
In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

OBJECTION OF THE BANK OF NEW YORK MELLON TO THE PLAN OF REHABILITATION AND JOINDER IN THE OBJECTIONS OF (A) BANK OF AMERICA, N.A., SOLELY IN ITS CAPACITY AS TRUSTEE FOR CERTAIN RMBS TRUSTS AND ON BEHALF OF THOSE TRUSTS' CERTIFICATEHOLDERS AND (B) WELLS FARGO BANK, N.A., SOLELY IN ITS CAPACITY AS TRUSTEE AND IN SIMILAR CAPACITIES FOR CERTAIN RMBS TRUSTS AND AS INDENTURE TRUSTEE ON CERTAIN STUDENT LOAN BACKED SECURITIES TRANSACTIONS AND ON BEHALF OF THE CERTIFICATEHOLDERS AND NOTEHOLDERS FOR SUCH TRUSTS AND TRANSACTIONS

The Bank of New York Mellon, a New York banking corporation (“BNY Mellon”), as trustee, indenture trustee or collateral agent, as the case may be (directly and/or through its affiliates), for the benefit of holders and/or secured parties of certain mortgage-backed securities, other asset-backed securities, collateralized loan obligations and collateralized debt obligations (collectively, the “Trusts”), by its attorneys, hereby objects to the plan of rehabilitation, joins in the (a) Objection of Bank of America, N.A. (“Bank of America”), solely in its capacity as trustee for certain RMBS trusts and on behalf of those trusts’ certificateholders, to the plan of rehabilitation (the “Bank of America Trustee Objection”) and (b) Objection of Wells Fargo Bank, N.A. (“Wells Fargo”), in its capacity as trustee and in similar capacities for certain residential mortgage-backed securities trusts and indenture trustee for certain student loan backed securities transactions (the “Wells Fargo Trustee Objection,” together with the Bank of

America Trustee Objection, the “Trustee Objections”), and incorporates the legal positions set forth in the Trustee Objections as if fully set forth herein.¹

STATEMENT OF FACTS

BNY Mellon and/or its affiliates serves as trustee, indenture trustee, or collateral agent, as the case may be, for certain Trusts for which Ambac Assurance Corporation (“Ambac”), BNY Mellon or its affiliates, and/or the Trusts and other related parties (including holders, directly or indirectly, of securities issued by certain Trusts) entered into insurance policies (the “Policies”), pursuant to which Ambac has agreed to insure certain payments to be made to certain classes of holders or secured parties of such Trusts as set forth in the Policies and the transaction documents governing the Trusts (the “Transaction Documents”). This submission relates to those Trusts for which the Policies were allocated to the Segregated Account (as defined in the Verified Petition for Order of Rehabilitation dated March 24, 2010) in connection with the commencement of this action on March 24, 2010.

On October 8, 2010, the Commissioner filed the Plan, along with a Motion for Confirmation of the Plan, a Disclosure Statement, and a Notice of Filing of the Motion, Disclosure Statement and Motion. On October 21, 2010, the Commissioner filed a Brief in Support of Motion for Confirmation of Plan of Rehabilitation, a proposed Order Confirming Plan of Rehabilitation with Findings of Fact and Conclusions of Law, and a Witness List for Hearing on Confirmation of Plan of Rehabilitation. On November 8, 2010, Bank of America filed the Bank of America Trustee Objection, and Wells Fargo filed the Wells Fargo Trustee Objection. To facilitate the Court’s review of objections to the Plan, and in light of the substantial

¹ In light of the limited information disclosed to date, BNY Mellon respectfully reserves its right to supplement or amend its objections to the Plan of Rehabilitation for Ambac (the “Plan”) should additional information be forthcoming.

commonality of interests reflected in the trustees' objections to the Plan, BNY Mellon, as trustee, indenture trustee or collateral agent, hereby joins the Trustee Objections.

STATEMENT OF ISSUES

As set forth below and in the Trustee Objections, this Court should deny the Commissioner's Motion for Confirmation of the Plan.

I. THE PLAN SHOULD NOT BE CONFIRMED BECAUSE IT PURPORTS TO PERMIT AMBAC TO SATISFY POLICY CLAIMS THROUGH THE DELIVERY OF SURPLUS NOTES IN LIEU OF CASH

Under the Plan, Ambac would be permitted to deliver certain Surplus Notes, rather than cash, as payment for certain claims under the Policies. (*See* Plan § 2.02.) As with those policies identified by Bank of America and Wells Fargo in the Trustee Objections, the Policies do not provide that Ambac may satisfy claims by the issuance of Surplus Notes. As set forth in the Trustee Objections, the substitution of Surplus Notes for cash is therefore inconsistent with the terms of the Policies and creates prejudice and uncertainty for the Trusts and/or holders or secured parties of such Trusts that warrant the Court's denial of the Motion for Confirmation of Plan. *See* Trustee Objections at § 1.

II. THE PLAN SHOULD NOT BE CONFIRMED BECAUSE THE COMMISSIONER HAS NOT DEMONSTRATED THAT POLICYHOLDERS WOULD RECOVER MORE UNDER THE PLAN THAN IN A LIQUIDATION, NOR HAS HE PERMITTED POLICYHOLDERS TO OPT OUT OF THE PLAN

The Court should not confirm the Plan because the Commissioner has not demonstrated that policyholders would be better off under the Plan than in a liquidation, nor has the Commissioner permitted policyholders to opt out of the Plan. For its argument in support of this point, BNY Mellon joins in and incorporates by reference the arguments made at Point II.B.1 of the Objections of Deutsche Bank National Trust Company, Deutsche Bank Trust

Company Americas, and U.S. Bank National Association, each acting solely in its capacity as trustee for certain securitization trusts, to the Plan of Rehabilitation.

III. THE PLAN SHOULD NOT BE CONFIRMED BECAUSE IT CONTAINS SEVERAL OBJECTIONABLE TERMS

The Court should not confirm the Plan as proposed by the Commissioner in light of the significant objectionable terms contained therein. In the Trustee Objections, Bank of America and Wells Fargo have identified several such objectionable terms, namely that:

- The Plan would unconscionably allow Ambac to demand reimbursement wholly in cash where it has paid the underlying claim by a combination of cash and Surplus Notes (*see* Trustee Objections at § III.A);
- The Plan purports to allow Ambac an indefinite period of time to evaluate and pay claims, in contravention of the Policies' terms (*see* Trustee Objections at § III.B);
- The Plan would unfairly subordinate Surplus Note claims to future policy claims made against Ambac (*see* Trustee Objections at § III.C);
- The Plan converts objectionable terms of the Order for Temporary Injunctive Relief into permanent injunctive restraints (*see* Trustee Objections at § III.D); and
- The Plan prejudices trustees and other parties to the Trusts by failing to provide adequate protection and compensation to trustees and other parties to the Transaction Documents for taking actions that would be required under the proposed Plan and by purporting to impose duties on trustees that were delegated to other entities under the Transaction Documents (*see* Trustee Objections at § III.E).

Each of these objections applies with equal force to the Trusts and the Policies pursuant to which Ambac has agreed to insure certain payments to be made to certain classes of holders or secured parties of such Trusts. Notably, the Commissioner offers no reason – he cannot – why the Trusts should be required to reimburse Ambac one hundred cents on the dollar in cash for claims where Ambac has only made cash payments of twenty-five cents on the dollar.

Such requirement would serve only to deprive the Trusts of assets and to grant Ambac rights beyond those set forth in the Policies and Transaction Documents.

Nor does the Commissioner offer any reason why parties to the Transaction Documents should be prohibited – on a permanent basis – from taking actions in accordance with the Transaction Documents that are otherwise unrelated to the instant rehabilitation proceeding or exercising any rights of set-off that would otherwise be available. In that regard, BNY Mellon further incorporates herein by reference the arguments made in its Brief in Objection to, and if Necessary, in Support of Motion to Modify, the Order for Temporary Injunctive Relief, filed June 22, 2010, and the reply memorandum submitted in further support thereof, filed September 1, 2010, to the extent the Plan seeks to extend permanently the terms of the Order for Temporary Injunctive Relief.

Further, the Plan impermissibly seeks to impose duties on the parties to the Transaction Documents, including but not limited to BNY Mellon and/or its affiliates as trustees, indenture trustees and/or collateral agents for the Trusts, that exceed the scope of the parties' obligations under the Transaction Documents and may otherwise be inconsistent with the Transaction Documents. As set forth in the Trustee Objections, while the Plan contains express exculpatory provisions for the Commissioner and Ambac, no such exculpation is provided to any other parties that are required to take specific actions under the proposed Plan. Nor does the Plan provide for any compensation to be provided to such parties, even where the required actions go beyond the scope of those parties' duties under the Transaction Documents. As a matter of basis fairness, a party to the Transaction Documents should not be faced with the choice of liability before this Court for failing to take actions under the Plan or potential liability in other jurisdictions for taking such actions at its own expense. Therefore, the Plan should, at minimum,

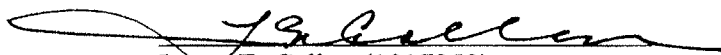
be modified (1) to protect any such parties from claims that may arise from any actions necessary to implement the Plan by barring all such claims and (2) to provide such parties with compensation for any actions taken to implement the Plan.

Accordingly, the Motion for Confirmation of Plan should be denied for the reasons set forth above and in the Trustee Objections.

CONCLUSION

For the reasons set forth above and in the Trustee Objections, BNY Mellon, as trustee, indenture trustee and/or collateral agent (directly and/or through its affiliates) for the benefit of holders and secured parties of the Trusts for which Ambac, BNY Mellon or its affiliates, and/or the Trusts and other related parties (including holders, directly or indirectly, of securities issued by certain Trusts) entered into insurance policies that have been allocated to the Segregated Account or have otherwise been affected by this Rehabilitation Proceeding, respectfully requests that this Court deny the Commissioner's Motion for Confirmation of Plan.

Dated this 8th day of November, 2010.



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