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SUPERIOR COURT
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January 25, 2011

VIA HAND DELIVERY

Honorable Walter R. Barisonek
Union County Superior Court
First Floor Rotunda
Two Broad Street
Elizabeth, New Jersey 07201

Re: Administrative Order 01-2010

Dear Judge Barisonek:

I write on behalf of our clients Deutsche Bank National Trust Company, Deutsche Bank Trust Company Americas, and U.S. Bank National Association,[1] each acting solely in its capacity as trustee (collectively, "the Trustees"), in response to Administrative Order 01-2010 (the "Order"), which was issued on December 20, 2010 and was directed to "Foreclosure Plaintiffs Filing 200 or more residential mortgage foreclosure actions in 2010." (Order, at 1.) The Trustees believe that they are named in the Order on the basis of foreclosures conducted by loan servicers in the Trustees' names as trustees of for residential mortgage-backed securitization ("RMBS") transactions.[2]

At the outset, I want to stress that the Trustees appreciate the New Jersey judiciary's desire to identify and address issues relating to foreclosure document preparation and filing practices and also share the Court's interest in ensuring the integrity of the residential mortgage foreclosure process. The Trustees have been industry leaders concerning these issues and have been reminding servicers of their obligations in connection with foreclosure-related issues since well before the media began focusing on this issue in the fall of 2010.

[1] Based on the criteria for selection (*i e*, 200 or more foreclosure cases filed in 2010), we believe that the Deutsche Bank entity to which the Order likely should be directed is either DBNTC or DBTCA, and we therefore respond collectively on behalf of both entities.

[2] The Trustees note that to the best of their knowledge, they have not been served with the Order, and they expressly retain and do not waive any rights in that regard.

The Order directs 24 named recipients (the "Recipients") to respond to the Order within 45 days to "demonstrate affirmatively that there are no irregularities in their handling of foreclosure proceedings." (Order, at 15.) As the Order references, on December 20, 2010, Judge Jacobson separately issued an order to show cause directing six residential mortgage loan servicers to show cause as to why "the processing of uncontested residential mortgage foreclosure actions they have filed should not be suspended" (the "OTSC"). The six servicers filed written submissions with the Court on January 5th[3] and participated in a conference on January 19, 2011 with Edward Dauber, Esq., an attorney appointed by the Court. The return date for the OTSC is February 14, 2011. Based on information contained in the servicers' written submissions and other information set forth below, the Trustees respectfully request that Your Honor consider withdrawing the Order or adjourning the deadline for the Trustees to respond to the Order

The Role of Corporate Trustees

By way of background, the Trustees serve in the capacity of corporate trustee for RMBS transactions. As with other corporate trustees, an RMBS trustee is a trustee that, prior to an event of default, undertakes to perform only the duties that are expressly set forth in the document that governs the securitization, which is typically known as a pooling and servicing agreement. Under standard terms in a pooling and servicing agreement, an RMBS trustee plays no role in managing or overseeing foreclosures of loan collateral held by the trusts Rather, that function is reserved exclusively for loan servicers, which are appointed by the settlor of each trust (and not by the trustee). As explained in one treatise·

> [S]ervicers are responsible for enforcing the terms of a defaulted securitized loan. This responsibility may include: (1) foreclosing on the property and/or in a commercial context pursuing other related remedies such as exercising an assignment of leases and rents, appointing a receiver of rents, etc.; or (2) agreeing with the borrower to "work out" the loan default by modifying the terms of the loan or forbearing from exercising certain remedies in order to allow the borrower an opportunity to cure the underlying default.

Talcott J. Franklin and Thomas F. Nealon III, Mortgage and Asset Backed Securities Litigation Handbook, § 5.106 [4] Notably, several servicers' submissions to Judge Jacobson in response to

[3] The servicers' written submissions are available via the following link·
http //www.judiciary state nj us/superior/documents htm

[4] Similarly, a recent publication by the American Bankers Association, Corporate Trust Committee explained that "to the extent enforcement of the assets involves a foreclosure action, the servicer undertakes those actions in the trustee's name as the secured party but is fully responsible for all associated activities including the engagement of counsel, eviction proceedings, property maintenance,

the OTSC expressly acknowledged that the servicer—not the trustee or lender—typically has the relationship with the borrower. (Chase Response to OTSC, at 5, n.3.) Wells Fargo, which serves in a trustee capacity or a servicing capacity in securitizations, explained that·

> [W]hen Wells Fargo appears as a plaintiff in a foreclosure proceeding, it is often appearing solely in its capacity as a trustee for the holders of privately issued mortgage backed securities In those circumstances, the servicer for the securitized loans (not necessarily Wells Fargo) engages in all of the activity undertaken in the foreclosure lawsuit. The servicer is authorized to act on behalf of the trust pursuant to contracts that govern the administration of the securitized assets, commonly known as pooling and servicing agreements. The selection of the servicer is also governed by those contracts. Accordingly, in its trustee capacity, Wells Fargo generally plays no active role in the servicing or foreclosure of mortgage loans.

Wells Fargo Response to OTSC, at 5, n.3.

The Challenge for Corporate Trustees to Respond to the Order

The Order compels the 24 Recipients to provide information concerning "processes they follow" and "their handling of foreclosure proceedings " Given the distinct roles played by trustees and servicers, however, the processes and procedures employed in connection with any given foreclosure of a property owned by a securitization trust are determined by the procedures of that trust's loan servicers, not those of its trustee. Accordingly, if trustees, as foreclosure plaintiffs, were required to respond to the Order on behalf of each securitization trust, the trustees would need to: (a) redirect the inquiry to each of the companies that service loans held in each of the trusts for which it serves as trustee,[5] and (b) compile the results of that inquiry for delivery to the Court. Such a task would not only be virtually impossible to achieve within the timeframe allotted by the Order, but would result in a bombardment of the Court with duplicative and overlapping submissions because loan servicers service loans for multiple trusts for which multiple banks act as trustees. Moreover, a list of Trusts' loan servicers undoubtedly would overlap with the list of servicers that service loans for the Government Sponsored Enterprises, Fannie Mae and Freddie Mac (the "GSEs"), which also are named in the Order. The Trustees respectfully submit that a more efficient and effective approach would focus directly on loan

and sale or disposition of properties following foreclosure." American Bankers Association, Corporate Trust Committee, "The Trustee's Role in Asset-Backed Securities," Nov 9, 2010, at 5

[5] A single trust can have a single servicer or multiple loan servicers, each of which services a portion of the trust's loan portfolio. The trustee is never the loan servicer

servicers, rather than trustees. The Court could direct inquiries regarding the issues identified in the Order to servicers that conduct substantial foreclosure activity in New Jersey, each of which could respond in a single submission.

There Appears to Be Sufficient Publicly Available Information for the Court to Examine Foreclosure Document Preparation and Filing Practices

A great deal of information concerning the procedures that are employed to foreclose on properties owned by trusts for which the Trustees serve as trustee (the "Trusts") is publicly available in the form of the servicers' January 5, 2011 written submissions to Judge Jacobson in response to the OTSC, and additional information might become available soon in subsequent filings in that action.[6] The Trustees believe that more than half of the foreclosure actions filed in New Jersey in 2010 on behalf of the Trusts were commenced and handled by those six servicers

The remaining minority of foreclosures involving the Trusts that were filed in 2010 were handled by many other servicers (the "Other Servicers"). Notably, none of the Other Servicers is mentioned in the Order, which identifies by name certain firms that have attracted attention from the media and/or all three branches of government at the state and federal levels Given the burden of collecting these data from numerous Other Servicers, each of which represents only a small share of New Jersey foreclosures, and the fact that these servicers' practices have not been publicly questioned, the Trustees respectfully request that Your Honor consider the comprehensive data that has been provided by the six servicers—along with additional information that will available very soon in forthcoming responses by Mr. Dauber and the six servicers' reply memoranda—before determining whether (or what) additional information from the Trustees would be helpful for his review.

* * *

For the reasons explained above, in addition to the concerns raised by some of the six servicers that *sua sponte* review by the New Jersey judiciary outside of a particular case or claim raises questions of jurisdiction, constitutionality, and compliance with New Jersey rules of court, the Trustees respectfully request that Your Honor withdraw the Order to the extent that it is directed to the Trustees, or at a minimum, adjourn the Trustees' date to respond to the Order at least until after Judge Jacobson adjudicates the OTSC Of course, if Your Honor or the Acting Administrative Director would be interested in meeting or speaking with counsel for the Trustees in the interim, we would welcome an opportunity to discuss these issues as well as the Emergent Amendments to Rules 1:5-6, 4.64-1, and 4.64-2, which raise similar issues with respect to

[6] The January 12, 2011 scheduling order for the OTSC contemplates that Mr Dauber will file responses to the six servicers' January 5, 2011 submissions by January 28, 2011, and the six servicers will file reply memoranda by February 4, 2011

foreclosures brought on behalf of RMBS trusts.

Sincerely,

John P. Lavelle, Jr.