UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR GUARANTY BANK

Plaintiff,

-against-

THE BANK OF NEW YORK MELLON,

Defendant.

Index No. 15-cv-6560

COMPLAINT

DEMAND FOR JURY TRIAL

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Plaintiff Federal Deposit Insurance Corporation as Receiver for Guaranty Bank ("Plaintiff" or "FDIC-R"), by and through its attorneys, brings this action against Defendant The Bank of New York Mellon ("BNY Mellon", "Defendant", or the "Trustee"), and alleges as follows:

NATURE OF ACTION

1. This is an action for damages against BNY Mellon for its breaches of contractual and statutory duties under the governing agreements, the New York Streit Act, N.Y. Real Property Law § 124, *et seq.* (the "Streit Act"), and under the federal Trust Indenture Act of 1939 (the "TIA"), 15 U.S.C. § 77aaa, *et seq.*[1] as Trustee for 12 securitization trusts (the "Covered Trusts"), identified below, which issued residential mortgage-backed securities ("RMBS") purchased by investors, including Guaranty Bank ("Guaranty").

2. This action seeks to hold BNY Mellon accountable for abdicating its fundamental duties as the trustee to certificateholders such as Plaintiff. Under the agreements governing the Covered Trusts, BNY Mellon accepted virtually all of the powers designed to protect the certificateholders and was compensated for that role. BNY Mellon was essentially Plaintiff's sole source of protection against breaches of the governing agreements by the other parties to those agreements, including the sponsors that sold the loans to the Covered Trusts and the servicers tasked with servicing the mortgage loans. BNY Mellon, however, shirked its duty to exercise its powers to protect Plaintiff and instead attempted to shorn itself of the responsibilities that trusteeship imports. While BNY Mellon stood idly for years, the sponsors kept defective mortgage loans in the Covered Trusts, servicers reaped excessive fees for servicing the defaulted

[1] Plaintiff acknowledges that the United States Court of Appeals for the Second Circuit has held that the TIA does not apply to RMBS similar to the RMBS at issue here. Plaintiff includes a claim under the TIA to the extent there are any further developments in the law and for purposes of preserving any rights on appeal.

loans from the Covered Trusts, and Plaintiff was left to suffer enormous losses.

3. The Covered Trusts were created to facilitate RMBS transactions sold to investors from 2005 to 2006. Eight of the RMBS transactions were sponsored by Countrywide Home Loans, Inc. (the "Countrywide Trusts"), and four were sponsored by EMC Mortgage Corporation (the "EMC Trusts") (EMC Mortgage Corporation and Countrywide Home Loans, Inc., are referred to as "Countrywide" and "EMC" respectively, or collectively as the "Sponsors").

Trust	Short Title	Depositor	Sponsor
Alternative Loan Trust 2005-38	CWALT 2005-38	CWALT, Inc.	Countrywide Home Loans Inc.
Alternative Loan Trust 2005-41	CWALT 2005-41	CWALT, Inc.	Countrywide Home Loans Inc.
Alternative Loan Trust 2005-51	CWALT 2005-51	CWALT, Inc.	Countrywide Home Loans Inc.
Alternative Loan Trust 2005-58	CWALT 2005-58	CWALT, Inc.	Countrywide Home Loans Inc.
Alternative Loan Trust 2005-62	CWALT 2005-62	CWALT, Inc.	Countrywide Home Loans Inc.
Alternative Loan Trust 2005-76	CWALT 2005-76	CWALT, Inc.	Countrywide Home Loans Inc.
Alternative Loan Trust 2005-81	CWALT 2005-81	CWALT, Inc.	Countrywide Home Loans Inc.
Alternative Loan Trust 2006-OA2	CWALT 2006-OA2	CWALT, Inc.	Countrywide Home Loans Inc.
Structured Asset Mortgage Investments II Trust 2005-AR4	SAMI 2005-AR4	Structured Asset Mortgage Investments II Inc.	EMC Mortgage Corporation
Structured Asset Mortgage Investments II Trust 2005-AR7	SAMI 2005-AR7	Structured Asset Mortgage Investments II Inc.	EMC Mortgage Corporation
Structured Asset Mortgage Investments II Trust 2005-AR8	SAMI 2005-AR8	Structured Asset Mortgage Investments II Inc.	EMC Mortgage Corporation
Structured Asset Mortgage Investments II Trust 2006-AR3	SAMI 2006-AR3	Structured Asset Mortgage Investments II Inc.	EMC Mortgage Corporation

4. Prior to its failure, Guaranty purchased the RMBS certificates at issue in this

action with an original face value of $2,062,840,000 (the "Certificates") as set forth below:

Deal Name	CUSIP	Tranche	Purchase Date	Purchase Price
CWALT 2005-38	12667GZ22	A2	July 29, 2005	$204,000,000.00
CWALT 2005-41	12667GR96	2A1	July 29, 2005	$ 182,283,800.00
CWALT 2005-51	12668ACW3	3A1	Sept. 30, 2005	$ 204,000,000.00
CWALT 2005-58	12668AWK7	A3	Oct. 28, 2005	$ 190,445,000.00
CWALT 2005-62	12668ATP0	1A2	Oct. 31, 2005	$ 179,002,940.00
CWALT 2005-76	12668BDD2	1A2	Dec. 30, 2005	$ 178,937,500.00
CWALT 2005-81	12668BBR3	A4	Dec. 29, 2005	$ 205,000,000.00
CWALT 2006-OA2	126694V88	A7	April 8, 2006	$206,580,811.34
SAMI 2005-AR4	86359LMA4	A2	Dec. 30, 2005	$ 204,000,000.00
SAMI 2005-AR7	86359LQT9	5A2	July 29, 2005	$ 59,687,340.00
SAMI 2005-AR8	86359LSB6	A5	Nov. 30, 2005	$ 204,000,000.00
SAMI 2006-AR3	86360KAH1	12A4	April 28, 2006	$ 91,893,510.00

5. The Certificates represent interests in the cash flows associated with the mortgage loans deposited into the Covered Trusts by the Sponsors and their affiliates or business partners. The certificateholders are the beneficiaries of the Covered Trusts. The quality of the mortgage loans deposited into the Covered Trusts is critical, and numerous provisions of the governing agreements assure that only qualifying loans would be deposited into the Covered Trusts. Similarly, because the securities were to be "mortgage-backed," numerous other provisions seek to assure that complete documentation for each loan, including an original mortgage note and a properly assigned mortgage, would be delivered to BNY Mellon.

6. The certificateholders, however, did not receive any loan or mortgage files that they could check to make certain that their contractual rights were being protected. Rather, such investors were dependent upon their trustee representative, BNY Mellon, to protect their contractual and other legal rights.

7. As the Trustee for the Covered Trusts, BNY Mellon owed investors, like Plaintiff, certain contractual duties, as well as duties under the Streit Act and the TIA, with

respect to the mortgage loans owned by the Covered Trusts. Among these duties are those set forth in governing agreements, generally identified as pooling and servicing agreements ("PSAs"), which were incorporated by reference into the Certificates that BNY Mellon signed, and under applicable state and federal laws.

8. The Sponsors and BNY Mellon typically had extensive business relationships. For example, BNY Mellon was Countrywide's trustee of choice for over 530 RMBS trusts. Nevertheless, as trustee, BNY Mellon was obligated to act against the financial interest of the Sponsors when demanded by the circumstances. The contractual right to have the Sponsors or the parties who originated the mortgage loans (the "Originators") replace or repurchase defective mortgage loans and the duties of BNY Mellon to enforce such obligations and the other rights of investors in the Covered Trusts was a significant protection received by investors in the Covered Trusts. BNY Mellon, however, failed in its obligations and breached its contractual and statutory obligations to protect the rights of investors such as Plaintiff. As a result, Plaintiff has suffered material damages, which it seeks to recover in this action.

9. BNY Mellon breached its contractual and statutory duties in at least five different ways that caused Plaintiff to suffer damages.

10. First, to ensure that the rights, title, and interest in the mortgage loans were perfected and properly conveyed to BNY Mellon, the PSAs imposed on BNY Mellon a duty to ensure that key documents for the loans were included in the mortgage files and to create an exception report identifying incomplete mortgage loan files. BNY Mellon, however, systematically disregarded these contractual and statutory duties to enforce these rights on behalf of certificateholders. If BNY Mellon had met its contractual and statutory duties with

respect to the non-compliant loans whose defects were not cured during the limited cure period, the relevant Sponsor (or other obligated party) would have been required to substitute compliant loans for the loans with incomplete files, or repurchase the loans instead of having them remain in the Covered Trusts causing Plaintiff to incur significant losses.

11. Second, BNY Mellon had important notice obligations under the PSAs. Upon discovery of any breach of the mortgage loan representations and warranties that materially and adversely affects the interests of certificateholders, BNY Mellon was required to notify all the parties to the PSA of the breach, triggering the obligated party's duty to either cure the defect within the cure period or substitute or repurchase the loans. BNY Mellon failed to provide such notices. If adequate notice of such breaches had been provided, the obligated parties would have been required to cure the breaches or repurchase the mortgage loans that did not comply with the applicable underwriting guidelines, and that ultimately caused a significant portion of Plaintiff's losses. BNY Mellon knew, or should have known, of the representation and warranty breaches and, thus, breached its obligation to provide notice. Additionally, BNY Mellon was obligated to notify the mortgage loan servicers when the servicers breached the PSAs, triggering the servicers' obligation to cure the breach. BNY Mellon failed to do so. Finally, BNY Mellon failed to provide certificateholders notice, as required under the PSAs, of any Event of Default.

12. Third, upon occurrence of an Event of Default, as defined under the PSAs, BNY Mellon had a contractual and statutory duty to act prudently and exercise available remedies to protect the interests of certificateholders. Having notice of the servicers' numerous defaults and Events of Default under the PSAs and breaches of the mortgage loan

representations and warranties, BNY Mellon should have prudently exercised all available remedies to ensure that certificateholders were adequately compensated. If BNY Mellon had acted prudently, it would have issued repurchase demands years ago and, if necessary, commenced litigation forcing the Sponsors (or other obligated party) to repurchase defective loans or pay for losses.

13. Fourth, BNY Mellon had a duty to provide accurate certifications and remittance reports where required under the PSAs, which incorporate applicable federal law. BNY Mellon failed to do so, failing to disclose the existence of defaults and breaches to Plaintiff causing injury to Plaintiff.

14. Fifth, the PSAs required BNY Mellon to take steps to protect Plaintiff whenever it became aware of uncured loan servicing failures by the Covered Trusts' servicers. Countrywide Home Loans Servicing LP was the servicer for eleven of the Covered Trusts and EMC Mortgage Corporation was the servicer for two of the Covered Trusts (collectively, the "Servicers") and Countrywide Home Loans Servicing LP was the master servicer for eight of the Covered Trusts and Wells Fargo Bank, NA was the master servicer for two of the Covered Trusts (collectively, the "Master Servicers"). The Servicers were supposed to ensure the proper servicing and administration of the mortgage loans in the Covered Trusts for the benefit of the certificateholders. The PSAs required the Servicers (and their subservicers) to exercise customary and "prudent" loan servicing practices in servicing the mortgage loans. The Servicers failed to meet prudent servicing standards because, among other things, they regularly overcharged for various default services provided in connection with the mortgage loans and they failed to prudently perform loss mitigation procedures. The excessive fees ultimately were paid out of the Covered Trusts.

The Servicers for the Countrywide Trusts modified loans without requiring the Countrywide to repurchase them, as Countrywide was required to do under the PSAs. BNY Mellon failed to take steps to address these defaults, which damaged Plaintiff by increasing the loss severities for defaulted loans.

15. BNY Mellon's breaches of these duties give rise to three distinct legal claims.

16. Breach of Contract. BNY Mellon breached the PSAs by failing to: (i) provide notice of the mortgage loan representation and warranty violations; (ii) provide notice of the Servicers' failure to give notice of those same representation and warranty violations; (iii) cause the responsible parties to repurchase or substitute loans that were subject to a breach of representation or warranty or missing documentation required to be delivered under the PSAs; and (iv) exercise all rights and remedies available to the Trustee under the PSAs upon the occurrence of an Event of Default.

17. Violation of the Streit Act. BNY Mellon violated the Streit Act by failing to "use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs" to protect the rights of certificateholders during the pendency of an "event of default." The Streit Act applies to the extent a PSA is not "qualified" under the TIA.

18. Violation of the TIA. The TIA requires the trustee to provide certificateholders with notice of defaults under the operative indentures within 90 days of becoming aware of such defaults and to act prudently to protect the rights of certificateholders during the period in which the default remains uncured. BNY Mellon violated these provisions by failing to provide notice of defaults it was aware of and failing to act prudently to protect the certificateholders' interests by exercising all rights and

remedies available to it under the PSAs.

19. By failing to perform these duties, BNY Mellon has caused Plaintiff to suffer significant damages. Plaintiff incurred these damages both before and in March 2010 when it sold the Certificates as part of a resecuritization transaction, Structured Sale of Guaranteed Notes 2010-S1 ("SSGN 2010-S1"), and suffered significant losses caused by BNY Mellon's breaches of duties it owed Plaintiff.

PARTIES

20. Plaintiff, FDIC-R, is the receiver for Guaranty Bank, Austin, Texas. The Federal Deposit Insurance Corporation ("FDIC") is a corporation organized and existing under the laws of the United States of America. Under the Federal Deposit Insurance Act, the FDIC is authorized to be appointed as receiver for failed insured depository institutions. On August 21, 2009, Guaranty Bank was closed by the Office of Thrift Supervision and the FDIC was duly appointed as the receiver for Guaranty Bank. Under the Federal Deposit Insurance Act, the FDIC as receiver succeeds to, and is empowered to use and complain in any court of law to pursue, all claims held by any bank for which it is the receiver. 12 U.S.C. §§ 1819, 1821(d)(2)(A)(i). Thus, the FDIC as receiver for Guaranty Bank has authority to pursue claims formerly held by Guaranty Bank, including the claims made against the Defendant in this action.

21. Defendant BNY Mellon is a bank organized under the laws of the State of New York, with its principal place of business located at One Wall Street, New York, New York 10286. It serves as the trustee for the Covered Trusts. BNY Mellon is a wholly owned subsidiary of The Bank of New York Mellon Corporation.[2] For the Countrywide Trusts, BNY

[2] The Bank of New York signed the Certificates incorporating the PSAs, as Trustee. After a corporate merger in or about July 2007, The Bank of New York was re-named The Bank of New York Mellon. All references herein to BNY Mellon refer to The Bank of New York Mellon pre- and post-merger.

Mellon signed Certificates incorporating the PSAs. For the EMC Trusts, BNY Mellon succeeded JPMorgan Chase Bank, N.A. ("JPMorgan") as trustee after BNY Mellon acquired JPMorgan's trust business in or around October 2006. As the trustee for the Covered Trusts, BNY Mellon owed certificateholders certain statutory and contractual duties with respect to the mortgage loans owned by the Covered Trusts, which it violated.

JURISDICTION AND VENUE

22. This Court has subject matter jurisdiction over this action pursuant to 12 U.S.C. § 1811 *et seq.*, 12 U.S.C. § 1819 (b)(1) and (2), and 28 U.S.C. §§ 1331 and 1345. 12 U.S.C. § 1819(b)(2)(A) provides that all suits to which the FDIC, in any capacity, is a party shall be deemed to arise under the laws of the United States.

23. Venue is proper pursuant to 28 U.S.C. § 1391(b) as BNY Mellon resides and transacts business in this District and a substantial part of the events and omissions giving rise to the claims asserted herein occurred in this District.

24. This Court has personal jurisdiction over BNY Mellon because BNY Mellon is organized under the laws of New York and maintains its principal place of business in New York and a substantial part of the administration of the Covered Trusts, out of which the claims asserted herein arise, is performed in New York.

FACTUAL ALLEGATIONS

I. THE SECURITIZATION PROCESS

25. The process through which RMBS are created and sold is known as mortgage loan securitization. In broad terms, mortgage loans are acquired from mortgage originators and pooled together in a trust, which issues securities representing interests in the cash flow from principal and interest payments on the pool of loans after certain costs and fees are

deducted.

26. The first step in each securitization is generally the acquisition of mortgage loans by a sponsor (or "seller"), such as Countrywide and EMC, and the sale of a large pool of such loans by the sponsor to a depositor, typically a special-purpose affiliate of the sponsor.

27. The depositor then conveys the pool of loans to a trustee, such as BNY Mellon, pursuant to a PSA. Each securitization includes various prioritized "tranches" of interests in payments to be made by borrowers on the loans. The trust issues certificates representing those tranches; the certificates are sold to an underwriter; and the underwriter re-sells the certificates at a profit to investors. The sponsor (through its affiliated depositor) earns a profit on the excess of the proceeds of the sale of certificates to the underwriter over the cost of purchasing the mortgage loans. Here, BNY Mellon acted as the trustee in connection with the relevant RMBS transactions.

28. Pursuant to the PSA for each trust, a "servicer" is obligated to manage the collection of payments on the mortgage loans in return for a monthly fee. The servicer's duties include monitoring delinquent borrowers, foreclosing on defaulted loans, monitoring compliance with representations and warranties regarding loan origination, tracking mortgage documentation, and managing and selling foreclosed properties.

29. The trustee typically delivers monthly remittance reports to holders of certificates describing the performance of underlying loans and compliance with the PSA. For trusts created in 2006 and later, the contents of those reports are specified in the PSA and in Item 1121 of SEC Regulation AB. *See* 17 C.F.R. § 229.1121. The servicer provides data to the trustee to include in these remittance reports.

30. Each tranche in a loan securitization has a different level of risk and reward, and its own rating issued by a nationally recognized credit-rating agency such as Standard & Poor's or Moody's. The most senior tranches generally receive the highest ratings. Junior tranches receive lower ratings, but offer higher potential returns. Senior tranches are generally entitled to payment in full ahead of junior tranches, and shortfalls in principal and interest payments are generally allocated first to junior tranches. This division of cash flows and losses is referred to as the "waterfall."

31. Because the cash flow from payments made by mortgage borrowers on the underlying mortgage loans is the sole source of funds to pay holders of a mortgage-backed security, the credit quality of the security turns on the credit quality of, and the trust assets securing, the underlying loans, which often number in the thousands.

32. BNY Mellon earned various forms of compensation in connection with its role as trustee, including typically an annual fee based on the percentage of principal outstanding on the loans underlying the RMBS. The RMBS trustee engagements further deepened BNY Mellon's business relationships with the sponsors and underwriters of the RMBS, leading to more lucrative future engagements. For example, in BNY Mellon's 2006 Annual Report, it stated: "We provide Countrywide a one-stop service from the initial funding of mortgage loans through to their eventual securitization, where we act as trustee on over $300 billion of securitized product. As Countrywide has grown in both sophistication and global reach, our relationship has expanded accordingly, and now includes securities clearing and tri-party repo collateral management for both Countrywide and its broker-dealer, Countrywide Securities."

II. BNY MELLON'S DUTIES AND OBLIGATIONS

33. BNY Mellon's duties and obligations as the trustee for the Covered Trusts are spelled out in the PSAs. These agreements govern the parties' respective rights and responsibilities in connection with the Covered Trusts. BNY Mellon (or JPMorgan for the Covered Trusts in which BNY Mellon succeeded JPMorgan as trustee) entered into the PSAs with the following parties:

> (A) For the eight Countrywide Trusts: (i) various special purpose vehicles established by Countrywide, as Depositors; (ii) Countrywide Home Loans, Inc. and certain of its affiliates, as Sponsors or Sellers; and (iii) Countrywide Home Loan Servicing LP, as Master Servicers;
>
> (B) For the four EMC Trusts: (i) Structured Asset Mortgage Investments II Inc., as Depositors; (ii) Wells Fargo Bank, N.A., as Master Servicers and Securities Administrators; and (iii) EMC Mortgage Corporation, as Sponsors.

A. BNY Mellon's Duties Pertaining to the Delivery of Mortgage Files

34. The PSAs sets forth a process for conveying the mortgage loans to the Covered Trusts. Typically, the Sponsor conveyed the loans to the depositor for the Covered Trusts. Then the depositor conveyed the mortgage loans to BNY Mellon in its capacity as the trustee for the Covered Trusts to hold for the benefit of the certificateholders. This process is set forth in Section 2.01 of the Countrywide PSA, which provides in relevant part:[3]

> (a) Each Seller, concurrently with the execution and delivery of this Agreement, hereby sells, transfers, assigns, sets over and otherwise conveys to the Depositor, without recourse, all its respective right, title and interest in and to the related Mortgage Loans, including all interest and principal received or receivable by such Seller, on or with respect to the applicable Mortgage

[3] Quotations to the Countrywide PSA herein are to the PSA executed in connection with the CWALT 2005-38 securitization. The other seven Countrywide Trusts in this action were issued pursuant to PSAs with substantially similar language and any differences are immaterial to the issues addressed in this Complaint.

> Loans after the Cut-off Date . . . On or prior to the Closing Date, Countrywide shall deliver to the Depositor or, at the Depositor's direction, to the Trustee or other designee of the Depositor, the Mortgage File for each Mortgage Loan listed in the Mortgage Loan Schedule . . .
>
> (b) Immediately upon the conveyance of the Mortgage Loans referred to in clause (a), the Depositor sells, transfers, assigns, sets over and otherwise conveys to the Trustee for the benefit of the Certificateholders, without recourse, all the right, title and interest of the Depositor in and to the Trust Fund together with the Depositor's right to require each Seller to cure any breach of a representation or warranty made in this Agreement by such Seller or to repurchase or substitute for any affected Mortgage Loan in accordance herewith.

Sections 2.01(a) and 2.03(a) of the EMC PSA similarly provide:[4]

> The Depositor, concurrently with the execution and delivery of this Agreement, sells, transfers and assigns to the Trust without recourse all its right, title and interest in and to (i) the Mortgage Loans identified in the Mortgage Loan Schedule, and the related Mortgage Notes, mortgages and other related documents, including all interest and principal due with respect to the Mortgage Loans after the Cut-off Date, but excluding any payments of principal and interest due on or prior to the Cut-off Date with respect to the Mortgage Loans.
>
> The Depositor hereby assigns to the Trustee, on behalf of the Certificateholders, all of its right, title and interest in the Mortgage Loan Purchase Agreement, including but not limited to the Depositor's rights and obligations pursuant to the Countrywide Servicing Agreement . . . .

35. In addition, Section 2.02 of the Countrywide PSA provides that BNY Mellon is required to take physical possession of the mortgage loans and the accompanying mortgage files for the exclusive use and benefit of all current and future certificateholders:

> (a) The Trustee acknowledges receipt of the documents identified in the Initial Certification in the form annexed hereto as Exhibit F (an "Initial Certification") and declares that it holds and will hold such documents and the other documents delivered

[4] Quotations to the EMC PSA herein are to the PSA executed in connection with the SAMI 2005-AR4 securitization. The other three EMC Trusts in this action were issued pursuant to PSAs with substantially similar language and any differences are immaterial to the issues addressed in this Complaint.

> to it constituting the Mortgage Files, and that it holds or will hold such other assets as are included in the Trust Fund, in trust for the exclusive use and benefit of all present and future Certificateholders. The Trustee acknowledges that it will maintain possession of the Mortgage Notes in the State of California, unless otherwise permitted by the Rating Agencies.

Section 2.02 of the EMC PSA likewise provides:

> The Trustee acknowledges the sale, transfer and assignment of the Trust Fund to it by the Depositor and receipt of, subject to further review and the exceptions which may be noted pursuant to the procedures described below, and declares that it holds, the documents (or certified copies thereof) delivered to it pursuant to Section 2.01, and declares that it will continue to hold those documents and any amendments, replacements or supplements thereto and all other assets of the Trust Fund delivered to it as Trustee in trust for the use and benefit of all present and future Holders of the Certificates.

36. Section 2.01(c) of the Countrywide PSA and 2.01(b) of the EMC PSA also specifically set forth the operative documents that must be contained in the mortgage file for the mortgage loans, including, but not limited to, the original mortgage note, the original recorded mortgage or certified copy thereof, a duly executed assignment of the mortgage together with any interim assignments of the mortgage, and the lender's title policy.

37. Physical possession of these documents by BNY Mellon was necessary to transfer the ownership rights to the mortgage loans from the Sponsors and depositors to the Covered Trusts.

38. After a designated period, BNY Mellon, or a document custodian as agent for BNY Mellon, was required to issue a final certification and attached document exception report. The final certification and document exception report are the two key certifications that BNY Mellon was required to prepare for the Covered Trusts. In these documents BNY Mellon certified that: (i) there was full and complete loan documentation in accordance with

the requirements of the PSAs for those loans specifically identified on the mortgage loan schedule; and (ii) BNY Mellon had not obtained complete required documentation for those loans identified on the document exception report. *See* Countrywide PSA § 2.02(a); EMC PSA § 2.02(b). The form of the final certification was attached to the Countrywide PSA as Exhibit H-1 and the EMC Custodial Agreement as Exhibit 3.

39. If there was a defect with any mortgage file, then BNY Mellon was obligated to demand that the Sponsor cure the defect leading to the exception within 90 days or repurchase or substitute the defective loans. This is set forth in Section 2.02(a) of the Countrywide PSA, which provides:

> ***If, in the course of such review, the Trustee finds any document constituting a part of a Mortgage File that does not meet the requirements of Section 2.01, the Trustee shall list such as an exception in the Final Certification***; provided, however that the Trustee shall not make any determination as to whether (i) any endorsement is sufficient to transfer all right, title and interest of the party so endorsing, as noteholder or assignee thereof, in and to that Mortgage Note or (ii) any assignment is in recordable form or is sufficient to effect the assignment of and transfer to the assignee thereof under the mortgage to which the assignment relates. ***Countrywide . . . shall promptly correct or cure such defect within 90 days from the date it was so notified of such defect and, if Countrywide does not correct or cure such defect within such period, Countrywide . . . shall either (a) substitute for the related Mortgage Loan a Substitute Mortgage Loan, which substitution shall be accomplished in the manner and subject to the conditions set forth in Section 2.03, or (b) purchase such Mortgage Loan from the Trustee within 90 days from the date Countrywide . . . was notified of such defect in writing at the Purchase Price of such Mortgage Loan; provided, however, that in no event shall such substitution or purchase occur more than 540 days from the Closing Date***. . . .

(Emphasis added.)

40. Section 2.02(b) of the EMC PSA provides the trustee has an affirmative obligation to seek repurchase or substitution of loans with uncured document exceptions:

> In accordance with the Mortgage Loan Purchase Agreement, the Seller shall correct or cure any such defect or EMC shall deliver to the Trustee an Opinion of Counsel to the effect that such defect does not materially or adversely affect the interests of Certificateholders in such Mortgage Loan within 90 days from the date of notice from the Trustee of the defect and if the Seller is unable to cure such defect within such period***, and if such defect materially and adversely affects the interests of the Certificateholders in the related Mortgage Loan, then the Trustee shall enforce the Seller's obligation under the Mortgage Loan Purchase Agreement to, within 90 days from the Trustee's or Custodian's notification, provide a Substitute Mortgage Loan (if within two years of the Closing Date) or purchase such Mortgage Loan at the Repurchase Price***. . . .

(Emphasis added.)

41. Although JPMorgan, as initial trustee, provided the final certifications and exception reports for the EMC Trusts, BNY Mellon, as successor trustee, was required to obtain those reports when it succeeded JPMorgan. Section 9.09 of the EMC PSA provides that JPMorgan was required to deliver to any successor trustee all of JPMorgan's records and certifications concerning the administration of the EMC Trusts. As successor trustee, BNY Mellon had a duty to obtain and apprise itself of the contents of the exception reports and enforce the repurchase or substitution provisions.

B. BNY Mellon Had a Duty to Provide Notice of Defaults and Enforce Repurchase Obligations Triggered by Such Notice

42. As a party to the PSAs, BNY Mellon had an obligation pursuant to the PSAs to provide notice to all parties of other parties' breaches of representations and warranties under the PSAs. For example, Section 2.03(c) of the Countrywide PSA provides:

> ***Upon discovery by any of the parties hereto of a breach of a representation or warranty with respect to a Mortgage Loan made pursuant to Section 2.03(a) that materially and adversely affects the interests of the Certificateholders in that Mortgage Loan, the party discovering such breach shall give prompt notice thereof to the other parties.*** Each Seller hereby covenants that within 90 days

> of the earlier of its discovery or its receipt of written notice from any party of a breach of any representation or warranty with respect to a Mortgage Loan sold by it pursuant to Section 2.03(a) that materially and adversely affects the interests of the Certificateholders in that Mortgage Loan, it shall cure such breach in all material respects, and if such breach is not so cured, shall, (i) if such 90-day period expires prior to the second anniversary of the Closing Date, remove such Mortgage Loan (a "Deleted Mortgage Loan") from the Trust Fund and substitute in its place a Substitute Mortgage Loan, in the manner and subject to the conditions set forth in this Section; or (ii) repurchase the affected Mortgage Loan or Mortgage Loans from the Trustee at the Purchase Price in the manner set forth below . . . .

(Emphasis added.) Sections 2.02(b) and 2.03(b) of the EMC PSA contain substantially similar provisions:

> If the Trustee or the Custodian, as its agent, finds any document constituting part of the Mortgage File has not been received, or to be unrelated, determined on the basis of the Mortgagor name, original principal balance and loan number, to the Mortgage Loans identified on Exhibit B or to appear defective on its face, the Trustee or the Custodian, as its agent, shall promptly notify the Seller (provided, however, that with respect to those documents described in subsection (b)(iv), (b)(v) and (b)(vii) of Section 2.01, the Trustee's and the Custodian's obligations shall extend only to the documents actually delivered to the Trustee or Custodian pursuant to such subsections). . .
>
> If the Depositor, the Securities Administrator or the Trustee discovers a breach of any of the representations and warranties set forth in the Mortgage Loan Purchase Agreement, which breach materially and adversely affects the value of the interests of Certificateholders or the Trustee in the related Mortgage Loan, the party discovering the breach shall give prompt written notice of the breach to the other parties. . . .

43. The PSAs require that BNY Mellon provide notice to the Master Servicers of breaches of representations and warranties or covenants made by the Master Servicers. Section 7.01(ii) of the Countrywide PSA provides that most breaches by the Master Servicers ripen into an Event of Default if left unremedied for sixty days after "written notice of such failure shall have been given to the Master Servicer by the Trustee."

Likewise, Section 8.01 of the EMC PSA provides that most breaches by the Master Servicers ripen into an Event of Default if left uncured for sixty days "after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the Master Servicer by the Trustee." These provisions clearly contemplate that BNY Mellon "shall" provide notice of Master Servicers breaches upon becoming aware of such breaches, which makes sense as the Trustee was the party required to police the deal for investors.

44. Under Section 7.03 of the Countrywide PSA, "[w]ithin 60 days after the occurrence of any Event of Default, the Trustee shall transmit by mail to all Certificateholders notice of each such Event of Default hereunder known to the Trustee." Similarly, under Section 8.04 of the EMC PSA, "the Trustee shall transmit by mail to all Certificateholders, within 60 days after the occurrence of any Event of Default known to the Trustee."

45. Additionally, Congress enacted the TIA to ensure, among other things, that investors in certificates, bonds, and similar instruments, have adequate rights against, and receive adequate performance from, the responsible trustees. 15 U.S.C. § 77bbb.

46. Under Section 315(b) of the TIA, BNY Mellon was required to give certificateholders notice of a default under the PSAs within ninety days of learning of such default. 15 U.S.C. § 77ooo(b).

47. As set forth in Section III below, BNY Mellon failed to give notice of numerous defaults and breaches of representations and warranties or covenants as required under the PSAs, common law, and the TIA.

C. BNY Mellon Had a Duty to Act Prudently to Enforce Repurchase Obligations

48. Under the PSAs, the Streit Act, and the TIA, BNY Mellon owed a duty to certificateholders upon the occurrence of an Event of Default. BNY Mellon's post-default

contractual duty is described in Section 8.01 of the Countrywide PSA, which provides in relevant part, "[i]n case an Event of Default has occurred . . . the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs." Section 9.01 of the EMC PSA similarly provides: "If an Event of Default has occurred and has not been cured or waived, the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and subject to Section 8.02(b) use the same degree of care and skill in their exercise, as a prudent person would exercise under the circumstances in the conduct of his own affairs."

49. The Streit Act provides that upon the occurrence of an "Event of Default," as that term is defined in the trust indenture, an indenture trustee must exercise such of the rights and powers vested in it by the indenture, and must use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. The Streit Act also requires trustees to avoid conflicts of interest.[5]

50. A prudent trustee would have taken appropriate steps to ensure all mortgage loan documentation was completely and accurately transferred to the trusts. A prudent trustee also would have ensured that the appropriate parties were receiving notification of breaches of representations and warranties from Servicers and Master Servicers and enforced the responsible parties' obligations with respect to breaching mortgage loans. As set forth in Section III below, BNY Mellon failed to exercise its duties both prior to and after the occurrence of defaults

[5] In addition, Section 315(c) of the TIA provides that upon the occurrence of a "default" the indenture trustee must exercise such of the rights and powers vested in it by the indenture, and must use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. 15 U.S.C. § 77ooo(c).

and Events of Default.

D. BNY Mellon Had a Duty to Provide Accurate Remittance Reports and Certifications under Regulation AB

51. Each Countrywide PSA requires BNY Mellon to forward to the rating agencies and to make available to certificateholders monthly remittance reports describing the performance of underlying loans. Section 4.06 of the Countrywide PSA provides that "[c]oncurrently with each distribution on a Distribution Date, the Trustee will forward by electronic delivery to each Rating Agency and make available to Certificateholders on the Trustee's website . . . a statement generally setting forth the following information."[6]

52. Under item 1121 of SEC Regulation AB, which is applicable to the Covered Trusts issued in 2006, such reports must disclose "[m]aterial breaches of pool asset representations or warranties or transaction covenants." *See* 17 C.F.R. § 229.1121(a)(12).

53. Regulation AB requires all parties involved in servicing to certify on a Form 10-K filed a year after each RMBS transaction that: (i) "[p]olicies and procedures are instituted to monitor any performance or other triggers and events of default in accordance with the transaction agreements"; (ii) trust assets securing the loans held by the Covered Trust had been maintained as required by the relevant transaction agreements, pool assets and related documents were safeguarded; and (iii) the remittance reports provided to investors complied with SEC rules. *See* 17 C.F.R § 229.1122(d)(1)(i), (3)(i)(C), (4)(i) and (ii).[7] The Servicers made a similar certification annually that covers all trusts that they

[6] The Securities Administrator delivers the monthly remittance reports under the EMC PSA.

[7] BNYM has certain obligations in connection with servicing the loans under the PSAs. For example, BNYM is required to execute and deliver court documents, including court pleadings, necessary to carry out servicing activities such as the foreclosure or sale of mortgaged property. Countrywide PSA § 3.01; EMC PSA § 3.01, 3.05.

service or administer. *See* 17 C.F.R § 229.1123. For example, BNY Mellon issued a certification attached to the 2006 Form 10-K for the CWALT 2006-0A2 Trust asserting compliance with applicable servicing criteria specified in Item 1122(d) of Regulation AB on an entire "platform level."

54. Additionally, Section 3.16 of the Countrywide PSA and Section 3.16 of the EMC PSA require the Master Servicers to deliver to BNY Mellon an annual statement indicating whether each of the Master Servicers has complied with all of its obligations under the PSA, or, if not, specifying any defaults.

55. As set forth in Section III(D), BNY Mellon breached its contractual duties by failing to provide accurate certifications, which for the Covered Trusts issued in 2006 required compliance with Regulation AB, and by failing to provide notice of false certifications provided by the Servicers.

E. BNY Mellon Had a Duty to Address the Servicers' Failure to Meet Prudent Servicing Standards

56. Each PSA requires the Servicers to service the loans underlying the Covered Trusts prudently.

57. Section 3.01 of the Countrywide PSA provides: "For and on behalf of the Certificateholders, the Master Servicer shall service and administer the Mortgage Loans in accordance with the terms of this Agreement and customary and usual standards of practice of prudent mortgage loan servicers." Section 3.01 further provides: "[T]he Master Servicer shall not take any action that is inconsistent with or prejudices the interests of the Trust Fund or the Certificateholders in any Mortgage Loan or the rights and interests of the Depositor, the Trustee and the Certificateholders under this Agreement." Likewise, Section 3.01 of the EMC PSA requires the Servicers "to service and administer the Mortgage Loans in

accordance with the terms of the Countrywide Servicing Agreement."

58. The PSAs for the Covered Trusts provide that failure to meet prudent servicing standards is an Event of Default if left uncured for 60 days after notice of the default. *See* Countrywide PSA § 7.01(ii); EMC PSA § 8.01(ii).

59. Further, for the Countrywide Trusts, if the default relates to a failure to deliver mortgage files to the Covered Trust, the Event of Default is triggered immediately upon service of the exception report that identifies the document delivery failure.

60. For example, Section 7.01 of the Countrywide PSA provides that an Event of Default is triggered by:

> any failure by the Master Servicer to observe or perform in any material respect any other of the covenants or agreements on the part of the Master Servicer contained in this Agreement . . . which failure materially affects the rights of Certificateholders, that failure continues unremedied for a period of 60 days after the date on which written notice of such failure shall have been given to the Master Servicer by the Trustee or the Depositor, or to the Master Servicer and the Trustee by the Holders of Certificates evidencing not less than 25% of the Voting Rights evidenced by the Certificates; provided, however, that the sixty day cure period shall not apply ***to the initial delivery of the Mortgage File for Delay Delivery Mortgage Loans nor the failure to substitute or repurchase in lieu of delivery.***

(Emphasis added.)

61. Upon a servicer default or Event of Default, the Trustee was obligated to act. As discussed above in Section II(B), BNY Mellon had a duty to provide notice when it became aware of breaches of the PSAs by the Servicers or the Master Servicers. If the defaults were not cured within the grace period after notice, the Trustee was required to take action to address the defaults. Further, the Trustee cannot avoid its duties after the grace period because it failed to give the required notice of defaults. For example, the

Countrywide PSA provides that once an Event of Default occurred, the Trustee had the authority and obligation to "terminate all of the rights and obligations of the Master Servicer," Countrywide PSA § 7.01, and "assume all of the rights and obligations of the Master Servicer." Countrywide PSA § 3.04. Sections 8.01 and 8.02(a) of the EMC PSA likewise enable the Trustee to terminate the Master Servicers after the occurrence of uncured Events of Default with respect to the Master Servicers and provide for the Trustee to become successor to the Master Servicers. More generally, BNY Mellon, as trustee, had a duty to exercise all rights available under the PSAs to protect certificateholders' interests and do so prudently.

62. As set forth in Section III below, BNY Mellon breached contractual and statutory duties by failing to take actions to address servicer defaults and Events of Default.

III. BNY MELLON BREACHED ITS CONTRACTUAL AND STATUTORY DUTIES

A. BNY Mellon Failed to Take Possession of Complete Mortgage Files

63. BNY Mellon breached its contractual duties under the PSAs by failing to cause Countrywide or EMC to repurchase or substitute for loans that, based on information and belief, were listed on final exception reports with defects, but were not cured within the required period.

64. BNY Mellon's failure was not a mere technicality, as explained by Georgetown Law School Professor Adam Levitin in his testimony before the House Financial Services Committee in November 2010. Professor Levitin described the implications of the failure by a securitization trustee such as BNY Mellon to take physical possession of the key documents in the loan file:

> If mortgages were not properly transferred in the securitization

> process, then mortgage-backed securities would in fact not be backed by any mortgages whatsoever. The chain of title concerns stem from transactions that make assumptions about the resolution of unsettled law. If those legal issues are resolved differently, then there would be a failure of the transfer of mortgages into securitization trusts.
>
> * * *
>
> Recently, arguments have been raised in foreclosure litigation about whether the notes and mortgages were in fact properly transferred to the securitization trusts. This is a critical issue because the trust has standing to foreclose if, and only if, it is the mortgagee. If the notes and mortgages were not transferred to the trust, then the trust lacks standing to foreclose.
>
> * * *
>
> If the notes and mortgages were not properly transferred to the trusts, then the mortgage-backed securities that the investors purchased were in fact non-mortgage-backed securities. In such a case, investors would have a claim for the rescission of the MBS, meaning that the securitization would be unwound, with investors receiving back their original payments at par (possibly with interest at the judgment rate). Rescission would mean that the securitization sponsor would have the notes and mortgages on its books, meaning that the losses on the loans would be the securitization sponsor's, not the MBS investors.

Problems in Mortgage Servicing from Modification to Foreclosure: Before S. Comm. on Banking, Housing, and Urban Affairs (2010) (statement of Adam Levitin, Associate Professor of Law, Georgetown University Law Center).

65. It would have been obvious to a reasonably competent trustee performing its contractual duties with due care that, for example, the original mortgage note was missing from the loan file, or there was a missing link in the chain of endorsements from the mortgage loan originator to BNY Mellon, or there was no duly executed assignment of the mortgage to BNY Mellon, or the original lender's title policy was missing. In many cases, BNY Mellon likely identified these obvious defects and noted them on the final exception reports for the Covered Trusts, but it did not require that they be corrected because, as set

forth below, evidence would be revealed years later that many thousands of documentation exceptions were never cured.[8]

66. On the same basis, BNY Mellon knew or should have known of numerous instances where it did not receive the original mortgage note with all intervening endorsements that showed a complete chain of endorsement from the Originator to the Sponsor or depositor or a lost mortgage note affidavit, as well as a duly executed assignment of mortgage for each loan that was not a MERS loan, the original recorded mortgage for each loan that was not a MERS loan, the original mortgage for those loans that were MERS loans, or the original recorded assignment or assignment of the mortgage together with all interim recorded assignments and the original lender's title policy. When those defects were left uncured after the expiration of the contractual cure period, a prudent trustee would have, at a minimum, sought repurchase of all defaulted loans with incomplete mortgage files.

67. BNY Mellon has admitted publicly that it was aware of Countrywide's pervasive failure to deliver complete mortgage files to Countrywide sponsored RMBS trusts, including the Covered Trusts. Phillip R. Burnaman II, an expert retained by BNY Mellon in a proceeding it commenced under New York C.P.L.R. Article 77 to approve a settlement with Countrywide (the "BNY Mellon Article 77 Proceeding"), issued an expert report revealing that BNY Mellon's exception reports for Countrywide securitizations (including numerous Covered Trusts) as of June 2011 showed **117,899** loans lacking complete documentation at that time. Burnaman Expert Report at 50, *In re Bank of N.Y. Mellon*, No. 651786/2011 (N.Y. Sup. Ct. Mar. 14, 2013) (emphasis added).

68. The head of Global Document Custody Operations at BNY Mellon likewise

[8] To the extent BNY Mellon failed to properly list required documentation exceptions on the final exception reports, that failure would be an additional breach of its duties under the PSAs.

testified in the BNY Mellon Article 77 Proceeding concerning internal BNY Mellon records corroborating this large magnitude of documentation exceptions that were still uncured.

69. Additionally, BNY Mellon commenced foreclosure actions between 2005 and 2008 which highlighted pervasive document delivery issues of the Sponsors and Originators for the Covered Trusts. For example, BNY Mellon admitted in *Bank of New York v. Kirkland*, No. 07-16839 (N.Y. Sup. Ct. Dec. 11, 2007) that an action to foreclose on a mortgage had been commenced despite the fact that the promissory note had not been assigned to the trust that purportedly owned the note. Similarly, in *Bank of New York v. Gioio*, No. 08-9865 (N.Y. Sup. Ct. Sept. 22, 2008), Bank of America and BNY Mellon admitted that a note assignment had been executed two days prior to commencement of the action, contrary to requirements of state law.

70. BNY Mellon has been similarly involved in a number of foreclosure actions, including actions involving mortgages securitized by EMC where it learned that there were numerous documentation failures. For example, there have been multiple judicial decisions in foreclosure actions adverse to BNY Mellon because it was unable to prove it owned the note that was held in trust for investors in EMC securitizations. *See, e.g.*, *The Bank of New York Mellon v. Deane*, Index No. 16583/09, 2013 Slip Op. 23224 (N.Y. Sup.); *Varian v. Bank of New York Mellon*, No. 21 LCR 490, MISC 12-462971, 2013 WL 4537421 (Com. Mass. Aug. 23, 2013).

B. BNY Mellon Was Aware of but Failed to Provide Notice of Sponsors' and Originators' Pervasive Representation and Warranty Breaches

71. BNY Mellon failed to give notice of breaches of representations and warranties provided by the Sponsors or Originators concerning the mortgage loans backing the Covered Trusts.

72. For the Countrywide Trusts, Countrywide represented and warranted in the Countrywide PSA that "[e]ach Mortgage Loan was underwritten in all material respects in accordance with Countrywide's underwriting guidelines." Countrywide PSA Schedule III-A, § 37. Countrywide Home Loans further represented and warranted the following:

> (1) The information set forth on Schedule I to the Pooling and Servicing Agreement with respect to each Mortgage Loan is true and correct in all material respects as of the Closing Date.
>
> (2) As of the Closing Date, all payments due with respect to each Mortgage Loan prior to the Cut-off Date have been made; and as of the Cut-off Date, no Mortgage Loan has been contractually delinquent for 30 or more days more than once during the twelve months prior to the Cut-off Date.
>
> (3) No Mortgage Loan had a Loan-to-Value Ratio at origination in excess of 95.00%.
>
> (4) Each Mortgage is a valid and enforceable first lien on the Mortgaged Property . . .
>
> (10) Each Mortgage Loan at origination complied in all material respects with applicable local, state and federal laws, including, without limitation, usury, equal credit opportunity, predatory and abusive lending laws, real estate settlement procedures, truth-in-lending and disclosure laws, and consummation of the transactions contemplated hereby will not involve the violation of any such laws . . .
>
> (12) A lender's policy of title insurance together with a condominium endorsement, negative amortization endorsement and extended coverage endorsement, if applicable, in an amount at least equal to the Cut-off Date Stated Principal Balance of each such Mortgage Loan or a commitment (binder) to issue the same was effective on the date of the origination of each Mortgage Loan, each such policy is valid and remains in full force and effect . . .
>
> (17) Each Mortgage Note and the related Mortgage are genuine, and each is the legal, valid and binding obligation of the maker thereof, enforceable in accordance with its terms and under applicable law. To the best of Countrywide's knowledge, all parties to the Mortgage Note and the Mortgage had legal capacity

to execute the Mortgage Note and the Mortgage and each Mortgage Note and Mortgage have been duly and properly executed by such parties . . .

(21) Each Mortgage Note and each Mortgage is in substantially one of the forms acceptable to FNMA or FHLMC, with such riders as have been acceptable to FNMA or FHLMC, as the case may be . . .

(23) The origination, underwriting and collection practices used by Countrywide with respect to each Mortgage Loan have been in all respects legal, prudent and customary in the mortgage lending and servicing business . . .

(28) Each Mortgage Loan that had a Loan-to-Value Ratio at origination in excess of 80% is the subject of a Primary Insurance Policy that insures that portion of the principal balance equal to a specified percentage times the sum of the remaining principal balance of the related Mortgage Loan . . .

(30) If the Mortgaged Property is in an area identified in the Federal Register by the Federal Emergency Management Agency as having special flood hazards, a flood insurance policy in a form meeting the requirements of the current guidelines of the Flood Insurance Administration is in effect with respect to such Mortgaged Property . . .

(38) Other than with respect to any Streamlined Documentation Mortgage Loan as to which the loan-to-value ratio of the related Original Mortgage Loan was less than 90% at the time of the origination of such Original Mortgage Loan, prior to the approval of the Mortgage Loan application, an appraisal of the related Mortgaged Property was obtained from a qualified appraiser, duly appointed by the originator, who had no interest, direct or indirect, in the Mortgaged Property or in any loan made on the security thereof, and whose compensation is not affected by the approval or disapproval of the Mortgage Loan; such appraisal is in a form acceptable to FNMA and FHLMC . . .

(41) The Mortgage Loans were selected from among the outstanding adjustable-rate one- to four-family mortgage loans in the portfolios of the Sellers at the Closing Date as to which the representations and warranties made as to the Mortgage Loans set forth in this Schedule III-A can be made. Such selection was not made in a manner intended to adversely affect the interests of Certificateholders . . .

> (43) With respect to any Mortgage Loan as to which an affidavit has been delivered to the Trustee certifying that the original Mortgage Note is a Lost Mortgage Note, if such Mortgage Loan is subsequently in default, the enforcement of such Mortgage Loan or of the related Mortgage by or on behalf of the Trustee will not be materially adversely affected by the absence of the original Mortgage Note. A "Lost Mortgage Note" is a Mortgage Note the original of which was permanently lost or destroyed and has not been replaced.
>
> (44) The Mortgage Loans, individually and in the aggregate, conform in all material respects to the descriptions thereof in the Prospectus Supplement . . .
>
> (48) All of the Mortgage Loans were originated in compliance with all applicable laws, including, but not limited to, all applicable anti-predatory and abusive lending laws . . .
>
> (49) No Mortgage Loan is a High Cost Loan . . . .

73. The PSAs for the EMC Trusts likewise incorporate the mortgage loan representations and warranties from the Mortgage Loan Purchase agreements for the loans backing the EMC Trusts, which included substantially similar representations and warranties as the Countrywide Trusts, including that "each Mortgage Loan was originated in accordance with the underwriting guidelines of the related originator."[9]

74. As noted above in Section II(B), BNY Mellon, had an obligation to provide notice of breaches of these representations and warranties and such notice triggered the Sponsors' or Originators' obligation to repurchase or substitute the defective loans.

75. If BNY Mellon had provided notice of the widespread representation and warranty violations, the Sponsors and Originators would have been forced to repurchase the affected loans.

[9] The Mortgage Loan Purchase Agreements for certain of the EMC Trusts are not publicly available, but, upon information and belief, the non-public agreements contain similar representations and warranties.

1. BNY Mellon Obtained Information During Its Administration of RMBS Trusts Alerting It to Widespread Breaches of Representations and Warranties

76. Through its role as trustee, BNY Mellon knew or should have known that the Sponsors and Originators regularly disregarded their underwriting guidelines and representations and warranties made to securitization trusts long before certificateholders learned of such problems.

77. BNY Mellon served as trustee of hundreds, if not thousands, of RMBS trusts from 2004–2007, including many transactions involving the Sponsors and Originators. In the course of administering these trusts, BNY Mellon learned that the Sponsors and Originators had departed from their underwriting guidelines, engaged in predatory lending, and failed to ensure that mortgage loans complied with state and federal laws.

78. For example, while serving as trustee for various RMBS trusts, BNY Mellon was presented with a large number of defaulted loans that were originated by the Sponsors and Originators here and foreclosures were often commenced in BNY Mellon's name. While a default alone does not demonstrate a breach of a representation and warranty, BNY Mellon, unlike certificateholders, was a party to foreclosure actions. Through its review of these filings, BNY Mellon knew or should have known that the borrowers either (i) did not qualify for the loans because they did not have the ability to repay the loans; (ii) were victims of predatory lending; or (iii) were given a loan that did not comply with state or federal law.

79. Foreclosure actions were commenced in BNY Mellon's name for numerous loans in which the origination practices were at issue, including, for example, foreclosure actions in which:

(a) Countrywide served as Sponsor. *See, e.g.*, *Bank of N.Y. v. Lariviere*, No. RE-07-243 (W. York. Dist. Ct. Jan. 16, 2008); *Bank of N.Y. v. Sigworth*, No. 2009 F 00472 (C.P. Hancock Cnty. May 29, 2009);

(b) Countrywide served as Originator. *See, e.g.*, *Bank of N.Y. v. Cupo*, 2012 WL 611849 (N.J. Super. Ct. App. Div. Feb. 28, 2012); *Bank of N.Y. v. Batad*, 204 P.3d 501 (Haw. Ct. App. 2009); *Bank of N.Y. v. Sullivan*, No. 2007-09-6810 (C.P. Summit Cnty. Sept. 28, 2007); *Bank of N.Y. v. Scott*, No. 2008-10-7076 (C.P. Summit Cnty. Oct. 9, 2008); *Bank of N.Y. v. Eatmon*, No. 2007-10-7093 (C.P. Summit Cnty. Oct. 10, 2007); *Bank of N.Y. v. Brumit, No*. 2006-12-7889 (C.P. Summit Cnty. Dec. 5, 2006).

80. Sometimes the defaults and foreclosures occurred just months after the loan was originated or securitized. In each foreclosure, BNY Mellon had a contractual duty to execute necessary foreclosure filings, Countywide PSA § 3.01, EMC PSA § 3.05, and had a general duty to examine foreclosure filings because the Servicers filed actions in the name of BNY Mellon and was acting on behalf of BNY Mellon. Having lent its name to the foreclosure proceedings, BNY Mellon had a duty to review and approve filings and therefore should have learned about the problems with the mortgage loans revealed by those proceedings.

2. Notices from Monoline Insurers and Investors

81. BNY Mellon also received written notice of widespread Sponsor breaches from monoline insurers.

82. Monoline insurance is a form of credit enhancement that involves purchasing insurance to cover losses from any defaults. Many RMBS trusts were insured by monoline insurers. The sponsors of the mortgage loans made representations and warranties concerning the underwriting standards of the loans in the governing agreements for the insured RMBS. The governing agreements for the insured RMBS transactions have a repurchase procedure through which the monoline insurers must provide notice of a breach of representation and warranty to the responsible mortgage loan sponsor and the parties to the agreement, including the trustee.

83. Since 2009, monoline insurers, such as Ambac, MBIA, and Syncora, have filed

many complaints against Sponsors and Originators of the Covered Trusts for breaches of their representations and warranties in connection with other RMBS trusts.

84. Prior to filing suit against the mortgage loan sponsors, the monoline insurers were often able to obtain and carry out a forensic loan level review of the loans at issue.

85. Pursuant to typical agreements governing the relevant insured RMBS transactions, monoline insurers, such as Ambac, MBIA, and Syncora, would have provided BNY Mellon notice of breaches of representations and warranties for specific mortgage loans prior to filing lawsuits.

86. For example, the head of the BNY Mellon team that oversaw BNY Mellon's administration of Countrywide RMBS trusts from approximately 2008 to 2011 testified at the BNY Mellon Article 77 Proceeding that she recalled a monoline insurer notifying BNY Mellon approximately one or two years prior to her 2012 deposition of "a sizeable population" of Countrywide mortgage loans across multiple Countrywide RMBS that breached the mortgage loans representations and warranties.

87. Because these monoline insurers' findings from loan level reviews set forth in their breach notices reflected these common mortgage loan sellers' pervasive violations of underwriting and securitization guidelines, BNY Mellon discovered or should have discovered that these same defective underwriting and securitization practices applied equally to the Covered Trusts containing loans originated and securitized by these same Originators and Sponsors. As set forth below, Plaintiff's forensic analysis of samples of loans in the Covered Trusts demonstrate that there were in fact high levels of breaches of the mortgage loan representations and warranties.

88. The head of the BNY Mellon team that oversaw BNY Mellon's administration of

Countrywide RMBS trusts also testified in the BNY Mellon Article 77 Proceeding that at some point prior to her 2012 deposition she became aware of allegations of "mortgage fraud in Countrywide issues RMBS" from the media and letters received from various certificateholders. She further testified that she was unaware of any instance where BNY Mellon took any actions to investigate these notices from certificateholders.

89. Starting in 2009, other investors, including Fannie Mae and Freddie Mac, provided BNY Mellon similar notices, advising BNY Mellon that Countrywide and EMC breached representation and warranty provisions for numerous mortgage loans.

3. BNY Mellon Was Aware of Rating Downgrades and High Level of Defaults

90. Apart from the notices it received from investors and monoline insurers, there were various other indications that should have caused BNY Mellon to investigate whether the Covered Trusts' loan pools included mortgage loans that materially breached the responsible party's representations and warranties. For example, the Sponsors' and Originators' pervasive abandonment of underwriting guidelines has had a devastating effect on the performance of the Covered Trusts. All of the Covered Trusts acquired by Plaintiff were triple-A rated at the time of purchase. Subsequently, all of them were downgraded to "junk" bonds that did not qualify for any investment grade rating. The downgrades are shown below:

Deal Name	Rating at Guaranty's Purchase	Current Rating	Date downgraded below investment grade
CWALT 2005-38	AAA/Aaa	D/C	February 19, 2009
CWALT 2005-41	AAA/Aaa	D/Ca	February 19, 2009
CWALT 2005-51	AAA/Aaa	D/Ca	September 3, 2008

Deal Name	Rating at Guaranty's Purchase	Current Rating	Date downgraded below investment grade
CWALT 2005-58	AAA/Aaa	D/C	September 3, 2008
CWALT 2005-62	AAA/Aaa	D/C	September 3, 2008
CWALT 2005-76	AAA/Aaa	D/C	September 3, 2008
CWALT 2005-81	AAA/Aaa	D/Ca	September 3, 2008
CWALT 2006-OA2	AAA/Aaa	D/Ca	September 3, 2008
SAMI 2005-AR4	AAA/Aaa	D/C	February 23, 2009
SAMI 2005-AR7	AAA/Aaa	D/C	February 23, 2009
SAMI 2005-AR8	AAA/Aaa	D/C	September 8, 2008
SAMI 2006-AR3	AAA/Aaa	D/C	October 27, 2008

91. These downgrades were prompted by the alarming rate of defaults and delinquencies of the mortgage loans backing the Covered Trusts. In addition to the other information that BNY Mellon was aware of due to its position as trustee set forth above, BNY Mellon was aware of the high level of defaults and should have carefully investigated these issues, notified certificateholders, including Plaintiff, of the issues, and taken action to address these issues.

92. A loan that defaults shortly after origination can be an indicator that it was not underwritten in accordance with underwriting guidelines. An analysis of the early payment default ("EPD") rates for loans underlying Guaranty's RMBS, data available to the trustee shows strong evidence that the loans were not underwritten in accordance with underwriting guidelines. The results are shown below:

Defaults Occurring Within the First 18 Months			
Security	**6 Months**	**12 Months**	**18 Months**
CWALT 2005-38	5.1%	8.7%	12.9%
CWALT 2005-41	7.2%	11%	15.4%
CWALT 2005-51	12.4%	17.1%	21.8%
CWALT 2005-58	8.9%	14.0%	19.5%
CWALT 2005-62	8.1%	12.7%	18.9%
CWALT 2005-76	7.7%	14.2%	19.7%
CWALT 2005-81	6.9%	12.9%	18.8%
CWALT 2006-OA2	8.1%	15.6%	25.5%
SAMI 2005-AR4	8.0%	11.7%	16.1%
SAMI 2005-AR7	7.7%	12.0%	15.2%
SAMI 2005-AR8	7.3%	14.2%	20.9%
SAMI 2006-AR3	7.0%	13.6%	20.5%

4. BNY Mellon Was or Should Have Been Aware of Originators' and Sponsors' Pervasive Breaches

93. As a result of its role as trustee, BNY Mellon had knowledge of specific problems with specific loans as well as access to the mortgage loan files. At a minimum, in its role as trustee to more than a thousand RMBS trusts, BNY Mellon was privy to information that would have provided the scent of a problem with the loans underlying the Covered Trusts. Having caught wind of the problem, BNY Mellon had contractual and statutory duties requiring it to nose to the source.

94. The chart below identifies each of the entities disclosed to be the Sponsors

and Originators of the loans included in the Covered Trusts:

Trust	Sponsor	Originator
CWALT 2005-38	Countrywide Home Loans Inc.	Countrywide Home Loans Inc.
CWALT 2005-41	Countrywide Home Loans Inc.	Countrywide Home Loans Inc.
CWALT 2005-51	Countrywide Home Loans Inc.	Countrywide Home Loans Inc.
CWALT 2005-58	Countrywide Home Loans Inc.	Countrywide Home Loans Inc.
CWALT 2005-62	Countrywide Home Loans Inc.	Countrywide Home Loans Inc.
CWALT 2005-76	Countrywide Home Loans Inc.	Countrywide Home Loans Inc.
CWALT 2005-81	Countrywide Home Loans Inc.	Countrywide Home Loans Inc.
CWALT 2006-OA2	Countrywide Home Loans Inc.	Countrywide Home Loans Inc.
SAMI 2005-AR4	EMC Mortgage Corporation	EMC Mortgage Corporation
SAMI 2005-AR7	EMC Mortgage Corporation	First Horizon Home Loan Corporation, SouthStar Funding, LLC, Opteum Financial Services, LLC, and Bank of America, N.A.
SAMI 2005-AR8	EMC Mortgage Corporation	EMC Mortgage Corporation
SAMI 2006-AR3	EMC Mortgage Corporation	EMC Mortgage Corporation

95. BNY Mellon was aware or should have been aware of reports, investigations, and lawsuits concerning the Sponsors and Originators for the Covered Trusts. These reports would have raised the suspicions of a prudent trustee, causing it to act particularly in light of the

fact the BNY Mellon was aware of skyrocketing defaults, early payment defaults, and received information from monoline insurers and investors concerning these Sponsors and Originators. BNY Mellon failed to respond to these red flags.

96. For example, prior to March 2010, BNY Mellon was aware of or should have been aware of public information showing widespread breaches of the mortgage loan representations and warranties with respect to loans originated by Countrywide—the originator of the loans comprising eight of the Covered Trusts. This information included Countrywide documents that were made public by the SEC in 2009 and public statements by former employees incriminating Countrywide of failing to comply with the mortgage loan representations and warranties.

97. By March 2010, BNY Mellon was aware of or should have been aware of similar public information revealing widespread breaches of the mortgage loan representations by EMC and the other Originators that originated the loans in the EMC Trusts. With respect to EMC, BNY Mellon itself was named as a co-defendant in a class action also naming EMC and Structured Asset Management Investments II ("SAMI", the depositor for the EMC Trusts) as defendants alleging that EMC engaged in predatory and fraudulent origination practices in connection with loans securitized in the same shelf as the EMC Trusts. The court denied the motion to dismiss and the parties engaged in discovery providing BNY Mellon yet another source of information concerning breaches of the mortgage loan representations of warranties for EMC mortgage loans. *Quezada v. Loan Ctr. of California, Inc.*, No. CIV. 08-177 WBS KJM, 2008 WL 5100241, at *1 (E.D. Cal. Nov. 26, 2008).[10]

[10] Similar public facts concerning First Horizon include, for example, an investigation by the HUD Inspector General where it sought to "aggressively pursue indicators of fraud" at First Horizon based on

98. Unlike certificateholders, such as Plaintiff, BNY Mellon had the ability to look beyond this public information because it would have received notice of mortgage loan re-underwriting findings from monoline insurers and it had the ability to request the mortgage loan files for the loans in the Covered Trusts and independently review them.

5. If BNY Mellon Had Performed Its Duties, It Would Have Obtained Further Evidence of Breaches of Representations and Warranties

99. If BNY Mellon did nose to the source of the information it learned concerning widespread breaches of representations and warranties by the Sponsors and Originators for the Covered Trusts, BNY Mellon would have readily identified further evidence of specific breaches of the mortgage loan representations and warranties.

100. Based on an analysis of a random sample of loans in the Covered Trusts that eventually became possible to conduct when adequate tools were introduced to the marketplace, the FDIC-R identified numerous breaches of mortgage loans representations and warranties for that the FDIC-R was able to test without access to mortgage loan files.

101. For example, while the mortgage loan representations and warranties provided that none of the mortgage loans in the Covered Trusts were permitted to have a loan-to-value ("LTV) ratio over 100 percent, the FDIC-R's analysis showed that 421 loans (or 13 percent of the sampled loans) contained LTV ratios over 100 percent:[11]

FHA findings about First Horizon's origination and underwriting practices. *See* Eric Snyder, *First Tennessee Bank Mortgage Loan Records Subpoenaed*, Nashville Bus. J. (Jan. 13, 2010), http://www.bizjournals.com/nashville/stories/2010/01/11/ daily17.html.

[11] Using a comprehensive, industry-standard automated valuation model ("AVM"), it was possible to determine the "true market value" of a certain property as of a specified date and thereby test whether any of the LTV ratios for the sampled loans were over 100%.

Results of LTV Analysis for Sample Loans for Covered Trusts			
Security	No. of properties with adequate data to determine TMV	Loans with LTVs >100% per Pro-Supp	Loans with LTVs >100% per AVM
CWALT 2005-38	270	0	28
CWALT 2005-41	265	0	23
CWALT 2005-51	267	0	29
CWALT 2005-58	280	0	32
CWALT 2005-62	273	0	31
CWALT 2005-76	264	0	43
CWALT 2005-81	254	0	32
CWALT 2006-OA2	276	0	40
SAMI 2005-AR4	251	0	23
SAMI 2005-AR7	265	0	35
SAMI 2005-AR8	272	0	49
SAMI 2006-AR3	263	0	56

102. The mortgage loan representations and warranties incorporated in the PSAs also provided that the mortgage loans would comply with the mortgage loan characteristics, including owner occupancy, reported in the prospectus supplements. The investigation tested the accuracy of the representation that loans were owner-occupied by examining indicia that the properties were not primary residences, such as a borrower's bills being sent to a different address, a borrower not designating property as a homestead, or a borrower's tax bills not being sent to the property address. Based on this analysis, the number of owner occupancy breaches in the sampled loans range from 29.60 percent to 40.70 percent as shown below.

Results of Owner-Occupancy Analysis for Sample Loans for Covered Trusts						
Certificate	Properties Represented To Be Owner-Occupied	Bills Sent to Different Address	Property Not Designated as Homestead	Tax Bills Not Sent to Property Address	Sample Loans with At Least One Problem Noted in Prior 3 Columns	Percent Indicated To Have Incorrect Occupancy Designation
CWALT 2005-38	273	61	51	35	111	40.70%
CWALT 2005-41	234	25	50	32	78	33.30%
CWALT 2005-51	311	26	61	24	92	29.60%
CWALT 2005-58	370	27	85	28	115	31.10%
CWALT 2005-62	333	42	70	21	107	32.10%
CWALT 2005-76	304	49	72	30	111	36.50%
CWALT 2005-81	314	53	61	29	108	34.40%
CWALT 2006-OA2	329	17	87	47	121	36.80%
SAMI 2005-AR4	292	54	43	31	102	34.90%
SAMI 2005-AR7	358	38	61	31	109	30.40%
SAMI 2005-AR8	325	44	61	26	99	30.50%
SAMI 2006-AR3	338	48	66	37	118	34.90%

103. Given that BNY Mellon had access to the actual mortgage loan files, BNY Mellon could have evaluated compliance with the full set of the mortgage loan representations and warranties incorporated in the PSAs, which likely would have revealed far more breaches of the mortgage loan representations and warranties.

C. BNY Mellon Failed to Act Prudently to Enforce Repurchase Obligations

104. Events of Default occurred under each of the PSAs, but BNY Mellon failed to take the required actions to protect the rights of the certificateholders.

105. First, as set forth in Section III(B), BNY Mellon was aware (or would have been aware if it had carried out its duties) that the parties to the PSAs (including BNY Mellon itself) failed to provide notice of the representation and warranty violations that occurred in the Covered Trusts. This failure itself was a default under the PSAs for which BNY Mellon was required to provide notice, triggering an Event of Default to the extent that the defaults were left unremedied. Given that BNY Mellon cannot avoid the occurrence of an Event of Default by shirking its duty to fulfill the condition precedent and provide notice under the PSAs, these defaults all ripened into Events of Default. As a result, BNY Mellon had the duty to prudently exercise all available remedies, including the enforcement of the repurchase provisions in the PSAs. However, as the head of BNY Mellon's team that administered Countrywide RMBS testified at the BNY Mellon Article 77 Proceeding, she was not aware of a single instance of BNY Mellon seeking to cause Countrywide or Bank of America to repurchase a mortgage loan.

106. Additionally, when BNY Mellon learned that the Servicers failed to provide notice of numerous breaches of representation and warranty provisions as required under the PSAs, BNY Mellon should have (i) taken action against the Servicers; (ii) taken steps to require the Sponsors or Originators to repurchase or substitute the loans; and (iii) notified certificateholders of the defaults and the breaches of representation and warranty provisions.

107. As described below, additional Events of Default occurred under the terms of the PSAs.

1. Events of Default Relating to Document Delivery

108. Events of Default occurred shortly after the closing of the RMBS transactions relating to the Countrywide Trusts because the Servicers breached their obligation to cause the responsible parties to repurchase or substitute for loans with document exceptions that were not cured within the required period. These Events of Default triggered BNY Mellon's duty to act prudently to protect the interests of certificateholders in all respects, which duty continued during the period that Plaintiff held the Certificates.

109. Section 7.01(ii) of the Countrywide PSA provides that an Event of Default occurs when the Master Servicer breaches its contractual obligations relating to delivery of mortgage files under the PSA, including but not limited to "the Mortgage File for Delay Delivery Mortgage Loans" and "the failure to substitute or repurchase in lieu of delivery." Delay Delivery Mortgage Loans are defined in the Countrywide PSA as "Mortgage Loans for which all or a portion of a related Mortgage File is not delivered to the Trustee on the Closing Date."

110. Section 2.02(a) of the Countrywide PSA provides that Countrywide has 90 days to cure the exceptions identified by BNY Mellon on the final exception reports. If Countrywide failed to cure, it was required to repurchase or substitute for loans with exceptions.

111. Section 2.01(c) of the Countrywide PSA further provides "substitution[s] or repurchase[s] shall be accomplished in the manner and subject to the conditions set forth in Section 2.03 (treating each Delay Delivery Mortgage Loan as a Deleted Mortgage Loan for purposes of such Section 2.03)." The Master Servicer is obligated to enforce these repurchase and substitution provisions and is reimbursed for the costs incurred in doing so

pursuant to Section 2.03(c) of the Countrywide PSA. As with the Master Servicer, the Trustee is specifically reimbursed for any costs incurred in enforcing Countrywide's obligation to repurchase defective loans pursuant to Section 2.03.

112. As discussed above, BNY Mellon notified Countrywide that many of the mortgage files for loans underlying the Covered Trusts had document exceptions and these exceptions were not cured within the required period. As a result, Countrywide was required to substitute or repurchase loans with exceptions and BNY Mellon was aware that the Master Servicers (*i.e.*, Countrywide) failed to enforce these obligations.

113. Pursuant to Section 7.01 of the Countrywide PSA, the Master Servicer's failure to cause the repurchase or substitution is an Event of Default. BNY Mellon, as the party obligated to issue final exception reports under the PSAs, was aware of this Event of Default because it notified the parties to the PSAs of document exceptions and, following such notice, neither Countrywide nor any other party to the PSAs delivered the complete Mortgage File for these loans or caused Countrywide to substitute or repurchase the loans. Events of Default under Section 7.01(ii) occurred in the first year of each Countrywide Trust's existence and remained uncured. From that date, BNY Mellon had an affirmative obligation to exercise remedies on behalf of certificateholders and to do so with the same degree of care that a prudent person would exercise in its own affairs.

114. The Master Servicers' failure to cause the repurchase or substitution of loans with document exceptions also constituted a breach of their prudent servicing obligations. Each PSA provides that the Servicers' failure to adhere to prudent servicing standards ripens into an Event of Default if left uncured within a specified period of notice by the Trustee of such breach. Rather than taking a loss on loans that were eligible for repurchase, a prudent servicer would

have caused the responsible party to repurchase them. Instead, the Servicers liquidated loans with document exceptions. BNY Mellon was aware of this fact as it was aware of the contents (or would have been aware of the contents had it exercised its contractual obligations) of the document exception reports and that properties with exceptions had defaulted and not been repurchased or substituted. However, BNY Mellon did not provide notice as it was required to do. Having failed to provide the required notice, BNY Mellon had an obligation to act prudently to address all defaults.

115. Despite the existence of uncured Events of Default, BNY Mellon did not adequately address the defaults and Events of Defaults. If BNY Mellon had acted prudently, it would have exercised remedies to address the document delivery failures and numerous breaches of representations and warranties by the Sponsors and Originators and caused them to repurchase or substitute the affected loans. BNY Mellon's failure to do so continued during the period that Plaintiff held the RMBS and damaged Plaintiff.

2. Events of Default Concerning False Master Servicer and Servicer Certifications

116. Each PSA obligated each of the Master Servicers to certify annually that it met its obligations under the PSAs and applicable federal regulations. Section 3.16(a) of the Countrywide PSA requires the Master Servicer to certify, among other things, that:

> (i) a review of the activities of the Master Servicer during the preceding calendar year (or applicable portion thereof) and of the performance of the Master Servicer under this Agreement has been made under such officer's supervision and
>
> (ii) to the best of such officer's knowledge, based on such review, the Master Servicer has fulfilled all its obligations under this Agreement in all material respects throughout such year (or applicable portion thereof), or, if there has been a failure to fulfill any such obligation in any material respect, specifying each such failure known to such officer and the nature and status thereof.

Section 3.16 of the EMC PSA contains substantially similar requirements:

> The Master Servicer shall deliver to the Trustee and the Rating Agencies on or before March 1 of each year, commencing on March 1, 2006, an Officer's Certificate, certifying that with respect to the year ending December 31 of the prior year: (i) such Servicing Officer has reviewed the activities of such Master Servicer during the preceding calendar year or portion thereof and its performance under this Agreement, (ii) to the best of such Servicing Officer's knowledge, based on such review, such Master Servicer has performed and fulfilled its duties, responsibilities and obligations under this Agreement in all material respects throughout such year, or, if there has been a default in the fulfillment of any such duties, responsibilities or obligations, specifying each such default known to such Servicing Officer and the nature and status thereof, and (iii) nothing has come to the attention of such Servicing Officer to lead such Servicing Officer to believe that the Servicer has failed to perform any of its duties, responsibilities and obligations under the Countrywide Servicing Agreement in all material respects throughout such year, or, if there has been a material default in the performance or fulfillment of any such duties, responsibilities or obligations, specifying each such default known to such Servicing Officer and the nature and status thereof.

117. The failure to provide a conforming certification is an Event of Default under each of the PSAs. *See* Countrywide PSA § 7.01; EMC PSA § 8.01. BNY Mellon received and accepted certifications that it knew to be false because the Servicers were not in fact meeting their obligations under the PSAs. As discussed above, the Servicers breached the PSAs in many ways, including by attempting to foreclose on defective loans rather than tendering loans for repurchase or substitution and overcharging borrowers for default services (the costs of which were ultimately taken from the Covered Trusts). BNY Mellon was aware of or should have been aware of these breaches and therefore knew the required servicer certifications did not conform because they were false. Events of Default were triggered as a result and BNY Mellon had a continuing duty to act prudently to protect the certificateholders' interests.

118. In addition, under the Covered Trusts PSAs, the Servicers provide a representation and warranty and/or covenant that all reports provided under the PSA, including servicing compliance certifications, were accurate and complete. Section 2.08 of the Countrywide PSA provides: "[N]o written information, certificate of an officer, statement furnished in writing or written report delivered to the Depositor, any affiliate of the Depositor or the Trustee and prepared by the Master Servicer pursuant to this Agreement will contain any untrue statement of a material fact or omit to state a material fact necessary to make such information, certificate, statement or report not misleading." Section 2.07 of the EMC PSA similarly provides: "no written information, certificate of an officer, statement furnished in writing or written report prepared by the Master Servicer pursuant to this Agreement and delivered to the Securities Administrator, the Depositor, any affiliate of the Depositor or the Trustee will contain any untrue statement of a material fact or omit to state a material fact necessary to make the information, certificate, statement or report not misleading."

119. As addressed above, BNY Mellon had a duty to provide notice of breaches of representations and warranties or covenants resulting from the Servicers' false certifications, but failed to do so despite being aware of them. Because BNY Mellon cannot avoid the duty to act prudently by failing to give notice of a default, these breaches ripened into Events of Default triggering BNY Mellon's continuing duty to act prudently to protect the certificateholders' interests.

D. BNY Mellon Provided False Regulation AB Certifications and Remittance Reports

120. For the first year of their existence, each Covered Trust was a reporting entity under the Securities Exchange Act of 1934. For the two Covered Trusts offered 2006 and later, at the end of the trust's first year, the depositor filed with the SEC with respect to each

Covered Trust a report on Form 10-K. For the CWALT 2006-OA2 Trust, the Form 10-K contained a certification from BNY Mellon (or JP Morgan as predecessor trustee) that all servicing requirements had been met, that there were no breaches of representations and warranties, that the underlying properties securing the loans held by the Covered Trust had been maintained as required by the relevant transaction agreements, and that pool assets and related documents were safeguarded. *See* SEC Regulation AB, 17 C.F.R § 229.1122(d)(4)(i)–(ii).[12] The Servicers made similar certifications for all the trusts pursuant to the PSAs. BNY Mellon re-certified (or should have re-certified) annually that the servicing requirements were met with respect to all trusts that it administered. The servicer certifications were false and misleading in that they failed to disclose Sponsors' widespread failure to transfer complete mortgage files to the Covered Trusts, and the Sponsors' and Originators' many breaches of representations and warranties regarding the underwriting of the mortgage loans and their obligations as to transfer of title.

121. BNY Mellon regularly made remittance reports available to certificateholders as it was required to do under the Countrywide PSAs. Under Item 1121 of SEC Regulation AB, such reports must disclose "[m]aterial breaches of pool asset representations or warranties or transaction covenants." *See* 17 C.F.R. § 229.1121(a)(12).

122. The effect of the multiple disclosure failures concerning breaches of representations and warranties and contractual requirements has been to mislead certificateholders and conceal BNY Mellon's breaches of its contractual and statutory duties.

[12] Because the Trustee was involved in "servicing functions" the Trustee should have provided the certification for all trusts for which Regulation AB applied.

E. BNY Mellon Failed to Address the Master Servicers' and Servicers' Excessive Charges for Default Services that Diminished Trust Assets

123. In addition to the servicing related defaults and Events of Default described above, the Servicers and Master Servicers have engaged in a variety of practices that resulted in overcharging defaulted borrowers that BNY Mellon failed to address. These practices have increased loss severities on defaulted mortgages and, as a result, increased Plaintiff's losses.

124. The PSAs for the Countrywide Trusts require that any loans that are modified be repurchased from the Covered Trusts. *See* Countrywide PSA § 3.11(b). Although BNY Mellon was aware that Countrywide modified loans in the Countrywide Trusts and did not repurchase them from the Covered Trusts, BNY Mellon did not take action to ensure that these loans were repurchased even when the modification resulted in a loss to certificateholders.

125. To the extent that the PSAs for the EMC Trusts permitted modifications without repurchase, upon information and belief, the Master Servicers and Servicers did not modify loans when it was in the Covered Trusts' interest to do so rather than foreclose.

126. It has been widely reported that the Servicers and Master Servicers for the Covered Trusts have overcharged borrowers after default by, *inter alia*, charging improper and excessive fees (including without limitation fees for property maintenance prior to foreclosure), failing to properly oversee third-party vendors and procuring insurance policies for properties that were already insured. As a result the Master Servicers and Servicers received excess fees from borrowers (and ultimately the Covered Trusts) for default-related services.

127. Improper foreclosure practices have been the subject of many government investigations and settlements, including, for example, a Consent Order between the OCC and Bank of America/Countrywide entered in April 13, 2011 and a $25 billion settlement that Bank of America/Countrywide, Wells Fargo (along with JPMorgan, Citibank, and Ally Financial) entered with 49 state Attorneys General.[13]

128. These excessive and often unnecessary fees were ultimately paid by certificateholders because when a defaulting borrower's home is foreclosed upon and sold, the Servicers deduct their fees (which defaulting borrowers are in no position to pay themselves) and any servicing advances from sale proceeds before any funds are transferred to the securitization trust that purportedly owned the mortgage loan and thus was entitled to the net sale proceeds.

129. These overcharges are improper and resulted in breaches under the PSAs because they do not meet the prudent servicing standard. As noted in Sections II(E) and III(C), servicing related defaults known to BNY Mellon triggered its duty to act prudently. BNY Mellon was or should have been aware of allegations of these widespread servicing abuses, and, upon information and belief, if BNY Mellon had investigated, it would have discovered the serious servicing abuses impacted the loans in the Covered Trusts.

IV. BNY MELLON'S CONDUCT INJURED PLAINTIFF

130. By March 2010 it was apparent that BNY Mellon failed to act in the interests of certificateholders. RMBS market participants were aware of this fact by March 2010 as

[13] See Consent Order, *In the Matter of Bank of America, N.A.*, *available at* http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47b.pdf; Department of Justice Press Release, *Federal Government and State Attorneys General Reach $25 Billion Agreement with Five Largest Mortgage Servicers to Address Mortgage Loan Servicing and Foreclosure Abuses*, Feb. 9, 2012, *available at* http://www.justice.gov/opa/pr/federal-government-and-state-attorneys-general-reach-25-billion-agreement-five-largest.

reflected in market publications. As an example, in a white paper issued in March 2010 titled *Reforming the Asset-Backed Securities Market*, the American Association of Mortgage Investors (consisting of many RMBS investors) observed:

> Right now, trustees of collateral pools play a largely passive role and bear little if any accountability to the holders of securities which they have agreed – and are being compensated – to serve. In practice they do not supervise the servicers of collateral pools, who are often affiliated with the loan originators and therefore have strong incentives not to enforce representation and warranty claims on behalf of investors.

131. The white paper further reflected this market understanding when it went on to state:

> If one considers that the trustee of a securitization is like the board of directors of a company and the servicer of a collateral pool is functionally like the management, then it must be stated that holders of asset-backed securities are not given the protective rights, relative to those expected to serve them, that shareholders are provided. Securitization legal structures may utilize trustees and holders of asset-backed securities may have their rights shaped by contracts, but these holders are collectively the equity of the trust and they are owed fiduciary duties which must be respected. At least shareholders have the right to find out who their fellow security holders are, the right to an annual meeting, and the right to remove and elect new directors. Holders of asset-backed securities have none of these rights.

132. Because the market had concluded that defaulted loans would result in significant principal write-downs for the Certificates, market values for the Certificates were well below par in March 2010. The chart below reflects the trading price as a percentage of current face value for the Certificates as of March 2010.

Trust	**IDC Trading Price –March 2010 (as percentage of current face value of bond)**
CWALT 2005-38	26.7%

Trust	IDC Trading Price –March 2010 (as percentage of current face value of bond)
CWALT 2005-41	21.4%
CWALT 2005-51	38.2%
CWALT 2005-58	19.6%
CWALT 2005-62	26.7%
CWALT 2005-76	32.1%
CWALT 2005-81	18.0%
CWALT 2006-OA2	21.1%
SAMI 2005-AR4	30.2%
SAMI 2005-AR7	28.5%
SAMI 2005-AR8	26.8%
SAMI 2006-AR3	15.3%

133. On March 11, 2010, Plaintiff sold the Certificates as part of a resecuritization transaction, SSGN 2010-S1, and suffered over $440 million in losses. The sale was made pursuant to a Trust Agreement by and among the Federal Deposit Insurance Corporation as Receiver for the Depository Institutions, Wilmington Trust Company, and Citbank N.A. dated March 11, 2010 (the "Trust Agreement"). The Trust Agreement has an express Delaware choice of law provision.

134. Section 3.01 of the Trust Agreement provides that the Seller (*i.e.*, the Receivership) conveys "all its right, title and interest in and to the Underlying Securities,

including all interest and principal due on or with respect to the Underlying Securities." This language is substantially similar to the language of Article 8 of the UCC, which under Delaware law, does not result in a conveyance of claims accruing prior to the sale held by the seller.

135. If BNY Mellon had performed its duties as trustee, it would have enforced the obligations of the Sponsors and Originators and caused them to buy back, or replace with non-defective loans, the vast majority, if not all, of the loans that ultimately defaulted and caused Plaintiff's losses.

136. BNY Mellon's failure to address the Servicers' failure to adhere to prudent servicing practices also increased the loss severities (*i.e.*, the amount of principal loss caused by defaults) on defaulted loans dramatically. The extended foreclosure timelines that resulted from document delivery failures resulted in increased servicing fees, property tax, and utility expenditures that were borne by the Covered Trusts, a decline in value of the underlying properties, and ultimately less sale proceeds for the Covered Trusts and certificateholders. The overcharging for default related services and forced-placed insurance further increased loss severities as those overcharges were collected by the Servicers' from foreclosure sale proceeds.

137. If BNY Mellon had met its contractual and statutory duties to accept delivery of notes and mortgage loans files, inspect them, give notice as required and issue accurate certifications, it would have caused the Sponsors or Originators to substitute or repurchase all loans where the required documentation was missing or where there were breaches of representations and warranties regarding the mortgage loans. This would have included numerous loans that had already defaulted or would ultimately default.

138. BNY Mellon's failure to meet its contractual and statutory duties once it became aware of defaults relating to the numerous representation and warranty breaches further caused harm. If BNY Mellon had provided notice of representation and warranty violations and defaults and acted prudently as it was required to do upon the occurrence of a default or Event of Default, it would have caused the Sponsors or Originators to repurchase loans as they were required to do and, required the Servicers to pay the damages to the Covered Trusts caused by their improper servicing practices.

139. Although BNY Mellon participated in settlement of repurchase liabilities with the Sponsors of certain of the Covered Trusts years after many of the mortgage loans should have been repurchased, these settlements have not produced any recovery for certificateholders to date and are expected to yield a negligible recovery for individual certificateholders, if any, particularly relative to the enormous losses suffered by certificateholders such as Plaintiff. This confirms that the market was correct in March 2010 in assuming BNY Mellon had breached and would continue to breach its duties as trustee, including its duty to act prudently and enforce the actual repurchase of defective mortgage loans in the Covered Trusts.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
(Breach of Contract)

140. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs above as if fully set forth herein.

141. The PSAs are valid and binding contracts entered into between BNY Mellon, the Sponsors, the Master Servicers, the Servicers, and depositors.

142. The PSAs provide, among other things, the terms under which BNY Mellon acts as Trustee for the Covered Trusts.

143. As former holders of Certificates issued by each Covered Trust, Plaintiff is an express, intended third party beneficiary under the PSAs entitled to enforce the performance of the Trustee.

144. BNY Mellon breached several obligations that it undertook on behalf of Plaintiff as a certificateholder including, without limitation, to:

(a) take physical possession of the operative documents for the mortgage loans in the Covered Trusts;

(b) identify those mortgage loans for which there was missing, defective, or incomplete documentation on the document exception report attached to the Final Certification of the Trustee.

(c) make accurate representation in the initial mortgage certification, the Final Certification of the trustee, and all schedules and attachments thereto;

(d) protect the interests of the beneficiaries of the Covered Trusts;

(e) take steps to cause the Sponsors or Originators to repurchase loans lacking adequate documentation;

(f) investigate and give notice to all parties to the PSAs of the breaches of representations and warranties relating to the mortgage loans once it discovered the Sponsors' and Originators' widespread practice of including in securitization trusts loans which breached such representations and warranties;

(g) make prudent decisions concerning the exercise of appropriate remedies following Events of Default;

(h) provide notice of, and take steps to remedy, the Servicers' failure to adhere to prudent servicing standards and otherwise perform their obligations under the PSAs; and

(i) enforce the repurchase obligations of the Sponsors and/or Originators.

145. The specific provisions breached by BNY Mellon are further detailed herein.

146. BNY Mellon's breach of its duties set forth in the PSAs, as described above, directly and proximately caused Plaintiff to incur losses on its Certificates and diminished

their value.

147. Plaintiff has performed its obligations under the PSAs.

148. BNY Mellon is liable to Plaintiff for the losses it suffered as a direct result of BNY Mellon's failure to perform its contractual obligations under the PSAs.

SECOND CAUSE OF ACTION
(Violation of the Streit Act)

149. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs above as if fully set forth herein.

150. As a certificateholder, Plaintiff is a trust beneficiary entitled to the protections afforded under the Streit Act. The Streit Act was enacted to provide for the proper administration of mortgage trusts and requires that the trustee must exercise due care in performing its obligations. N.Y. Real Prop. Law § 124.

151. The Certificates are "mortgage investments" subject to the Streit Act. N.Y. Real Prop. Law § 125(1). BNY Mellon conducted business with respect to the mortgage investments in New York and many properties underlying the certificates are located in New York.

152. The PSAs underlying and establishing the Covered Trusts are "indentures," and BNY Mellon is a "trustee," under the Streit Act. N.Y. Real Prop. Law § 125(3).

153. Prior to any Event of Default, as described above, BNY Mellon violated the Streit Act by failing to perform its pre-default obligations with due care. Further, Events of Default occurred under each Covered Trust shortly after closing.

154. Section 126(1) of the Streit Act provides that upon an event of default the indenture trustee must exercise such of the rights and powers vested in it by the indenture and must use the same degree of care and skill in their exercise, as a prudent man would

exercise or use under the circumstances in the conduct of his own affairs.

155. The Streit Act further imposes a duty upon trustees of mortgage trusts to discharge their duties under the applicable indenture with due care in order to ensure the orderly administration of the trust and protect trust beneficiary rights.

156. As set forth above, BNY Mellon failed to exercise its rights under the PSAs after becoming aware of defaults and Events of Default by failing to:

(a) take physical possession of the operative documents for the mortgage loans in the Covered Trusts;

(b) identify those mortgage loans for which there was missing, defective, or incomplete documentation on the document exception report attached to the Final Certification of the Trustee;

(c) make accurate representations in the initial mortgage certification, the Final Certification of the Trustee, and all schedules and attachments thereto;

(d) render accurate reports under Regulation AB;

(e) protect the interests of the beneficiaries of the Covered Trusts;

(f) take steps to cause the Sponsors or Originators to repurchase loans lacking adequate documentation;

(g) investigate and give notice to all parties to the PSAs of the breaches of representations and warranties relating to the mortgage loans once it discovered the Sponsors' and originators' widespread practice of including in securitization trusts loans which breached such representations and warranties;

(h) make prudent decisions concerning the exercise of appropriate remedies following Events of Default;

(i) provide notice of, and take steps to remedy, the Servicers' failure to adhere to prudent servicing standards and otherwise perform their obligations under the PSAs; and

(j) enforce the repurchase obligations of the Sponsors and/or Originators.

157. BNY Mellon also violated the conflict of interest provisions of the Streit Act

by continuing to act as trustee despite having a financial interest in indemnification under the proposed settlement with Countrywide and Bank of America.

158. BNY Mellon is liable to Plaintiff for damages incurred as a direct and proximate result of its violation of the Streit Act.

THIRD CAUSE OF ACTION
(Violations of the TIA)[14]

159. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs above as if fully set forth herein.

160. The PSAs underlying and establishing the Covered Trusts are "indentures," and BNY Mellon is an "indenture trustee," under the TIA. 15 U.S.C. § 77aaa(7), (10).

161. As a certificateholder, Plaintiff is a trust beneficiary entitled to the protections afforded under the TIA.

162. The TIA applies to the PSAs and the related Certificates. 15 U.S.C. § 77ddd(a)(1).

163. BNY Mellon violated the TIA in at least four ways. First, TIA Section 315(a) provides that, prior to default (as that term is defined in the indenture), the trustee is liable for any duties specifically set out in the indenture. 15 U.S.C. § 77ooo(a)(1). As set forth above, BNY Mellon failed to comply with a number of duties set out in the indentures, including its duties to carefully review the mortgage files, to notify certificateholders and other parties of deficiencies, to provide notice of defaults or Events of Default relating to servicing of the loans, to take steps to address those deficiencies, and, most importantly, to enforce the substitution or repurchase of defective loans.

164. Second, TIA Section 315(b) provides that the indenture trustee must notify

[14] As set forth above, Plaintiff includes a TIA claim for purposes of preserving any rights on appeal.

certificateholders of "all defaults known to the trustee, within ninety days after the occurrence thereof." 15 U.S.C. § 77ooo(b) (citing 15 U.S.C. § 77mmm(c)). As set forth above, BNY Mellon failed to carefully investigate serious known issues with the loans in the trusts, or to notify certificateholders of numerous defaults, including the failure of the responsible parties to cure, repurchase, or substitute mortgage loans with defective mortgage files and mortgage loans affected by breaches of representations and warranties.

165. Third, in the case of defaults (as that term is defined in the indenture), the TIA requires that the trustee exercise its rights and powers under the governing agreement as a "prudent man would exercise or use [them] under the circumstances in the conduct of his own affairs." 15 U.S.C. § 77ooo(c). Here, as set forth above, BNY Mellon did not act prudently after learning of numerous serious issues related to material breaches of representations and warranties and servicer defaults and Events of Default. A prudent person would have taken action to investigate these issues carefully, pursue repurchase remedies, and cure defective mortgage loans. In addition, a prudent person would have taken action against the responsible parties for the failure to properly execute and deliver mortgage file documents.

166. Finally, the TIA states that "[n]otwithstanding any other provision of the indenture to be qualified, the right of any holder of any indenture security to receive payment of the principal of and interest on such indenture security, on or after the respective due dates expressed in such indenture security . . . shall not be impaired or affected without the consent of such holder." 15 U.S.C. § 77ppp(b). BNY Mellon has impaired the ability of the Covered Trusts, and consequently the certificateholders, to receive payment in connection with defective mortgage loans for which BNY Mellon failed to take action to correct. In addition, BNY Mellon has impaired the ability of the Covered Trusts, and consequently the certificateholders, to receive

payment by failing to enforce the repurchase remedy.

167. These breaches materially and adversely affected the interests of the certificateholders, including Plaintiff, because they resulted in the trusts being burdened with large numbers of defective loans that should have been put back to the responsible parties.

168. BNY Mellon is liable to Plaintiff for damages incurred as a direct and proximate result of its violations of the TIA in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

A. Awarding compensatory damages and/or equitable relief in favor of Plaintiff against BNY Mellon for breaches of its statutory and contractual duties, in an amount to be proven at trial, including interest thereon;

B. Awarding Plaintiff its reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

C. Such other relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury on all issues triable by jury.

Dated: August 19, 2015

By: /s/ *David H. Wollmuth*

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