as of right under CPLR 1012(a)(2) which provides for intervention where “the representation of the person’s interest by the parties is or may be inadequate and the person is or may be bound by the judgment.” The proposed intervenor need not show that the representation will be inadequate, merely that it may be so. See Matter of Romeo v. New York State Dept. of Educ., 2007 NY Slip Op 2840, at *2 (3d Dep’t 2007) (finding that appellant should have been permitted to intervene as of right where “[a]t the very least, the district’s interests ‘may’ not have been adequately represented.”).

The Trustee has expressly recognized “that some Certificateholders may disagree with the Trustee’s judgment that the Settlement is reasonable” and that “different groups of Certificateholders may wish to pursue remedies for alleged breaches in different ways, creating the potential for conflicts among Certificateholders.” See Trustee’s Petition, ¶¶ 13-14. The Triaxx Respondents’ holdings within the Covered Trusts are unique and differ from any of the 22 Institutional Investors that have already been granted intervenor status by the Court. See New

² “Potentially Interested Person” is defined in paragraph 4(a) of the Affirmation of Matthew D. Ingber, dated June 28, 2011, to include “holders of certificates or notes evidencing various categories of ownership interests in the Trusts.”

York State Public Employment Relations Board v. Board of Education, 46 A.D.2d 509, 513 (4th Dep't 1975) (“[W]here the interests of [plaintiff] and the [proposed intervenors’ members] are not identical, the [proposed intervenors’] full intervention is required to insure complete litigation of its interests in the judicial forum.”). Finally, there is no dispute that the proposed settlement order seeks to bind the Triaxx Respondents, satisfying the second prong under CPLR 1012(a)(2). The Triaxx Respondents are, therefore, entitled to participate in this proceeding pursuant to CPLR 1012(a)(2).

III.

ADDITIONALLY, THE TRIAXX RESPONDENTS QUALIFY FOR INTERVENTION UNDER CPLR 1013

In addition to meeting the standards for intervention as of right, the Triaxx Respondents should be permitted to intervene pursuant to the discretionary standard under CPLR 1013. The Court may permit intervention where “the person’s claim or defense and the main action have a common question of law or fact.” CPLR 1013. “In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.” McLean, 70 A.D.3d at 677 (reversing denial of intervention petition where proposed intervenor “demonstrated a real and substantial interest in . . . the outcome of the action”).

Here, the questions of law and fact raised by the Triaxx Respondents’ Petition to Intervene are identical to those already present in the action. The Triaxx Respondents seek to evaluate whether the terms of the proposed settlement are fair, which is the purpose of this Article 77 Proceeding. The intervention of the Triaxx Respondents will not unduly delay the action because the Triaxx Respondents seek the same access to information that many other

intervenors are already seeking and to which all Potentially Interested Persons are entitled before being bound by the global settlement proposal. Moreover, the participation of the Triaxx Respondents will not prejudice the substantial rights of any party since the Triaxx Respondents do not seek to exclude any other Potentially Interested Persons from fully representing their own interests. The Court, therefore, should grant the Triaxx Respondents' Petition to Intervene under its discretionary authority. See United Servs. Auto. Ass'n v. Graham, 21 A.D.2d 657, 657 (1st Dep't 1964) (“[I]n view of the broad language of [CPLR 1013] and the mandate for liberal construction, the application of [the proposed intervenor] to intervene should have been granted.”) (citation omitted).

Conclusion

For the foregoing reasons, the Triaxx Respondents respectfully request that the Court grant their Petition to Intervene in this Article 77 proceeding.

Dated: August 24, 2011
New York, New York

MILLER & WRUBEL P.C.



Joel M. Miller
John G. Moon
Claire L. Huene
Corban S. Rhodes
570 Lexington Avenue
New York, New York 10022
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Attorneys for Triaxx Respondents

Exhibit D

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

Petitioners,

-against-

TRIAXX PRIME CDO 2006-1, LTD., TRIAXX PRIME CDO 2006-2, LTD. and TRIAXX PRIME CDO 2007-1, LTD.
(Proposed Intervenor-Respondents),

Respondents.

Index No: 651786/2011

Assigned to Kapnick, J.

PROPOSED ORDER
GRANTING
PETITION TO INTERVENE

Proposed intervenor-respondents, Triaxx Prime CDO 2006-1, Ltd., Triaxx Prime CDO 2006-2, Ltd., and Triaxx Prime CDO 2007-1, Ltd. (together, the “Triaxx Respondents”), having duly petitioned by their attorneys for an order pursuant to CPLR 401, 1012, and 1013 permitting them to intervene as party respondents in this proceeding, directing that they be added as respondents, and granting such other and further relief as may be just, proper, and equitable, and the motion having regularly come to be heard,

NOW, upon reading and filing the Notice of Petition dated August 24, 2011, the Petition to Intervene and supporting Memorandum of Law, the supporting Affirmation of John G. Moon made on August 24, 2011, and after due deliberation having been held thereon, and it appearing that the Triaxx Respondents have the right to intervene and/or should be permitted to intervene in the above-captioned proceeding,

NOW, upon petition of proposed intervenor-respondents, it is hereby

ORDERED, that the petition to intervene is granted in all respects, and the Triaxx Respondents are permitted to intervene in the above-captioned proceeding as intervenor-respondents, and it is further

ORDERED, that the caption of this proceeding shall be formally amended after August 30, 2011, to add these intervenor-respondents and any additional intervenors that may be permitted to intervene by the Court.

ENTER,

Justice Barbara R. Kapnick
J.S.C.

Exhibit E

Corban S. Rhodes

From: NewYorkEF@courts.state.ny.us
Sent: Wednesday, August 24, 2011 3:40 PM
To: aromanelli@rplaw.com; jeremy.eicher@state.de.us; efile@scott-scott.com; jbulmer@rplaw.com; kpatrick@gibbsbruns.com; luis.lopez@dechert.com; sbishop@gibbsbruns.com; rleone@susmangodfrey.com; rajiashvili@susmangodfrey.com; mrollin@rplaw.com; tmyers@gibbsbruns.com; nycmanagingclerks@dechert.com; mauricio.espana@dechert.com; hector.gonzalez@dechert.com; shumphries@gibbsbruns.com; dgrais@graisellsworth.com; james.mcguire@dechert.com; robailey@bankofny.com; drscott@scott-scott.com; Corban S. Rhodes; aslaughter@scott-scott.com; thomas.carroll@ag.ny.gov; sfitzgerald@wmd-law.com; gregory.strong@state.de.us; megan.fazio@state.de.us; mtlatenchi@scott-scott.com; dreilly@rplaw.com; mschwartz@scott-scott.com; kwarner@warnerpartnerslaw.com; dle@murphyking.com; peter@pntlaw.com; cpurdy@rplaw.com; aatlas@graisellsworth.com; lwilson@graisellsworth.com; dwilcher@kellerrohrback.com; jbuchdahl@susmangodfrey.com; sviafore@graisellsworth.com; HYFong@RKMC.com; jguglielmo@scott-scott.com; kshih@gibbsbruns.com; rmadden@gibbsbruns.com; dpreminger@kellerrohrback.com; bkaswan@scott-scott.com; jrosen@graisellsworth.com; jmarsala@mayerbrown.com; ocyrulnik@graisellsworth.com; mingber@mayerbrown.com; olc@pobox.com
Subject: NYSCEF: New York Confirmation - NOTICE OF PETITION 651786/2011 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) - v. - for an Ord...



***New York County Supreme Court
Confirmation
08/24/2011***

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651786/2011

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Case Caption: 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) - v. - for an Order, pursuant to CPLR 7701, seeking judicial instructions and approval of a proposed settlement

Judge: Barbara Kapnick

Doc #	Document Type	Description	Motion #	Received date/time
156	NOTICE OF PETITION	Notice of Intention to Appear and Object and Notice of Petition to Intervene		08/24/2011 03:40 PM
157	AFFIRMATION	Affirmation of John G. Moon in support of the Petition to Intervene and Notice of Intention to Appear and Object		08/24/2011 03:40 PM
158	MEMORANDUM OF LAW IN SUPPORT	Memorandum of Law in support of Notice of Intention to Appear and Object and Petition to Intervene		08/24/2011 03:40 PM
159	PROPOSED ORDER	Proposed Order Granting Petition to Intervene		08/24/2011 03:40 PM

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