

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

-----X
 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. (proposed intervenor), Kore Advisors, L.P. (proposed intervenor), Maiden Lane, LLC (proposed intervenor), Maiden Lane II, LLC (proposed intervenor), Maiden Lane III, LLC (proposed intervenor), Metropolitan Life Insurance Company (proposed intervenor), Trust Company of the West and affiliated companies controlled by The TCW Group, Inc. (proposed intervenor), Neuberger Berman Europe Limited (proposed intervenor), Pacific Investment Management Company LLC (proposed intervenor), Goldman Sachs Asset Management, L.P. (proposed intervenor), Teachers Insurance and Annuity Association of America (proposed intervenor), Invesco Advisers, Inc. (proposed intervenor), Thrivent Financial for Lutherans (proposed intervenor), Landesbank Baden-Wuerttemberg (proposed intervenor), LBBW Asset Management (Ireland) plc, Dublin (proposed intervenor), ING Bank fsb (proposed intervenor), ING Capital LLC (proposed intervenor), ING Investment Management LLC (proposed intervenor), New York Life Investment Management LLC (proposed intervenor), Nationwide Mutual Insurance Company and its affiliated companies (proposed 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, Federal Home Loan Bank of Atlanta (proposed intervenor), Bayerische Landesbank (proposed intervenor), Prudential Investment Management, Inc. (proposed intervenor), Western Asset Management Company (proposed intervenor)

Index No. 651786/11

**NOTICE OF PETITION
 TO INTERVENE**

Assigned to:
 Kapnick, J.

Petitioner,

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

-----X

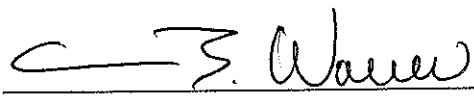
PLEASE TAKE NOTICE that upon the affidavit of Kathy D. Patrick, Esq. (the "Patrick affidavit"), sworn to June 29, 2011, the petition of the Trustee that commenced this proceeding and notice of petition, the instant petition filed herein and the accompanying memorandum of law, and all pleadings and proceedings heretofore had herein, the proposed intervenors, the "Institutional Investors" listed *infra*, will move this Court, by their undersigned attorneys, at the Motion Submission Part thereof, Room 130, located at 60 Centre Street, New York, New York

on July 7, 2007, at 9:30 a.m., or as soon thereafter as counsel may be heard, pursuant to CPLR 401, 1012 and 1013, for an Order permitting BlackRock Financial Management Inc., Kore Advisors, L.P., Maiden Lane, LLC, Maiden Lane II, LLC, Maiden Lane III, LLC, Metropolitan Life Insurance Company, Trust Company of the West and affiliated companies controlled by The TCW Group, Inc., Neuberger Berman Europe Limited, Pacific Investment Management Company LLC, Goldman Sachs Asset Management, L.P., Teachers Insurance and Annuity Association of America, Invesco Advisers, Inc., Thrivent Financial for Lutherans, Landesbank Baden-Wuerttemberg, LBBW Asset Management (Ireland) plc, Dublin, ING Bank fsb, ING Capital LLC, ING Investment Management LLC, New York Life Investment Management LLC, Nationwide Mutual Insurance Company and its affiliated companies, AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, and Western Reserve Life Assurance Co. of Ohio, Federal Home Loan Bank of Atlanta, Bayerische Landesbank, Prudential Investment Management, Inc., and Western Asset Management Company (each for themselves and, to the extent applicable, as investment manager of funds and accounts, and collectively, the "Institutional Investors") to intervene as petitioners in the above-captioned proceeding, directing that the Institutional Investors be added as petitioners, directing that the Trustee's petition and notice of petition in the above-captioned proceeding be amended by adding the Institutional Investors as intervenor petitioners, and granting such other and further relief as may be just, proper and equitable.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 403(b), answering papers, if any, must be served upon the undersigned no later than two (2) days prior to the return date of this motion.

Dated: New York, New York
June 29, 2011

WARNER PARTNERS, P.C.

By: 
Kenneth E. Warner
Lewis S. Fischbein

950 Third Avenue, 32nd Floor
New York, New York 10022
Phone: (212) 593-8000

Attorneys for Proposed Intervenors

OF COUNSEL:

GIBBS & BRUNS LLP (admission *pro hac*
vice pending)
Kathy D. Patrick
Robert J. Madden
Scott A. Humphries
Kate Kaufmann Shih (admitted to New
York bar)
1100 Louisiana, Suite 5300
Houston, Texas 77002
Phone: (713) 650-8805

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

-----X
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. (proposed intervenor), Kore Advisors, L.P. (proposed intervenor), Maiden Lane, LLC (proposed intervenor), Maiden Lane II, LLC (proposed intervenor), Maiden Lane III, LLC (proposed intervenor), Metropolitan Life Insurance Company (proposed intervenor), Trust Company of the West and affiliated companies controlled by The TCW Group, Inc. (proposed intervenor), Neuberger Berman Europe Limited (proposed intervenor), Pacific Investment Management Company LLC (proposed intervenor), Goldman Sachs Asset Management, L.P. (proposed intervenor), Teachers Insurance and Annuity Association of America (proposed intervenor), Invesco Advisers, Inc. (proposed intervenor), Thrivent Financial for Lutherans (proposed intervenor), Landesbank Baden-Wuerttemberg (proposed intervenor), LBBW Asset Management (Ireland) plc, Dublin (proposed intervenor), ING Bank fsb (proposed intervenor), ING Capital LLC (proposed intervenor), ING Investment Management LLC (proposed intervenor), New York Life Investment Management LLC (proposed intervenor), Nationwide Mutual Insurance Company and its affiliated companies (proposed 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, Federal Home Loan Bank of Atlanta (proposed intervenor), Bayerische Landesbank (proposed intervenor), Prudential Investment Management, Inc. (proposed intervenor), Western Asset Management Company (proposed intervenor)

Index No. 651786/11

**PETITION TO
INTERVENE**

Assigned to:
Kapnick, J.

Petitioner,

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

-----X
Proposed intervenors, by and through their attorneys, Warner Partners, P.C., submit this Petition to Intervene, pursuant to CPLR 401, 1012 and 1013, and respectfully allege as follows:

INTRODUCTION

1. This Petition in Intervention is filed by 22 institutional investors in, and investment managers for holders of, residential mortgage backed securities issued by affiliates of

Countrywide Home Loans, Inc. (the "CW RMBS") in order to support the settlement of repurchase, servicing and mortgage documentation claims (the "Settlement") that is the subject of the within action filed by The Bank of New York Mellon ("BNY Mellon" or "Trustee"). BNY Mellon acts as Trustee for 530 trusts (the "Covered Trusts") that issued such securities. The settlement was entered into by and among BNY Mellon, in its capacity as Trustee, Bank of America Corporation ("BAC") and BAC Home Loans Servicing, LP ("BAC HLS") (collectively, "Bank of America") and Countrywide Financial Corporation ("CFC") and Countrywide Home Loans, Inc. ("CHL") (collectively, "Countrywide").

2. The Institutional Investors are parties affected by the Trustee's action seeking approval of the Settlement. They and their clients are some of the nation's largest holders of CW RMBS issued by the Covered Trusts: in aggregate, they and their clients hold more than \$40 billion in unpaid principal balance of CW RMBS. The Settlement arose after Institutional Investors alleged breaches of representations and warranties in the Governing Agreements and breaches of the Master Servicer's prudent servicing obligations under the Governing Agreements. Specifically, the Institutional Investors alleged that: a) ineligible mortgage loans had been sold into the Covered Trusts' collateral pools in violation of the Mortgage Sellers'¹ contractual representations and warranties, b) the Covered Trusts' Mortgage Loans were not serviced prudently and their losses were being exacerbated as a result, and c) the Covered Trusts had not received all of the mortgage and title documents necessary to ensure they held the

¹ Unless otherwise indicated, capitalized terms have the meaning ascribed to them in: (i) the Pooling and Servicing Agreements (or Indentures of Trusts) that govern the rights and operations of the Covered Trusts, or (ii) the Settlement Agreement that is the subject of this proceeding.

appropriate security interests in the Mortgage Loans that secured the CW RMBS issued by the Covered Trusts.²

3. The Proposed Settlement will benefit the Covered Trusts immediately upon court approval and for many years to come. It includes a payment of \$8.5 billion to settle hotly disputed mortgage repurchase and mortgage servicing claims. The Settlement also includes a highly detailed mortgage servicing protocol that, when fully implemented, is expected to reduce loss severities in all of the Covered Trusts through four key innovations:

a) implementation of a required subservicing queue for specific categories of troubled loans, so those borrowers receive the “high touch” specialty servicing they need to help them return their loans to performing status;

b) a ground-breaking agreement by Bank of America to benchmark its servicing performance for the covered trusts against the stringent standards imposed by the FHFA United Timelines for servicing of mortgages guaranteed by the federal government;

c) a requirement that Bank of America *automatically* pay monthly compensation to each Covered Trust in any month where its servicing performance on a Covered Trust deviates from the agreed upon benchmark by a stated amount – without the need for that Trust to file and prevail on a lawsuit to enforce that right; and,

d) a requirement that Bank of America retain, at its sole expense, an external third party to review and attest to its servicing performance, with that attestation report to be made available to all Certificateholders.

4. In addition to the multi-billion dollar settlement payment and the servicing improvements, the settlement includes another key feature that will benefit both investors and

² The claims covered by this Settlement are exclusively those arising under the Governing Agreements and do not include individual investor claims arising under the securities or anti-fraud laws of the United States or of any state.

borrowers. If approved by the Court, the settlement will require Bank of America to identify and resolve key mortgage documentation and title policy exceptions for all un-liquidated loans in the Covered Trusts' collateral pools. If those exceptions cannot be resolved prior to the time a loan is liquidated, and the Covered Trusts are unable to foreclose as a first-lien holder as a result, then Bank of America will indemnify the Covered Trusts for the realized loss caused by the documentation defect. This requirement, in concert with requirements already imposed by the Office of the Comptroller of the Currency, will help to ensure that no mortgage is foreclosed wrongfully and that the Covered Trusts are compensated if they are not able to foreclose as first-lien holders.

5. As the Institutional Investors explain in greater detail below, consummating the settlement before the Court is in the clear interests of the Covered Trusts. That would be true even if the *only* benefit they received was the payment of \$8.5 billion to the Covered Trusts to resolve disputed repurchase claims. Many of the ground-breaking benefits of the settlement, however, may not have been achieved through private litigation at all. These otherwise unobtainable benefits include: Bank of America's *agreement* to conform to a set of objective, external servicing benchmarks; an *agreement* by Bank of America to implement servicing improvements; and *automatic* compensation payments to the Covered Trusts if servicing performance is deficient in the future (without the need to litigate and prove that deficiency). In addition, Bank of America has agreed to cure mortgage and title document exceptions, and to indemnify the Covered Trusts *automatically* if those exceptions cannot be cured and the Covered Trusts suffer a loss on liquidation as a result.

6. The Institutional Investors that are filing this Petition in Intervention are: BlackRock Financial Management Inc., Kore Advisors, L.P., Maiden Lane, LLC, Maiden Lane

II, LLC, Maiden Lane III, LLC, Metropolitan Life Insurance Company, Trust Company of the West and affiliated companies controlled by The TCW Group, Inc., Neuberger Berman Europe Limited, Pacific Investment Management Company LLC, Goldman Sachs Asset Management, L.P., Teachers Insurance and Annuity Association of America, Invesco Advisers, Inc., Thrivent Financial for Lutherans, Landesbank Baden-Wuerttemberg, LBBW Asset Management (Ireland) plc, Dublin, ING Bank fsb, ING Capital LLC, ING Investment Management LLC, New York Life Investment Management LLC, Nationwide Mutual Insurance Company and its affiliated companies, AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, and Western Reserve Life Assurance Co. of Ohio, Federal Home Loan Bank of Atlanta, Bayerische Landesbank, Prudential Investment Management, Inc., and Western Asset Management Company (each for themselves and, to the extent applicable, as investment manager of funds and accounts, and collectively, the "Institutional Investors"). Since November 2010, the Institutional Investors, through their counsel, have engaged in extensive, arms-length negotiations with Bank of America, Countrywide and the Trustee in an attempt to reach a settlement that would resolve these allegations. Those negotiations have now culminated in the proposed Settlement. The Institutional Investors, after careful consideration of the proposed Settlement, have concluded that it is fair, reasonable, and in the clear interest of the Covered Trusts.

7. For all of the reasons stated above, and those set out in detail below, the Institutional Investors who led the effort to achieve this extraordinary settlement are persons affected by the Trustee's Article 77 Proceeding. Pursuant to an Order to Show Cause that the Court has issued, the Court will direct the Trustee to provide to all investors, including the Institutional Investors, a Notice to all Potentially Interested Persons. The Institutional Investors qualify as Potentially Interested Persons as defined in that Notice. They therefore file this verified petition in intervention pursuant to CPLR 401, 1012, 1013 and 7701 to support the Trustee's request that the Court approve the settlement and the formula by which the settlement proceeds will be distributed. In support of their intervention, the Institutional Investors allege as follows:

PROCEDURAL BACKGROUND

8. On June 29, 2011, BNY Mellon, solely in its capacity as Trustee of the Covered Trusts, petitioned this Court pursuant to CPLR 7701 for judicial instructions and approval of a proposed settlement (the "Settlement") related to the Covered Trusts. The Covered Trusts are identified in Exhibit A to the Trustee's verified petition.

9. The Covered Trusts each resulted from residential mortgage-backed securitizations issued by affiliates of Countrywide between 2004 and 2008. BNY Mellon is the Trustee for each of the Covered Trusts. The Sellers in each of the Covered Trusts are any or all CHL, Park Granada LLC, Park Monaco, Inc., Park Sienna LLC, and Countrywide LFT LLC. The Master Servicer is BAC HLS, formerly known as Countrywide Home Loans Servicing, LP.

10. All but seventeen of the Covered Trusts are evidenced by separate contracts known as Pooling and Servicing Agreements ("PSAs"). The remainder are evidenced by Indentures and related Sale and Servicing Agreements ("SSAs"). The PSAs, Indentures and

SSAs are collectively referred to herein and in the Settlement Agreement as the "Governing Agreements."

11. The Settlement is memorialized in a Settlement Agreement dated June 29, 2011. The Settlement Agreement is attached as Exhibit B to the Trustee's CPLR 7701 petition. If approved by the Court, the Settlement would require Bank of America to pay \$8.5 billion into the Covered Trusts, allocated and distributed pursuant to the waterfall provisions in the relevant Governing Agreements, based upon a methodology that accounts for past and future losses associated with the Mortgage Loans in each Trust. It also requires BAC HLS to implement, among other things, a series of servicing protocols and improvements designed to more effectively service all performing and non-performing loans. The Settlement provides for a release by the Trustee of Countrywide's and Bank of America's alleged liability to the Covered Trusts for repurchase and servicing claims under the Governing Agreements. It does not release or compromise any individual investor's direct claims (such as claims for securities fraud) that do not seek to enforce the terms of the Governing Agreements.

12. Pursuant to the intervention provisions of CPLR 401, 1012 and 1013, the Institutional Investors now petition to intervene in support of the Settlement. The Institutional Investors, after careful consideration of the proposed Settlement, concluded that it is fair, reasonable and in the clear interests of the Covered Trusts. Accordingly, the Institutional Investors entered with Bank of America, Countrywide and the Trustee into a separate Institutional Investor Agreement, dated June 29, 2011, that memorializes the Institutional Investors' support of the Settlement.

14. The Institutional Investors evaluated this settlement not only for its benefits, but also against the alternative to settlement: lengthy, hotly contested, uncertain and expensive

litigation to compel Mortgage Sellers to repurchase ineligible loans, and the pursuit of separate servicing claims against BAC HLS for its failure as Master Servicer to service the Mortgage Loans prudently. While the Institutional Investors believe these claims had substantial merit and significant value to the Covered Trusts, the contracts on which those claims rest are extremely complex. The burdens of proof they impose, and the remedial provisions they contain, have not previously been tested in the courts. Tellingly, until the Institutional Investors organized themselves to pursue these claims, neither the Trustee nor any other investor group had succeeded in enforcing the Covered Trusts' rights under the Governing Agreements.

15. The Countrywide Sellers who are directly liable to repurchase ineligible Mortgage Loans also lack significant assets. In the absence of a successful claim that Bank of America was liable as the sellers' successor, any judgment obtained against the sellers would run the risk of being largely uncollectible.

16. Given all of these factors, the Institutional Investors believe the Settlement represents fair and reasonable compensation for the Covered Trusts' claims. It also removes the significant litigation, collection, expense and delay risks associated with pursuing the Covered Trusts' claims on a contested basis. The settlement proceeds will be distributed under the Governing Agreements, in accordance with the applicable payment waterfall, a distribution to which all investors agreed when they purchased the CW RMBS. Importantly, though the settlement will improve mortgage servicing under the Governing Agreements, nothing in the settlement alters or amends the terms of the Governing Agreements themselves. For all of these reasons, the settlement is fair to the Covered Trusts and should be approved swiftly, so the servicing benefits under the settlement may be implemented as quickly as possible.

RELIEF REQUESTED

WHEREFORE, the Institutional Investors respectfully request that this Court enter the proposed Final Order and Judgment attached as Exhibit F to the Trustee's petition.

Dated: New York, New York
June 29, 2011

WARNER PARTNERS, P.C.

By: 

Kenneth E. Warner
Lewis S. Fischbein

950 Third Avenue, 32nd Floor
New York, New York 10022
Phone: (212) 593-8000

Attorneys for Proposed Intervenors

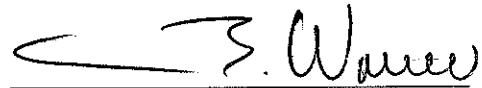
Of Counsel:

GIBBS & BRUNS LLP (admission *pro hac*
vice pending)
Kathy D. Patrick
Robert J. Madden
Scott A. Humphries
Kate Kaufmann Shih (admitted to New
York bar)
1100 Louisiana, Suite 5300
Houston, Texas 77002
Phone: (713) 650-8805

VERIFICATION

KENNETH E. WARNER, an attorney duly licensed to practice law in the State of New York, affirms under penalties of perjury and says:

I am a member of Warner Partners, P.C., attorneys of record for Proposed Intervenors. I have read the foregoing Verified Petition and know the contents thereof. All statements of fact therein are true and correct to the best of my knowledge and belief. I am making this affirmation in lieu of a Verification by Proposed Intervenors because all Proposed Intervenors are not within the County where Warner Partners, P.C. maintains its offices, to wit: New York County.



Kenneth E. Warner

Affirmed this 29th
day of June, 2011.