

3. Actual false statements about when and how a loan has been transferred since its origination.
4. False identification of signatory.
5. Forged signatures.
6. Execution outside the presence of a notary, who nevertheless notarizes the signature.

On a national scale these kinds of irregularities in preparation of documents to support mortgage foreclosures manifested themselves in a practice that became known as “robo-signing,” where a person would sign hundreds of affidavits or certifications a day with no personal knowledge of the contents of any of them. In many instances the underlying facts asserted in the documents submitted to support foreclosures may have actually been true but because of the false representations concerning the process by which the documents were created, there was no way for courts to be able to separate assertions that were accurate from those that were not.

If each uncontested mortgage foreclosure were to be heard by a judge with the presentation of oral testimony, the judge could cross-examine the witnesses to determine the reliability and veracity of testimony presented. However, uncontested foreclosures represent over 90% of all residential mortgage foreclosure proceedings pending in New Jersey and presentation of oral testimony is not a sensible or practical way to resolve the thousands of foreclosures filed every year. Therefore courts have traditionally relied upon the truthfulness of affidavits or certifications submitted to support a mortgagee’s request for a judgment of foreclosure. When confidence in the reliability of such submissions is lost, the court must be persuaded by the mortgagee that it has processes and procedures in place that will restore the

necessary confidence to justify the court's reliance on documents submitted.

Toward that end, on December 20, 2010, General Equity Judge Mary C. Jacobson, designated by the Chief Justice to oversee uncontested foreclosure cases in the State, entered an Order to Show Cause directed at: Bank of America, d/b/a BAC Home Loan Servicing, LP; Citibank, N.A. and Citi Residential Lending, Inc.; GMAC Mortgage, LLC; JPMorgan Chase Bank, N.A. and Chase Home Finance LLC; OneWest Bank, FSB; and Wells Fargo Bank, N.A. (collectively, "Respondents") requiring each to show cause why the processing of pending uncontested residential mortgage foreclosure actions filed by them should not be suspended. While the Order to Show Cause did not order an immediate suspension of foreclosure processing for the Respondents, *de facto* there has been such a suspension, either because Respondents or some of them had earlier ceased processing foreclosures in New Jersey on their own while attempting to address the "robo-signing" issue or because the effect of the Rule Amendments, as worded in the December 20th emergency revisions, was to make it impractical or unfeasible for Respondents to pursue foreclosures.

The six Respondents were selected specifically for the Order to Show Cause for two reasons. First, the six Respondents account for a large majority of the foreclosure actions in the New Jersey courts. Any Judiciary-wide correction of the "robo-signing" issue in the State of New Jersey must logically begin with these six Respondents. Second, the six Respondents were selected for inclusion in the Order to Show Cause because there has been deposition testimony and/or other materials forming a public record in various jurisdictions across the United States indicating that each of the six Respondents has encountered "robo-signing" problems concerning their foreclosures in the past.

In response to the Order to Show Cause, Respondents and court appointed counsel entered into discussions resulting in a Consent Order. That Order appointed a Special Master charged with responsibility to conduct a review to determine whether each of the respective service providers has processes and procedures in place which, if adhered to, will ensure that the information set forth in affidavits/certifications submitted in foreclosure proceedings is personally reviewed by an affiant authorized to act on behalf of the plaintiff in the foreclosure action and that each affidavit or certification submitted is properly executed and is based upon knowledge gained through a personal review of relevant records which are made in the regular course of business as part of the regular practice of that business to make them. The review also contemplated a process to verify that the respective servicers are, in fact, adhering to those processes and procedures following the resumption of residential mortgage foreclosure activities in New Jersey.

While there has also been much public discussion and litigation concerning complex issues relating to the standing of mortgagees and loan servicers to foreclose, including issues flowing from the securitization of mortgages, assignments of mortgages, and the utilization of Mortgage Electronic Registration Systems, Inc. ("MERS"), these broad issues of standing, assignments, and MERS, though important, are beyond the scope of the Special Master's charge. The focus of the Consent Order entered by Judge Jacobson is on Respondents' business practices and procedures that generate the sworn documents that are submitted to the Judiciary in support of final judgments and other relief requested in uncontested foreclosure cases. Nothing in this report is intended, nor should be construed in any way, to prejudge or comment on issues concerning a plaintiff's standing to foreclose in any individual case.

THE REVIEW PROCESS

The review by the Special Master is systems oriented and not intended to deal with individual pending cases, although selected individual cases may be reviewed as part of the process. The first phase of the review process, involving an examination of the respondents' business practices, required that each respective servicer make a prima facie showing that it has processes and procedures in place which, if adhered to, will assure the Judiciary that it can rely on the veracity of representations contained in documents filed by the servicer. Upon a determination that such a showing had been made the Judiciary would resume processing uncontested foreclosure cases filed by the servicer. The second phase, to be commenced later, will involve a monitoring process to ensure that the servicers' processes and procedures are effective and, in fact, are being followed.

In determining whether a respondent had made the requisite prima facie showing, the inquiry focused on three major areas:

1. Respondent's authority to pursue foreclosure proceedings.
2. The evidential admissibility of data from Respondent's records.
3. The reliability of Respondent's document preparation and execution process.

As part of the inquiry in the first phase of this work, each Respondent was directed to respond to the following requests for information about its business processes:

(a) If the Respondent is acting on behalf of a mortgagee, but is not the mortgagee itself, provide examples of the source of the Respondent's authority to act, including providing representative samples of documentation evidencing the authority to act on behalf of mortgagees;

(b) Does the Respondent have a record keeping system of Business Records that provides accurate up to date information on the payment history and status of the loan? If so, describe the system;

(c) Describe the Respondent's case processing steps for the review of information contained in, and the execution of, affidavits/certifications submitted in support of foreclosure proceedings;

(d) Has the Respondent established specific procedures for staff to ensure that the information set forth in affidavits/certifications submitted in foreclosure proceedings is based on a personal review of Business Records? If so:

- (i) Describe the procedures;
- (ii) Produce all documents evidencing establishment of the procedures;
- (iii) Produce samples of all documents or screens reviewed by staff in the affidavit/certification of indebtedness process; and
- (iv) Provide the numerical range and average of how much time is spent per loan to review the Respondent's business records and complete an affidavit/certification of indebtedness.

(e) Has the Respondent implemented a training program for its staff to review relevant Business Records and source documents and complete foreclosure affidavits/certifications based on a personal review of such materials? If so:

- (i) Describe the program;
- (ii) Produce copies of all written materials used and screen samples from any powerpoint or other presentations; and
- (iii) Produce a statement that all staff who are preparing affidavits/certifications have received this training.

(f) Has the Respondent established quality assurance procedures to insure that the established procedures for review of relevant source documents and completion of foreclosure affidavits/ certifications based on a personal review of Business Records are followed in each case? If so:

- (i) Describe the procedures; and
- (ii) Produce copies of all documents evidencing establishment of quality assurance procedures.

(g) Does the Respondent have a process for insuring effective and timely communication with foreclosure counsel in connection with the completion and execution of foreclosure affidavits/certifications? If so:

- (i) Describe the process; and
- (ii) Describe the procedures that will enable foreclosure

counsel to comply with their duties concerning the completion and execution of foreclosure affidavits/certifications, under the Court Rules as they are finally adopted by the New Jersey Supreme Court.

After reviewing the documentation submitted, the Special Master and counsel to the Special Master conducted follow-up telephone conferences on a number of occasions with representatives of each respondent to obtain further explanation and clarification of the materials submitted and to request supplemental information. Each respondent provided the clarification, explanation, and supplemental information by way of at least one supplemental certification. If further clarification or supplemental information was required, this was communicated to the respondent through counsel and additional certifications were submitted.

FINDINGS

The initial Prima Facie submission¹ of Bank of America d/b/a BAC Home Loans Servicing, LP was accompanied by two certifications. Bridgett Lett, Assistant Vice President, Risk Operations Team Manager for Bank of America, who is responsible for compliance with servicing agreements and company guidelines in respect of the Bankruptcy and Foreclosure Servicing Group, submitted a certification describing the various arrangements and scenarios under which Bank of America is vested with authority to service and foreclose upon mortgage loans. Ms. Lett's certification was accompanied by nine supporting exhibits, which included representative copies of the various pooling and servicing and subservicing agreements described in her

¹ The entire submission of Bank of America d/b/a BAC Home Loan Servicing LP has been filed on the Judiciary website at http://www.judiciary.state.nj.us/superior/f_59553_10.htm.

certification. Bruce E. Barron, Director, Bankruptcy and Foreclosure Servicing, who is responsible for BAC's mortgage servicing operations and back-end default departments, including foreclosures, submitted a certification describing BAC's maintenance of business records and its document preparation and execution process. Mr. Barron's certification was accompanied by thirty-six supporting exhibits, which included: exemplar screenshots from Bank of America's system of record; training materials for Respondent's document review and execution personnel, as well as quality control staff; sample checklists completed by Bank of America's affidavit preparers, signers, and quality control staff; and thirteen sample executed New Jersey certifications of amount due with the accompanying business records and documents used to prepare and validate them.

Thereafter a supplemental filing of four certifications was made. Jon Kuretich, Assistant Vice President and Mortgage Servicing Team Manager, Bankruptcy & Foreclosure Servicing at BAC Home Loans Servicing, LP submitted a certification addressing the means by which foreclosure counsel and BAC Servicing communicate with one another. Matthew Lee Wardlow, BAC Servicing's Senior Vice President, Portfolio Services Group, addressed measures to ensure data accuracy when BAC Servicing acquires loan portfolios. Bridget Lett submitted a supplemental certification addressing BAC Servicing's authority to act as servicer for Bank of America, attaching a copy of a letter agreement between those two entities. Bruce Barron submitted a supplemental certification addressing BAC's policy concerning the acceptance of partial payments once the foreclosure process has begun.

Finally, Bruce Barron submitted a second supplemental certification providing details on Bank of America's intended procedures for complying with the June 9, 2011 amendments to Rule 4:64-1 and 4:64-2.

BAC Home Loans Servicing, LP (BAC Servicing) is an operating subsidiary of Bank of America, N.A., a national banking association. The company previously operated under the name of Countrywide Home Loans Servicing, LP (CHLS) a limited partnership. A change to its current name was effective as of April 27, 2009. BAC acts as both a servicer for mortgage loans and as a subservicer for other servicers. BAC Servicing is the servicer on approximately 25,000 loans that are the subject of pending foreclosure proceedings in New Jersey.

RESPONDENT'S AUTHORITY TO PURSUE FORECLOSURE PROCEEDINGS

The first element of proof in any type of case is to establish that the party initiating the proceeding has authority to ask the court for relief. Respondent is involved herein in its capacity as a mortgage loan servicer. In some foreclosure cases initiated by Respondent it may be servicing its own mortgage loan. But in other cases it may be servicing the mortgage loan of an independent party. For that reason the inquiry began with an examination of Respondent's authority to pursue foreclosure proceedings under the various circumstances in which it appears before the court.

Where BAC Servicing services loans held by Bank of America, N.A (the "Bank") its parent company, it does so pursuant to a letter of agreement between the two entities. BAC Servicing provided a copy of an agreement dated December 17, 2008. The agreement requires BAC Servicing to "service the mortgage loans in accordance with the

standard of care employed by prudent mortgage servicers for mortgage loans similar to the Bank's mortgage loans."

There are six other types of circumstances by which Bank of America d/b/a BAC Home Loans Servicing, LP ("BAC Servicing") is authorized to service and foreclose upon mortgage loans. For each of those different types of circumstances, Bank of America has provided an example of an agreement conveying authority to foreclose. One out of six of the sample agreements grants this authority directly to Bank of America. The remaining five sample agreements grant this authority to Countrywide Home Loans Servicing LP ("CHLS"). CHLS subsequently changed its name to BAC Home Loans Servicing, LP ("BAC Servicing"), thus transferring the authority to service and foreclose upon the mortgage loans from CHLS to BAC Servicing.

The first arrangement involves servicing private-label residential mortgage backed securitizations ("RMBS"). As an example of this arrangement Bank of America submitted a Pooling and Servicing Agreement that provides in relevant part as follows:

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. In connection with such servicing and administration, the Master Servicer shall have full power and authority...(iv) to effectuate foreclosure or other conversion of the ownership of the Mortgaged Property securing any Mortgage Loan.

The second arrangement described by Bank of America involves acting as a servicer for a Government Sponsored Enterprise ("GSE"), such as Fannie Mae or Freddie Mac. To evidence the grant of authority to service this type of mortgage loan Bank of America submitted a Sale and Servicing Agreement that provides in relevant part as follows:

The Master Servicer shall service the Mortgage Loans for Fannie Mae in accordance with the requirements of the Servicing Guide in effect.

Page 801-3 of the Fannie Mae 2010 Servicing Guide Update Part VII and Part VIII, dated April 2010,² requires servicers generally to initiate “foreclosure proceedings for a first mortgage loan...30 to 34 days after an acceleration or breach letter is sent upon the completion of the pre-referral account review and after any applicable notice and waiting period under state law is met.” A review of the Servicing Guide, page 801-1, also reveals the following provision: “A servicer must process foreclosures, conveyances, and claims in accordance with the provisions of the mortgage loan; state law; the requirements of FHA, HUD, VA, RD, or the mortgage insurer; and any special requirements that Fannie Mae may have.” When servicing mortgage loans for a Government Sponsored Enterprise the GSE usually requires that the foreclosure proceeding be initiated in the name of the servicer. For this reason Bank of America will obtain possession of the note prior to initiating the proceeding. Thus its authority to prosecute the foreclosure action is also grounded in the fact that it is the holder of the note.

The third arrangement described by Bank of America involves servicing securitized loans by private financial institutions not affiliated with BAC Servicing. As an example of this arrangement, Bank of America refers to a Pooling and Servicing Agreement that provides, in pertinent part:

The Servicer shall service and administer the Mortgage Loans on behalf of the Trust Fund and in the best interests of and for the benefit of the Certificateholders (as determined by the Servicer in its reasonable judgment) in accordance with the terms of this Agreement and the respective Mortgage Loans and, to the extent consistent with such terms, in the same manner in which it services and administers similar mortgage loans for its own portfolio...

² The Fannie Mae 2010 Servicing Guide Update Part VII and Part VIII is available at <https://www.efanniemae.com/sf/guides/ssg/svcg/svc042810.pdf>.

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...Subject only to the above-described servicing standards and the terms of this Agreement and of the respective Mortgage Loans, the Servicer shall have full power and authority, acting alone or through Sub-Servicers as provided in Section 3.02, to do or cause to be done any and all things in connection with such servicing and administration which it may deem necessary or desirable. Without limiting the generality of the foregoing, the Servicer in its own name or in the name of a Sub-Servicer is hereby authorized and empowered by the Trustee when the Servicer believes it appropriate in its best judgment in accordance with the servicing standards set forth above ...to institute foreclosure proceedings....”

The fourth type of arrangement described by Bank of America involves a pool of loans held by a whole loan investor, rather than by a securitization trust. As an example of this type of arrangement, Bank of America refers to a Mortgage Loan Purchase and Servicing Agreement that provides:

The applicable Seller, as independent contract servicer, shall service and administer Mortgage Loans sold pursuant to this Agreement in accordance with the terms of this Agreement and shall have full power and authority, acting alone or through subservicers or agents, to do or cause to be done any and all things, in connection with such servicing and administration, that such Seller may deem necessary or desirable and consistent with the terms of this Agreement.

The Seller shall use reasonable efforts to foreclose upon or otherwise comparably convert the ownership of properties securing such of the Mortgage Loans as come into and continue in default and as to which no satisfactory arrangements can be made for collection of delinquent payments.

The fifth type of arrangement described by Bank of America involves servicing loans held on books of affiliates of BAC Servicing, referred to as “held for investment.” As an example of this arrangement, Bank of America refers to a Subservicing Agreement that provides:

Servicer shall service and administer each Mortgage Loan...and shall have full power and authority, acting alone, to do or cause to

be done any and all things in connection with such servicing and administration which Servicer may deem necessary or desirable and consistent with the terms of this Agreement.

Servicer shall use reasonable efforts to foreclose upon or otherwise comparably convert the ownership of properties securing such of the Mortgage Loans as come into and continue in default and as to which no satisfactory arrangements can be made for collection of delinquent payments.

The sixth type of arrangement described by Bank of America occurs where BAC Servicing is appointed by an unaffiliated servicer to service mortgages on its behalf, referred to as “subservicing arrangements.” As an example of this arrangement, Bank of America submits a Servicing Agreement that provides:

Countrywide [a/k/a CHLS, now BAC Servicing] shall service and administer each Mortgage Loan from and after the related Servicing Transfer Date in accordance with the terms of this Agreement...and shall have full power and authority, acting alone, to do or cause to be done any and all things in connection with such servicing and administration which Countryside may deem necessary or desirable consistent with the foregoing.

Countrywide [a/k/a CHLS, now BAC Servicing] shall use Acceptable Standard Servicing Procedures to foreclose upon or otherwise comparably convert the ownership of properties securing such of the Mortgage Loans as come into and continue in default and as to which no satisfactory arrangements can be made for collection of delinquent payments.

Respondent has certified that the categories cited accurately describe the types of cases it has filed with the court in its capacity as a mortgage loan servicer. It has also certified that the examples submitted are representative of its source of authority to prosecute foreclosure proceedings in such cases. For the purposes of this review, Respondent’s submission meets the standard of a Prima Facie showing that it has authority to ask the court for relief in the foreclosure proceedings within its portfolio.

ADMISSIBILITY OF DATA FROM RESPONDENT'S RECORDS

An essential element of proof in a foreclosure case is the existence of a note and mortgage and a default on the part of the mortgagor. Most typically the claim of default is based on allegations of non-payment of amounts due on the note. To prove that fact, the servicer of the mortgage will usually offer proof in the form of a statement of account produced from its records. Such evidence is classified as "hearsay" under our Rules of Evidence. "Hearsay" evidence is considered inherently unreliable and is therefore generally inadmissible in court proceedings. There are exceptions to this rule, however, where circumstances warrant considering "hearsay" evidence as reliable. Evidence Rule 803(c)(6) is one of those exceptions, providing for admissibility of data from business records under the following circumstances:

Records of regularly conducted activity. A statement contained in a writing or other record of acts, events, conditions, and, subject to Rule 808, opinions or diagnoses, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make it, unless the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.

This inquiry has therefore focused on how Respondent maintains the data that it offers as evidence to support its requests for judgments of foreclosure.

BAC Servicing relies on two information technology systems in support of its foreclosure documentation process. The principal system is the iSeries, an IBM enterprise-class database and warehouse server system. The other system, LPS Desktop, is a desktop manager system used to exchange information and documents within BAC Servicing and with foreclosure counsel.

The IBM iSeries is BAC Servicing's primary information system in support of its loan servicing operations. It contains borrower account information, including: contact information; original loan information (including principal, loan term, interest rate, and property sale price); payment history; occupancy status; attempted workout programs; current account status; identity of note holder; foreclosure fees; and property inspection information.

The iSeries database provides accurate, up-to-date account information on borrower payment history and loan status and is maintained in the regular course of business. The process begins with the initial data entries. Thereafter, BAC Servicing employees use non-graphical user interface based applications and graphical user interface based applications to enter information that comes from discussions with customers or specific business process workflows. When employees access the "Account Status Inquiry" screen, the iSeries database displays all current loan information, including current balance, interest, current payment information, and the status of the loan. The status field classifies loans according to whether they are currently in "normal servicing," "bankruptcy," "foreclosure," or "workout" (a "workout" refers to any sort of pending loss mitigation activity). A separate screen contains information about payment history. BAC Servicing employees rely on the iSeries database whenever they need current borrower account information.

The payment history and loan status fields are updated as a BAC Servicing employee processes incoming information. The same employee who processes that information attends to inputting the data into the system. When checks are mailed to BAC Servicing, the check is sent to the Payment Processing Department for check imaging, and then the check image is forwarded to Electronic Payment Workflow employees, who upload the imaged check into the system. Then, an employee in the Cash Management System function applies the funds to the

loan while contemporaneously updating the iSeries database. Similarly, as necessarily, employees in the various functions (e.g., foreclosure, loss mitigation, and bankruptcy) update a customer's account status by updating the loan status in iSeries at or near the time the employee processes the information. When applicable, an employee can enter additional narrative information into the system, often referred to as "case notes." These notes can never be deleted in the iSeries database; rather, a BAC Servicing employee who wishes to update or edit a case note must create an entirely new case note.

Password access ensures that only employees qualified to access borrower account information can do so. Sections of borrower account screens are locked to prevent changes to borrower data by employees without the authority to make such changes. For example, borrower payment data cannot be changed by an employee in the foreclosure function who is viewing the screen for purposes of updating foreclosure events. Foreclosure counsel does not possess the authority or ability to alter borrower account information in the iSeries database. Nor do they have access to iSeries. No third party vendor involved in the foreclosure process has the ability to access and make edits to iSeries.

Quality assurance procedures are also employed to ensure the accuracy and integrity of borrower payment information and loan status. Depending on the payment channel used by the customer, verifications are performed to ensure the payment is accurately entered into BAC Servicing's automated system for posting. When a customer mails a check, a BAC Servicing employee correlates the check with an account number before posting it to the account. Similarly, if a customer uses the pay-by-phone channel, an employee (or, if used by the customer, the automated system) verifies the borrower's identification number, account number, and other identifying information before accepting payment. These procedures are

designed to ensure that mortgage payments are validated against BAC Servicing's data and applied to the correct borrower account before being entered into the automated posting system. Additionally, BAC Servicing conducts retrospective quality assurance reviews to validate the accuracy of information entered into the iSeries database.

In circumstances where BAC Servicing receives loan portfolios from others, whether lenders, investors, or other servicers, its Portfolio Services Group (PSG) is responsible for boarding the loans onto BAC's system. This process involves pre-boarding, boarding, and post boarding functions.

With respect to loans that are transferred, PSG receives data relating to each loan transferred, including principal balances, interest paid to date, escrow payments note rate, partial payments, and late charges and enters it into the Bank's systems. PSG reconciles the balances to the loan file received to verify the accuracy and completeness of the file. Loan Service Specialists within PSG will investigate and resolve any discrepancies, including contacting the originating lender, investor, or servicer to resolve any issues identified. Thereafter the party transferring the loan for servicing sends the Bank the final loan file which is also validated. Loan Servicing Specialists are responsible for again testing the data and generating exception reports for any discrepancies identified. PSG then receives a final trial balance that sets forth the principal balance, interest paid to date, escrow payments, PMI payments, note rate, partial payments, and late charges. The trial balance is reconciled to the data on the Bank's system to ensure accuracy.

For each acquisition, the Bank's system randomly generates a sample of loans for which pre-boarding and post-boarding audits are conducted to determine that the data in the Bank's system matches the data in the files received.

Lender Processing Services (“LPS”), a vendor, is the technology solution supplier for BAC Servicing’s foreclosure workflow system, known as LPS Desktop. BAC Servicing uses LPS Desktop to ensure the confidentiality and integrity of the documents and information exchanged between BAC Servicing and foreclosure counsel with respect to foreclosure proceedings. In October 2010, BAC Servicing integrated all active foreclosures into the LPS Desktop system, thereby permitting foreclosures to be centrally tracked and monitored through and beyond a foreclosure sale. BAC Servicing uploads into LPS Desktop all of the documents required by foreclosure counsel to prepare foreclosure complaints and AOIs. Thereafter, foreclosure counsel are required to submit and upload into LPS Desktop all documents substantiating the steps of the foreclosure process, including notices of default complaints, and AOIs where they can be accessed and reviewed by BAC Servicing personnel. Foreclosure counsel cannot alter borrower financial data resident in BAC Servicing’s information systems via LPS Desktop.

Issues have been raised about the security and integrity of business records where LPS and/or a similar company called DOCX have an active role in the preparation and execution of foreclosure documents. Other than the provision of LPS Desktop, BAC Servicing does not rely on LPS for any foreclosure-related services. Nor does BAC Servicing use DOCX for any foreclosure-related services, specifically including mortgage assignments.

In order for information contained in the electronic record keeping system to be admitted in evidence the record has to be made at or near the time of observation by a person with actual knowledge, or from information supplied by such a person, and must be made in the regular course of business as part of a regular practice of that business to make the record. The information in the electronic record keeping system will then be admissible unless the sources

of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.

For the purposes of this review, BAC Servicing has met the standard of a Prima Facie showing that data in its record keeping system is entered at or near the time of the transaction recorded as a part of a regular practice to make such records and that there is nothing in the sources of information or the method, purposes or circumstances of preparation to indicate that the data is not trustworthy.

THE RELIABILITY OF RESPONDENT'S DOCUMENT PREPARATION AND EXECUTION PROCESS

All of the Affidavits of Indebtedness ("AOIs") filed in New Jersey by BAC Servicing are prepared and executed in BAC Servicing's Pittsburgh, Pennsylvania facility. All employees involved in the document execution process at the Pittsburgh facility have participated in a two-day in-person training program covering the procedures set forth herein. These employees included all affiants, members of the Prep Team, members of the Quality Control Team, notaries, and supervisors. The two-day training session occurred over November 22 and 23, 2010, with one-on-one make-up sessions for employees who could not attend. The training will be repeated at regular intervals and for all new hires, and updated as necessary. The training included reviewing the various checklists that each employee would encounter in his or her job function in the document execution process and administration of a practice test to verify the employee's understanding of BAC Servicing's document execution procedures. In addition, the employees are required to take two scored tests, on which they must achieve a grade of 90% or higher in order to work on real AOIs. Under the New Jersey Rules of Court, the Judiciary accepts

unnotarized certifications in lieu of notarized affidavits and thus the vast majority of sworn documents submitted in New Jersey foreclosure cases are not notarized. However, BAC Servicing's employees are trained about the notarization process, the necessity for personal appearance before the notary, and the importance of notarization in states where the process is required and for those instances in which notarization may be needed in New Jersey as well.

Prior to beginning the foreclosure process, BAC Servicing's Foreclosure Review Committee reviews each loan on the iSeries database to see if foreclosure is appropriate. If the Foreclosure Review Committee finds that foreclosure is appropriate, the Committee refers the loan to the Pre-Sale Group, which manages and tracks the foreclosure process from referral to foreclosure counsel to sale. When a loan is referred to the Pre-Sale Group for foreclosure, it is assigned a specific warning code in the servicing databases that, among other things, prevents partial payments from being applied. BAC Servicing has established a practice that once a mortgage loan is in default and has been referred to counsel for foreclosure, it will not accept partial payments on the loan unless such payments are submitted pursuant to an express agreement between the bank and the mortgagor. Where a documented agreement between the bank and borrower occurs, the warning code will be changed and further prosecution of the foreclosure will cease.

The Pre-Sale Group provides the loan documents, such as the mortgage, note, and assignments, if any, to foreclosure counsel, who then drafts the foreclosure complaint. Foreclosure counsel obtains the note, the mortgage, and other information necessary for opening the file and preparing and filing a complaint via LPS Desktop. BAC Servicing does not utilize LPS as a third-party vendor in any way, and no LPS employee has access to any of BAC Servicing's information.

When the time comes for the judgment application, foreclosure counsel requests the necessary information from BAC Servicing. BAC Servicing will then prepare an Account Information Statement ("AIS"), which is a compilation of data maintained in the ordinary course of business on BAC Servicing's iSeries database. The "as of" figures in the AIS are generated from real-time iSeries data and are current to within 24 hours. The AIS contains applicable financial data, including the unpaid principal and interest balances, escrow balances, and credits. When completed and uploaded to LPS Desktop to be transmitted to foreclosure counsel, the AIS is in PDF format, and cannot be edited or manipulated in any way. BAC Servicing provides foreclosure counsel with standardized AOI forms and attorney checklists. Foreclosure counsel prepares the AOI based on the information contained in the AIS and uploads the AOI, the complaint, the note, the mortgage, and assignments, if any, to LPS Desktop to be reviewed and executed by BAC Servicing.

After foreclosure counsel transmits the completed AOI to BAC Servicing via LPS desktop, the document "Prep Team" at BAC Servicing verifies the information on the AOI as submitted by foreclosure counsel against that in the underlying documents on iSeries and LPS Desktop. The Prep Team prints the mortgage, note, complaint, and assignments, if any, and places them in the "AOI package" that is provided to the affiant for review. The Prep Team uses a checklist tailored specifically for New Jersey. Among other data points, the Prep Team verifies the borrower information and the identity of the note holder/lender including the presence of any related assignments and prints out the most recent version of the AIS, which contains the date of default and the amount due. If any facts on the AOI are inconsistent with the business records, the Prep Team sends the AOI back to counsel for correction.

If the Prep Team approves the AOI, the team sends the AOI and the following business records to the affiant: (a) the AIS; (b) the Complaint; (c) the Foreclosure Account Follow-Up Screen Print from iSeries, which shows "milestone information" relating to the foreclosure, such as the referral date and the date the complaint was filed; (d) the Investor Information Maintenance Screen Print from iSeries, which provides the identity of the proper plaintiff; (e) the Account Status Inquiry Screen Print from iSeries, which shows loan-specific information including loan amount, interest rate, and monthly payment; (f) the Note; (g) the Mortgage; and (h) any applicable assignments.

The affiant reviews and verifies all of the information in the AOI in comparison to the same information in the printed business records provided to the affiant by the Prep Team. If anything is inconsistent between the AOI and the business records, the affiant is trained to reject the AOI and to return it to foreclosure counsel for correction.

In completing the execution of the AOI, the affiant goes through a 44-step New Jersey-specific checklist of all data points on the AOI. These include: verifying that all the necessary documentation is attached to the AOI, including the AIS and the payment and default information contained therein; that the loan number and borrower name on the AIS match those on the Foreclosure Account Follow Up screen print; that the holder of the note as listed in the AOI is the same entity as the lender/mortgagee on the mortgage, and if not, that there is an assignment included with the paperwork; and that the principal and interest amounts due correspond from the AOI to the business records. Step 44 of the process is for the AOI to be signed in the presence of a notary and then for the file to be returned to the appropriate secure storage filing cabinet.

After execution, every AOI is reviewed by BAC Servicing's Quality Assurance Team. The Quality Assurance Team first verifies that the Prep Team and affiant checklists were completed and that the affiant has the authority to sign the AOI. The Quality Assurance Team also completes its own 19-step checklist. This checklist includes verifying that: there are no outstanding issues logged in LPS concerning loan modification or requests to stop foreclosure; the loan number and borrower name on the AIS match those on the Foreclosure Account Follow Up screen print; the plaintiff on the Complaint matches the plaintiff on the AOI; the affiant has proper signing authority based on BAC's Foreclosure Affidavit Master Associate List; and the AOI appears to have been properly notarized.

For the purposes of this review, the process described by Respondent's submissions meets the standard of a Prima Facie showing that each certification submitted to the court is reviewed and executed by an authorized person who has been trained in how to understand Respondent's business records and source documents and who has personal knowledge of the content of the relevant records and documents upon which the certification is based. Respondent has also shown, on a Prima Facie basis, that it has a training process and a post-certification review process to ensure that its established procedures are in fact followed. The process described in these submissions, if followed, could justify reliance by the court on the accuracy of the information contained in certifications submitted to the court by the Respondent. This conclusion should not be deemed as dispositive of issues in any individual foreclosure case, each of which must be determined upon its own facts and record.

RESPONDENT'S OVERSIGHT AND COMMUNICATION WITH COUNSEL

During the period of this review the New Jersey Supreme Court adopted further amendments to Rules 4:64-1 and 4:64-2. The pertinent part of revised Rule 4:61-4 provides;

In all residential foreclosure actions, plaintiff's attorney shall annex to the complaint a certification of diligent inquiry:

(A) confirming that the attorney has communicated with an employee or employees of the plaintiff or of the plaintiff's mortgage loan servicer (i) who personally reviewed the complaint and confirmed the accuracy of its content, as mandated by paragraphs (b)(1) through (b)(10) and (b)(12) through (b)(13) of this rule, based on business records kept in the regular course of business by the plaintiff or the plaintiff's mortgage loan servicer, and (ii) who, if employed by the plaintiff's mortgage loan servicer, (a) identified the relationship between the mortgage loan servicer and the plaintiff, and (b) confirmed the authority of the mortgage loan servicer to act on behalf of the plaintiff; and

(B) stating the date and mode of communication employed and the name(s), title(s) and responsibilities in those titles of the plaintiff's or plaintiff's mortgage loan servicer's employee(s) with whom the attorney communicated pursuant to paragraph (2)(A) of this rule.

The revised Rule 4:64-2 now provides in relevant part:

(c) Time; signatory. The affidavit prescribed by this rule shall be sworn to not more than 60 days prior to its presentation to the court or the Office of Foreclosure. The affidavit shall be made either by an employee of the plaintiff, if the plaintiff services the mortgage, on the affiant's knowledge of the plaintiff's business records kept in the regular course of business, or by an employee of the plaintiff's mortgage loan servicer, on the affiant's knowledge of the mortgage loan servicer's business records kept in the regular course of business. In the affidavit the affiant shall confirm:

- (1) that he or she is authorized to make the affidavit on behalf of the plaintiff or the plaintiff's mortgage loan servicer;
- (2) that the affidavit is made based on a personal review of business records of the plaintiff or the plaintiff's mortgage loan servicer, which records are maintained in the regular course of business;
- (3) that the financial information contained in the affidavit is accurate; and
- (4) that the default remains uncured.

The affidavit shall also include the name, title, and responsibilities of the individual, and the name of his or her employer. If the employer is not the named plaintiff in the action, the affidavit shall provide a description of the relationship between the plaintiff and the employer.

(d) Affidavit. Plaintiff's counsel shall annex to every motion to enter judgment in a residential mortgage foreclosure action an affidavit of diligent inquiry stating: (1) that the attorney has communicated with an employee or employees of the plaintiff or the plaintiff's mortgage loan servicer who (A) personally reviewed the affidavit of amount due and the original or true copy of the note, mortgage and recorded assignments, if any, being submitted and (B) confirmed their accuracy; (2) the date and mode of communication employed; (3) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) or the employee(s) of the plaintiff's mortgage loan servicer with whom the attorney communicated pursuant to this rule; and (4) that the aforesaid documents comport with the requirements of R. 1:4-8(a).

The revisions to the Rules require an examination of Respondent's procedures for oversight and communication with foreclosure counsel. The primary means of communication between BAC Servicing and foreclosure counsel is via an intercom (email) function in LPS Desktop. Intercoms may be sent to specific Bank employees or to group mailboxes for specific operational units. Intercoms are the preferred method of communication because the Bank feels that they are convenient, rapid, efficient, and familiar and because they create a record to assist in management and supervision of the communication process.

Foreclosure counsel can also communicate with BAC Servicing through the use of a group email box managed by the Bank's Vendor Management group. The Bank's Attorney Vendor Management team manages the relationship with foreclosure counsel and provides quality control oversight, in compliance with Office of the Comptroller of the Currency rules and regulations. BAC Servicing also uses this box to send "Attorney Alerts" to foreclosure counsel concerning changes in policies and procedures, to reiterate existing policies and procedures, or to request data or documents.

Foreclosure counsel may also use their firm email system and may use the telephone for direct interpersonal discussions. BAC Servicing provides counsel with a directory of employees and phone numbers.

The Bank also has regularly scheduled weekly conference calls with each foreclosure firm to discuss policies, procedures, processes, groups of loans and even specific cases. Prior to the conference calls the Bank typically receives an emailed list of matters that foreclosure counsel would like addressed during the call. When the Bank has issues it wishes to address, it will provide agendas and meeting materials in advance of the meeting. At least one BAC Servicing employee assigned to work with the specific foreclosure firm and one team manager will participate in the conference. Following each call the Bank will send counsel minutes of the meeting, taking note of issues remaining open for discussion and resolution.

All New Jersey foreclosure attorney firms in BAC Servicing's attorney network have attended mandatory training on BAC Servicing's enhanced document execution processes. Moreover, before New Jersey counsel are permitted to file any cases, the firm must first participate in a testing phase to demonstrate its ability to produce New Jersey AOs that are accurate and comply with BAC Servicing standards. To do so, the firms are required to process and produce during the testing phase five accurate AOs. The test AOs are processed by BAC Servicing as if in the ordinary course of business and must pass the same quality assurance criteria.

In addition to the above pre-representation procedures, BAC Servicing has recently enhanced its oversight of outside counsel during the foreclosure process. BAC Servicing established a Code of Conduct that was distributed to all foreclosure counsel and abidance by which is a prerequisite to a firm's representation of BAC Servicing. BAC Servicing also assesses foreclosure counsel via onsite quality assurance reviews of firms that handle a high volume of BAC foreclosures. These onsite reviews include: a review of law firm operations; an assessment of the firm's compliance with law; interviews of law firm personnel; and shadowing of law firm

personnel as they process foreclosures. In addition to onsite assessments, BAC Servicing reviews a sampling of foreclosure files to ensure accuracy, completeness, and compliance with all Bank of America requirements.

In order to comply with the amended Rules 4:64-1 and 4:64-2, foreclosure counsel initiates the process by uploading the documents requiring verification into LPS Desktop. After counsel has uploaded the documents, a member of BAC Servicing's Prep Team audits the documents and confirms that each document has been properly uploaded. Next, a member of the Signer Team verifies that the data and information in the documents, including the Complaint, Mortgage, Note, and Assignment of Mortgage if applicable, are consistent with Bank of America's business records. BAC Servicing's Quality Control team reviews all of the underlying documents and data points again, after which the member of the Signing Team who initially verified the data will advise foreclosure counsel that BAC Servicing has completed its review and verification.

This communication to counsel is expected to be predominantly via an "Intercom" function on LPS Desktop. BAC Servicing has certified that the LPS Desktop Intercom function is a "direct, personal, and real-time communication," in which "messages are recorded and time-stamped, which permits the Bank to track and maintain all communications between counsel and the Bank." BAC Servicing has further certified that "[a]lthough LPS Desktop is the preferred method of communication, foreclosure counsel may call Bank of America employees to discuss any issues they may have, including with respect to the verification process" set forth in amended Rules 4:64-1 and 4:64-2.

In conjunction with the amended Rules, BAC Servicing has implemented a mandatory training program to introduce employees to the Attorney Certification process, their

responsibilities, the documents they will be required to review, and the process for communicating with foreclosure counsel to enable compliance with the new Rules. Following completion of the training session, employees are required to pass an assessment to ensure they understand the process prior to being permitted to participate in the Attorney Certification process.

PROPOSED DETERMINATION

Based on the submissions discussed herein it is my proposed determination that BAC Servicing has shown, on a Prima Facie basis, that it has processes and procedures in place which, if adhered to, will ensure that the information set forth in affidavits or certifications submitted in foreclosure proceedings is provided by an affiant authorized to act on behalf of the plaintiff in the action and that each affidavit or certification submitted is properly executed and is based upon knowledge gained through a personal review of relevant records which were made in the regular course of business as part of BAC Servicing's regular practice to make such records. BAC Servicing has filed the required Service Portfolio with the court and has certified that all uncontested mortgage foreclosure cases in that portfolio will be prosecuted under the processes outlined in its Prima Facie showing. Therefore it is my recommendation that BAC Servicing be permitted to resume prosecution of the uncontested residential mortgage foreclosure proceedings included in its Servicer Portfolio.

Consistent with paragraph 3 of the Court's March 29, 2011 Order Approving the Recommended Stipulation and Appointing Special Master in this case, nothing in this report and recommendation should be construed as altering or interfering with the right of any party to a foreclosure action to contest the foreclosure in any way that party sees fit, nor altering or

interfering with the discretion of any Superior Court Judge of the State of New Jersey to
adjudicate all issues raised by the parties in contested foreclosure matters.

Respectfully submitted,

Richard J. Williams
Special Master