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

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, *Petitioner*, For Judicial Instructions Under CPLR Article 77 Concerning the Proper Pass-Through Rate Calculation for CWALT Interest Only Senior Certificates.	Index No. 150738/2019 IAS Part 60 Hon. Marcy S. Friedman Mot. Seq. 001

SILIAN VENTURES LLC'S RESPONSE TO THE P&I INVESTORS' OPENING BRIEF OBJECTING TO THE PETITION AND BNYM'S OPENING BRIEF IN SUPPORT OF THE PETITION

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PRELIMINARY STATEMENT

BNYM's and the P&I Investors' submissions provide no persuasive response to Silian's compelling demonstration that the terms of the Covered Trusts require use of the Original Rate to calculate payments to the IO senior certificates. The P&I Investors respond that the terms "evidence of indebtedness" and "from time to time" might be broad enough to capture loan modifications. Yet, understood in context—including that "evidence of indebtedness" is a term of art with a specific meaning—these provisions serve only to support Silian's interpretation, not dispel it. The P&I Investors rely heavily on an unpublished Minnesota court decision that is irrelevant here given its many distinguishable factors. This is true especially where the P&I Investors remain unable to wrangle with the many inconsistencies that would result from using the Modified Rate in this case and provide explanations only confirming that the drafters intended a consistent use of the Original Rate.

Seeming to understand the futility of arguing from the contract terms, BNYM instead pivots to ask the Court to ignore the contract terms and instead defer to BNYM's self-serving description of its supposed historical "course of performance." Even if the Court were to find ambiguity, this request is premature as BNYM's proffered extrinsic evidence is in substantial dispute—including whether BNYM has even been historically implementing the correct provisions—and, in any event, is likely to be overwhelmed by the full record of extrinsic evidence developed in discovery demonstrating it was the clear intent of the parties to use the Original Rate.

Finally, the Court should reject the P&I Investors' invitation to bifurcate its consideration of whether the calculations should be performed on a pool or loan level. Rather, that issue is inextricably intertwined with whether to use the Original or Modified Rate so that they must be resolved together.

ARGUMENT

I. BNYM AND THE P&I INVESTORS HAVE NO COMPELLING RESPONSE TO SILIAN'S TEXTUAL INTERPRETATION

After trumpeting its interpretation of the PSAs in the Petition, BNYM now retreats to the milquetoast position that its "interpretation is at least a reasonable reading of the contracts." BNYM Br. 12. As BNYM retreats from its textual arguments, the P&I Investors have charged ahead—claiming that Silian's interpretation is wrong because it supposedly "ignores" the term "evidence of indebtedness" in the definition of "Mortgage Note" and invents inconsistency in the application of the term Mortgage Rate where none exists. Neither argument withstands scrutiny.

A. "Other Evidence Of Indebtedness" In The Definition Of Mortgage Note Does Not Undermine Silian's Construction Of The PSAs

The P&I Investors' position that later modifications fit under the definition of Mortgage Note because it refers to either a "note" or the catchall term "other evidence of indebtedness," P&I Br. 6–8, fails for multiple reasons. *First*, the P&I Investors mistakenly read "evidence of indebtedness" as a lay phrase that loosely includes anything showing the terms of a debt, including modification agreements. To the contrary, "evidence of indebtedness" is "a term of art that usually connotes ***an original instrument that itself may be traded***, not merely a reference to the existence of debt." *Davis v. Chase Bank U.S.A., N.A.*, 453 F. Supp. 2d 1205, 1208 (C.D. Cal. 2006).[1] *Black's Law Dictionary* similarly recognizes "evidence of indebtedness" as a term of art meaning "[***a***]***n instrument*** that evidences the holder's ownership rights in a firm (*e.g.*, a stock), the holder's creditor relationship with a firm or government (*e.g.*, a bond), or the holder's other rights (*e.g.*, an option)." *Evidence of Indebtedness*, Black's Law Dictionary (11th ed. 2019); *Security*, *id.*[2] Here,

[1] Emphasis indicated by both bold and italics is added throughout. All other emphasis is original.

[2] Other relevant sources support this usage. *See* I.R.C. § 6323(h)(4) (defining security as "any bond, debenture, note or certificate or ***other evidence of indebtedness*** …."). The Prospectus confirms that the drafters used the term of art. *See* Adams Aff. Ex. A, at 80 ("The income on securities representing regular interests in a REMIC … are generally taxable to holders in the same manner as income on ***evidences of indebtedness***.").

the term "other evidence of indebtedness" captures debt formally memorialized in a fashion other than a "note," like a bond. *See, e.g.*, Real Prop. Law § 125(1) (defining "mortgage investments" to include "bonds, notes or other evidence of indebtedness … secured by a mortgage ….").

A modification agreement is not an independently tradable debt instrument and thus cannot be an "evidence of indebtedness" under the definition of Mortgage Note. This distinction is precisely why the PSAs require the Mortgage File to include both the original version of the Mortgage Note, *see* PSA § 2.01(c)(i)(A), and, separately, copies or originals of any modification agreement. *Id.* § 2.01(c)(iv). The P&I Investors' sole support for a broader reading of "evidence of indebtedness" is *American Home Mortgage Assets Trust 2007-5* ("*AHMA*"), 2019 WL 1431923 (Minn. Ct. App. Apr. 1, 2019). But the *AHMA* court based its interpretation on the definition of "indebtedness" in *Black's Law Dictionary*, without considering *Black's* separate definition of "evidence of indebtedness" or any of the other sources demonstrating it is a term of art. *Id.* at *5. This oversight cannot override the definitive evidence of the term of art's proper meaning detailed above.

Second, the P&I Investors ignore that the Mortgage Note definition is disjunctive: it can be ***either*** a note "***or***" other evidence of indebtedness. This grammatical choice supports Silian's position that the drafters included "other evidence of indebtedness" to capture debt created by an instrument other than a note. Under the P&I Investors' construction, however, a Mortgage Note would include ***both*** a note ***and*** other evidence of indebtedness (a later modification agreement), which cannot be squared with the disjunctive form used by the drafters.

Third, even if a modification agreement could be an "evidence of indebtedness" in some instances, it would not be a Mortgage Note here because it would not be "original"—meaning first in time. Under a fundamental canon of contract construction, in defining Mortgage Note as "[t]he

original executed note or other evidence of indebtedness," the terms "original" and "executed" modify "other evidence of indebtedness." *See* Antonin Scalia & Bryan A. Garner, *Reading Law* 147 (2012) ("When there is a straightforward, parallel construction that involves all nouns or verbs in a series, a … modifier normally applies to the entire series."). It would also be nonsensical to interpret the definition as requiring that any note be "original" and "executed" but not as requiring that "other evidence of indebtedness," such as a bond, be "original" and "executed." On this point, the P&I Investors' reliance on *AHMA* is misplaced. The *AHMA* PSA's definition of Mortgage Note omits the word "original"; it is just "the note or other evidence of indebtedness of a Mortgagor under a Mortgage Loan." *Id.* at *2. The *AHMA* court's interpretation of "evidence of indebtedness" as including *subsequent* modifications, even if correct, has no application here.

Finally, the P&I Investors get no support from provisions requiring the deposit of "additional original documents evidencing an assumption or modification" into the Trust Fund. P&I Br. 7. These provisions say nothing about the meaning of "other evidence of indebtedness" and, if anything, support Silian's positions by drawing distinctions between "modification" agreements and the "Mortgage Note." *See* 2.01(c)(i), (iv) (separately requiring inclusion in the Mortgage File of the "original Mortgage Note" and "original or copies of each … modification … agreement"). Nor does the inclusion of modification agreements in the Trust Fund somehow itself dictate how the impact of those modifications are to be allocated among certificateholders; rather that is controlled by the PSA provisions governing the relative entitlements of each class of certificates to the cash flows generated by the Trust Fund.

B. The P&I Investors Fail To Reconcile The Internal Inconsistencies Created By The Trustee's Use Of The Modified Rate

To sidestep the inconsistency of arguing for the Modified Rate while using the Original Rate to classify Non-Discount Mortgage Loans, the P&I Investors must read an ***implied*** term into

the definition of Non-Discount Mortgage Loan (and Discount Mortgage Loan) that the classification be made only once at closing when the Modified Rate and Original Rate are the same. The P&I Investors' reasons for writing this new term into the PSAs are unpersuasive. *See Vt. Teddy Bear Co. v. 538 Madison Realty Co.*, 1 N.Y.3d 470, 475 (2004) ("[C]ourts may not by construction add or excise terms … under the guise of interpreting a writing" (quotations omitted).)

First, the P&I Investors contend that the lack of any temporal term in the Non-Discount Mortgage Loan definition means that the classification is performed "*once*—at the time the trusts were created." P&I Br. 17. As support, the P&I Investors point to other definitions that address determinations made with specific periodicity such as "[a]s to any Distribution Date." *Id.* This argument is a strawman. Silian does not contend that the category of Non-Discount Mortgage Loans changes over time; to the contrary, Silian contends that the Adjusted Net Mortgage Rate used to make those determinations was always intended to be static, resulting in a fixed group of Non-Discount Mortgage Loans. Thus, the lack of any temporal terms in the Non-Discount Mortgage Loan definition supports Silian's position, not the P&I Investors'. Indeed, if the drafters wanted the Adjusted Net Mortgage Rate to be subject to change—so that the classification of Non-Discount Mortgage Loans *could* vary over time—they would have stated expressly that the classification was made as of a specific date, as they did for other "one-time" determinations based on changing inputs. *See, e.g.*, PSA I-8 ("Cut-off Date Principal Balance: As to any Mortgage Loan, the Stated Principle Balance thereof ***as of the close of business on the Cut-off Date***.").

The P&I Investors' temporal-language argument also fails to account for BNYM's regular use of the Original Rate to determine other defined terms that do use express temporal language. *See, e.g.*, PSA I-2 (calculating Allocable Share "[***a***]***s to any Distribution Date***"); PSA I-17, I-22 (calculating PO and Non-PO Formula Principal Amounts "[***a***]***s to any Distribution Date***").

Second, though the P&I Investors rely on the PSAs' treatment of Substitute Mortgage Loans, P&I Br. 18, those provisions are irreconcilable with their position. The P&I Investors admit that the Non-Discount Mortgage Loan classification is supposed to "stick," even when an original loan is replaced with a Substitute Mortgage Loan. *Id.* But under the P&I Investors' approach, a Non-Discount Mortgage Loan would become a Discount Mortgage Loan when a Substitute Mortgage Loan replaces a loan with a modified interest rate below the Required Coupon. As "each Substitute Mortgage Loan shall be deemed to have an Adjusted Net Mortgage Rate equal to Adjusted Net Mortgage Rate of the Deleted Mortgage Loan for which it is substituted," using the Modified Rate would mean that such a Substitute Mortgage Loan would have a "deemed" interest rate below the Required Coupon when it enters the Trust Fund. PSA I-1 ("Adjusted Net Mortgage Rate"). Thus, even under the one-time-classification theory, that Substitute Mortgage Loan would be a Discount Mortgage Loan replacing a Non-Discount Mortgage Loan. Silian's approach avoids this perverse result: by using the Original Rate, every Substitute Mortgage Loan is "deemed" to have the same interest rate as the replaced loan at inception (*i.e.*, in the "original executed note"), meaning all Substitute Mortgage Loans receive the same classification as the loan they replace.

II. THE P&I INVESTORS' OTHER TEXTUAL ARGUMENTS FAIL

A. The Use Of "From Time To Time" Does Not Support The Dynamic Method

The P&I Investors' reliance on the language "from time to time" in the definition of Mortgage Rate to support the Modified Rate is misplaced, because that phrase is most naturally read to describe the frequency of payments: "at intervals." *See* Silian Br. 9.[3] The P&I Investors' effort to rebut that natural reading by referencing other places where the phrase "from time to time" refers to a change in rate, P&I Br. 5, is unpersuasive. The P&I Investors ignore other uses

[3] *Time*, Am. Heritage Dictionary of the English Language, https://www.ahdictionary.com/word/search.html?q=time.

of "from time to time" that refer to payment frequency, including tables in the Prospectus Supplement comparing Fees and Expenses paid from "time to time" with those paid "monthly." *See* Adams Aff. Ex. A, at S-80 (Prospectus Supplement). Context clarifies the meaning of the phrase. The examples cited by the P&I Investors refer to the rate "***in effect*** from time to time" for ***adjustable-rate*** indices, P&I Br. 5, making clear that rate changes were meant. The Mortgage Rate definition could use the same language—*e.g.*, the rate of interest on a Mortgage Note "***in effect*** from time to time"—but it does not. Rather, in defining Mortgage Rate as "[t]he annual rate of interest borne by a Mortgage Note from time to time," PSA I-17, the phrase "from time to time" most naturally describes how the "***annual*** rate" is borne—*i.e.*, at monthly intervals.

The P&I Investors' submission has no response to Silian's alternative argument that, even if the phrases "from time to time" and "at any time" could allow for changes over time to the interest rate, this merely accommodates the floating-rate Mortgage Loans that are collateral for some Covered Trusts and numerous other Countrywide trusts. Notably, this interpretation harmonizes the use of "from time to time" with the requirement that BNYM refer to the "original executed note," as the changes in interest rate over time for a floating-rate mortgage are reflected in the original executed note. By contrast, the P&I Investors' unsubstantiated conjecture that the phrase "from time to time" must be referring to later modifications creates needless contradiction with the "original executed note" being the alleged source for that information.

B. The Mortgage Rate Applicable To Modified Mortgage Loans Does Not Support The P&I Investors' Position

The P&I Investors' argument that a stray use of the term "Mortgage Rate" in Section 3.11(b) to describe the rate on a separately defined ***Modified*** Mortgage Loan—*i.e.*, a loan modified in lieu of refinancing—supports using the Modified Rate fails for multiple reasons. P&I Br. 5–6. *First*, the P&I Investors ignore the PSAs' treatment of a ***Modified*** Mortgage Loan as a completely

new Mortgage Loan, independent from the original Mortgage Loans. This construction was deliberate. Under REMIC tax rules, a modification made in lieu of refinancing is a "significant modification" that requires the modified obligation be "treated as one that was newly issued in exchange for the unmodified obligation that it replaced." Treas. Reg. § 1.860G-2(b)(1). Because a Modified Mortgage Loan is deemed newly issued on the date of its modification, the use of "Mortgage Rate" to refer to the newly originated loan is consistent with the purpose and the plain meaning of "original executed note." The original executed note on the ***Modified*** Mortgage Loan includes the terms of the modification in lieu of refinancing that brought it into existence. That the ***Modified*** Mortgage Loan expressly is distinguished from an original Mortgage Loan confirms that the Mortgage Rate is fixed at inception.

Second, Countrywide must immediately repurchase Modified Mortgage Loans—a repurchase treated as "prepayment in full" of the loan. PSA § 3.11(b). Thus all new Modified Mortgage Loans are removed from the trust and from any of the determinations or calculations at issue here. This avoids commercially absurd results, like those caused by using the Modified Rate, that would arise from using the interest rate of the Modified Mortgage Loans. Silian Br. 15–17.

Third, none of the modified Mortgage Loans relevant here are **M**odified Mortgage Loans, because they were modified in lieu of "reasonably foreseeable default," rather than refinancing—a type of modification not considered "significant" under REMIC tax rules. Treas. Reg. § 1.860G-2(b)(3). A non-significant modified obligation "is not treated as one that was newly originated on the date of modification." *Id.* § 1.860G-2(b)(4). Thus, the Mortgage Note for the modifications here is the original executed note. *See* PSA § 2.01(c)(i)(A), (iv) (separately requiring the Mortgage File contain the "original Mortgage Note" and each modification agreement). Modifications made after origination cannot impact the rate of interest appearing in the ***original*** mortgage note.

C. The Mortgage Rate's Netting Of Premiums For Lender-Paid Mortgage Insurance Does Not Establish A Dynamic Rate

The P&I Investors' argument that the Mortgage Rate is necessarily "dynamic" because it is defined to net out "any interest premium charged by the mortgagee [*i.e.,* the lender] to obtain or maintain any Primary Insurance Policy," P&I Br. 8–9, misunderstands how mortgage insurance works. The "interest premium charged by the mortgagee" is, by definition, a premium for lender paid mortgage insurance or "LPMI." *See* PSA I-13 (defining "Lender PMI Mortgage Loan[s]" as "[c]ertain Mortgage Loans as to which the Lender (rather than the borrower) acquires the Primary Insurance Policy and charges the related borrower an interest premium"). LPMI premiums are charged by the lender as a monthly fixed rate above the base mortgage rate set at the origination of the Mortgage Loan, and LPMI premiums are not cancelable until the Mortgage Loan is repaid or refinanced. *See* 12 U.S.C. § 4905(c)(1)(A). Consequently, the Mortgage Loan Schedule lists separately the "Mortgage Rate" ("net of any interest premium") and for "any Lender PMI Mortgage Loan, a percentage representing the amount of the related interest premium charged to the borrower." PSA I-16–17 ("Mortgage Loan Schedule" ¶¶ (xi), (xiii)). Because LPMI is a fixed monthly rate lasting the life of each Mortgage Loan and accounted for separately from the Mortgage Rate, netting LPMI premiums does not result in a "dynamic" rate.[4]

III. THE *AHMA* DECISION IS NEITHER CONTROLLING NOR PERSUASIVE

The P&I Investors exaggerate the relevance of the unpublished decision of a Minnesota intermediate appellate court in *AHMA*, which found that certain IO certificates in a non-ratio-strip transaction were properly impacted by loan modifications. That decision is not precedential here or anywhere.[5] Contrary to the P&I Investors' claim that the key terms "are virtually identical,"

[4] Even if the P&I Investors were correct that LPMI could change over time—which it does not—this still would not make the Mortgage Rate "dynamic" as it is "net" of the premiums and thus would remain static if the premiums varied.
[5] *See* Minn. St. § 480A.08(3) ("Unpublished opinions of the Court of Appeals are not precedential.").

P&I Br. 10, *AHMA* is a completely different deal, using different definitions and a different structure than the Covered Trusts. Thus, very few of Silian's arguments were even presented to, let alone rejected by, the Minnesota court. At least five factors render *AHMA* readily distinguishable.

First, unlike the Covered Trusts, the *AHMA* transaction is not a ratio-strip transaction. It does not rely upon Discount and Non-Discount Mortgage Loan classifications to determine payments to IO certificates, it does not use a PO and Non-PO Percentage to allocate cash flows among P&I and PO certificates, and it has no corollary to the Allocable Share concept. Thus, none of the definitional inconsistencies (*i.e.*, using the Modified Rate in some instances and the Original Rate in others, *see* Silian Br. 11–12) arise under the *AHMA* PSA when using the Modified Rate. To understand the import of these distinctions, the Court need look only as far as the conduct of the *AHMA* trustee, Wells Fargo. Though Wells Fargo used the Modified Rate for the *AHMA* transaction, Wells Fargo also performs calculations for ratio-strip transactions and uniformly uses the Original Rate on 30 different shelves. D'Vari Aff. ¶ 27. This stark contrast alone undermines the usefulness of *AHMA* in considering ratio-strip transactions.

Second, though the *AHMA* PSA designates the IO certificates as "senior," it expressly subordinates them to other senior certificates. Rather than pay interest to the IO certificates directly, the interest payment "is deposited into a shortfall reserve fund and first used to pay" other classes of certificates before "[t]he ***remaining interest, if any***, is then distributed to the" IO Certificates. *AHMA*, 2019 WL 1431923, at *3. This provision—which has no analogue in the Covered Trusts' PSAs—suggests that the *AHMA* IOs were designed much more like residual-interest certificates subordinate to the P&I certificates. By contrast, nothing in the Covered Trusts'

distribution waterfall supports subordinating the IO certificates to P&I certificates. Both types of certificates are Senior Certificates, and neither is subordinated to the other in payment priority.

Third, the *AHMA* PSA defines "Mortgage Note" as just "the note or other evidence of indebtedness of a Mortgagor under a Mortgage Loan." *Id.* at *2. The missing requirement that the note be "original" (*i.e.*, first in time) allows more leeway for later modifications.

Fourth, the *AHMA* PSA defines "Mortgage Rate" as the "annual rate at which interest ***accrues*** on such Mortgage Loan." *Id.* The court viewed the use of the accrual language as an important indication of the drafter's intent that later modifications could be accommodated. By contrast, the Covered Trusts' PSAs define "Mortgage Rate" as the "annual rate of interest ***borne*** by a Mortgage Note." PSA I-17. Like the face-value on a ticket, the interest borne by the first-in-time mortgage note is crystallized at execution, and its use demonstrates clearly that the drafters did not envision any later changes in interest rates not reflected in the original mortgage note.

Finally, though the *AHMA* PSA and the Covered Trusts' PSAs both use the phrase "from time to time" in the definition of "Mortgage Rate," that phrase in the *AHMA* PSA expressly refers to when the interest rate will be "adjusted." *AHMA*, 2019 WL 1431923, at *2. As the collateral in *AHMA* was adjustable-rate mortgages, the reference to rates being "***adjusted*** from time to time" most naturally reads as referring to those future interest-rate changes. *Id.*. This use of "from time to time" thus offers no guidance for interpreting "from time to time" in the Covered Trusts' PSAs, which describes how the "annual rate of interest" is "***borne*** by a Mortgage Note." PSA I-17. In any event, the *AHMA* court did not consider the phrase "from time to time" to show an intent to accommodate modifications. It thus provides no support for the P&I Investors here.

In addition to these structural and textual distinguishing factors, the *AHMA* court also made at least one clear interpretive error by failing to recognize "evidence of indebtedness" as a term of

art, instead improperly according it a lay meaning. *See supra* p. 3. Given that error, the Court should also decline to adopt the *AHMA* court's interpretation.

IV. THE P&I INVESTORS' STRUCTURAL ARGUMENTS ARE UNAVAILING

Without any citation, the P&I Investors assert that the IO senior certificates "were designed to receive 'excess' interest only to the extent the Non-Discount Mortgage Loans *created* excess interest." P&I Br. 14. That *ipse dixit* assertion cannot be reconciled with the Covered Trusts' terms or structure. If the drafters intended the IO senior certificates to be "excess-interest" IOs, the complex calculation of the Pass-Through Rate would be completely unnecessary. Instead, the PSAs would define the Pass-Through Rate using simple arithmetic: all the interest accrued on the mortgage loans minus the interest accrued on the other certificates. In fact, that ***is*** how the PSAs create an excess-interest certificate. For example, the CWALT 2007-J1 PSA defines the Pass-Through Rate for Class C Certificates as "a rate sufficient to entitle it to an amount equal to all interest accrued on the Mortgage Loans … less the interest accrued on the other Certificates." Adams Aff. Ex. B, at 19 n.3. By contrast, the complex Pass-Through Rate formula for the IO senior certificates—including the Class X certificates in the same CWALT 2007-J1 trust, *id.* at 8 n.9, 20 n.2—makes clear that the drafters' intended the "ratio-strip" structure for the IO senior certificates to maintain a constant proportion of each Mortgage Loan's interest between the P&I and IO senior certificates. Silian Br. 3, 6.

The P&I Investors' argument that Silian's approach would "provide the IO Certificates a ***guaranteed*** excess interest rate," making the IO senior certificates "uniquely immune to widespread defaults, foreclosures, and … mortgage modifications," P&I Br. 12, is unfounded. All credit losses—whether from defaults, foreclosures, or modifications—impact interest owed to the IO senior certificates and to the P&I senior certificates identically. In both cases, the losses reduce the amount by which the interest rate is multiplied (*i.e.*, the Stated Principal Balance for P&I

certificates and the Notional Amount for IO certificates). Both the P&I certificates and IO certificates also benefit equally from the distribution waterfall. In both cases, interest is paid first in the waterfall before principal—thus interest shortfalls are recovered out of principal proceeds. Neither the IO senior certificates nor the P&I senior certificates lose interest distributions when principal and interest proceeds combine to exceed interest owed to the senior certificates (except for the *pro rata* reductions in Section 4.02(d), *see* Silian Br. 5).

The P&I Investors stretch to fit the risk of interest-rate modifications under the "risk factor" disclosures in the Prospectus Supplement warning of the risk to the IO certificates if mortgage loans "prepay at higher rates." P&I Br. 12–13. Prepayment risks and modification risks are completely different. The P&I Investors themselves seem to admit this distinction, as they also argue that the missing modification risk disclosure for the IO senior certificates should be excused because no one anticipated the modification risk and there was no disclosure of that risk for P&I certificates either. *Id.* Br. 13 n.25. Both excuses are unpersuasive. The idea that modifications were not anticipated is belied by the express references to anticipated modifications in the PSAs. *See, e.g.*, PSA § 2.01(c)(iv) (delivery of modifications to Mortgage File); *id.* § 3.01 (permitting modifications that do not violate the REMIC rules). And, under the P&I Investors' approach, no disclosure of modification risk would be expected for the P&I certificates, because ***all*** interest-rate modifications would be absorbed by the IO senior certificates before ***any*** interest-rate modifications are absorbed by any other certificates. It is this uniquely concentrated risk faced by the IO certificates (and not the P&I certificates) that would have necessitated a risk disclosure.

Finally, the P&I Investors' argument that Silian's approach results in large payments to the IO senior certificates to recoup for past shortfalls caused by BNYM's improper calculation, P&I Br. 14, has no bearing on properly interpreting the PSAs' unambiguous terms. These payments

are no windfall. They are what is owed to the IO senior certificates under the PSAs. The P&I Investors' pearl-clutching at these amounts is ironic because the approach they ask the Court to adopt would completely halt future payments to nearly all of the IO senior certificates at issue here and increase their own recoveries by more than $100 million. It is no surprise that a calculation error impacting distributions on tens of billions of dollars of RMBS certificates would have a large monetary impact. But high stakes are no reason to ignore the plain language of the PSAs.

V. BNYM'S EXTRINSIC EVIDENCE IS PREMATURE AND UNPERSUASIVE

BNYM makes no textual arguments. It instead contends that the PSAs are ambiguous and asks the Court to accept a one-sided selection of extrinsic evidence to resolve that ambiguity. Resort to extrinsic evidence is inappropriate because the PSAs unambiguously require consistent use of the Original Rate. *See Chelsea Piers L.P. v. Hudson River Park Tr.*, 106 A.D.3d 410, 412 (1st Dep't 2013) ("Since defendant's obligation … is unambiguous, plaintiff may not resort to extrinsic evidence, such as the parties' course of performance."). Even if it were appropriate, BNYM's extrinsic evidence is weak or based on disputed facts yet to be tested by discovery.

A. BNYM's "Course-Of-Performance" Evidence Is Unpersuasive And Disputed

BNYM argues that its conduct alone "is sufficient to resolve the case" because "course of performance" is the "most persuasive evidence of the agreed intention of the parties." BNYM Br. 13–14 (quotation omitted). BNYM's "course of performance" argument fails for multiple reasons.

1. All Extrinsic Evidence Must Be Considered To Resolve An Ambiguity

BNYM asks the Court to find the PSAs ambiguous and to resolve that ambiguity using one source of extrinsic evidence—BNYM's own historical calculations—to the exclusion of any other type of extrinsic or parole evidence. But under New York law, a court should permit discovery to "explore all that may be offered to show what is the proper interpretation of the disputed language." *LDIR, LLC v. DB Structured Prods., Inc.*, 172 A.D.3d 1, 5 (1st Dep't 2019) (alterations omitted).

Relevant sources include "evidence of conversations, negotiations and agreements made prior to or contemporaneous with the execution of the agreement," and "extrinsic evidence about the purpose or object of the specific provision at issue." *Int'l Fin. Corp. v. Carrera Holdings, Inc.*, 2016 WL 3943790, at *11 (Sup. Ct. (N.Y. Cty.) Jun. 29, 2016). BNYM's focus on "course of performance" evidence, to the exclusion of other extrinsic evidence, is a transparent attempt to avoid any searching investigation into the true intent of the drafters. If the Court finds ambiguity, BNYM's effort to short-circuit the normal procedure for construing ambiguous contracts should be rejected, and the parties should be permitted to conduct fuller discovery on the issue of intent.

2. BNYM's Course-Of-Performance Evidence Is Unpersuasive

Even on this undeveloped record, there are strong reasons to doubt the interpretative value of BNYM's conduct. *First*, BNYM is merely an administrator of the Covered Trusts and would not have drafted their economic terms. Those economic terms, including the payments owed to the IO senior certificates, were drafted by the sponsor of the Covered Trusts, Countrywide, and investment banks that it retained to assist in structuring, marketing, and selling the deals, in coordination with the core original investors in the transaction. As a service provider, BNYM likely played little part in the structuring of the transaction—including the drafting of provisions governing interest calculations—and likely had little understanding of the reasons for structuring the Covered Trusts as they are. Given BNYM's sideline view, the contemporaneous understandings and statements from the real players—such as Countrywide, its investment bankers, investors, and counsel—will be much more probative of intent than BNYM's conduct.

Second, "course of performance" evidence is relevant only when a party deliberately performs a contract over time. *Jim Henson Prods., Inc. v. John T. Brady & Assocs., Inc.*, 16 F. Supp. 2d 259, 287 (S.D.N.Y. 1997). And it is hornbook law that a party's unilateral, mistaken conduct is not evidence of intent. *See* 5 Corbin on Contracts § 24.16 (2019) ("One of the parties

may carelessly make a wrong interpretation of the words of the contract …. The parties' mistaken interpretation of their contract does not constitute a course of performance which can assist the court in interpreting a disputed term."). Even the sparse record chosen by BNYM to support its "course of performance" argument includes evidence that BNYM's historical calculations are not the type of deliberate conduct that illuminates contractual intent. BNYM's counsel has acknowledged that BNYM uses a computer script to calculate certificateholder distributions. When the script was written—likely years before the financial crisis—there is no evidence that BNYM considered the impact of rate modifications on the calculations. In fact, until Silian approached BNYM in 2018, it is not clear that BNYM understood how its computer script treated modified Mortgage Loans.[6] There is even evidence that BNYM did not understand its own calculation when it filed the Petition. The Petition described BNYM's calculations inaccurately—so inaccurately that BNYM had to issue a second, clarifying notice to investors. This conduct suggests that as late as 2019, BNYM did not fully understand the computer script it had been using.

Moreover, Silian has reason to doubt whether BNYM's computer script was even intended to implement the correct PSA provision. In describing its calculation in the Petition, BNYM quoted from an ***in***applicable provision related to the LTR X-1 Class, which Silian does not hold and which does not control payments made to the IO senior certificates. Pet. ¶ 48 (quoting, without citation, PSA 6 n.4). Discovery will show that BNYM has also incorrectly referenced that provision as controlling in earlier communications with investors. BNYM's mistaken reliance on that provision is also supported by its use of a loan-level calculation, which is expressly provided for at the LTR X-1 Class, but not in the calculation of interest payment to the IO senior certificates.

[6] After Silian raised concerns in February 2018, BNYM spent nine months investigating its own calculations. During that time, BNYM repeatedly told Silian that it did not have a view on which rate applied. BNYM's nine-month refusal to take any position on the appropriate calculation methodology cannot be squared with its present position that its historical calculation reflected its longstanding, deliberate interpretation of the relevant contractual language.

While discovery is needed to confirm which PSA provision BNYM intended to implement, BNYM's mistaken reliance upon an inapplicable provision would render its course of performance entirely irrelevant to the interpretation of the applicable provision. On this record, there is no basis to conclude that BNYM's past calculations are anything but a mistaken interpretation "carelessly ma[d]e." 5 Corbin on Contracts § 24.16.

In any event, BNYM's conduct needs to be considered in contrast with the overwhelming evidence of BNYM's and other trustees' administration of substantively analogous ratio-strip transactions consistent with Silian's approach. An initial analysis supervised by BlackRock's former Global Head of Structured Finance, Ron D'Vari, and RMBS-banker, Matthew Lewis, shows that the six entities (BNYM, Citibank, Deutsche Bank, Ocwen, U.S. Bank, and Wells Fargo) responsible for calculating interest payments for the universe of ratio-strip IOs issued from 2002–2008 (excluding the Covered Trusts) use the Original Rate for more than 95 percent of the shelves—with only one party on one shelf following BNYM's approach. D'Vari Aff. ¶ 27. Specifically, Wells Fargo, Deutsche Bank, Ocwen, and BNYM uniformly apply the Original Rate across a combined 53 shelves. *Id.* BNYM thus uses the Original Rate on 13 out of 13 trusts it administers other than CWALT and CWHL. *Id.* U.S. Bank applies the Original Rate across 6 of 7 shelves. *Id.* U.S. Bank appears to apply BNYM's methodology on a single shelf, AMAC, but that appears to be a mistake given U.S. Bank's consistent use of the Original Rate on every other shelf it administers. *Id.* Citibank (the least active administrator) is responsible for the remaining three outlier shelves, but it never follows BNYM's approach, and it is inconsistent in even its own approach, sometimes using the Original Rate. *Id.* BNYM's uniform use of the Original Rate in other ratio-strip transactions, many using the exact terms disputed here, raises serious questions about what, if any, interpretive value BNYM's calculations have for the Covered Trusts. *See, e.g.*,

Adams Aff. Ex. C, at 25 (SURF 2004-AA1 PSA) ("Mortgage Rate: The annual rate of interest borne by a Mortgage Note from time to time."); *id.* Ex. D, at 23 (JPMMT 2004-S1 PSA) ("Mortgage Note: The original executed note or other evidence of the indebtedness of a Mortgagor secured by a Mortgage under a Mortgage Loan."); *id.* Ex. E, at 24 (CFLX 2007-1 PSA) ("Mortgage Note: The note or other evidence of the indebtedness of a Mortgagor secured by a Mortgage.").

3. Fact Issues Prevent Ruling On BNYM's Course Of Performance Now

BNYM has submitted no sworn affidavits or other admissible evidence that could be admitted into the record to establish its course of performance. Even if BNYM's unsupported assertions could substitute for admissible evidence, there are many triable issues of fact underlying those assertions that prevent them from being accepted now. First and foremost, though the parties agree that BNYM uses the Modified Rate in at least one place in calculating the interest payable to the IO senior certificates, the parties dispute virtually every other aspect of the calculation. Of particular relevance, Silian believes that BNYM uses the Original Rate in numerous calculations performed under the PSAs, but BNYM asserts (without evidentiary support) that it performs some or all of these calculations only once, at inception. BNYM Br. 5. BNYM has refused to produce the working papers that would show how or when it performed these calculations, and when asked to describe its calculation, BNYM would offer only what it called a "functional description of the Trustee's method for calculating payments to the IO Certificates" that "does not purport to describe the calculations performed." BNYM's repeated insistence that its calculation is undisputed cannot be squared with its lack of transparency and its inability to describe the actual calculations it performs. BNYM also asks the Court to accept numerous other facts without evidentiary basis including its history of calculations, BNYM Br. 1, 15; objections by parties to the PSAs and by Certificateholders, *id.* at 9, 15; and market expectations, *id.* at 17–19. These are all triable issues of fact as BNYM has offered no conclusive evidence in support and their assertions might be

conclusively refuted with facts learned in discovery. Indeed, as BNYM's resort to a "functional description" of its methodology shows, even BNYM cannot yet fully assess its past practices. Consideration of BNYM's course of performance is thus premature.

B. The Alleged Calculations By The Master Servicer Are Unestablished

BNYM contends (again without evidentiary support) that the Master Servicers for certain so-called "uncertificated" trusts "have adopted the same dynamic method as the Trustee." BNYM Br. 15 n.5, 16–17. *First*, the Master Servicer's supposed calculation does not support BNYM's approach to calculating interest payable to the IO senior certificates. The "Excess Master Servicing Fee Amount" is only "payable out of each ***full payment of interest received*** on [a] Mortgage Loan," BNYM Br. Ex. C, at I-18–19 (CWALT 2005-50CB PSA), meaning it is not payable on the reduced rate paid on a modified Mortgage Loan. This limitation makes sense for an "excess" Master Servicer fee paid to encourage maximum interest collections. Unsurprisingly, no similar limitation exists for interest payments to IO senior certificates. This clear difference explains any disparity between the Master Servicer's alleged calculations and Silian's proposed approach. *Second*, and in any event, BNYM has offered no valid evidence of what calculation is being performed or that the Master Servicer is actually performing this calculation. The remittance reports, which ***BNYM*** publishes, simply show ***BNYM's*** designation of an Excess Master Servicing Fee, without any detail as to how it was calculated or who calculated it.

VI. THE LOAN- VERSUS POOL-LEVEL DISPUTE MUST BE CONSIDERED TOGETHER WITH THE ORIGINAL- VERSUS MODIFIED-RATE DISPUTE

The P&I Investors contend that the pool-level versus loan-level approach is "separate and independent" from the dispute over whether to use the Modified Rate or the Original Rate. P&I Br. 19. Through this assertion, the P&I Investors improperly seek to bifurcate this Court's analysis of BNYM's calculation to maximize their payout. As explained in Silian's opening brief, *see*

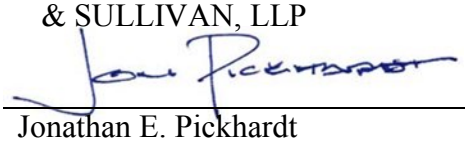
Silian Br. 7, whether the calculation of the Pass-Through Rate must be performed using a loan-level or pool-level calculation has enormous implications on the outcome for investors. For years, by using a loan-level calculation, BNYM has masked its use of the Modified Rate, because the loan-level calculation limited the losses allocated to the IO senior certificates on each modified Mortgage Loan to the difference between the Adjusted Net Mortgage Rate and the Required Coupon. Using the Modified Rate ***and*** a pool-level calculation, as the P&I Investors suggest, would create risk of regulatory issues and dramatically accelerate losses to the IO senior certificates by allocating all losses due to interest-rate modifications to the IO senior certificates until the IO senior certificates are completely written down. Indeed, it would often result in commercial absurdity, causing the IO "***Senior*** Certificates" to be entirely written down before "***Subordinated*** Certificates." Silian will show by expert evidence that it would be anathema to the expectations of investors and other industry participants that there would ***ever*** be a scenario in which senior ratio-strip certificates are written down to zero while subordinate certificates remain outstanding and that, indeed, the practices of BNYM and its peer trustees overwhelmingly support that conclusion. *See* D'Vari Aff. ¶¶ 28–30. Given the degree that these issues are entwined, in the event of ambiguity as to ***any*** aspect of the calculation of payments to the IO senior certificates, the Court should not be asked to evaluate in a vacuum the impact of extrinsic evidence on one issue and not the other. If the broader dispute cannot be resolved considering the unambiguous terms of the contract, no component of the calculation should be addressed on its own.

CONCLUSION

The Court should reject the P&I Investors' and BNYM's arguments, direct BNYM to use the Original Rate consistently, and direct BNYM to pay past shortfalls to the IO senior certificates.

Dated: New York, New York
July 19, 2019

QUINN EMANUEL URQUHART
& SULLIVAN, LLP

By: 

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

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, *Petitioner*, For Judicial Instructions Under CPLR Article 77 Concerning the Proper Pass-Through Rate Calculation for CWALT Interest Only Senior Certificates.	Index No. 150738/2019 IAS Part 60 Hon. Marcy S. Friedman Mot. Seq. 001

Affirmation Of Blair A. Adams In Support Of Silian Ventures LLC's Response To The P&I Investors' Opening Brief Objecting To The Petition And BNYM's Opening Brief In Support Of The Petition

I, Blair A. Adams, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirm the following to be true, under penalty of perjury, pursuant to CPLR 2106.

1. I am an associate at Quinn Emanuel Urquhart & Sullivan, LLP, attorneys for Respondent Silian Ventures LLC ("**Silian**") in the above-captioned litigation. I submit this affirmation in support of Silian's Response to the P&I Investors' Opening Brief Objecting to the Petition and BNYM's Opening Brief in Support of the Petition, dated July 19, 2019.

2. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the prospectus and prospectus supplement to the prospectus dated March 27, 2006, for Countrywide Alternative Loan Trust 2006-6CB, Mortgage Pass-Through Certificates, Series 2006-6CB, dated March 29, 2006.

3. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the pooling and servicing agreement for Countrywide Alternative Loan Trust 2007-J1, Mortgage Pass-Through Certificates, Series 2007-J1, among CWALT, Inc., as Depositor; Countrywide Home

Loans, Inc., Park Granada LLC, Park Monaco Inc., and Park Sienna LLC, as Sellers; Countrywide Home Loans Servicing LP, as Master Servicer; and The Bank of New York, as Trustee, dated as of February 1, 2007.

4. Attached hereto as **Exhibit C** is a true and correct copy of excerpts from the pooling and servicing agreement for Specialty Underwriting and Residential Finance Trust, Mortgage Loan Asset-Backed Certificates, Series 2004-AA1, among Merrill Lynch Mortgage Investors, Inc., as Depositor; Litton Loan Servicing LP, as Servicer; and JPMorgan Chase Bank, as Trustee, dated as of October 1, 2004.

5. Attached hereto as **Exhibit D** is a true and correct copy of excerpts from the pooling and servicing agreement for J.P. Morgan Mortgage Trust 2004-S1, Mortgage Pass-Through Certificates, among J.P. Morgan Acceptance Corporation I, as Depositor; JPMorgan Chase Bank, as Securities Administrator; Chase Manhattan Mortgage Corporation, as Master Servicer; and Wachovia Bank, National Association, as Trustee, dated August 1, 2004.

6. Attached hereto as **Exhibit E** is a true and correct copy of excerpts from the pooling and servicing agreement for ChaseFlex Multi-Class Mortgage Pass-Through Certificates Series 2007-1, among Chase Mortgage Finance Corporation, as Depositor; JPMorgan Chase Bank, N.A., as Servicer and Custodian; and The Bank of New York Trust Company, N.A., as Paying Agent and Trustee, dated January 1, 2007.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 19, 2019
New York, New York

By: Blair Adams
Blair A. Adams

EXHIBIT A

PROSPECTUS SUPPLEMENT
(To Prospectus dated March 27, 2006)

$2,164,334,096
(Approximate)

CWALT, INC.
Depositor

Sponsor and Seller

Countrywide Home Loans Servicing LP
Master Servicer

Alternative Loan Trust 2006-6CB
Issuing Entity

Mortgage Pass-Through Certificates, Series 2006-6CB
Distributions payable monthly, beginning April 25, 2006

The issuing entity will issue certificates, including the following classes of certificates, that are offered pursuant to this prospectus supplement and the accompanying prospectus:

	Initial Class Certificate Balance/ Initial Notional Amount(1)	Pass-Through Rate(2)		Initial Class Certificate Balance/ Initial Notional Amount(1)	Pass-Through Rate(2)
Class 1-A-1	$ 46,428,750	5.50%	Class 2-A-7	$ 15,000,000	Floating
Class 1-A-2	$ 446,987,000	Floating	Class 2-A-8	$ 166,040,900(3)	Floating
Class 1-A-3	$ 446,987,000(3)	Floating	Class 2-A-9	$ 22,640,000	5.75%
Class 1-A-4	$ 140,597,250	5.50%	Class 2-A-10	$ 132,058,500	6.00%
Class 1-A-5	$ 65,349,000	5.50%	Class 2-A-11	$ 132,058,500	5.50%
Class 1-A-6	$ 25,000,000	Floating	Class 2-A-12	$ 11,680,600	5.75%
Class 1-A-7	$ 25,000,000(3)	Floating	Class 2-A-13	$ 101,040,900	Floating
Class 1-A-8	$ 506,249,850	5.50%	Class 2-A-14	$ 590,909(3)	Floating
Class 1-A-9	$ 8,752,750	5.50%	Class 2-A-15	$ 10,000,000	5.75%
Class 1-A-10	$ 216,965,000	5.50%	Class 2-A-16	$ 4,500,000	5.75%
Class 1-A-11	$ 3,820,000	5.50%	Class 2-A-17	$ 1,639,975	5.75%
Class 1-X	$ 1,359,441,862(3)	Variable	Class 2-X	$ 655,268,271(3)	Variable
Class 2-A-1	$ 66,900,000	Floating	Class PO	$ 2,911,796	(4)
Class 2-A-2	$ 66,900,000(3)	Floating	Class A-R	$ 100	5.50%
Class 2-A-3	$ 1,000,000	5.75%	Class M	$ 43,679,900	Variable
Class 2-A-4	$ 49,490,425	5.75%	Class B-1	$ 16,379,900	Variable
Class 2-A-5	$ 30,100,000	5.75%	Class B-2	$ 13,103,900	Variable
Class 2-A-6	$ 50,000,000	Floating			

Consider carefully the risk factors beginning on page S-24 in this prospectus supplement and on page 2 in the prospectus.

The certificates represent obligations of the issuing entity only and do not represent an interest in or obligation of CWALT, Inc., Countrywide Home Loans, Inc. or any of their affiliates.

This prospectus supplement may be used to offer and sell the offered certificates only if accompanied by the prospectus.

(1) This amount is subject to a permitted variance in the aggregate of plus or minus 5%.

(2) The classes of certificates offered by this prospectus supplement are listed, together with their pass-through rates (and, in the case of the floating rate certificates, the index on which the pass-through rates are based) and their initial ratings, in the tables under "Summary — Description of the Certificates" beginning on page S-7 of this prospectus supplement.

(3) The Class 1-A-3, Class 1-A-7, Class 2-A-2, Class 2-A-8, Class 2-A-14, Class 1-X and Class 2-X Certificates are interest only notional amount certificates and are not included in the aggregate class certificate balance of all of the certificates offered.

(4) The Class PO Certificates are principal only certificates and will not accrue interest.

This prospectus supplement and the accompanying prospectus relate only to the offering of the certificates listed above and not to the other classes of certificates that will be issued by the issuing entity. The certificates represent interests in a pool consisting of two loan groups of primarily 30-year conventional, fixed rate mortgage loans secured by first liens on one- to four-family residential properties.

Credit enhancement and other support for the transaction will consist of:
- Subordination; and
- Cross-collateralization between loan groups.

The credit enhancement for each class of certificates varies. Not all credit enhancement is available for every class. The credit enhancement for the certificates is described in more detail in this prospectus supplement.

The Class 1-A-2, Class 1-A-6, Class 2-A-1, Class 2-A-6, Class 2-A-7 and Class 2-A-13 Certificates also will have the benefit of separate interest rate corridor contracts.

These securities have not been approved or disapproved by the Securities and Exchange Commission or any state securities commission nor has the Securities and Exchange Commission or any state securities commission passed upon the accuracy or adequacy of this prospectus supplement or the prospectus. Any representation to the contrary is a criminal offense.

Deutsche Bank Securities Inc. will offer the Class A Certificates and Countrywide Securities Corporation will offer the Class M, Class B-1 and Class B-2 Certificates to the public at varying prices to be determined at the time of sale. The proceeds to the depositor from the sale of these classes of certificates are expected to be approximately $2,116,983,769, plus accrued interest, before deducting expenses. The Class PO and Class X Certificates will not be purchased by Deutsche Bank Securities Inc. or Countrywide Securities Corporation. They will be transferred to Countrywide Home Loans, Inc. on or about March 30, 2006 as partial consideration for the sale of the mortgage loans to the depositor. See "Method of Distribution" in this prospectus supplement.

Deutsche Bank Securities **Countrywide Securities Corporation**

March 29, 2006

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Fees and Expenses

The following summarizes the related fees and expenses to be paid from the assets of the issuing entity and the source of payments for the fees and expenses:

Type / Recipient (1)	Amount	General Purpose	Source (2)	Frequency
Fees				
Master Servicing Fee / Master Servicer	One-twelfth of the Stated Principal Balance of each mortgage loan multiplied by the master servicing fee rate (3)	Compensation	Amounts on deposit in the Certificate Account representing payments of interest and application of liquidation proceeds with respect to that mortgage loan	Monthly
	• All late payment fees, assumption fees and other similar charges	Compensation	Payments made by obligors with respect to the mortgage loans	Time to time
	• All investment income earned on amounts on deposit in the Certificate Account and Distribution Account.	Compensation	Investment income related to the Certificate Account and the Distribution Account	Monthly
	• Excess Proceeds (4)	Compensation	Liquidation proceeds and Subsequent Recoveries	Time to time
Trustee Fee (the "Trustee Fee") / Trustee	One-twelfth of the Trustee Fee Rate multiplied by the aggregate Stated Principal Balance of the outstanding mortgage loans. (5)	Compensation	Amounts on deposit in the Certificate Account or the Distribution Account	Monthly
Expenses				
Insured expenses / Master Servicer	Expenses incurred by the Master Servicer	Reimbursement of Expenses	To the extent the expenses are covered by an insurance policy with respect to the mortgage loan	Time to time
Servicing Advances / Master Servicer	To the extent of funds available, the amount of any Servicing Advances.	Reimbursement of Expenses	With respect to each mortgage loan, late recoveries of the payments of the costs and expenses, liquidation proceeds, Subsequent Recoveries, purchase proceeds or repurchase proceeds for that mortgage loan (6)	Time to time
Indemnification expenses / the sellers, the master servicer and the depositor	Amounts for which the sellers, the master servicer and depositor are entitled to indemnification (7)	Indemnification	Amounts on deposit on the Certificate Account	Monthly

PROSPECTUS

CWALT, INC.

Depositor

Mortgage Backed Securities
(Issuable in Series)

Please carefully consider our discussion of some of the risks of investing in the securities under "Risk Factors" beginning on page 2.

The securities will represent obligations of the related trust fund only and will not represent an interest in or obligation of CWALT, Inc., any seller, servicer, or any of their affiliates.

The Trusts

Each trust will be established to hold assets in its trust fund transferred to it by CWALT, Inc. The assets in each trust fund will be specified in the prospectus supplement for the particular trust and will generally consist of:

- first lien mortgage loans secured by one- to four-family residential properties;
- mortgage loans secured by first liens on small multifamily residential properties, such as rental apartment buildings or projects containing five to fifty residential units;
- collections arising from one or more types of the loans described above which are not used to make payments on securities issued by a trust fund, including excess servicing fees and prepayment charges;
- mortgage pass-through securities issued or guaranteed by Ginnie Mae, Fannie Mae, or Freddie Mac; or
- mortgage-backed securities evidencing an interest in, or secured by, loans of the type that would otherwise be eligible to be loans included in a trust fund and issued by entities other than Ginnie Mae, Fannie Mae or Freddie Mac.

The Securities

CWALT, Inc. will sell either certificates or notes pursuant to a prospectus supplement. The securities will be grouped into one or more series, each having its own distinct designation. Each series will be issued in one or more classes and each class will evidence beneficial ownership of (in the case of certificates) or a right to receive payments supported by (in the case of notes) a specified portion of future payments on the assets in the trust fund that the series relates to. A prospectus supplement for a series will specify all of the terms of the series and of each of the classes in the series.

Credit Enhancement

If the securities have any type of credit enhancement, the prospectus supplement for the related series will describe the credit enhancement. The types of credit enhancement are generally described in this prospectus.

Offers of Securities

The securities may be offered through several different methods, including offerings through underwriters.

These securities have not been approved or disapproved by the Securities and Exchange Commission or any state securities commission nor has the Securities and Exchange Commission or any state securities commission passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

March 27, 2006

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installment loans secured by the consumer's principal dwelling that have interest rates or origination costs in excess of prescribed levels;

- the Real Estate Settlement Procedures Act and its regulations, which (among other things) prohibit the payment of referral fees for real estate settlement services (including mortgage lending and brokerage services) and regulate escrow accounts for taxes and insurance and billing inquiries made by borrowers;

- the Equal Credit Opportunity Act and its regulations, which (among other things) generally prohibits discrimination in any aspect of a credit transaction on certain enumerated basis, such as age, race, color, sex, religion, marital status, national origin or receipt of public assistance;

- the Fair Credit Reporting Act, which (among other things) regulates the use of consumer reports obtained from consumer reporting agencies and the reporting of payment histories to consumer reporting agencies; and

- the Federal Trade Commission's Rule on Preservation of Consumer Claims and Defenses, which generally provides that the rights of an assignee of a conditional sales contract (or of certain lenders making purchase money loans) to enforce a consumer credit obligation are subject to the claims and defenses that the consumer could assert against the seller of goods or services financed in the credit transaction.

The penalties for violating these federal, state, or local laws vary depending on the applicable law and the particular facts of the situation. However, private plaintiffs typically may assert claims for actual damages and, in some cases, also may recover civil money penalties or exercise a right to rescind the loan. Violations of certain laws may limit the ability to collect all or part of the principal or interest on a loan and, in some cases, borrowers even may be entitled to a refund of amounts previously paid. Federal, state and local administrative or law enforcement agencies also may be entitled to bring legal actions, including actions for civil money penalties or restitution, for violations of certain of these laws.

Depending on the particular alleged misconduct, it is possible that claims may be asserted against various participants in secondary market transactions, including assignees that hold the loans, such as the trust fund. Losses on loans from the application of these federal, state and local laws that are not otherwise covered by a credit enhancement will be borne by the holders of one or more classes of securities.

Material Federal Income Tax Consequences

General

The following is a discussion of the anticipated material federal income tax consequences of the purchase, ownership, and disposition of the securities and is based on advice of special counsel to the depositor ("Tax Counsel"), named in the prospectus supplement. The discussion is based upon the provisions and interpretations of the Code, the regulations promulgated thereunder, including, where applicable, proposed regulations, and the judicial and administrative rulings and decisions now in effect, all of which are subject to change, which change could apply retroactively.

The discussion does not purport to deal with all aspects of federal income taxation that may affect particular investors in light of their individual circumstances, nor with certain types of investors subject to special treatment under the federal income tax laws. This discussion focuses primarily upon investors who will hold securities as "capital assets" (generally, property held for investment) within the meaning of Section 1221 of the Code, but much of the discussion is applicable to other investors as well. Prospective Investors are encouraged to consult their own tax advisers concerning the federal, state, local and any other tax consequences to them of the purchase, ownership and disposition of the securities.

The federal income tax consequences to Holders will vary depending on whether

- the securities of a series are classified as indebtedness;
- an election is made to treat the trust fund relating to a particular series of securities as a real estate mortgage investment conduit ("REMIC") under the Internal Revenue Code of 1986, as amended (the "Code");
- the securities represent an ownership interest in some or all of the assets included in the trust fund for a series; or
- an election is made to treat the trust fund relating to a particular series of certificates as a partnership.

The prospectus supplement for each series of securities will specify how the securities will be treated for federal income tax purposes and will discuss whether a REMIC election, if any, will be made with respect to the series. The depositor will file with the SEC a Form 8-K on behalf of the related trust fund containing an opinion of Tax Counsel with respect to the validity of the information set forth under "Material Federal Income Tax Consequences" herein and in the related prospectus supplement.

Taxation of Debt Securities

Interest and Acquisition Discount. The income on securities representing regular interests in a REMIC ("Regular Interest Securities") are generally taxable to holders in the same manner as the income on evidences of indebtedness. Stated interest on the Regular Interest Securities will be taxable as ordinary income and taken into account using the accrual method of accounting, regardless of the Holder's normal accounting method. Interest (other than original issue discount) on securities (other than Regular Interest Securities) that are characterized as indebtedness for federal income tax purposes will be includible in income by holders thereof in accordance with their usual methods of accounting. Securities characterized as debt for federal income tax purposes and Regular Interest Securities will be referred to hereinafter collectively as "Debt securities."

Debt securities that are Compound Interest securities will, and certain of the other Debt securities may, be issued with "original issue discount" ("OID"). The following discussion is based in part on the rules governing OID which are set forth in Sections 1271 through 1275 of the Code and the Treasury regulations issued thereunder (the "OID Regulations"). A Holder should be aware, however, that the OID Regulations do not adequately address certain issues relevant to prepayable securities, such as the Debt securities.

In general, OID, if any, will equal the difference between the stated redemption price at maturity of a Debt security and its issue price. A holder of a Debt security must include OID in gross income as ordinary interest income as it accrues under a method taking into account an economic accrual of the discount. In general, OID must be included in income in advance of the receipt of the cash representing that income. The amount of OID on a Debt security will be considered to be zero, however if the interest is less than a de minimis amount as determined under the Code.

The issue price of a Debt security is the first price at which a substantial amount of Debt securities of that class are sold to the public (excluding bond houses, brokers, underwriters or wholesalers). If less than a substantial amount of a particular class of Debt securities is sold for cash on or prior to the related closing date, the issue price for the class will be treated as the fair market value of the class on the closing date. The issue price of a Debt security also includes the amount paid by an initial Debt security holder for accrued interest that relates to a period prior to the issue date of the Debt security. The stated redemption price at maturity of a Debt security includes the original principal amount of the Debt security, but generally will not include distributions of interest if the distributions constitute "qualified stated interest."

Under the OID Regulations, qualified stated interest generally means interest payable at a single fixed rate or qualified variable rate (as described below) provided that the interest payments are unconditionally payable at intervals of one year or less during the entire term of the Debt security. The OID Regulations state that interest

Alternative Loan Trust 2006-6CB

Issuer

CWALT, INC.

Depositor

Sponsor and Seller

Countrywide Home Loans Servicing LP

Master Servicer

$2,164,334,096
(Approximate)

Mortgage Pass-Through Certificates, Series 2006-6CB

PROSPECTUS SUPPLEMENT

Deutsche Bank Securities

Countrywide Securities Corporation

You should rely only on the information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus. We have not authorized anyone to provide you with different information.

We are not offering the Series 2006-6CB Mortgage Pass-Through Certificates in any state where the offer is not permitted.

Dealers will deliver a prospectus supplement and prospectus when acting as underwriters of the Series 2006-6CB Mortgage Pass-Through Certificates and with respect to their unsold allotments or subscriptions. In addition, all dealers selling the Series 2006-6CB Mortgage Pass-Through Certificates will be required to deliver a prospectus supplement and prospectus until 90 days after the date of this prospectus supplement.

March 29, 2006

EXHIBIT B

EXECUTION COPY

CWALT, INC.,

Depositor

COUNTRYWIDE HOME LOANS, INC.,

Seller

PARK GRANADA LLC,

Seller

PARK MONACO INC.,

Seller

PARK SIENNA LLC,

Seller

COUNTRYWIDE HOME LOANS SERVICING LP,

Master Servicer

and

THE BANK OF NEW YORK,

Trustee

POOLING AND SERVICING AGREEMENT

Dated as of February 1, 2007

ALTERNATIVE LOAN TRUST 2007-J1

MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-J1

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THIS POOLING AND SERVICING AGREEMENT, dated as of February 1, 2007, among CWALT, INC., a Delaware corporation, as depositor (the "Depositor"), COUNTRYWIDE HOME LOANS, INC. ("Countrywide"), a New York corporation, as a seller (a "Seller"), PARK GRANADA LLC ("Park Granada"), a Delaware limited liability company, as a seller (a "Seller"), PARK MONACO INC. ("Park Monaco"), a Delaware corporation, as a seller (a "Seller"), PARK SIENNA LLC ("Park Sienna"), a Delaware limited liability company, as a seller (a "Seller") COUNTRYWIDE HOME LOANS SERVICING LP, a Texas limited partnership, as master servicer (the "Master Servicer"), and THE BANK OF NEW YORK, a banking corporation organized under the laws of the State of New York, as trustee (the "Trustee").

WITNESSETH THAT

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

PRELIMINARY STATEMENT

The Depositor is the owner of the Trust Fund that is hereby conveyed to the Trustee in return for the Certificates. For federal income tax purposes, the Trustee shall treat the Trust Fund as consisting of, among other things (1) a trust (the "ES Trust") beneath which are one chain of three real estate mortgage investment conduits (or in the alternative, the "Sub-WAC(SW) REMIC," the Strip (ST) REMIC" and the "Master REMIC") and shall make all elections as necessary for such treatment (2) another chain of REMICs consisting of two REMICs (or in the alternative, the "Lower Tier (LTR) REMIC," and the "Upper Tier (UTR) REMIC").

The Sub WAC REMIC will hold all the assets of the Trust Fund relating to Loan Group 1 and Loan Group 2 (other than the Pre-Funding Account and the Capitalized Interest Account) and will issue several classes of uncertificated Sub WAC REMIC Interests. The Class SW-A-R Interest is hereby designated as the residual interest in the Sub WAC REMIC and each other Sub WAC REMIC Interest is hereby designated as a regular interest in the Sub WAC REMIC. The ST REMIC will hold all the regular interests in the Sub WAC REMIC and will issue several classes of uncertificated ST REMIC Interests.

Through Rate for the Class 2-A-6 Certificates for the Interest Accrual Period for the first Distribution Date is 5.92% per annum.

(8) The Pass-Through Rate for the Class 2-A-7 Certificates for the Interest Accrual Period for each Distribution Date will be a per annum rate equal to 5.40% minus LIBOR, subject to a maximum and minimum Pass-Through Rate of 5.40% and 0.00% per annum, respectively. The Pass-Through Rate for the Class 2-A-7 Certificates for the Interest Accrual Period for the first Distribution Date is 0.08% per annum.

(9) The Pass-Through Rate for the Class X Certificates during the Interest Accrual Period for each Distribution Date will equal the weighted average of the Pass-Through Rates of the Class X-1 and the Class X-2 Components, weighted on the basis of their respective Component Notional Amounts immediately prior to such Distribution Date. The Pass-Through Rate for the Class X Certificates for the Interest Accrual Period for the first Distribution Date is 0.66332% per annum.

(10) The Class A-R Certificates represent the sole Class of residual interest in the Master REMIC and in Lower Tier REMIC. The Class A R Certificate shall be issued by the ES Trust as two separate certificates, one with an initial Certificate Balance of $99.99 and the Tax Matters Person Certificate with an initial Certificate Balance of $0.01.

(11) The Pass-Through Rate for each Class of Group I Subordinated Certificates for the Interest Accrual Period related to each Distribution Date will be a per annum rate equal to the sum of:

- 5.75% multiplied by the excess of the aggregate Stated Principal Balance of the Mortgage Loans in Loan Group 1 as of the Due Date in the month preceding the calendar month of that Distribution Date (after giving effect to Principal Prepayments received in the Prepayment Period related to such prior Due Date) over the aggregate Class Certificate Balance of the Group 1 Senior Certificates immediately prior to that Distribution Date, and

- 6.00% multiplied by the excess of the aggregate Stated Principal Balance of the Mortgage Loans in Loan Group 2 as of the Due Date in the month preceding the calendar month of that Distribution Date (after giving effect to Principal Prepayments received in the Prepayment Period related to such prior Due Date) over the aggregate Class Certificate Balance of the Group 2 Senior Certificates immediately prior to that Distribution Date,

divided by the aggregate Class Certificate Balance of the Group I Subordinated Certificates immediately prior to that Distribution Date. The Pass-Through Rate for each Class of Group I Subordinated Certificates for the Interest Accrual Period for the first Distribution Date is 5.88179% per annum

(12) The Class P Certificates will also have a notional amount equal to the aggregate Stated Principal Balance of the Mortgage Loans in Aggregate Loan Group I with a Prepayment Charge. The Class P Certificates are issuable in minimum notional amounts equal to a 20% Percentage Interest and any amount in excess thereof.

The following table specifies the class designation, interest rate, and principal amount for each class of Master REMIC Interest:

Master REMIC Interest	**Initial Principal Balance**	**Interest Rate**	**Possible Corresponding ES Trust Certificates**

(3) For each Interest Accrual Period the Class 3-C Certificates are entitled to an amount (the "Class 3-C Distributable Amount") equal to the sum of (a) the interest payable on the LTR-3-C Interest and (b) a specified portion of the interest payable on the Lower Tier REMIC Regular Interests (other than the LTR-$100, LTR-3-C and LTR-3-P Interests) equal to the excess of the Pool Net Rate Cap over the weighted average interest rate of the Lower Tier REMIC Interests (other than the LTR-$100, LTR-3-C and LTR-3-P Interests) with each such Class subject to a cap and a floor equal to the interest rate of the corresponding Class of Upper Tier REMIC Certificates. The interest rate of the Class 3-C Certificates shall be a rate sufficient to entitle it to an amount equal to all interest accrued on the Mortgage Loans in Loan Group 3 less the interest accrued on the other Certificates issued by the Upper Tier REMIC. The Class 3-C Distributable Amount for any Distribution Date is payable from current interest on the Mortgage Loans and any related Overcollateralization Reduction Amount for that Distribution Date.

(4) This Class of Upper Tier REMIC Certificates makes no interest payments.

(5) The Class 3-P Certificates will also have a notional amount equal to the aggregate Stated Principal Balance of the Mortgage Loans in Aggregate Loan Group II with a Prepayment Charge. The Class P Certificates are issuable in minimum notional amounts equal to a 20% Percentage Interest and any amount in excess thereof.

(6) The Class 3-A-R Certificates represent the sole Class of residual interest in the Upper Tier REMIC and in the Lower Tier REMIC. The Class 3-A-R Certificate shall be issued as two separate Certificates, one with an initial Class Certificate Balance of $99.99 and the Tax Matters Person Certificate with an initial Class Certificate Balance of $0.01.

The foregoing REMIC structure is intended to cause all of the cash from the Mortgage Loans to flow through to the Upper Tier REMIC as cash flow on a REMIC regular interest, without creating any shortfall-actual or potential (other than for credit losses) to any REMIC regular interest.

Set forth below are designations of Classes or Components of Certificates and other defined terms to the categories used herein:

Accretion Directed Certificates..... None.

Accretion Directed Components..... None.

Accrual Certificates..... None.

Accrual Components..... None.

Book-Entry Certificates ..... All Classes of Certificates other than the Physical Certificates.

COFI Certificates..... None.

Combined Certificates..... None.

Component Certificates..... Class X and Class PO Certificates.

Components ..... For purposes of calculating distributions of principal and/or interest, the Component Certificates, if any, will be comprised of multiple payment components having the designations, Initial Component Balances or Notional Amounts, as applicable, and Pass-Through Rates set forth below:

Designation	Initial Component Balance/ Initial Component Notional Amount	Pass-Through Rate
Class X-1	$180,910,300 (1)	(2)
Class X-2	$204,973,997 (1)	(3)
Class PO-1	$136,139	(4)
Class PO-2	$28,740	(4)

(1) This Component is a notional amount component, will have no Component Principal Balance and will bear interest on its Notional Amount.

(2) The Pass-Through Rate for the Class X-1 Component for the Interest Accrual Period for any Distribution Date will equal the excess of (a) the weighted average of the Adjusted Net Mortgage Rates of the Non-Discount Mortgage Loans in Loan Group 1, weighted on the basis of the Stated Principal Balances thereof as of the Due Date in the preceding calendar month (after giving effect to Principal Prepayments received in the Prepayment Period related to such prior Due Date), over (b) 5.75%. The Pass-Through Rate for the Class X-1 Component for the Interest Accrual Period for the first Distribution Date is 0.45419% per annum.

(3) The Pass-Through Rate for the Class X-2 Component for the Interest Accrual Period for any Distribution Date will equal the excess of (a) the weighted average of the Adjusted Net Mortgage Rates of the Non-Discount Mortgage Loans in Loan Group 2, weighted on the basis of the Stated Principal Balances thereof as of the Due Date in the

IN WITNESS WHEREOF, the Depositor, the Trustee, the Seller and the Master Servicer have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

CWALT, INC.,
as Depositor

By: _____
Name: Michael Schloessmann
Title: Managing Director

THE BANK OF NEW YORK,
as Trustee

By: _____
Name: MATTHEW SABINO
Title: ASSISTANT TREASURER

COUNTRYWIDE HOME LOANS, INC.,
as Seller

By: _____
Name: Michael Schloessmann
Title: Managing Director

PARK GRANADA LLC,
as Seller

By: _____
Name: Michael Schloessmann
Title: Managing Director

PARK SIENNA LLC,
as Seller

By: _____
Name: Michael Schloessmann
Title: Managing Director

PARK MONACO INC.,
as Seller

By: _____
Name: Michael Schloessmann
Title: Managing Director

COUNTRYWIDE HOME LOANS SERVICING LP,
as Master Servicer
By: Countrywide GP, Inc.

By: _____
Name: Michael Schloessmann
Title: Managing Director

Acknowledged solely with respect to the Trustee's obligations under Section 4.01(b):

THE BANK OF NEW YORK, in its individual capacity

By:_____
Name: Paul Connolly
Title: Vice President

CWALT 2007-J1

EXHIBIT C

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EXHIBIT 4.1

MERRILL LYNCH MORTGAGE INVESTORS, INC.,
Depositor

LITTON LOAN SERVICING LP,
Servicer

and

JPMORGAN CHASE BANK,
Trustee

POOLING AND SERVICING AGREEMENT
Dated as of October 1, 2004

SPECIALTY UNDERWRITING AND RESIDENTIAL FINANCE TRUST
MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2004-AA1

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POOLING AND SERVICING AGREEMENT, dated as of October 1, 2004, among MERRILL LYNCH MORTGAGE INVESTORS, INC., a Delaware corporation, as depositor (the "Depositor"), LITTON LOAN SERVICING LP, a Delaware limited partnership, as servicer (the "Servicer") and JPMORGAN CHASE BANK, a New York banking corporation, as trustee (the "Trustee").

The Depositor is the owner of the Trust Fund that is hereby conveyed to the Trustee in return for the Certificates. The Trust Fund for federal income tax purposes will consist of (i) three real estate mortgage investment conduits in a tiered structure and (ii) the right to receive payments distributable to the Servicing Rights Owner pursuant to Section 3.08(a). The Lower Tier REMIC will consist of all of the assets constituting the Trust Fund (other than the assets described in clause (ii) above, the Lower Tier REMIC Regular Interests and the Middle Tier REMIC Regular Interests) and will be evidenced by the Lower Tier REMIC Regular Interests (which will be uncertificated and will represent the "regular interests" in the Lower Tier REMIC) and the Class LT-R Interest as the single "residual interest" in the Lower Tier REMIC. The Trustee will hold the Lower Tier REMIC Regular Interests. The Middle Tier REMIC will consist of the Lower Tier REMIC Regular Interests and will be evidenced by the Middle Tier REMIC Regular Interests (which will represent the "regular interests" in the Middle Tier REMIC) and the Class MT-R Interest as the single "residual interest" in the Middle Tier REMIC. The Trustee will hold the Middle Tier REMIC Regular Interests. The Upper Tier REMIC will consist of the Middle Tier REMIC Regular Interests and will be evidenced by the Certificates (other than the Class A-R Certificate) which will represent "regular interests" in the Upper Tier REMIC and the Class UT-R Interest as the single "residual interest" in the Upper Tier REMIC. The Class A-R Certificate will represent beneficial ownership of the Class LT-R Interest, the Class MT-R Interest and the Class UT-R Interest. The "latest possible maturity date" for federal income tax purposes of all interests created hereby will be the Final Scheduled Distribution Date.

All covenants and agreements made by the Seller in the Sale Agreement and by the Depositor and the Trustee herein with respect to the Mortgage Loans and the other property constituting the Trust Fund are for the benefit of the Holders from time to time of the Certificates.

(i) the loan number;

(ii) the unpaid principal balance of the Mortgage Loans;

(iii) the Mortgage Rate;

(iv) the maturity date and the months remaining before maturity date;

(v) the original principal balance;

(vi) the Cut-off Date Principal Balance;

(vii) the first payment date of the Mortgage Loan;

(viii) the Loan-to-Value Ratio at origination with respect to a first lien Mortgage Loan;

(ix) a code indicating whether the residential dwelling at the time of origination was represented to be owner-occupied;

(x) a code indicating the property type;

(xi) location of the related Mortgaged Property; and

(xii) a code indicating whether a prepayment penalty is applicable and, if so, the term of such prepayment penalty.

The Mortgage Loan Schedule shall be provided to the Servicer on the Closing Date.

Mortgage Note: The original executed note or other evidence of indebtedness evidencing the indebtedness of a Mortgagor under a Mortgage Loan and all amendments, modifications and attachments thereto.

Mortgage Pool: The aggregate of the Mortgage Loans identified in the Mortgage Loan Schedule.

Mortgage Rate: The annual rate of interest borne by a Mortgage Note from time to time.

Mortgaged Property: The underlying property securing a Mortgage Loan.

Mortgagor: The obligor on a Mortgage Note.

Net Mortgage Rate: As to each Mortgage Loan, and at any time, the per annum rate equal to the then current Mortgage Rate less the Servicing Fee Rate.

Non-Discount Mortgage Loans: Any Mortgage Loan having a Net Mortgage Rate in excess of the applicable Remittance Rate.

Non-PO Class A Certificates: The Class A Certificates exclusive of the Class I-PO and II-PO Certificates.

Non-PO Class A Prepayment Percentage: The Non-PO Class I-A Prepayment Percentage or the Non-PO Class II-A Prepayment Percentage, as applicable.

Non-PO Class I-A Certificates: The Class I-A-1, Class I-IO and Class A-R Certificates.

Non-PO Class I-A Optimal Principal Amount: With respect to any Distribution Date, the lesser of (a) the Non-PO Class I-A Principal Balance and

of the financing arrangement between the Servicer and any Advance Financing Person.

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IN WITNESS WHEREOF, the Depositor, the Servicer and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

MERRILL LYNCH MORTGAGE INVESTORS, INC., as Depositor

By: /s/ Matthew Whalen

Name: Matthew Whalen
Title: President

LITTON LOAN SERVICING LP, as Servicer

By: /s/ Janice McClure

Name: Janice McClure
Title: Senior Vice President

JPMORGAN CHASE BANK
not in its individual capacity, but solely as Trustee

By: /s/ Andrew M. Cooper

Name: Andrew M. Cooper
Title: Assistant Vice President

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EXHIBIT A

FORMS OF OFFERED CERTIFICATES

[Intentionally Omitted]

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EXHIBIT B-1

MORTGAGE LOAN SCHEDULE - TOTAL MORTGAGE POOL

[Intentionally Omitted]

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J.P. MORGAN ACCEPTANCE CORPORATION I
Depositor

JPMORGAN CHASE BANK
Securities Administrator

CHASE MANHATTAN MORTGAGE CORPORATION
Master Servicer

and

WACHOVIA BANK, NATIONAL ASSOCIATION
Trustee

POOLING AND SERVICING AGREEMENT

Dated as of August 1, 2004

J.P. MORGAN MORTGAGE TRUST 2004-S1

MORTGAGE PASS-THROUGH CERTIFICATES

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Schedule A Mortgage Loan Schedule

This POOLING AND SERVICING AGREEMENT, dated as of August 1, 2004 (the "Agreement"), by and among J.P. MORGAN ACCEPTANCE CORPORATION I, a Delaware corporation, as depositor (the "Depositor"), WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association, as trustee (the "Trustee"), CHASE MANHATTAN MORTGAGE CORPORATION, as master servicer with respect to the Harris Trust Mortgage Loans (as defined herein) (the "Master Servicer") and JPMORGAN CHASE BANK, as securities administrator (the "Securities Administrator"), and acknowledged by J.P. MORGAN MORTGAGE ACQUISITION CORP., a Delaware corporation, as seller (the "Seller"), for purposes of Section 2.05.

PRELIMINARY STATEMENT

The Depositor has acquired the Mortgage Loans from the Seller and at the Closing Date is the owner of the Mortgage Loans and the other property being conveyed by the Depositor to the Trustee hereunder for inclusion in the Trust Fund. On the Closing Date, the Depositor will acquire the Certificates from the Trustee as consideration for the Depositor's transfer to the Trust Fund of the Mortgage Loans and the other property constituting the Trust Fund. The Depositor has duly authorized the execution and delivery of this Agreement to provide for the conveyance to the Trustee of the Mortgage Loans and the other property constituting the Trust Fund. All covenants and agreements made by the Depositor, the Master Servicer, the Securities

Mortgage: A mortgage, deed of trust or other instrument encumbering a fee simple interest in real property securing a Mortgage Note, together with improvements thereto.

Mortgage Component: The portions of Pool 1 Mortgage Loans that relate to a Subgroup.

Mortgage Documents: With respect to each Mortgage Loan, the mortgage documents required to be delivered to the Custodian pursuant to each Custodial Agreement.

Mortgage Group: The Mortgage Loans or Mortgage Components, as applicable, in Subgroup 1, Subgroup 2, Subgroup 3, Pool 2, Pool 3 or Pool 4, as the context requires.

Mortgage Loan: A Mortgage and the related Mortgage Note conveyed, transferred, sold, assigned to or deposited with the Trustee pursuant to Section 2.01 (including any Replacement Loan and REO Property), including without limitation, each Mortgage Loan listed on the Mortgage Loan Schedule, as amended from time to time.

Mortgage Loan Schedule: The schedule attached hereto as Schedule A, which shall identify each Mortgage Loan, as such schedule may be amended by the Depositor or a Servicer from time to time (with copies of such amended schedule to be delivered promptly by the Depositor or such servicer to the Securities Administrator, the Trustee and the Custodian) to reflect the addition of Replacement Mortgage Loans to, or the deletion of Deleted Mortgage Loans from, the Trust Fund. Such schedule shall, among other things (i) designate the Servicer servicing such Mortgage Loan and the applicable Servicing Fee Rate; and (ii) identify the designated Pool in which such Mortgage Loan is included.

Mortgage Note: The original executed note or other evidence of the indebtedness of a Mortgagor secured by a Mortgage under a Mortgage Loan.

Mortgaged Property: The underlying property securing a Mortgage Loan which, with respect to a Cooperative Loan, is the related Cooperative Shares and Proprietary Lease.

Mortgage Rate: As to any Mortgage Loan or Mortgage Component, as applicable, the annual rate of interest borne by the related Mortgage Note.

Mortgagor: The obligor on a Mortgage Note.

Net Liquidation Proceeds: With respect to any Liquidated Mortgage Loan or any other disposition of related Mortgaged Property, the related Liquidation Proceeds net of Advances, Servicer Advances, Servicing Fees and/or Master Servicing Fees and any other accrued and unpaid servicing fees received and retained in connection with the liquidation of such Mortgage Loan or Mortgaged Property.

Net Mortgage Rate: With respect to any Mortgage Loan and any Distribution Date, the related Mortgage Rate reduced by the Aggregate Expense Rate for such Mortgage Loan.

Net Prepayment Interest Shortfall: With respect to any Mortgage Loan and any Distribution Date, the amount by which any Prepayment Interest Shortfall for such date exceeds the amount payable by the related Servicer, or the Master Servicer (if Harris Trust fails to pay such amount) and/or in respect of such shortfall.

Non-Book-Entry Certificate: Any Certificate other than a Book-Entry Certificate.

Non-permitted Foreign Holder: As defined in Section 3.03(f).

Non-U.S. Person: Any person other than a "United States person" within the meaning of Section 7701(a)(30) of the Code.

Nonrecoverable Advance: Any portion of an Advance or Servicer Advance previously made or proposed to be made by the related Servicer, or the Master Servicer (if Harris Trust fails to pay such amount) (as certified in an Officer's Certificate of such Servicer or the Master Servicer), which in the good faith judgment of such party, shall not be ultimately recoverable by such party from the related Mortgagor, related Liquidation Proceeds or otherwise.

provided to such Rating Agency, including the loan level detail, is true and correct according to such Rating Agency's requirements.

SECTION 11.13 Conflicts.

To the extent that the terms of this Agreement conflict with the terms of any Purchase and Servicing Agreement, the related Purchase and Servicing Agreement shall govern.

SECTION 11.14 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

SECTION 11.15 No Petitions.

The Trustee and the Master Servicer (not in its individual corporate capacity, but solely as Master Servicer hereunder), by entering into this Agreement, hereby covenant and agree that they shall not at any time institute against the Depositor, or join in any institution against the Depositor of, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings under any United States federal or state bankruptcy or similar law in connection with any obligations relating to this Agreement or any of the documents entered into by the Depositor in connection with the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed hereto by their respective officers hereunto duly authorized as of the day and year first above written.

J.P MORGAN ACCEPTANCE CORPORATION I,
as Depositor

By: /s/ Brian Simons
Name: Brian Simons
Title: Vice President

WACHOVIA BANK, NATIONAL ASSOCIATION,
as Trustee

By: /s/ Thomas Musarra
Name: Thomas Musarra
Title: Vice President

CHASE MANHATTAN MORTGAGE CORPORATION,
as Master Servicer

By: s/s Diane Bentz
Name: Diane Bentz
Title: Senior Vice President

JPMORGAN CHASE BANK,
as Securities Administrator

By: /s/ Eboni D. Dawkins
Name: Eboni D. Dawkins

Title: Trust Officer

Solely for purposes of Section 2.05
accepted and agreed to by:

J.P. MORGAN MORTGAGE ACQUISITION CORP.

By: /s/ Brian Simons
Name: Brian Simon
Title: Vice President

EXHIBIT A

FORMS OF CERTIFICATES

EXHIBIT B

FORM OF RESIDUAL CERTIFICATE TRANSFER AFFIDAVIT (TRANSFEREE)

STATE OF)) ss.:
COUNTY OF)

[NAME OF OFFICER], _____ being first duly sworn, deposes and says:

1. That he [she] is [title of officer] _____ of [name of Purchaser] _____ (the "Purchaser"), a _____ [description of type of entity] duly organized and existing under the laws of the [State of _____] [United States], on behalf of which he [she] makes this affidavit.

2. That the Purchaser's Taxpayer Identification Number is [ ].

3. That the Purchaser is not a "disqualified organization" within the meaning of Section 860E(e)(5) of the Internal Revenue Code of 1986, as amended (the "Code") and will not be a "disqualified organization" as of [date of transfer], and that the Purchaser is not acquiring a Residual Certificate (as defined in the Agreement) for the account of, or as agent (including a broker, nominee, or other middleman) for, any person or entity from which it has not received an affidavit substantially in the form of this affidavit. For these purposes, a "disqualified organization" means the United States, any state or political subdivision thereof, any foreign government, any international organization, any agency or instrumentality of any of the foregoing (other than an instrumentality if all of its activities are subject to tax and a majority of its board of directors is not selected by such governmental entity), any cooperative organization furnishing electric energy or providing telephone service to persons in rural areas as described in Code Section 1381(a)(2)(C), any "electing large partnership" within the meaning of Section 775 of the Code, or any organization (other than a farmers' cooperative described in Code Section 521) that is exempt from federal income tax unless such organization is subject to the tax on unrelated business income imposed by Code Section 511.

EXHIBIT E

EXECUTION COPY

CHASE MORTGAGE FINANCE CORPORATION,

DEPOSITOR,

JPMORGAN CHASE BANK, N.A.,

SERVICER,

JPMORGAN CHASE BANK, N.A.,

CUSTODIAN,

THE BANK OF NEW YORK TRUST COMPANY, N.A.,

PAYING AGENT

AND

THE BANK OF NEW YORK TRUST COMPANY, N.A.,

TRUSTEE

POOLING AND SERVICING AGREEMENT

Dated as of January 1, 2007

$450,014,109
ChaseFlex
Multi-Class Mortgage Pass-Through Certificates
Series 2007-1

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a security interest in the stock allocated to a dwelling unit in a residential cooperative housing corporation and pledged to secure such Co-op Loan and the related Co-op Lease.

MORTGAGE FILE: As to each Mortgage Loan, the items referred to in Exhibit B annexed hereto.

MORTGAGE GROUP: Pertaining to Mortgage Group One or Mortgage Group Two, as the case may be.

MORTGAGE GROUP ONE: The Mortgage Loans in the Trust Fund that are designated in the Mortgage Loan Schedule attached hereto as Exhibit A-1 as comprising Mortgage Group One.

MORTGAGE GROUP ONE SUBORDINATED PERCENTAGE: As of any Distribution Date, the difference between 100% and the Non-PO Class 1-A Percentage.

MORTGAGE GROUP ONE SUBORDINATED PREPAYMENT PERCENTAGE: As of any Distribution Date, the difference between 100% and the Non-PO Class 1-A Prepayment Percentage.

MORTGAGE GROUP TWO: The Mortgage Loans in the Trust Fund that are designated in the Mortgage Loan Schedule attached herero as Exhibit A-2 as comprising Mortgage Group Two.

MORTGAGE GROUP TWO SUBORDINATED PERCENTAGE: As of any Distribution Date, the difference between 100% and the Non-PO Class 2-A Percentage.

MORTGAGE GROUP TWO SUBORDINATED PREPAYMENT PERCENTAGE: As of any Distribution Date, the difference between 100% and the Non-PO Class 2-A Prepayment Percentage.

MORTGAGE LOAN: An individual mortgage loan and all rights with respect thereto, evidenced by a Mortgage and a Mortgage Note, sold and assigned by the Depositor to the Trustee and which is subject to this Agreement and included in the Trust Fund. The Mortgage Loans originally sold and subject to this Agreement are identified on the Mortgage Loan Schedule.

MORTGAGE LOAN SCHEDULE: The schedule of Mortgage Loans attached hereto as Exhibit A as it may be amended in accordance with Section 3.03, setting forth the following information as to each Mortgage Loan: (i) the Mortgage Loan identifying number; (ii) the city, state and zip code of the Mortgaged Property (or Underlying Mortgaged Property, in the case of a Co-op Loan); (iii) an indication of whether the Mortgaged Property (or the related residential dwelling unit in the Underlying Mortgaged Property, in the case of a Co-op Loan) is owner-occupied; (iv) the property type of the Mortgaged Property (or the related residential dwelling unit in the Underlying Mortgaged Property, in the case of a Co-op Loan); (v) the original number of months to stated maturity; (vi) the number of months remaining to stated maturity from the Cut-off Date; (vii) the original Loan-to-Value Ratio; (viii) the original principal balance of the Mortgage Loan; (ix) the unpaid principal balance of the Mortgage Loan as of the close of business on the Cut-off Date; (x) the Mortgage Rate; and (xi) the amount of the current Monthly Payment.

MORTGAGE NOTE: The note or other evidence of the indebtedness of a Mortgagor secured by a Mortgage.

MORTGAGE POOL: The pool of Mortgage Loans held in the Trust Fund.

MORTGAGE POOL PRINCIPAL BALANCE: As of any date of determination, the aggregate of the Principal Balances of each Outstanding Mortgage Loan on such date of determination less the

IN WITNESS WHEREOF, the Depositor, the Servicer, the Paying Agent and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

CHASE MORTGAGE FINANCE CORPORATION,
as Depositor

By:_____
Name:
Title:

JPMORGAN CHASE BANK, N.A.,
as Servicer

By:_____
Name:
Title:

THE BANK OF NEW YORK TRUST COMPANY, N.A.
as Trustee

By: _____
Name:
Title:

JPMORGAN CHASE BANK, N.A.,
as Custodian

By: _____
Name:
Title:

THE BANK OF NEW YORK TRUST COMPANY, N.A.
as Paying Agent

By: _____
Name:
Title:

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

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,

Petitioner,

For Judicial Instructions Under CPLR Article 77 Concerning the Proper Pass-Through Rate Calculation for CWALT Interest Only Senior Certificates.

Index No. 150738/2019

IAS Part 60

Hon. Marcy S. Friedman

AFFIDAVIT OF RON D'VARI, Ph.D.

I. Introduction

1. I am the Manager, Chief Executive Officer, Chief Investment Officer, and co-founder of the financial advisory firm, NewOak Capital LLC ("NewOak"), which has been engaged by Quinn Emanuel Urquhart & Sullivan LLP, acting on behalf of Silian Ventures LLC, in connection with the above-captioned matter. I submit this affidavit to provide my preliminary expert opinions in respect of two topics requested by Quinn Emanuel. First, Quinn Emanuel has requested that I provide an opinion and preliminary analysis in respect of the administration of various "ratio-strip" residential mortgage backed securities ("RMBS") transactions. In particular, this affidavit provides a preliminary analysis of the way The Bank of New York Mellon ("BNYM") and other trustees or parties calculate interest payments to ratio-strip interest-only ("IO") senior certificates issued by certain RMBS trusts from the same vintage as the CWALT and CWHL trusts at issue in this action. In connection with this project, I have collaborated with Matthew Lewis who is a Managing Director at NewOak. Second, Quinn Emanuel has also requested that I provide my opinion regarding the commercial reasonableness of the position taken in the brief submitted by the investors in principal and interest certificates (the "P&I Investors") regarding the calculation of the interest payable to the ratio-strip IO senior certificates. It is possible that I may be requested to provide opinions on other topics. In addition, I reserve all rights to revise this opinion or submit a new report that supplements, amends, or replaces entirely the analysis and conclusions herein.

2. In summary, my preliminary analysis has established that in the overwhelming majority of cases, BNYM and other calculating parties on RMBS trusts containing ratio-strip IO senior certificates calculate the interest payments owed to these certificates by utilizing the original interest rates on the underlying mortgage loans, regardless of whether the accrued interest rates on those loans have been subsequently modified as a result of rate modifications to avoid default after execution of the original mortgage note. Separately, it is my expert opinion that the P&I Investors' position that payments to IO senior certificates should be determined by combining the use of modified rates with a pool-level calculation would lead to commercially absurd results because it would result in *all* credit losses from credit-related interest rate modifications to be allocated to reduce the cash flow to the ratio-strip IO senior certificates to *zero* before impacting cash flow to *any* subordinated certificates.

3. NewOak is being compensated for its involvement in this matter based on its customary hourly billing rates, and its fee is not contingent upon the outcome of this matter.

II. Qualifications and Methodology

4. As referenced above, I am the Manager, Chief Executive Officer, Chief Investment Officer, and co-founder of the financial advisory firm, NewOak, which offers credit, valuation, risk management, asset management, litigation consulting, credit underwriting, financial technology, and capital markets services. I have an array of expertise in respect of the investing, origination, structuring, administration, and underwriting of structured products,

including asset-backed securities ("ABS"), RMBS, and commercial-mortgage backed securities ("CMBS").

5. Prior to founding NewOak, from 2005 to 2008 I was a Managing Director, Global Head of Structured Finance, and Member of the Fixed Income Business and Alternative Management Committees at BlackRock, where I was co-responsible for $90+ billion of investments in structured products and subordinated structured finance investments. During this time, I founded BlackRock's residential mortgage credit underwriting, loan modeling, due diligence, loss expectations, and investment process, and I was a senior member of the short duration, and non-agency mortgage-backed security portfolio management teams. I was personally responsible for the process for loan-level analysis and due diligence for residential and commercial real estate products, and I founded and led a team of eleven sector specialists managing portfolios of structured finance securities including RMBS and CMBS.

6. After ten years in aerospace engineering and academics, I started my financial career at State Street Research and Management in 1994 in the quantitative risk management group. In 2005, State Street Research and Management, the wholly owned third-party asset manager of MetLife, was acquired by BlackRock, where post-merger I became an executive. By 1997, I served as the Director of Fixed Income Research and Head of Quantitative Analysis, as well as the head of RMBS, CMBS and structured products portfolio management. By 2001, I served as a Member of the Fixed Income Management Committee and Head of Specialty Products Portfolio Management. In these roles, I established and managed the portfolio management and quantitative research teams in structured finance assets (including RMBS, ABS, and CMBS) comprised of a thirteen-member team of portfolio managers, analysts, and traders. I also founded and managed all aspects of the collateralized debt obligation program including structuring, placement, and ongoing management of the portfolios encompassing $4 billion in assets, including ABS and CMBS.

7. I co-founded NewOak in 2008, and it is now a leading integrated financial advisory firm that specializes in complex assets covering credits across residential, commercial, consumer, corporate, public finance, project finance (loans and securities), and financial companies. I have expertise in investing, origination, underwriting, warehousing, structuring, rating, distribution, management, pricing, and hedging practices with respect to complex financial products. While at NewOak, I have been engaged as a strategic consultant or expert witness in various matters involving asset management practices, structured products, and securities for large financial institutions and regulators.

8. I am also presently the Chief Executive Officer and Chief Investment Officer of NewOak Asset Management LLC and NewOak Advisors LLC. In these roles, among other things, I have engaged in the valuation analysis of complex securities, including ABS, RMBS, and CMBS; conducted periodic risk and valuation reporting on complex structured and fixed-income portfolios for various institutional clients; and provided my analysis and opinion in various litigations and other disputes regarding fiduciary management, RMBS underwriting, and collateralized debt obligation structuring practices.

9. I hold a Bachelor of Science, Master of Science, and Ph.D. in engineering and applied science, and a Master of Business Administration from the University of California, Los Angeles ("UCLA"), as well as FINRA Series 7, 24, 53, and 63 licenses. I have maintained adjunct professor positions at the International Business School at Brandeis University, the Harvard University Extension Program, Boston University Business School, and UCLA Engineering School. I also am on the editorial board of the *Journal of Structured Finance*, and previously I was a member of the American Securitization Forum's editorial advisory board and the Fixed Income Forum's advisory board and was Chairman of the Education Committee for the Professional Risk Managers International Association. I have presented and published numerous articles and other publications on structured finance, securities analysis and risk management.

10. Mr. Lewis, who collaborated with me on this project, has over 30 years of experience in RMBS structuring and analytics. He is a Managing Director at NewOak, and head of its Financial Markets Advisory practice. Mr. Lewis' work at NewOak has focused on, among other things, the analysis of plaintiff investment processes, market practices, collateral and security analysis, loss attribution, and RMBS servicing practices evaluation.

11. Prior to joining NewOak in 2012, Mr. Lewis was a Vice President and, later, a Senior Vice President, of Structured Finance at Lehman Brothers from 1996 to 2007. In this role, he structured ABS and RMBS deals both on his own and with Lehman's structuring group, and acted as a banker in the securitization group responsible for underwriting transactions for subprime mortgage and home equity line of credit ("HELOC") originators.

12. In addition to this experience, Mr. Lewis was a Senior Vice President in the Asset-Backed Securities Group of Swiss Re Financial Products from 2007 to 2012, where he participated in and managed a variety of asset-backed securities ("ABS") and RMBS-related projects, including managing a lending facility to a commercial mortgage lender, and pursuing repurchase claims versus a subprime mortgage originator. From 1993 to 1996, he was a Vice President in the Asset-Backed Securities Group at Goldman Sachs, where he acted as a banker in the securitization group responsible for underwriting transactions for originators of various assets, including ABS and RMBS deals. Mr. Lewis structured deals on his own using the firm's proprietary software, managed the rating agency process, and structured the first ever zero-coupon credit-card ABS. From 1986 to 1993, Mr. Lewis was employed by Deloitte & Touche where he became a Senior Manager in the collateralized mortgage obligations group. At Deloitte, Mr. Lewis was the lead modeler of mortgage-backed securities and ABS securitizations, created the group's residual tax analysis model, and verified underwriters' projections, among other tasks.

13. Mr. Lewis holds a Bachelor of Arts degree from Pitzer College and a Master of Business Administration degree from New York University, as well as FINRA Series 7 and 63 licenses.

III. Analysis

14. The trusts at issue in this lawsuit from the CWALT and CWHL shelves (the "Covered Trusts") are "ratio-strip" transactions. Like most RMBS, the operative deal document in a ratio-strip transaction is the pooling and servicing agreement ("PSA"). In a ratio-strip transaction, the PSAs segregate (or, as it is commonly known, "strip") a defined portion of the scheduled interest payments from the underlying Mortgage Loans above a set rate, often called the "Required Coupon" or the "Strip Rate," as payable to the IO senior certificates.[1] The Mortgage Loans in the pool with original interest rates above the Required Coupon are defined as the "Non-Discount Mortgage Loans" (sometimes called "Premium Mortgage Loans") in contrast with those Mortgage Loans whose net interest rates are below the Required Coupon, which are defined as the "Discount Mortgage Loans." For these Discount Mortgage Loans, the PSAs strip a defined portion of principal on the underlying Mortgage Loans as payable to the principal-only ("PO") senior certificates. The impact of segregating the defined portion of principal is to increase the effective interest rate on the remaining principal to the Required Coupon.

15. I understand that BNYM has used what it calls a "dynamic method" (the "Dynamic Method") in calculating the amount of interest owed to the ratio-strip IO senior certificates in the Covered Trusts, which entails using the current rate of interest on each Non-Discount Mortgage Loan, as reduced by any interest-rate reduction caused by a modification after the inception of the trust (the "Modified Rate"). BNYM also conducted the stripping component of the calculation (*i.e.*, subtracting the Required Coupon from the net interest rates on the Non-Discount Mortgage Loans) on a loan-by-loan basis (the "Loan Level Approach"), with a cap of zero, and then took the weighted average of these stripped amounts.

16. It is my understanding that certain investors in principal and interest certificates issued by the Covered Trusts (the "P&I Investors") agree with BNYM's so-called Dynamic Method insofar as it requires use of the Modified Rate, but they disagree with the use of the Loan Level Approach. The P&I Investors instead argue that BNYM should be conducting the stripping component of the calculation on a pool level (the "Pool Level Approach"), meaning that BNYM would take the weighted average net interest rate of the Non-Discount Mortgage Loans first and then subtract the Required Rate from that pool-level weighted average.

17. Finally, I also understand that it is Silian's position that BNYM is required to use the original rate of interest appearing on the Mortgage Note in calculating the interest owed to

[1] This does not make the IO senior certificates "excess interest" certificates—shorthand typically used to describe certificates entitled to the excess of the interest received on the mortgage loans over interest paid on the certificates issued by the trust and expenses of the trust, plus other residual cash flows. The cash flow to a ratio-strip IO certificate is not the excess of interest paid to other certificates issued by the RMBS trust. Instead, it is the excess above a rate set by the PSAs of the interest rate payable by the borrower on the underlying Mortgage Loan at the original rate of interest appearing on the Mortgage Note.

the IO senior certificates (the "Original Rate"). According to Silian, that Original Rate should not be reduced by subsequent modifications that reduce the current interest rate on the mortgage loan. Under Silian's approach, the Loan Level Approach and the Pool Level Approach generate the same outcome.

18. As described below, my preliminary analysis produced compelling evidence that the overwhelming practice among the parties responsible for calculating the interest payable to IO senior certificates issued under ratio-strip transactions is to use the Original Rate. Separately, I have reviewed the parties' initial briefs and there are a number of opinions that I would be prepared to provide in respect of the issues and assertions made in those briefs. In this affidavit, however, I am limiting my opinion to commercial reasonableness of the P&I Investors' proffered approach of combining the Modified Rate with a Pool-Level Approach. In my view, that combination would lead to absurd results, by allocating all credit losses caused by interest rate modifications to the IO senior certificates before such losses impact the subordinated certificates.

A. The Overwhelming Prevailing Practice Is To Use The Original Rate in Ratio-Strip Transactions

19. Based on my experience, it is my understanding that ratio-strip IOs use the Original Rate in determining the payments owed to the IO senior certificates, because a static rate of interest is necessary to preserve the proper functioning of the ratio-strip structure. Quinn Emanuel asked me to prepare a preliminary analysis of the actual calculations performed on other ratio-strip transactions from the same time period as the Covered Trusts, to determine whether the calculating party employed BNYM's Dynamic Method to calculate interest payable to the IO senior certificates.

20. To perform the analysis, Mr. Lewis and I reviewed the calculation of interest paid to IO senior certificates issued by the universe of other ratio-strip transactions backed by fixed-rate mortgage loans that were issued from 2002 to 2008, when the vast majority of the Covered Trusts were created. We identified the relevant universe of transactions by searching for RMBS trusts identified as ratio-strip transactions in Intex, the market-standard cash flow engine for mortgage- and asset-backed securities. We excluded the Covered Trusts from our analysis. This search yielded 1003 unique RMBS trusts, across 56 unique RMBS shelves.

21. From this universe, we were able to identify the trustee or other transaction party responsible for calculating the interest paid to the IO senior certificates based on the party that published the monthly remittance reports for each deal. There were six calculating parties in the universe: BNYM, Citibank, Deutsche Bank, Ocwen, U.S. Bank, and Wells Fargo. This is consistent with my understanding of the major banks serving as trustee, securities administrator, or other calculating parties for RMBS trusts of this vintage.

22. For each unique combination of calculating party and RMBS shelf, we then evaluated whether the calculating party calculated interest owed to the IO senior certificates based on (a) Silian's approach (the "Original Rate Method"), (b) BNYM's approach (the "Modified Loan-Level Method"), or (c) the P&I Investors' Approach (the "Modified Pool-Level Method").

23. First, we identified a random sample of trusts with ratio-strip IO senior certificates from our universe for testing. To do so, we randomly selected one trust from every shelf within the relevant universe. Where more than one party acted as the calculating party for a given shelf of RMBS trusts, we randomly selected one transaction per calculating party.

24. Second, we obtained monthly remittance reports provided for RMBS trusts in the relevant universe, as well as loan-level data for the mortgage loans underlying those trusts. These monthly reports are typically available on the websites of the various calculating parties, usually the trustee, while both loan-level data and monthly reports are typically available from Intex or Bloomberg.

25. Third, trusts were removed from the random sample if there was inadequate loan-level data or if there were no rate modifications in the loan pools (if there were no rate modifications, there would be no way to determine which method of calculation was being used). We resampled from the universe to replace the deals that were removed. These randomly selected resamples were checked for viable data, and this procedure was repeated until a viable trust was identified or until there were no longer any trusts with ratio-strip IO certificates in the universe with the same shelf and calculation agent. Based on this selection process, we identified 69 unique shelf-calculating party combinations.

26. Fourth, we ran each of these shelf–calculating party combinations through a custom model to determine the approach taken by the calculating party to calculate interest owed to the IO senior certificates. The model was adapted for each trust's interest calculation provisions as defined in the trust's PSA or, where the PSA was unavailable, the Prospectus Supplement ("ProSupp"). Where necessary, we did additional analysis to confirm our results. We were able to determine the calculation method used on the trusts related to 66 of the 69 shelf–calculating party combinations originally identified.[2]

27. Our preliminary analysis has established powerful evidence that there are virtually no other instances of calculating parties (including BNYM) using the Modified Loan-Level Method that BNYM is proposing be adopted in this case. Rather, the overwhelming practice of calculating parties is to use the Original Rate Method proposed by Silian. These results are set forth in Exhibit A. Approximately 95% of the shelf–calculating party combinations we examined used the Original Rate Method to calculate payments to the IO certificates. Only 2% used the Modified Loan-Level Method, and 3% used the Modified Pool-Level Method. In fact, BNYM used the Original Rate Method in all the trusts examined for which they were the calculating party. All of the calculating parties used the Original Rate

[2] These 66 shelf–calculating party combinations included approximately 900 trusts. The three excluded shelf–calculating party combinations included approximately 6 trusts.

Method except for Citibank on two shelves and US Bank on one shelf, as shown in the table below.

Calculating Party	Unmodified	Modified Loan Level	Modified Pool Level
BONY	13	0	0
Citibank	4	0	2
DeutscheBank	8	0	0
Ocwen	2	0	0
USBank	6	1	0
WellsFargo	30	0	0
Total	**63**	**1**	**2**

B. The P&I Investors' Proffered Calculation Leads To Commercially Absurd Results

28. The P&I Investors assert in their opening submission that the issue of whether to use the Modified or Original Rate, and whether to use the Pool Level Approach or Loan Level Approach, can be considered separately. I offer no opinion on this from a legal perspective. However, from the perspective of understanding the commercial reasonableness of the result, I strongly disagree. These two issues are both integral components of the calculation of payments to IO senior certificates. By attempting to disaggregate them, it would be difficult to understand the overall impact of determining one issue or the other on the IO senior certificate payments. Only by understanding them in combination, does their impact and commercial reasonableness become evident. In the case of the position taken by the P&I Investors, combining use of a Modified Rate with a Pool Level Approach would dramatically accelerate losses to the IO senior certificates in such a way as to violate the reasonable expectations of investors in these types of securities to the point of being commercially absurd.

29. I based this opinion on the fact that the Modified Pool Level Method being proposed by the P&I Investors would effectively transform the IO senior certificates into a "first loss" security that would absorb *all* credit losses from the reduced interest generated by Modified Loans until IO senior certificates' interest payments were reduced to *zero* before *any* such losses would be borne by any other certificates. This would mean that even the excess interest generated by *un*modified Non-Discount Loans that would normally go to the IO senior certificates would instead be utilized to cover interest shortfalls from credit-related Modified Loans instead of those losses being shared with even expressly subordinated junior certificates.

30. Based upon our analysis, in many instances, the practical effect of the P&I Investors' proposed approach would have been to cause payments to the IO "***Senior***" certificates in the Covered Trusts to be cut off in their entirety on account of loan modifications while the Covered Trusts continued to make interest and principal payments to P&I "***Subordinated***" certificates. In my experience, rational investors would never expect a ratio-strip transaction to be implemented in such a manner that "Senior" certificates—a designation that refers to their payment priority—would absorb credit-induced losses to the point of being effectively written down in their entirety while "Subordinated" certificates remained unaffected by those losses. Indeed, I believe that this result would be so fundamentally contrary to the reasonable expectations of investors in ratio-strip transactions so as to be commercially absurd.

IV. Summary and Conclusion

31. In sum, the data that we have reviewed across an extensive universe of ratio-strip transactions provides strong evidence that the overwhelming practice among parties calculating interest owed to the IO senior certificates is to use the Original Rate Method, while there is virtually no evidence of any calculating parties utilizing the Modified Loan-Level Method supported by BNYM. Separately, based on my experience as an investor in ratio-strip structures, it is my opinion that the dramatic acceleration of losses to the IO senior certificates ahead of the subordinated certificates generated by the combination of the Modified Rate and Pool Level Approach would frustrate the reasonable expectations of market participants and be commercially absurd.

Dated: July 19, 2019
New York, New York

Ron D'vari, Ph.D.

Subscribed and sworn to before me on this 19th day of July 2019.

Notary Public

NADIL R. RAMUSEVIC
Notary Public, State of New York
No. 01RA6019423
Qualified in Queens County
Commission Expires March 22, 2023

EXHIBIT A

	Shelf	Calculating Party	Method Used
1	BAFC	WellsFargo	Unmodified
2	BOAA	WellsFargo	Unmodified
3	BOAMS	WellsFargo	Unmodified
4	BSABS	WellsFargo	Unmodified
5	CDMC	Citibank	Unmodified
6	CFLX	BONY	Unmodified
7	CHASE	BONY	Unmodified
8	CMLTI	WellsFargo	Unmodified
9	CSFB	BONY	Unmodified
10	CSFB	WellsFargo	Unmodified
11	CSMC	WellsFargo	Unmodified
12	DBALT	WellsFargo	Unmodified
13	DMSI	WellsFargo	Unmodified
14	GMACM	BONY	Unmodified
15	GMACM	DeutscheBank	Unmodified
16	GMACM	WellsFargo	Unmodified
17	GSAA	BONY	Unmodified
18	GSAA	WellsFargo	Unmodified
19	GSR	BONY	Unmodified
20	GSR	WellsFargo	Unmodified
21	IMJA	DeutscheBank	Unmodified
22	IMSC	DeutscheBank	Unmodified
23	JPALT	WellsFargo	Unmodified
24	JPMMT	BONY	Unmodified
25	JPMMT	WellsFargo	Unmodified
26	LMT	Citibank	Unmodified
27	LMT	USBank	Unmodified
28	LMT	WellsFargo	Unmodified
29	MALT	WellsFargo	Unmodified
30	MANA	WellsFargo	Unmodified
31	MASTR	WellsFargo	Unmodified
32	MLMI	WellsFargo	Unmodified
33	MSDWC	WellsFargo	Unmodified
34	MSM	WellsFargo	Unmodified
35	MSSTR	WellsFargo	Unmodified
36	PRIME	USBank	Unmodified
37	PRIME	WellsFargo	Unmodified
38	RAAC	BONY	Unmodified
39	RALI	DeutscheBank	Unmodified
40	RALI	Ocwen	Unmodified

	Shelf	Calculating Party	Method Used
41	RAMP	BONY	Unmodified
42	RAMP	DeutscheBank	Unmodified
43	RAST	DeutscheBank	Unmodified
44	RBSGC	WellsFargo	Unmodified
45	RFMSI	BONY	Unmodified
46	RFMSI	DeutscheBank	Unmodified
47	RFMSI	Ocwen	Unmodified
48	RFSC	BONY	Unmodified
49	RFSC	DeutscheBank	Unmodified
50	SAMI	WellsFargo	Unmodified
51	SASC	BONY	Unmodified
52	SASC	Citibank	Unmodified
53	SASC	USBank	Unmodified
54	SASC	WellsFargo	Unmodified
55	SBM7	WellsFargo	Unmodified
56	STALT	WellsFargo	Unmodified
57	SURF	BONY	Unmodified
58	TBW	WellsFargo	Unmodified
59	WAMMS	USBank	Unmodified
60	WAMU	Citibank	Unmodified
61	WAMU	USBank	Unmodified
62	WFALT	WellsFargo	Unmodified
63	WMALT	USBank	Unmodified
64	AMAC	USBank	Modified Loan Level
65	CMALT	Citibank	Modified Pool Level
66	CMSI	Citibank	Modified Pool Level