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Via E-mail and NYSCEF

Hon. Joel M. Cohen
Supreme Court, IAS Part 3
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> Re: **_In the Matter of the Application of The Bank of New York Mellon, in its Capacity as Trustee for 278 Residential Mortgage-Backed Securitization Trusts (Index No. 150738-2019)_**

Dear Justice Cohen:

We write on behalf of the Institutional Investors, AIG Parties, Federal Home Loan Bank of San Francisco, and Tilden Park to supplement the submission of Petitioner in response to Your Honor's question concerning disclosures to investors of the Petitioner's use of the Dynamic Method since the trusts' inception.

We hope this letter will shed additional light on how investors in the trusts' certificates have long evaluated them using the Dynamic Method. The use of the Dynamic Method was widely and plainly disclosed to the marketplace by the trustee since the trusts' inception. The primary source of this disclosure is the trustee's monthly release of (i) remittance reports and (ii) extensive loan-level information on each mortgage (including disclosure of any interest rate reductions), as set forth in the trustee's submission earlier today. The monthly remittance reports are circulated to investors to explain that month's remittances, i.e., how much the trust paid out in that month and why. An example remittance report appears in the record (*see* Doc. 74, Ex. B), and the Trustee has provided an additional example of a remittance report that reflects the typical disclosures for months in which loans are subject to interest rate reductions (*see* Ex. C to trustee submission at p. 44).

The remittance reports plainly disclose the monthly interest rate reductions that feed into the dynamic rates paid to the IO Certificates (*see* Ex. C to trustee submission at p. 44):

Modification Loan Level Details for newly modified loans in Current Period

	LoanStatus	PmtAge	Loan type	Note Rate	Actual Balance
Pre-Mod				6.12500	238,906.37
Post-Mod				2.00000	374,799.86
Current	CURRENT	0 - 29		2.00000	362,000.00
Pre-Mod				6.12500	182,024.40
Post-Mod				3.62500	186,200.81
Current	CURRENT	0 - 29		3.62500	127,307.82

Further, those monthly remittance reports also disclose the *current* weighted average Mortgage Rates of all of the loans and the *initial* weighted average Mortgage Rates of all of the loans (*see* Ex. C to trustee submission at p. 7) (here, substantially dropping from 5.89% to 5.06% from the trust's inception through the present):

Original Mortgage Loan Details

	Group I	Group II
Original Aggregate Loan Count	7,239	3,002
Original Stated Principal Balance	1,528,000,000.00	655,990,105.26
Original Weighted Average Mortgage Rate	6.16305%	6.52590%
Original Weighted Average Net Mortgage Rate	5.89960%	6.26467%
Original Weighted Average Remaining Term	359	359

Current Mortgage Loan Details

	Group I	Group II
Beginning Aggregate Loan Count	2,290	863
Loans Paid Off or otherwise removed pursuant to the PSA	33	12
Ending Aggregate Loan Count	2,257	851
Beginning Pool Stated Principal Balance	408,189,031.09	163,635,874.03
Scheduled Principal	675,562.53	245,410.38
Unscheduled Principal	5,945,149.76	1,514,492.97
Realized Principal Losses due to Liquidations/Modifications	963,982.41	298,197.36
Ending Pool Stated Principal Balance	400,604,336.39	161,577,773.32
Beginning Weighted Average Mortgage Rate	5.33985%	5.34818%
Beginning Weighted Average Net Mortgage Rate	5.07545%	5.08815%
Ending Weighted Average Mortgage Rate	5.32995%	5.33863%
Ending Weighted Average Net Mortgage Rate	5.06546%	5.07860%
Beginning Weighted Average Remaining Term to Maturity	243	243
Ending Weighted Average Remaining Term to Maturity	242	242

In addition to relying on these monthly trustee disclosures, investors also typically rely on third-party data platforms to track and analyze the underlying mortgages and the principal and interest payments on the certificates. Two widely used platforms in this regard are Bloomberg and Intex, each of which incorporates the monthly data disclosed by the trustees and permits investors to easily manipulate and analyze that data. Further, investors rely on research reports compiled by third-party analysts. Each of these additional forms of disclosure is described below.

Bloomberg

Investors throughout the financial industry universally rely on the Bloomberg platform for market data. The information screens for the IO certificates allow investors to see the loan-level data for each trust that is feeding into the calculation of monthly payments. For example, below is the screen for the loans in CWHL 2007-20 Class X. The columns circled in yellow show investors the use of the modified rate: the Gross Coupon (i.e. the current coupon on the loan), the "Premod Coupon," (i.e. the pre-modification coupon), and the "Mod Date" (i.e., the date the modification was made). One column to the left, "Mod Type" data shows investors that while some of the included modifications are for things like recapitalizations or principal forgiveness, some are expressly "Rate Modifications."

Investors also use Bloomberg to track payments to their certificates over time. The following two screenshots show a time lapse for the IO certificates from the same example trust, CWHL 2007-20. This trust was issued in November 2007 and its first payment date was December 2007. As the circled "Coupon" column shows (i.e., the Pass-Through Rate), the interest rate paid to the IO certificate generally declines each month. And while any investor could easily compare the current coupons to the initial coupons in the trustee's monthly remittances, the fact that the declining rates include rate modifications would be apparent to investors. The declines in the coupon rate for the IO certificate in this trust is so severe—a decline of over half, from around .39% in early 2008 to .19% in early 2020—that investors would understand that a drop of that magnitude would not be due solely to adjustments from prepayments or re-weighting of the interest rates among the Non-Discount Mortgage Loans.

From 2008:
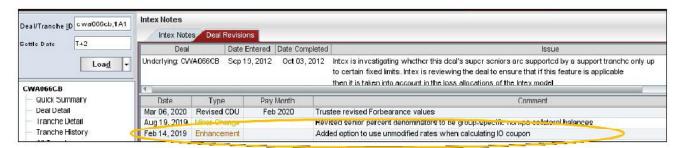

From 2020:

Intex

For its part, Intex provides user-friendly market data and cashflow modeling specific to mortgage-backed and similar securities like the trusts at issue in this case. Intex is widely used by investors in RMBS trusts. Like Bloomberg, Intex allows investors to model cashflows for these trusts and to easily manipulate each input thereto.

While these models are not easily reproducible here, the Intex screenshot below notes a momentous change in the modeling options Intex offered to investors as a result of this lawsuit being filed. As shown below, in February 2019, shortly after this lawsuit was filed in December 2018, Intex *"[a]dded [the] option to use unmodified rates when calculating IO coupon."* That the option to use <u>unmodified</u> rates to model cashflows was added only last year as a response to this lawsuit shows that since the inception of the trusts, the market has been modeling the trust payouts as calculated using the modified, dynamic rates.

Third-Party Research Coverage

Finally, investors also rely on market research published by a variety of third-party analysts. One well-known research report in the RMBS market is called "Securitized Products Weekly" and is published by Nomura. An example is attached here. Investors regularly receive updates from analysts concerning the function and performance of RMBS trusts like those at issue in this case. The reports are drafted by analyst experts who track over time the financial instruments on which they are writing.

In January 2019, Nomura's Securitized Products Weekly reported on this lawsuit. In discussing the lawsuit, the Nomura analysts described in detail that "for the purpose of computing the payout on IO bonds, *the trustee uses the following methodology currently*:

- A: Compute the UPB of loans which were classified as 'Non-Discount Mortgage Loans' based on their <u>initial</u> mortgage rate

- B: Compute the excess of such loans <u>current</u> mortgage rate over a specific threshold (as defined in the PSA), weighted by the current balance.

- C: The interest payable to the IO bonds, termed as the 'Class Optimal Interest Distribution Amount' is the product of the above two factors (on a monthly basis) in addition to past unpaid interest."

The report went on to discuss how the current lawsuit seeks to *change* the trustee's longstanding current methodology from the dynamic rate to the initial rate. This report reflected investors' longstanding awareness that the trustee employed the Dynamic Method.

Thank you for your continuing attention to this matter.

Very truly yours,

 /s/ David M. Sheeren

David M. Sheeren
Gibbs & Bruns LLP
(*pro hac vice*)

Cc: All counsel of record (via e-mail and NYSCEF)