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

SEALINK FUNDING LIMITED,

Plaintiff,

v.

DEUTSCHE BANK AG; DEUTSCHE BANK SECURITIES, INC.; DB STRUCTURED PRODUCTS INC.; ACE SECURITIES CORP.; and DEUTSCHE ALT-A SECURITIES INC.

Defendants.

Index No.

COMPLAINT

JURY TRIAL DEMANDED

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Plaintiff Sealink Funding Limited ("Sealink" or "Plaintiff") hereby brings this complaint for common law fraud, fraudulent inducement, and aiding and abetting fraud (the "Complaint") against Deutsche Bank AG, Deutsche Bank Securities, Inc., ACE Securities Corp., Deutsche Alt-A Securities, Inc. and DB Structured Products, Inc. (collectively, "Deutsche Bank" or "Defendants").[1]

I. SUMMARY OF THE ACTION

1. This action involves a fraud perpetrated by Deutsche Bank in connection with Plaintiff's purchase of over $960 million in 19 residential mortgage-backed securities ("RMBS") (the "Offerings") from Deutsche Bank. Deutsche Bank originated, purchased, financed, and securitized exceptionally high-risk loans into these RMBS, all while internally disparaging the poor quality of these loans and the RMBS they backed as "***pigs***" and "***crap***." Deutsche Bank's singularly negative view of the loans and RMBS it sold to Plaintiff led it, starting as early as 2005, to bet against the U.S. housing market, ultimately developing a ***$10 billion "short" position*** that paid off when the loans backing the RMBS it sold to Plaintiff and other investors failed.

2. Unaware that Deutsche Bank secretly viewed the RMBS it sold as "generally horrible" and was betting with its own capital that they and similar RMBS would fail, Plaintiff invested in those Deutsche Bank RMBS in reliance on the central role that Deutsche Bank played in creating the RMBS, and on the representations Deutsche Bank provided in registration statements, term sheets, prospectuses, draft prospectus supplements, prospectus supplements and other materials and communications (the "Offering Materials") attesting that the loans backing the RMBS had been prudently underwritten and were secured by adequate collateral in

[1] Throughout the Complaint, emphasis in quotations has been added, unless otherwise indicated. "¶__" refers to the corresponding paragraph(s) in this Complaint.

accordance with the underwriting guidelines of the companies that originated those mortgages, and that Deutsche Bank had verified the quality of the loans. Deutsche Bank's due diligence purportedly confirmed that the securities it sold Plaintiff warranted the sterling credit ratings they carried when sold.

3. Sealink is an assignee asserting the claims of special-purpose vehicles, see below at ¶¶21-26 (the "Irish SPVS") that purchased the Defendants' RMBS at issue here between 2006 and 2007 in reliance on the Offering Materials prepared by and provided to them, directly or indirectly, by Defendants. The Offering Materials contained numerous representations about the purportedly conservative mortgage underwriting standards applied by the mortgage originators, the appraisals of the mortgaged properties, Deutsche Bank's due diligence, and other facts regarding the collateral underlying the RMBS that were material to the Irish SPVs' investment decisions.

4. The Irish SPVs' decision to invest in the vast majority of the Certificates was based, in substantial part, on Deutsche Bank's role as a principal in the securitization process. In connection with transactions in which Deutsche Bank acted as the underwriter, sponsor, and depositor of an RMBS (referred to herein as "principal securitizations"), Deutsche Bank first purchased the loans from the originators before securitizing them into the RMBS purchased by the Irish SPVs. Deutsche Bank represented to the Irish SPVS that it had conducted due diligence on the mortgage originators and their loan underwriting guidelines before purchasing any mortgage loan for securitization, providing assurance to the Irish SPVs that: (i) the loans backing their RMBS investments conformed to the stated underwriting standards employed by those originators; (ii) the appraisal values and other characteristics were valid, accurate, and not inflated; (iii) the Certificates were deserving of the triple-A ratings they had been assigned; and

(iv) the quality of the RMBS as represented in the Offering Materials matched Deutsche Bank's reputation.

5. In securitizations where Deutsche Bank was the underwriter of a securitization (but not a principal securitization), it continued to play a significant role, sometimes assisting the sponsors in structuring the securitizations, or by participating in the due diligence of the loans selected for inclusion in the securitization. Deutsche Bank profited from serving as an underwriter of securities issued by the originator.

6. Deutsche Bank played a ubiquitous role in the mortgage origination and securitization process. Indeed, approximately $351 million in the face amount of the loans backing the Deutsche Bank RMBS that the Irish SPVs purchased were originated by Deutsche Bank's own subprime mortgage originator subsidiaries and affiliates, MortgageIT, an indirect wholly-owned subsidiary of Deutsche Bank AG, and DB Structured Products, Inc. ("DBSP"). In the Offering Materials, Deutsche Bank claimed that DBSP—which acted as the sponsor in 13 of the Deutsche Bank Offerings at issue here—when purchasing loans through its correspondent DB-ASAP lending program, only acquired loans from "approved" loan sellers that met DBSP's minimum requirements and that "***all*** of the Mortgage Loans" that were included in the securitization were vetted by DBSP underwriters to ensure they met both DBSP's and the loan sellers' underwriting guidelines.[2] Moreover, Deutsche Bank claimed to have regularly conducted a "***full re-underwriting*** of a random selection of mortgage loans to assure asset quality" to confirm "***the existence and accuracy of legal documents, credit documentation, appraisal analysis and underwriting decision***," and stated that the findings of this review were "sent monthly to [DBSP] management for response." In truth, and as the Irish SPVs and the

[2] All emphasis is added unless otherwise noted.

world would only later discover, the originators of the underlying mortgage loans that collateralized the RMBS that Deutsche Bank underwrote and sold contained loans issued by other originators that were among the worst culprits in the subprime industry—including, Countrywide Financial ("Countrywide"), American Home Mortgage ("American Home"), and IndyMac Bank ("IndyMac")—while Defendants had stated in the Offering Materials that these loans met the originators' stated underwriting guidelines, were supported by adequate collateral and were sufficient to warrant the AAA rating assigned to the RMBS purchased by the Irish SPVs. Deutsche Bank represented that, among other things, the loans contained in the Deutsche Bank RMBS were not seriously delinquent at the time they were securitized.

7. Those representations were false. In reality, the Offering Materials and credit ratings materially misrepresented the quality and purportedly conservative nature of the RMBS, and Deutsche Bank, through its extensive involvement in the securitization process, ***knew*** this was the case. Indeed, the due diligence Deutsche Bank claimed it had performed on these lenders and the loans they originated revealed, in explicit detail, their true quality. The percentage of deficient loans identified through that due diligence process – which Deutsche Bank generally outsourced to third-party mortgage consultants Clayton Holdings, Inc. ("Clayton") and Lydian Data Services ("Lydian") – demonstrates that Deutsche Bank knew that the originators routinely disregarded their own underwriting guidelines, originated loans based on inflated appraisal values, and manipulated the underwriting process to issue loans to borrowers who had no plausible means to repay them. According to evidence released by the Financial Crisis Inquiry Commission ("FCIC"), Deutsche Bank purchased and securitized nearly half of the sampled loans Clayton rejected for failing to comply with the originators' underwriting guidelines. For loans that Deutsche Bank itself originated through MortgageIT and DBSP, such due diligence only confirmed what Deutsche Bank already knew: that the loan pools

it securitized were riddled with defective loans that were improperly underwritten, in direct contrast to Deutsche Bank's representations in the Offering Materials.

8. Deutsche Bank's close relationships with the subprime lenders that originated the loans backing the RMBS in which the Irish SPVs invested gave them unique insight into the quality of those loans. These relationships included Deutsche Bank's role as one of the largest warehouse lenders to numerous subprime lenders, extending lines of credit totaling billions of dollars to several of the originators whose loans backed the Deutsche Bank RMBS sold to the Irish SPVs, including Countrywide. As a result of its close relationships with loan originators – as an affiliate, multibillion dollar lender, and multibillion dollar securitization partner – Deutsche Bank knew in granular detail the origination practices, underwriting guidelines, and the quality of the originated loans. As Deutsche Bank knew – but investors like the Irish SPVs would only later discover – these originators were among the worst of the subprime mortgage lenders, willing to "just giv[e] anyone a loan who wants one," secure in the knowledge that their Wall Street partners like Deutsche Bank would then foist the loans on unsuspecting investors.

9. For those loans DBSP purchased for securitization through its correspondent lending program, Deutsche Bank advanced the funding necessary to originate those loans even before they had been issued, and kept an extraordinarily close eye on their performance after they were purchased. To this end, DBSP had a stated policy of requiring any loan seller in its correspondent lending program to repurchase a loan "if any of the first three (3) payments due after the purchase date are thirty (30) days delinquent," which was amended in March 2006 to require any seller to repurchase a loan if the first two payments had not been made. Under this program, DBSP closely tracked such early payment defaults ("EPDs") and was keenly aware that loans issued by its correspondent lenders—including fly-by-night subprime lenders Maribella Mortgage LLC ("Maribella") and Cameron Financial Group, Inc., d/b/a 1st Choice Mortgage

("Cameron")—were defaulting within the first several months after issuance at alarming rates. Such early defaults showed that the loans never should have been issued in the first place. Moreover, Deutsche Bank was aware that these lenders were coming under increasing financial stress as other investment bank loan buyers began demanding repurchase of such loans. Instead of curtailing its business relationships with these lenders, or even enforcing its rights under its EPD program, Deutsche Bank—faced with having to suffer the loss on the loan itself if the lender were to declare bankruptcy—chose to securitize those loans and sell them as RMBS to the Irish SPVs even after they were already delinquent.

10. Indeed, as reflected in court filings in subsequent repurchase litigation brought by DBSP, scores of such EPD loans were securitized and sold as Deutsche Bank RMBS. Each of these loans—identified by DBSP in court filings as having defaulted under the terms of its own EPD program within the first several months of having been issued—were included in Deutsche Bank RMBS, such as those purchased by the Irish SPVs, despite the explicit representations in the Offering Materials that the loans had been underwritten in accordance with DBSP's own underwriting guidelines, independently reviewed by DBSP's own underwriters, and were not in serious delinquency status at the time of securitization.[3] Incredulously, DBSP, in its court filings, alleged that it was harmed because it was "unable to include certain of the Early Payment Default Loans in securitizations," despite the fact that it already had done so, and sold securities backed by those loans to investors.

11. Deutsche Bank also had unique insight into the practices of the originators whose loans it securitized through its role as trustee of the trusts that backed the RMBS it securitized.

[3] For example, Deutsche Bank represented in the Offering Materials for the ACE 2006-WM1 RMBS in which the Irish SPVs invested $17 million that "***No Mortgage Loan will be more than 60 days delinquent as of the Cut-off Date***."

Employees at Deutsche Bank's trustee arms, Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas (collectively, "Deutsche Bank Trust")—which was the largest RMBS trustee in the world at the height of the mortgage market bubble—knew of the slipshod mortgage origination practices that were prevalent in the Deutsche Bank RMBS, such as those purchased by the Irish SPVs. For example, a series of Deutsche Bank Trust memoranda to RMBS servicers beginning in August 2007 details increasing concerns that "good housekeeping" measures were not being followed to establish the RMBS trust's ownership of the mortgage loans. As evidence uncovered in foreclosure litigation across the country has since revealed, the mortgage loans backing Deutsche Bank RMBS—including loans backing the Deutsche Bank RMBS purchased by the Irish SPVs —were never properly transferred to the relevant trust, in direct contradiction to Deutsche Bank's statements in the Offering Materials.[4] Through these activities, and for every securitization in which Deutsche Bank sold certificates to the Irish SPVs, Deutsche Bank had in-depth knowledge of the underwriting practices of each loan originator, the creditworthiness of the loans it was securitizing and selling as RMBS, and the validity of the trust's ownership of those loans.

12. Rather than disclose the true nature and quality of the RMBS Deutsche Bank sold to the Irish SPVs, senior traders at Deutsche Bank exploited this insight to devise a strategy to profit from their eventual default. Indeed, as detailed by the Senate Permanent Subcommittee on Investigations ("Senate Subcommittee") in its April 2011 report "Wall Street and the Financial Crisis: Anatomy of a Financial Collapse" (the "Senate Report"), Deutsche Bank senior traders internally and secretly belittled the Deutsche Bank RMBS purchased by the Irish SPVs and other

[4] As discussed below, Deutsche Bank's trustee arm is currently the subject of investigations by both the U.S. Department of Justice and the Attorneys General of New York and Delaware that are looking into fraud, forgery and other misconduct concerning the securitization process and trust asset recovery in foreclosure litigation.

investors, and the originators who issued the underlying loans as "***crap***," "***pigs***," and "***generally horrible.***" To profit from these securities' expected failure, traders at Deutsche Bank developed and took positions in collateralized debt obligations ("CDOs") and credit default swaps ("CDSs") to bet on the values of (and in some cases, minimize its own exposure to) RMBS such as those it had created and sold to investors like the Irish SPVs. In fact, Deutsche Bank was one of two leaders of a consortium of banks that developed an index that tracked the performance of a group of RMBS that enabled Deutsche Bank traders to place such bets in the first place.

13. One such trader, Greg Lippmann, the head of RMBS trading at Deutsche Bank, who played a central role in helping Deutsche Bank execute this strategy, repeatedly derided the very RMBS that Deutsche Bank itself had created, marketed and sold. In 2006, Mr. Lippmann emailed his colleague about one Deutsche Bank RMBS issued pursuant to the ACE shelf, in which the Irish SPVs invested, asking "DOESNT THIS DEAL BLOW[?]" to which the trader replied: "yes it blows I am seeing 20-40% writedowns." Deutsche Bank went to great lengths to keep its traders' views of the subprime RMBS that Deutsche Bank sold to investors like the Irish SPVs – and Deutsche Bank's strategy to profit from their collapse – a secret. As reflected in the Senate Report, it was clear that Deutsche Bank concealed that strategy because it was unwilling to sacrifice the profits it was making from its "new issue and the customer franchise" business—*i.e.*, the money it was making by securitizing and selling RMBS and CDOs to investors like the Irish SPVs:

> One of Mr. Lippmann's top traders, Rocky Kurita, put it this way in mid-2005: "***[W]e have to make money***. ***Customer happiness is a secondary goal but we cannot lose sight of the trading desk[']s other role of supporting new issue and the customer franchise***." In a 2007 email to a client, Mr. Lippmann wrote: "***[P]lease please do not forward these emails outside of your firm. … I do not want to be blamed by the new issue people for destroying their business***."

14. So confident were Lippmann and Deutsche Bank in the strategy to profit from the collapse of RMBS like those Deutsche Bank sold to the Irish SPVs that Lippmann bragged in an email to a hedge fund investor in November 2005 that "he was short 1 billion dollars of this stuff and was going to make 'oceans' of money," causing the recipient of that email to worry that Lippmann's "exuberance was a little scary." By the end of 2007, Deutsche Bank's "short" position had grown to $10 billion, costing Deutsche Bank approximately $100 million per year to maintain.

15. While Deutsche Bank was building its $10 billion bet against the RMBS it was selling and the U.S. housing market in general, the Irish SPVs, in reliance upon the statements in the Offering Materials and Deutsche Bank's reputation, invested over $960 million in Deutsche Bank RMBS in 19 Offerings and 28 Certificates between 2006 and 2007 (the "Certificates") – all of which were rated AAA by purportedly independent rating agencies at the time of issuance. As Deutsche Bank expected, however, these RMBS eventually plunged in value, enabling Deutsche Bank to reap enormous profits on the "short" bets it had placed against those securities—described by Lippmann as "the largest profit obtained from a single position in Deutsche Bank history." Unfortunately, for investors like the Irish SPVs, homeowners, and the global economy, Deutsche Bank's misconduct caused devastating results.

16. Deutsche Bank's misconduct has resulted in astounding rates of default on the loans underlying the Deutsche Bank RMBS at issue here and massive downgrades of the Certificates, which are largely now considered "junk." As of May 2012, on average, ***over 40%*** of the mortgage loans underlying the Certificates were over 60 days delinquent, in foreclosure, bankruptcy, or repossession. This figure does not include the substantial losses suffered by the Irish SPVs since the RMBS' issuance due to foreclosures and defaults, and the removal of those failed mortgage loans from the current loan pool and current delinquency figures. Indeed, had

such mortgage loans remained in the securitization, the average serious delinquency rates would have been substantially higher. Accordingly, the Certificates are no longer marketable or salable at or near the prices the Irish SPVs paid for them, and Sealink, as assignee, has suffered significant losses as a result of the fraud perpetrated by Deutsche Bank.

17. Sealink seeks compensatory and/or rescissory damages against Defendants for fraud, fraud in the inducement, and aiding and abetting fraud.

II. JURISDICTION AND VENUE

18. Jurisdiction is proper because most Defendants are domiciled in New York, as detailed below, and because each Defendant transacts business within the State of New York within the meaning of CPLR § 302(a)(1) and each of them committed a tortious act inside the State of New York or outside the State of New York causing injury within the State of New York within the meaning of CPLR §§ 302(a)(2) and 302(a)(3). The amount in controversy exceeds $150,000.

19. Venue is proper in this Court because Defendants Deutsche Bank Securities, Inc., DB Structured Products, Inc. and Deutsche Alt-A Securities, Inc. maintain their principal places of business in New York County.

III. THE PARTIES

A. Plaintiff Sealink

20. Plaintiff Sealink Funding Limited is a company incorporated under the laws of Ireland that maintains offices in Dublin, Ireland at First Floor, 7 Exchange Place IFSC. Sealink is a special purpose vehicle that was established to receive, hold and manage toxic RMBS assets, including the Certificates. The Certificates were initially purchased by certain other special purpose vehicles incorporated under the laws of Ireland. As detailed further below, Sealink is the exclusive assignee of the claims asserted in this Complaint.

B. Non-Party SPVs

21. Landesbank Sachsen Girozentrale ("Sachsen LB") was a German bank founded in 1992. In 1999, Sachsen LB created Sachsen LB Europe Plc, ("Sachsen Europe"), a public limited company incorporated under the laws of Ireland. Sachsen Europe was a wholly-owned subsidiary of Sachsen LB and maintained its principal place of business at Ninth Floor, Block A, 1 George's Quay, Dublin 2, Ireland. Sachsen Europe's primary business purpose was managing the purchase of asset-backed securities, including RMBS. To facilitate this business purpose, Sachsen Europe was involved in creating and managing numerous special purpose vehicles, including:

a. In 2004, Sachsen Europe was involved in creating Ormond Quay Funding Plc ("Ormond Quay"), a company incorporated under the laws of Ireland, whose registered office was at Fourth Floor, Hanover Building, Windmill Lane, Dublin 2, Ireland;

b. In 2004, Sachsen Europe was involved in creating Eden Quay Asset Management Ltd., ("Eden Quay"), a special purpose vehicle incorporated under the laws of Ireland, whose registered office was at BDO Simpson Xavier, Beaux Lane House, Mercer Street, Lower Dublin 2, Ireland;

c. In 2004, Sachsen Europe was involved in creating Ellis Quay Asset Management Ltd., ("Ellis Quay"), a special purpose vehicle incorporated under the laws of Ireland, whose registered office was at BDO Simpson Xavier, Beaux Lane House, Mercer Street, Lower Dublin 2, Ireland;

d. In 2004, Sachsen Europe was involved in creating Merchants Quay Asset Management Ltd., ("Merchants Quay"), a special purpose vehicle incorporated under the laws of Ireland, whose registered office was at

BDO Simpson Xavier, Beaux Lane House, Mercer Street, Lower Dublin 2, Ireland; and

e. In 2007, Sachsen Europe was involved in creating Sachsen Funding I Ltd., ("Sachsen Funding"), a company incorporated under the laws of Ireland, whose registered office was at Fifth Floor, 75 St. Stephen's Green, Dublin 2, Ireland.

22. Ormond Quay, Eden Quay, Ellis Quay, Merchants Quay, and Sachsen Funding are hereinafter collectively referred to as the "Irish SPVs." The primary business purpose of the Irish SPVs was to purchase asset-backed securities, including the supposedly high-quality, lowest risk tranches (*i.e.*, AAA-rated) of RMBS offerings. The Irish SPVs accomplished this objective by issuing commercial paper or refinancing via repo transactions. The Irish SPVs were the initial purchasers of the Certificates at issue.

23. The Irish SPVs did not have employees. Rather, pursuant to agency agreements designating Sachsen Europe as the Irish SPVs' asset manager, Sachsen Europe employed traders, analysts, and other employees who conducted all operational activities of the Irish SPVs, including the trading of asset-backed securities, portfolio management, credit analysis, and valuation. At all relevant time, all operational activities, including the purchase of the Certificates, were conducted at Sachsen Europe's principal place of business in Dublin, Ireland.

24. In 2007, Sachsen Europe was involved in creating Castleview Asset Management Ltd., ("Castleview 1"), a special purpose vehicle incorporated under the laws of the Cayman Islands. Castleview 1's registered office was at P.O. Box 1093, Queensgate House, Grand Cayman, KY1-1102, Cayman Islands.

25. In 2007, Sachsen Europe was involved in creating Castleview Asset Management Ltd., ("Castleview 2"), a special purpose vehicle incorporated under the laws of the Cayman

Islands. Castleview 2's registered office was at P.O. Box 1093, Queensgate House, Grand Cayman, KY1-1102, Cayman Islands.

26. In 2008, Sachsen Europe was involved in Castleview Management Ltd., ("Castleview 3"), a special purpose vehicle incorporated under the laws of the Cayman Islands. Castleview 3's registered office was at P.O. Box 1093, Queensgate House, Grand Cayman, KY1-1102, Cayman Islands.

27. Castleview 1, Castleview 2, and Castleview 3 are collectively referred to herein as the "Cayman SPVs." Sachsen Europe also acted as the sole asset manager for the Cayman SPVs. The Irish SPVs and the Cayman SPVs are collectively referred to as the "SPVs." Each SPV contained a unique portfolio of RMBS, all of which were analyzed, purchased, transferred, and allocated at the direction of Sachsen Europe.

C. Defendants

28. Defendant Deutsche Bank AG is a German corporation with its principal place of business in Frankfurt, Germany. Defendant Deutsche Bank AG is a global financial services provider delivering investment, financial, and related products and services. Defendant Deutsche Bank AG's common stock trades on the New York Stock Exchange under the ticker symbol "DB."

29. Defendant Deutsche Bank Securities, Inc. ("DBSI") is a SEC registered broker-dealer incorporated in Delaware and based in New York, New York. Defendant DBSI is a subsidiary of Taunus Corporation, which is a subsidiary of Defendant Deutsche Bank AG. Defendant DSBI underwrote all of the Offerings at issue here.

30. Defendant DB Structured Products, Inc. ("DBSP") is a Delaware corporation with its principal place of business in New York, New York. Defendant DBSP acquired the mortgage loans from the originators discussed below, in thirteen of the Offerings at issue here.

31. Defendant ACE Securities Corp. is a Delaware corporation formed by DBSI, with its principal place of business in Charlotte, North Carolina. Defendant ACE Securities Corp. served as the depositor and issuer for the five of the Offerings at issue here.

32. Defendant Deutsche Alt-A Securities, Inc. is a Delaware corporation with its principal place of business in New York, New York. Defendant Deutsche Alt-A Securities, Inc. is a wholly owned subsidiary of Defendant DB Structured Products, Inc., and served as the depositor and issuer for eight of the Offerings at issue here.

33. The Defendants identified in ¶¶28-32 above are hereinafter collectively referred to as "Defendants."

IV. SEALINK HAS STANDING TO PURSUE THE CLAIMS AT ISSUE

34. As detailed herein, the prices the Irish SPVs paid for the Certificates were far in excess of their true value at the time of purchase. Had the Irish SPVs known the true value and quality of the Certificates at the time of purchase, the Certificates would have violated applicable investment guidelines, and the Irish SPVs would not have purchased them. Ultimately, as the true value of the RMBS was revealed, institutional investors refused to purchase the Irish SPVs' commercial paper and commercial banks withdrew their credit lines. Accordingly, the Irish SPVs, including Ormond Quay, were left temporarily unable to refinance themselves.

35. Rather than discontinuing operations, which would have forced a disposal of the RMBS assets, Sachsen Europe arranged access to alternative funding. Sachsen Europe created the Cayman SPVs, which enabled independent repo financing to be conducted for the Irish SPVs' portfolios. Sachsen Europe established the Cayman SPVS in the Cayman Islands primarily due to the relatively low cost and short time period required to incorporate. Establishing the Cayman SPVs enabled the Certificates to be transferred from the Irish SPVs at par value.

36. The Cayman SPVs were established sequentially and assets were transferred when respective funding capacities were needed. On or about December 12, 2007, Sachsen Europe transferred RMBS from the Irish SPVs to Castleview 1. On or about January 18, 2008, Sachsen Europe transferred RMBS from the Irish SPVs to Castleview 2. On or about February 27, 2008 Sachsen Europe transferred RMBS from the Irish SPVs to Castleview 3.

37. These transfers were governed by Global Master Repurchase Agreements executed between the Irish SPVs and the Cayman SPVs (the "Master Repurchase Agreements"). The Master Repurchase Agreements transferred "all right, title and interest" in the transferred securities. For example, the Master Repurchase Agreement transferring securities to Castleview 2, which was executed on January 11, 2008, stated that "[t]he parties shall execute and deliver all necessary documents and take all necessary steps to procure that all right, title and interest in any Purchased Securities . . . shall pass to the party to which transfer is being made upon transfer of the same in accordance with this Agreement . . ." All transfers from the Irish SPVs to the Cayman SPVs were at par value, which avoided recognition and consolidation of the massive underlying losses that the RMBS had already sustained.

38. On August 26, 2007, Landesbank Baden-Würrtemberg ("LBBW") agreed to acquire Sachsen LB, effective January 1, 2008. The SPVs were excluded from LBBW's acquisition of Sachsen LB. Instead, the RMBS held in the SPVs' portfolios were sold to Sealink, an Irish limited company established to receive, hold, and manage the toxic RMBS. The RMBS, including the Certificates at issue here, were sold to Sealink pursuant to a series of Sale and Purchase Agreements ("SPAs") which stated "with full title guarantee and as beneficial owner hereby agree[] to sell, and the Purchaser [Sealink] hereby agrees to purchase," all RMBS in the SPVs' portfolios, including the Certificates at issue. Along with the SPAs, a Master Framework and Definitions Schedule ("Master Framework") was also executed. The Master Framework

provides that "[a]ny reference in the Transaction Documents to . . . 'assets' includes present and future properties, revenues and rights of every description." The sales to Sealink were conducted at par value, which allowed the RMBS to be transferred without recognition and consolidation of the massive underlying losses that the portfolios had already sustained.

39. The Master Repurchase Agreements, SPAs, and Master Framework transferred all rights relating to the Certificates at issue, without limitation, to Sealink. This transfer included an assignment of the right to pursue the claims asserted herein.

V. FACTUAL BACKGROUND UNDERLYING PLAINTIFF'S CLAIMS

A. The Deutsche Bank RMBS Purchased By the Irish SPVs

40. RMBS, such as the Deutsche Bank RMBS purchased by the Irish SPVs, provide the RMBS investor with an interest in the income generated by a pool of mortgages. The actual securities themselves represent an equity interest in an "issuing trust" that holds the mortgage loan pool. Although the structure and underlying collateral of the mortgages varies among the nineteen Deutsche Bank Offerings that the Irish SPVs purchased, they all function in a similar manner: The cash flows from the borrowers who make interest and principal payments on the individual mortgages comprising the mortgage pool are "passed through" to the certificate holders, like the Irish SPVs. Accordingly, the failure of those borrowers to make their mortgage payments directly impacts the returns the Irish SPVs earns on their RMBS investments. Moreover, a default resulting in foreclosure may cause the trust to sell the subject property at a loss – a risk that increases when the appraisals utilized in underwriting the loans overstate the value of the property that serves as collateral for the mortgage. For these reasons, the proper underwriting of the mortgages underlying the Deutsche Bank RMBS – including verifying the credit quality of the borrower and the value of the real estate – is essential to ensuring that the

Deutsche Bank RMBS perform according to the representations made by Deutsche Bank to investors like the Irish SPVs.

41. The first step in creating an RMBS is the acquisition by a "depositor" of an inventory of loans from a "sponsor" or "seller," which either originates the loans or acquires the loans from other mortgage originators, in exchange for cash. The type of loans in the inventory varies, and can include conventional, fixed-rate or adjustable-rate mortgage loans, secured by first liens, junior liens, or a combination of first and junior liens, with various lifetimes to maturity. The depositor then transfers, or deposits, the acquired pool of loans to an "issuing trust."

42. The depositor then securitizes the pool of loans in the issuing trust so that the rights to the cash flows from the pool can be sold to investors. The securitization transactions are structured such that the risk of loss is divided among different levels of investment, or "tranches," with each having a different level of risk and reward. Typically, losses on the underlying loans—whether due to default, delinquency, or otherwise—are generally applied in reverse order of seniority. As such, the most senior tranches of pass-through securities are rated as the best quality, or "AAA/Aaa." Junior tranches, which usually obtained lower ratings, ranging from "AA/Aa" to "BB/Ba," are less insulated from risk, but offer greater potential returns in the form of higher rates of interest. All of the Deutsche Bank RMBS purchased by the Irish SPVs were among the most senior, risk-averse tranches of the relevant offerings and were largely rated "AAA/Aaa" at issuance and when they were purchased by the Irish SPVs.

43. Once the tranches are established, the issuing trust passes the securities back to the depositor, which becomes the issuer of the RMBS. The depositor then passes the RMBS to Deutsche Bank—which offers and sells the securities to the Irish SPVs and other investors in exchange for cash that is passed back to the depositor, less any fees collected by Deutsche Bank

for serving as an underwriter of the securitization. Typically, investment banks like Deutsche Bank would collect between 0.2% to 1.5% in discounts, concessions, or commissions in serving as an underwriter of an RMBS securitization. On the 28 Deutsche Bank Certificates purchased by the Irish SPVs, these commissions would have yielded Deutsche Bank millions of dollars in underwriting fees. By serving as a sponsor and depositor of the securitizations, Deutsche Bank earned even more.

44. Deutsche Bank entities were involved in every step of the process of selling the vast majority of the Deutsche Bank RMBS to the Irish SPVs. DB Structured Products, Inc., which served as the sponsor of thirteen of the nineteen Offerings purchased by the Irish SPVs, provided warehouse financing to the originators that issued the mortgage loans, acquired the mortgage loans from the originators, and initiated the securitization of the mortgage loans into RMBS by transferring the loans to ACE Securities Corp. or Deutsche Alt-A Securities, Inc., the depositors. ACE Securities Corp. or Deutsche Alt-A Securities, Inc., which served as the depositors in thirteen of the Deutsche Bank Offerings purchased by the Irish SPVs, obtained the mortgage loans from DB Structured Products, Inc. (the sponsor) to place into the issuing trust for sale in privately negotiated transactions to investors like the Irish SPVs. Importantly, Deutsche Bank provided the information that the Irish SPVs used to decide whether to purchase the securities.

45. Because the cash flow from the loans in the collateral pool of a securitization is the source of funds to pay the holders of the RMBS issued by the trust, the credit quality of those securities depends upon the credit quality of the loans in the collateral pool. The most important information about the credit quality of the loans is contained in the "loan files" that the mortgage originator develops while making the loans. For residential mortgage loans, each loan file normally contains documents including the borrower's application for the loan; verification of

the borrower's income, assets, and employment; references; credit reports on the borrower; an appraisal of the property that will secure the loan and provides the basis for important measures of credit quality, such as loan-to-value ratios.

46. The collateral pool of loans for each securitization usually includes thousands of loans. Deutsche Bank, in its role as a sponsor and underwriter of securitizations, is responsible for gathering, verifying, and presenting to potential investors accurate and complete information about the credit quality and characteristics of the loans that are deposited into the trust. Indeed, the most important factors for the Irish SPVs —and, for any investor—in purchasing Deutsche Bank RMBS were (1) the ability of the underlying borrowers to repay their mortgages; (2) the ability of the trust to recover its losses in case of default by ensuring the properties were appropriate collateral for the loans and were accurately valued; and (3) the rate of interest received on the RMBS. The loan files themselves are not provided or available to RMBS investors like the Irish SPVs, who must instead rely upon Deutsche Bank's representations about the mortgages underlying the RMBS and the process used to select and review those loans.

47. As noted, nearly all of the Deutsche Bank RMBS purchased by the Irish SPVs were rated triple-A at issuance, as set forth below:

Deal and Tranche	Amount Expended	Moody's Rating at Issuance	Moody's Current Rating	Top Originators & Sellers
ACE 2007-ASAP1 A2B	$25,000,000	Aaa	Ca	DB Structured Products
ACE 2007-ASAP1 A2D	$27,000,000	Aaa	Ca	DB Structured Products
ACE 2007-ASAP2 A2B	$12,229,000	Aaa	Ca	DB Structured Products
ACE 2007-WM1 A2C	$17,000,000	Aaa	Ca	WMC Mortgage
DBALT 2006-AR4 A2	$53,000,000	Aaa	Caa3	MortgageIT Countrywide GreenPoint
DBALT 2006-AR6 A6	$49,000,000	Aaa	Caa3	MortgageIT Countrywide
DBALT 2006-AR6 A8	$49,073,000	Aaa	C	MortgageIT Countrywide
DBALT 2007-1 1A2	$25,000,000	Aaa	B2	Countrywide National City

Deal and Tranche	Amount Expended	Moody's Rating at Issuance	Moody's Current Rating	Top Originators & Sellers
DBALT 2007-1 1A3C	$20,439,000	Aaa	Caa3	Countrywide National City
DBALT 2007-AR1 A5	$31,388,000	Aaa	C	MortgageIT American Home IndyMac
DBALT 2007-AR1 A6	$17,637,000	Aaa	C	MortgageIT American Home IndyMac
DBALT 2007-AR2 A2	$37,005,000	Aaa	C	MortgageIT American Home
DBALT 2007-BAR1 A3	$60,000,000	Aaa	Caa3	American Home IndyMac DHI Mortgage
DBALT 2007-BAR1 A4	$25,000,000	Aaa	C	American Home IndyMac DHI Mortgage
DBALT 2007-BAR1 A5	$25,000,000	Aaa	WR	American Home IndyMac DHI Mortgage
DBALT 2007-OA1 A3	$10,062,500	Aaa	C	Countrywide Residential Funding
DBALT 2007-OA1 M1	$7,470,000	Aaa	C	Countrywide Residential Funding
DBALT 2007-OA1 M2	$7,030,000	Aa1	C	Countrywide Residential Funding
DBALT 2007-OA2 A3	$35,000,000	Aaa	C	Impac IndyMac
DBALT 2007-OA4 A2A	$96,634,000	Aaa	C	Countrywide
DMSI 2006-PR1 5AF4	$56,754,878	Aaa	B2	Doral Financial
INDX 2006-AR27 1A4	$60,000,000	Aaa	Caa3	IndyMac
MHL 2007-1 2A11	$50,000,000	Aaa	Ca	MortgageIT
NHEL 2007-1 A2C	$40,000,000	Aaa	Ca	NovaStar
PHHAM 2007-2 1A2	$30,000,000	Aaa	Caa2	PHH Mortgage
RALI 2007-QO2 A3	$9,763,000	Aaa	C	Homecomings
RAMP 2007-RS1 A3	$50,000,000	Aaa	Ca	GMAC SunTrust
RAMP 2007-RS1 A4	$35,287,000	Aaa	C	GMAC SunTrust

B. Deutsche Bank's Activities In The Subprime Mortgage Arena

48. Deutsche Bank's activities in the RMBS market were a tremendous driver of Deutsche Bank's profits at the height of the U.S. housing boom. At nearly every step of the mortgage securitization process, Deutsche Bank reaped enormous profits, collecting the spread between what it would pay for a pool of mortgage loans and what it was able to obtain from

selling those loans into a securitization, from collecting underwriting fees and commissions from selling the RMBS it had securitized to investors, to earning interest and fees from the warehouse lending arrangements it established with subprime originators to facilitate the issuance of the loans underlying those securities.

49. Eager to capitalize on the booming market for subprime mortgages, Deutsche Bank created several entities—including DBSP and ACE Securities—to facilitate Deutsche Bank's origination and purchase of residential mortgage loans that Deutsche Bank would then underwrite and sell to investors, like the Irish SPVs, as RMBS. Deutsche Bank also pursued an increased market share in the subprime mortgage market through its 2006 purchase of Chapel Funding LLC, which it later renamed DB Home Lending LLC, as well as through its acquisition of MortgageIT, which Deutsche Bank officials lauded as a "major step[] forward in building our U.S. franchise with our acquisitions of mortgage origination platforms."

50. As a result of these efforts, from 2004 to 2006, DBSP residential mortgage securitizations more than tripled, from $7.7 billion to $24 billion. According to the Company's 2006 Annual Report, Deutsche Bank's RMBS securitization activities, including a "sustained expansion into residential mortgage-backed securities in the U.S." which reported "gain[s] both in earnings and in market share," enabled Deutsche Bank to "generate[] record revenues [and] reap[] rich rewards." By year end 2006, the reported cash flows passing through Deutsche Bank's hands and into securitizations totaled nearly $40 billion U.S. (€19,735 million), with Deutsche Bank recognizing over $550 million U.S. (€262 million) in gains as a result.

51. Even before its acquisition of MortgageIT and DB Home Lending, Deutsche Bank had unique insight into the practices of mortgage originators through its role as one of the most prolific RMBS trustees in the world. As Deutsche Bank boasted in its 2006 Annual Report, as of year-end 2006, Deutsche Bank's trustee and servicing arm had received more appointments

in U.S. asset-backed securitizations than any other provider, meaning that Deutsche Bank oversaw the securitization of more residential mortgage loans than any other trustee in the world.

52. Deutsche Bank's RMBS activities as securitizer and trustee were integral to the growth and proliferation of high-risk mortgages that contributed to the financial crisis. Mortgage originators generated profits primarily through the sale of their loans to investment banks like Deutsche Bank, and the originators were therefore driven to originate and sell as many loans as possible. Increased demand for mortgages by banks like Deutsche Bank led to increased volume in mortgage originations. That increased volume, in turn, led to a decrease in the gain-on-sale margins that mortgage originators received from selling pools of loans. As a result, originators began to borrow money from the same large banks that were buying their mortgages in order to fund the origination of even more mortgages.

53. One of the principal ways originators obtained such capital was by establishing a warehouse line of credit with an investment bank such as Deutsche Bank. The line of credit, in turn, would be secured by the very mortgage loans that investment banks like Deutsche Bank would purchase for securitization. Deutsche Bank earned fees and interest income on those warehouse lines of credit. From 2005 to 2007, Deutsche Bank extended warehouse lines of credit totaling billions of dollars to several of the originators whose loans backed the Deutsche Bank RMBS sold to the Irish SPVs, including Countrywide. These financial relationships also provided Deutsche Bank with unique insight into the lending practices of the originators whose loans backed the RMBS purchased by the Irish SPVs.

54. Deutsche Bank's activities in the subprime mortgage market also included exploiting its unique knowledge of the origination practices of subprime lenders to profit at the expense of its own clients, including the Irish SPVs. One way Deutsche Bank did so was by

structuring financial products, such as collateralized debt obligations ("CDOs")—which provided investors with payments from a portfolio of fixed-income assets, such as RMBS—that were backed by the very RMBS Deutsche Bank had securitized. Deutsche Bank earned fees by structuring CDOs and selling the securities that the CDOs issued, and also sold RMBS from its own portfolio to the CDOs—often for the very purpose of eliminating the risk from Deutsche Bank's own balance sheet. Another way Deutsche Bank exploited its knowledge of the true value of the RMBS it sold the Irish SPVs was to take proprietary positions in other instruments, such as credit default swaps ("CDSs")—insurance-like products that would provide payments to the CDS purchaser upon the occurrence of a particular credit event, typically the default of a particular asset (*e.g.*, RMBS) or asset class (*e.g.*, a series of RMBS with similar attributes)—that paid off when the value of those RMBS declined. Indeed, as discussed in further detail below, Deutsche Bank's top CDO trader, Greg Lippmann, entered into trades enabling Deutsche Bank to effectively "short" the subprime mortgage market by betting against subprime RMBS such as those it created and sold to investors like the Irish SPVs. Deutsche Bank began shorting the subprime mortgage market as early as 2005, and rapidly expanded its position into a multi-billion dollar bet that U.S. RMBS would fail on a massive scale.

55. According to Michael Lewis's account in *The Big Short*, Lippmann emailed an investor of a hedge fund in November 2005 and claimed that "he was short 1 billion dollars of this stuff and was going to make 'oceans' of money (or something to that effect.) His exuberance was a little scary." Indeed:

> Lippmann brimmed with fascinating details: the historical behavior of the American homeowner; the idiocy and corruption of the rating of the rating agencies, Moody's and S&P, who stuck a triple-B rating on subprime bonds that went bad when losses in the underlying pools of home mortgages reached just 8 percent; the widespread fraud in the mortgage market; the folly of the subprime

> mortgage investors, some large number of whom seemed to live in Düsseldorf, Germany.
>
> * * *
>
> Düsseldorf. Stupid Germans. They take rating agencies seriously. They believe in the rules.

56. Lippmann also enlisted the assistance of Deutsche Bank's preferred clients in helping Deutsche Bank to amass the massive short position that would pay off handsomely when the value of RMBS, like those it had created and sold to the Irish SPVs, declined. As described in *The Big Short*, Steve Eisman, a money manager that became famous for betting against the value of subprime mortgages, was approached by Lippmann, who wanted Eisman to bet against RMBS that Deutsche Bank had created. According to the account, Eisman asked Lippmann why he should "bet against bonds [Deutsche Bank] is creating, and arranging for the rating agencies to misrate?" Eisman was incredulous: "In my entire life I never saw a sell-side guy come in and say, 'Short my market.'" As Lewis explained, at the same time that Lippmann's short position against the value of subprime RMBS, such as those Deutsche Bank RMBS purchased by the Irish SPVs, had grown to $1 billion, "[s]ixteen floors above him inside Deutsche Bank's Wall Street headquarters, several hundred highly paid employees bought subprime mortgage loans, packaged them into bonds, and sold them off." As Lewis recounted:

> By the summer of 2006 Greg Lippmann had a new metaphor in his head: a tug-of-war. The entire subprime mortgage lending machine—including his own employer, Deutsche Bank—pulled on one end of the rope, while he, Greg Lippmann, hauled back on the other.

57. As noted in the Senate Report, "[e]ach of these issues focuses on the poor quality of the financial product that Deutsche Bank helped assemble and sell." Deutsche Bank's massive bet against the RMBS that it created and sold to investors enabled Deutsche Bank to reap $1.5 billion in profits during 2007 and 2008. Lippmann told the Senate Subcommittee that

he believes that profit to be "the largest profit obtained from a single position in Deutsche Bank history."

C. Deutsche Bank's Role Was to Ensure the Quality of the Loans Backing the RMBS

58. Deutsche Bank and the mortgage originators utilized two methods to securitize mortgages into RMBS for sale to investors. Specifically, the originators aggregated the loans into pools and would either (1) sell the loan pools to an investment bank, and the investment bank would then deposit the securities into a trust that would issue securities backed by the loans ("principal securitization") or (2) deposit them into a trust that would issue RMBS backed by the loans (referred to herein as an "originator securitization"). Under the first approach, principal securitizations, because the investment bank is securitizing the loans on its own behalf, Deutsche Bank profited from the difference in the price it paid for the loan pools it purchased from the originator and that which it received from the sale of those loans as RMBS. Under the second approach, Deutsche Bank profited by the fees it received by serving as an underwriter of the securities issued by the originator.

59. Nearly three-fourths of the Deutsche Bank RMBS purchased by the Irish SPVs at issue in this action were securitized through principal securitization, whereby Deutsche Bank entities would first purchase loan pools originated by third-party originators and/or loan sellers and then deposit those loans into the RMBS trust as the sponsor of a mortgage securitization. In principal securitizations a sophisticated investment bank like Deutsche Bank is involved throughout the securitization process, leading investors to expect a higher degree of oversight and due diligence on the mortgages being selected for inclusion in the RMBS.

60. For example, in the Offering Materials relied on by the Irish SPVs, Deutsche Bank explains that when serving as a sponsor of a securitization, DBSP "***conducts a number of***

quality control procedures, including a full re-underwriting of a random selection of mortgage loans to assure asset quality" to confirm "***the existence and accuracy of legal documents, credit documentation, appraisal analysis and underwriting decision***." The findings of this review are included in a "report detailing audit findings and level of error," which is then sent monthly to DBSP management for response. Specifically, before purchasing loans from an originator in a principal securitization, Deutsche Bank would perform due diligence on the mortgage loan pools by examining three areas—credit, compliance and valuation. First, credit diligence examined a sampling of the individual loans in a given loan pool to assess their quality and compliance with the underwriting guidelines of the originator. An originator's underwriting guidelines are a critical tool for investors to evaluate the risk of default on the loans that serve as collateral for RMBS. Prudent lending standards—as articulated in an originator's underwriting guidelines—are addressed in numerous federal guidance statements requiring that federally-regulated institutions adopt well-defined underwriting parameters such as acceptable loan-to-value ratios, debt-to-income ratios, and minimum acceptable credit scores.[5] Those federal standards have been adopted by the subprime industry as a whole through substantially similar guidance published by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. These standards are intended not only to protect borrowers to ensure that they can repay their loans, but also to ensure the safety and soundness of individual lending institutions and the financial system as a whole. Second, compliance diligence focused on whether the loans were originated in compliance with state, federal and local laws, including predatory

[5] *See, e.g.*, 12 C.F.R. Part 34, subpart D (Office of the Comptroller of Currency standards); 12 C.F.R. Part 208, subpart C (Board of Governors of the Federal Reserve standards); 12 C.F.R. Part 365 (Federal Deposit Insurance Corporation standards); 12 C.F.R. 560.100 and 12 C.F.R. 560.101 (Office of Thrift Supervision standards); and 12 CFR 701.21 (National Credit Union Administration standards).

lending and truth-in-lending statutes. Third, valuation diligence checked the accuracy of the originator's reported property valuations of the collateral backing the loans. In a principal securitization, this due diligence provides comfort to investors that Deutsche Bank has ensured that only mortgages that conform to these requirements are being securitized.

61. Deutsche Bank routinely ignored the pervasive defects that its due diligence identified in the loans it purchased for securitization. Deutsche Bank deliberately concealed these defects from the Irish SPVs and other investors in order to increase its own profits, preserve its ongoing business relationships with the RMBS originators, and move risk from its own balance sheet onto investors'. Instead, as discussed in further detail below, Deutsche Bank used its asymmetrical informational advantage to reap illicit profits.

62. Indeed, Deutsche Bank's misconduct has had a dramatic impact on the performance of the loans underlying the Deutsche Bank RMBS purchased by the Irish SPVs. As of May 2012, on average, ***over 40%*** of the mortgage loans backing the Certificates were over 60 days delinquent, in foreclosure, bankruptcy, or repossession as reflected by the chart below:

Collateral Performance of Securities Underwritten by Deutsche Bank
Serious Delinquencies (= 60 Day + 90 Day + Real Estate Owned + Foreclosure)[6]

#	Offering	At 12 Months	At 24 Months	At 36 Months	At 48 Months	At 60 Months	May 2012
1	ACE 2007-ASAP1	27.55	33.48	37.02	30.10	25.76	25.92
2	ACE 2007-ASAP2	23.08	33.11	35.52	34.83	--	33.22
3	ACE 2007-WM1	30.42	62.87	73.94	73.31	68.76	68.69
4	DBALT 2006-AR4	7.92	24.65	39.78	42.18	38.01	36.39
5	DBALT 2006-AR6	11.17	29.76	43.41	46.75	44.15	42.35

[6] Real Estate Owned Properties ("REO") are properties owned by a bank after an unsuccessful foreclosure auction. The figures in the above chart do not reflect the removal of failed mortgage loans from the current loan pool and current delinquency figures; had those mortgage loans remained in the securitization, the average serious delinquency rates would have been substantially higher.

#	Offering	At 12 Months	At 24 Months	At 36 Months	At 48 Months	At 60 Months	May 2012
6	DBALT 2007-1	14.37	32.93	38.87	37.08	--	38.90
7	DBALT 2007-AR1	11.55	34.54	54.84	56.18	56.53	54.92
8	DBALT 2007-AR2	13.85	36.49	52.86	57.13	52.72	52.01
9	DBALT 2007-BAR1	18.21	37.33	47.95	45.99	44.36	45.01
10	DBALT 2007-OA1	9.18	34.82	47.53	44.54	44.00	43.77
11	DBALT 2007-OA2	7.49	32.74	46.09	43.22	43.68	43.83
12	DBALT 2007-OA4	8.90	32.63	45.28	47.58	--	50.68
13	DMSI 2006-PR1	2.59	5.30	10.29	13.87	17.07	17.52
14	INDX 2006-AR27	5.21	19.66	32.03	31.83	31.86	24.30
15	MHL 2007-1	19.88	37.22	42.06	36.24	36.35	36.35
16	NHEL 2007-1	27.90	52.82	59.35	49.22	47.90	47.77
17	PHHAM 2007-2	5.17	17.31	25.22	24.47	24.55	23.97
18	RALI 2007-QO2	11.60	36.77	52.86	49.01	43.32	43.62
19	RAMP 2007-RS1	21.09	34.89	37.62	34.37	33.29	32.32
Averages		**14.59**	**33.12**	**43.29**	**41.99**	**40.77**	**40.08**

D. Factors Impacting The Quality Of The Deutsche Bank RMBS

63. Federal regulators have long recognized the importance of sound lending and have for years provided guidance on subprime mortgage products to ensure that borrowers are able to repay their loans. For example, the 1993 Interagency Guidelines for Real Estate Lending, issued jointly by the Board of Governors of the Federal Reserve System (Deutsche Bank's primary federal regulator), the Office of the Comptroller of the Treasury ("OCC"), the Federal Depository Insurance Commission ("FDIC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration, provided that prudently underwritten real estate loans (subprime or otherwise) "should reflect all relevant credit factors, including … the capacity of the borrower, or income from the underlying property, to adequately service the debt." Federal regulators responded to the growth of newer subprime products with enhanced guidance in 1999, warning that if risks associated with subprime lending were "not properly controlled, the agencies consider subprime lending a high-risk activity that is unsafe and unsound."

64. The 1999 guidance recognized the critical role that banks such as Deutsche Bank, which comprised the primary market for the sale of subprime loans, played in dictating and enforcing underwriting standards for subprime mortgage lending:

> Institutions should not accept loans from originators that do not meet their underwriting criteria, and should regularly review loans offered to ensure that loans purchased continue to meet those criteria. Deterioration in the quality of purchased loans or in the portfolio's actual performance versus expectations requires a thorough reevaluation of the lenders or dealers who originated or sold the loans, as well as a reevaluation of the institution's criteria for underwriting loans and selecting dealers and lenders. Any such deterioration may also highlight the need to modify or terminate the correspondent relationship or make adjustments to underwriting and dealer/lender selection criteria.

65. The guidance also required that "institutions…perform an ongoing analysis of subprime loans," "have information systems in place to segment and stratify their portfolio (e.g., by originator, loan-to-value, debt-to-income ratios, credit scores) and produce reports for management to evaluate the performance of subprime loans," determine "whether performance meets expectations," and "consider the source and characteristics of loans that do not meet expectations and make changes in their underwriting policies and loan administration procedures to restore performance to acceptable levels."

66. Indeed, the fundamental basis upon which RMBS are valued is the ability of the borrowers to repay the principal and interest on the underlying loans and the adequacy of the collateral. Thus, proper loan underwriting is critical to assessing the borrowers' ability to repay the loans, and a necessary consideration when purchasing and pooling loans. If the loans pooled in the RMBS suffer defaults and delinquencies in excess of the assumptions built into the certificate payment structure, RMBS investors suffer losses because of the diminished cash flow into the RMBS.

67. Likewise, independent and accurate appraisals of the collateralized real estate are essential to ensure that the mortgage or home equity loan can be satisfied in the event of a default and foreclosure on a particular property. An accurate appraisal is necessary to determine the likely price at which the foreclosed property can be sold and, thus, the amount of money available to pass through to certificate holders.

68. An accurate appraisal is also critical to calculating the loan-to-value ("LTV") ratio, which is a financial metric commonly used to evaluate the price and risk of RMBS. The LTV ratio expresses the amount of the mortgage or the loan as a percentage of the appraised value of the collateral property. For example, if a borrower seeks to borrow $90,000 to purchase a home worth $100,000, the LTV ratio is equal to $90,000 divided by $100,000, or 90%. If, however, the appraised value of the house has been artificially inflated to $100,000 from $90,000, the real LTV ratio would be 100% ($90,000 divided by $90,000). The term combined loan-to-value ratio ("CLTV") applies to the situation in which more than one loan is secured by a particular property. For example, a property valued at $100,000 with a single mortgage of $50,000 has an LTV of 50%. A similar property with a value of $100,000 with a first mortgage of $50,000 and a second lien mortgage of $25,000 has an aggregate mortgage balance of $75,000, and a CLTV of 75%.

69. From an investor's perspective, a high LTV or CLTV ratio represents a greater risk the borrower will default on the loan. First, borrowers with a small equity position in the underlying property have "less to lose" in the event of a default. Second, even a slight drop in housing prices might cause a loan with a high LTV ratio to exceed the value of the underlying collateral, which might cause the borrower to default and would prevent the issuing trust from recouping its expected return in the case of foreclosure and subsequent sale of the property.

70. Consequently, the LTV ratios of the loans underlying the RMBS are important to investors' assessments of the value of such RMBS. Prospectuses typically provide information regarding the LTV ratios, and even guarantee certain LTV ratio limits for the loans that will support the RMBS. Indeed, Deutsche Bank had a stated policy not to securitize loans with a LTV or CLTV greater than 100%. The Offering Materials used to solicit the Irish SPVs' investment in the Deutsche Bank RMBS expressly stated, in sum or substance, that none of the securitized mortgages had combined loan-to-value ratios greater than 100%, and in certain securitizations the maximum loan-to-value ratios were purportedly capped at even lower percentage amounts. As discussed below, this representation was false because a substantial portion of the loans purchased and securitized by Deutsche Bank had LTVs and CLTVs that exceeded 100% as calculated under independent property valuations obtained by Deutsche Bank.

71. Another important metric when considering a borrower's ability to repay a loan is a borrower's debt-to-income ratio, ("DTI"), which reflects the increased risk that borrowers whose debt is relatively high compared to their income will default on their loans. While a borrower's current DTI is a good measure of his or her capacity to repay a fixed rate mortgage, other loan products, such as adjustable rate mortgages ("ARMs"), have initial "teaser" rates that reset at much higher index rates after a certain period. A "fully indexed rate" accounts for this interest rate reset, and represents the interest rate over the life of the loan, calculated by adding the index rate at origination and the margin that a lender adds to the index rate after the initial "teaser" period. For example, if the current index rate is 2.5%, and if the margin on a particular loan is 3%, the fully indexed rate on that loan is 5.5%. Because the fully indexed rate accounts for the current value of the interest rate index used by an ARM, it is a better measure of a borrower's ability to repay the loan.

72. In 2006, the interagency regulators, responding to the explosive growth of non-traditional mortgage products, provided revised guidance explicitly addressing how institutions should calculate a borrower's DTI. Specifically, the underwriting guidelines state that "[w]hen an institution offers nontraditional mortgage loan products, underwriting standards should address the effect of a substantial payment increase on the borrower's capacity to repay when loan amortization begins." Moreover, according to the guidance:

> ***For all nontraditional mortgage loan products, an institution's analysis of a borrower's repayment capacity should include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule.*** In addition, for products that permit negative amortization, the repayment analysis should be based upon the initial loan amount plus any balance increase that may accrue from the negative amortization provision.

73. The federal guidance thus served to provide assurance to investors like the Irish SPVs that investments in instruments backed by subprime mortgages could be safe and conservative products as long as the underlying loans were properly underwritten and scrutinized. Indeed, the federal guidance made clear that heightened attention to, and rigorous compliance with, strict underwriting standards was critical for institutions engaged in subprime lending due to the unique risks posed by that borrower population. As regulators made clear, in the context of RMBS such as those purchased by the Irish SPVs, representations concerning underwriting guidelines, appraisals, LTVs and DTIs were paramount.

VI. THE OFFERING MATERIALS MISREPRESENTED THE UNDERWRITING AND QUALITY OF THE LOANS BACKING THE DEUTSCHE BANK RMBS

74. Contrary to the statements in the Offering Materials and other communications Deutsche Bank used to solicit the Irish SPVs' investment in the Deutsche Bank RMBS, the originators whose loans served as collateral for the Irish SPVs' investments routinely violated the stated underwriting guidelines. As a result, the mortgages they originated and sold to

Deutsche Bank for securitization presented a materially higher risk to investors than Deutsche Bank represented in the Offering Materials.

75. For example, the Offering Materials described DBSP's underwriting standards, in relevant part, as follows:

> ***The Mortgage Loans were originated by various third party originators pursuant to the underwriting standards described in this section and were reviewed by the Sponsor to ensure conformity with such underwriting standards. The Sponsor's underwriting standards are primarily intended to assess the ability and willingness of a borrower to repay the debt of the mortgage loan and to evaluate the adequacy of the related mortgaged property as collateral for the mortgage loan***. All of the Mortgage Loans were underwritten with a view towards resale in the secondary mortgage market. In underwriting a mortgage loan, the Sponsor considers, among other things, a mortgagor's credit history, repayment ability and debt service-to-income ratio (referred to in this section of the prospectus supplement as the "Debt Ratio"), as well as the value, type and use of the mortgaged property.

76. The Offering Materials also provided information regarding the appraisal standards and practices employed and described DBSP's appraisal practices as follows:

> The Sponsor's guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and generally require an appraisal of the mortgaged property which conforms to Freddie Mac and/or Fannie Mae standards and, if appropriate, a review appraisal. Generally, appraisals are provided by an approved list of appraisers maintained by the Sponsor. Additionally, review appraisals may only be provided by appraisers other than the original appraiser approved by the Sponsor. In some cases, the Sponsor relies on a statistical appraisal methodology provided by a third-party.
>
> Each review appraisal includes a market data analysis based on recent sales of comparable homes in the area and, where deemed appropriate, replacement cost analysis based on the current cost of constructing a similar home. The review appraisal may be an enhanced desk, field review or an automated valuation report that confirms or supports the original appraiser's value of the mortgaged premises.

77. These statements of material fact, and materially similar statements appearing in all of the Deutsche Bank RMBS Offering Materials, were false and misleading when made because DBSP and the originators discussed below violated their established underwriting standards. Indeed, the reckless practices of the mortgage originators whose loans backed the Deutsche Bank RMBS rendered numerous statements concerning the originators' guidelines, the LTV ratios, property appraisal values, the credit ratings assigned to the RMBS, and the due diligence Deutsche Bank conducted on those loans, materially false and misleading when made. As such, the riskiness of the loans underlying the RMBS, and thus the true risk profile of the RMBS was materially misrepresented when purchased by the Irish SPVs. Through Deutsche Bank's due diligence process, its intimate knowledge of DBSP's loan underwriting and purchasing practices, as well as Deutsche Bank's unique insight into the underwriting practices of other originators whose loans backed the Deutsche Bank RMBS purchased by the Irish SPVs gleaned through Deutsche Bank's warehouse lending relationships with such mortgage lenders, Deutsche Bank knew of the reckless underwriting practices of the originators, and concealed their violations from the Irish SPVs.

A. The Deutsche Bank Sponsor And Originator Entities Violated Their Underwriting Guidelines

78. Deutsche Bank entities were steeped in every aspect of the securitization process, including the origination of the mortgage loans underlying the Deutsche Bank RMBS. Defendant DBSP, along with Deutsche Bank affiliate Mortgage IT, Inc. ("Mortgage IT") (collectively, the "Deutsche Bank Originators"), acted as the sponsor and originator for many of the Deutsche Bank RMBS purchased by the Irish SPVs. The fact that Deutsche Bank itself controlled these entities provides compelling evidence that Deutsche Bank ***knew*** the loans

backing the Deutsche Bank RMBS failed to meet the established underwriting guidelines represented in the relevant Offering Materials set forth below.

79. Defendant DBSP, an indirect wholly-owned subsidiary of Deutsche Bank AG, served as the sponsor for thirteen of the nineteen RMBS purchased by the Irish SPVs. Deutsche Bank represented in the prospectus supplements of the RMBS purchased by the Irish SPVs that DBSP reviewed the mortgage loans it purchased to ensure conformity with prudent underwriting standards, including by performing a full re-underwriting of a random sampling of the loans it purchased for securitization in order to ensure the quality and soundness of those loans.

80. For example, Deutsche Bank made this and/or similar representations in the Offering Materials regarding the loans acquired by DBSP for securitization in the ACE 2007-ASAP1 RMBS purchased by the Irish SPVs. For example, the ACE 2007-ASAP1 prospectus supplement states, in relevant part, as follows:

> All of the Mortgage Loans were acquired by the Depositor from the Sponsor. ***The Mortgage Loans were originated by various third party originators pursuant to the underwriting standard described in this section and were reviewed by the Sponsor to ensure conformity with such underwriting standards. The Sponsor's underwriting standards are primarily intended to assess the ability and willingness of a borrower to repay the debt of the mortgage loan and to evaluate the adequacy of the related mortgaged property as collateral for the mortgage loan.*** All of the Mortgage Loans were underwritten with a view towards resale in the secondary mortgage market. ***In underwriting a mortgage loan, the Sponsor considers, among other things, a mortgagor's credit history, repayment ability and debt service-to-income ratio (referred to in this section of the prospectus supplement as the "Debt Ratio"), as well as the value, type and use of the mortgaged property.***
>
> * * *
>
> ***All of the Mortgage Loans were reviewed by the Sponsor's contract underwriters. On a case by case basis, the Sponsor may determine that, based upon compensating factors, a prospective borrower who does not strictly qualify under the underwriting***

> ***risk category guidelines described below warrants an underwriting exception.*** Compensating factors may include, but are not limited to, low loan-to-value ratio, low Debt Ratio, substantial liquid assets, good credit history, stable employment and time in residence at the applicant's current address. It is expected that an insignificant portion of the Mortgage Loans may represent such underwriting exceptions.

81. The Offering Materials also made false and misleading representations of material fact concerning the appraisal practices employed by DBSP for the mortgage loans backing the RMBS certificates. For example, the ACE 2007-ASAP1 prospectus supplement stated, in relevant part, that:

> The Sponsor acquires mortgage loans secured by 1-4 unit residential properties made to eligible borrowers with a vested fee simple (or in some cases a leasehold) interest in the property. ***The Sponsor's guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and generally require an appraisal of the mortgaged property which conforms to Freddie Mac and/or Fannie Mae standards and, if appropriate, a review appraisal.***
>
> ***Each review appraisal includes a market data analysis based on recent sales of comparable homes in the area and, where deemed appropriate, replacement cost analysis based on the current cost of constructing a similar home.***

82. Deutsche Bank also represented that DBSP performed an extensive quality control review process to ensure the quality and soundness of the loans comprising its securitizations. For example, the ACE 2007-ASAP1 prospectus supplement represented that:

> ***The Sponsor conducts a number of quality control procedures, including a full re-underwriting of a random selection of mortgage loans to assure asset quality. Under the asset quality procedure, a random selection of each month's originations is reviewed. The mortgage loan review confirms the existence and accuracy of legal documents, credit documentation, appraisal analysis and underwriting decision. A report detailing audit findings and level of error is sent monthly to management for response.*** The audit findings and management responses are then reviewed by the Sponsor's senior management. Adverse findings are tracked monthly and over a rolling six month period. This

review procedure allows the Sponsor to assess programs for potential guideline changes, program enhancements, appraisal policies, areas of risk to be reduced or eliminated and the need for additional staff training.

83. MortgageIT, an indirect wholly-owned subsidiary of Deutsche Bank AG, which was purchased by DBSP in 2006, originated loans contained in the DBALT 2006-AR4, DBALT 2006-AR6, DBALT 2007-AR1, DBALT 2007-AR2, and MHL 2007-1RMBS, representing over $287 million of the combined face amount of those deals.

84. The Offering Materials relied upon by the Irish SPVs in purchasing the RMBS originated by MortgageIT contained false and misleading statements of material fact regarding Mortgage IT's underwriting practices and guidelines. For example, the DBALT 2006-AR6 RMBS prospectus supplement described Mortgage IT's underwriting guidelines, in relevant part, as follows:

> ***MortgageIT's underwriting philosophy is to weigh all risk factors inherent in the loan file, giving consideration to the individual transaction, borrower profile, the level of documentation provided and the property used to collateralize the debt.*** Because each loan is different, MortgageIT expects and encourages underwriters to use professional judgment based on their experience in making a lending decision. ***MortgageIT underwrites a borrower's creditworthiness based solely on information that MortgageIT believes is indicative of the applicant's willingness and ability to pay the debt they would be incurring.***
>
> * * *
>
> ***The underwriting for [no documentation loans] may be based primarily or entirely on the estimated value of the mortgaged property and the LTV ratio at origination as well as on the payment history and credit score.***
>
> * * *
>
> MortgageIT realizes that there may be some acceptable quality loans that fall outside published guidelines and encourages 'common sense' underwriting. Because a multitude of factors are involved in a loan transaction, no set of guidelines can contemplate

> every potential situation. ***Therefore, exceptions to these underwriting guidelines are considered, so long as the borrower has other reasonable compensating factors, on a case-by-case basis*.**

85. The Offering Materials used to solicit the Irish SPVs' purchases of RMBS backed by MortgageIT-originated loans also contained false and misleading statements of material fact regarding MortgageIT's appraisal procedures and practices when issuing loans to borrowers. For example, the prospectus supplement for the DBALT 2006-AR6 explained that:

> ***Every MortgageIT mortgage loan is secured by a property that has been appraised by a licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.*** The appraisers perform on site inspections of the property and report on the neighborhood and property condition in factual and specific terms. Loans in excess of one million dollars require (i) two full appraisals or (ii) one full appraisal and a field review, ordered by a MortgageIT-approved national appraiser, including photographs of the interior and the exterior of the property. ***Each appraisal contains an opinion of value that represents the appraiser's professional conclusion based on market data of sales of comparable properties, a logical analysis with adjustments for differences between the comparable sales and the subject property and the appraiser's judgment.*** In addition, a MortgageIT underwriter or a mortgage insurance company contract underwriter reviews each appraisal for accuracy and consistency.

86. The above statements of material fact concerning the Deutsche Bank Originators' purported quality underwriting and prudent due diligence were false and misleading when made because as discussed below, the Deutsche Bank Originators: (i) completely disregarded their own established underwriting and loan purchasing guidelines, and issued and/or purchased mortgage loans regardless of the borrowers' ability to repay the mortgage loans; (ii) issued and/or purchased mortgage loans originated pursuant to inflated appraisals, which did not conform to the appraisal standards of Fannie Mae or Freddie Mac; (iii) allowed pervasive and undisclosed exceptions to their underwriting and loan purchasing guidelines in the absence of

compensating factors; and (iv) routinely misrepresented and manipulated a borrower's income, assets, and employment information in order to fuel Deutsche Bank's securitization pipeline.

87. In search of new sources of loans to purchase and securitize, Deutsche Bank, through DBSP, instituted a program to purchase nonprime loans for its RMBS from several correspondent mortgage originators to "make it easy for 'as big a seller or as small a seller' as exists to sell to Deutsche," according to a June 2004 article in *American Banker*. Through this program, Deutsche Bank provided guarantees to smaller mortgage lenders that Deutsche Bank would purchase loans ***even before the loans had been originated*** in order to encourage smaller lenders to originate more mortgage loans and sell such loans to Deutsche Bank for securitization. The loans to be purchased by DBSP were purportedly to be audited and underwritten by Lydian Data Services, a subsidiary of Lydian Trust Co. ("Lydian").

88. CW 1, a Director of Risk and Compliance at a Lydian subsidiary from June 2003 to October 2005 who performed due diligence on loans for DBSP, stated that investors like DBSP would purchase loans even when they knew of problems with the origination of the loans. As explained by CW 1, "[i]f deficiencies were found they tried to find a signature here, a stamp there, and that was really the end of it." According to CW 1, loan purchasers such as DBSP would purchase loans pursuant to automatic exceptions, regardless of the findings of the Lydian diligence team—"[they] really didn't care." CW 1 stated that his underwriting reviews were completely disregarded by loan purchasers and if anything, were "smoke and mirrors" because whatever findings CW 1 reported, it made no difference; loan purchasers would buy the loans anyway. CW 1 stated that he did not see many loans without a deficiency—the loans were originated "quicker than could be imagined" and the quality of underwriting was not a legitimate concern of loan purchasers such as DBSP. According to CW 1, at least 80% of the loans that

CW 1 reviewed while employed by Lydian contained deficiencies, including forged income documentation, forged W2's, or inflated appraisal valuations.

89. The loans DBSP purchased through its correspondent lending program and that were reviewed by Lydian were purchased and securitized even though, as reported by CW 1, approximately 80% contained deficiencies. To ensure that DBSP would not get caught "holding the bag" before it could securitize these defective loans, it had a stated policy requiring DBSP's "approved" loan sellers to repurchase a loan, at DBSP's discretion, "if any of the first three (3) payments due after the purchase date are thirty (30) days delinquent," a policy that was amended in March 2006 to require any seller to repurchase a loan if the first two payments had not been made. Under this program, DBSP closely tracked loans with early delinquencies, or EPD loans, and was keenly aware that loans issued by its correspondent lenders were defaulting within the first several months after issuance at alarming rates, indicating that the loans never should have been issued in the first place. As reflected in emails from DBSP to its correspondent lender that were submitted in subsequent court filings, DBSP undertook a concerted effort to force various of its correspondent loan sellers to repurchase EPD loans in mid-2007, even though DBSP had earlier chosen to securitize these loans into RMBS purchased by the Irish SPVs as a matter of course.

90. Moreover, Deutsche Bank was aware that the lenders that supplied the loans to the Deutsche Bank RMBS purchased by the Irish SPVs were coming under increasing financial stress as other investment bank loan buyers began demanding repurchases of their early defaulting loans and originators began closing their doors. Instead of more closely scrutinizing the underwriting practices of the originators, limiting their purchases of loans from these lenders, or even enforcing its rights under its EPD program, Deutsche Bank—faced with having to suffer

the loss on the loan itself if the lender were to declare bankruptcy—chose to securitize those loans and sell them as RMBS to the Irish SPVs.

91. These DBSP-“approved” lenders—which depended on the advance funding provided by Deutsche Bank just to stay in business—engaged in the very sort of risky, and in some cases, criminal, lending practices at the root of the financial crisis. For example, prior to its bankruptcy filing, Prajna Group, Inc., d/b/a Liberty Mortgage Funding (“Liberty”)—a company with approximately 30-45 employees—was fined by its state regulator for employing 21 unregistered brokers; in bankruptcy, Liberty listed assets of under $100,000 and liabilities of approximately $1 million, but remained in possession of $285,000 worth of Porsche luxury vehicles that it used as incentives for employees to issue loans to borrowers for Liberty to sell in the secondary market. A loan officer at Commonsense Mortgage, Inc., an originator with fewer than 50 employees, was convicted in May 2011 for his involvement in a mortgage fraud scam in which he would recruit “straw buyers” to purchase homes at inflated values. The two top executives (the CEO and president) and the sole shareholders of Cameron were charged by the trustee overseeing the originator’s bankruptcy with fraud for wrongfully transferring over $1 million in company assets as the lender was imploding. No facts regarding any of these lenders—or even their identities—were provided in the Offering Materials, and thus Deutsche Bank’s representations that these lenders and the loans they issued were properly vetted by DBSP were of critical importance.

92. Nevertheless, Deutsche Bank securitized scores of loans that were identified by DBSP in court filings as having defaulted under the terms of its own EPD program within the first several months of having been issued, despite the explicit representations in the Offering Materials that the loans had been underwritten in accordance with DBSP’s own underwriting guidelines, independently reviewed by DBSP’s own underwriters, and that none of the loans

were seriously delinquent at the time of securitization.[7] Incredulously, DBSP, in its court filings, complained that because those loans were in EPD, it was "unable to include certain of the Early Payment Default Loans in securitizations," despite the fact that for the loans that were purchased as RMBS by the Irish SPVs, it already had done so.

93. As a result of these practices, the Deutsche Bank Originators have found themselves as defendants in numerous private and government lawsuits alleging violations of law arising out of false and misleading statements related to underwriting standards employed by these entities in originating, purchasing and securitizing loans in RMBS such as those purchased by the Irish SPVs. *See United States v. Deutsche Bank AG*, No. 11 CIV 2976, (S.D.N.Y. May 3, 2011) ("USAO Complaint"); *Massachusetts Mutual Life Ins. Co. v. DB Structured Products, Inc.*, No. 11 CIV 30039 (D. Mass. Feb. 16, 2011), ECF No. 1 ("Mass Mutual Complaint"); *Allstate Insurance Company v. Ace Securities Corp.*, No. 650431/2011 (N.Y Sup. Ct. Feb. 17, 2011), NYSCEF No. ("Allstate Complaint"); *Assured Guaranty Corp. v. DB Structured Products, Inc.*, No. 651824/2010 (N.Y. Sup. Ct. Oct. 25, 2010), NYSCEF No. 2 ("Assured Complaint"); *Fed. Home Loan Bank of Boston v. Ally Fin. Corp.*, No. 11 CIV 1533 (Mass. May 26, 2011) ("FHLBB Complaint"); *EMC Mortgage Corp.* v. *MortgageIT*, No. 06 CIV 440, (N.D. Tex. Feb. 6, 2008), ECF No. 53 ("EMC Complaint").

94. For example, as alleged in the Mass Mutual Complaint, a loan-level forensic review of the loans purchased by DBSP and sold into securitizations purchased by the Irish SPVs —including the DBALT 2006-AR6 and ACE 2007-ASAP1 RMBS—revealed that the appraisal values of the mortgaged properties underlying the RMBS were significantly higher than what the

[7] For example, Deutsche Bank represented in the Offering Materials for the ACE 2007-ASAP1 RMBS in which the Irish SPVs invested over $52 million that "***No Mortgage Loan will be more than 60 days delinquent as of the Cut-off Date***."

mortgaged properties were actually worth. As such, the LTV ratios of the mortgage loans were significantly higher than what Deutsche Bank represented in the relevant Offering Materials. Specifically, contrary to Deutsche Bank's representations that none of the loans contained CLTV ratios that exceeded 100%, the forensic loan review found that the ***average*** CLTV ratios of the loans backing several of the Deutsche Bank RMBS at issue here exceeded 100%.

95. On May 10, 2012, the United States Attorney's Office ("USAO") announced the settlement of its action against Deutsche Bank and MortgageIT, which included allegations that upper management at MortgageIT and Deutsche Bank knowingly permitted egregious underwriting violations through MortgageIT's participation in the Federal Housing Administration ("FHA") Direct Endorsement Lender program ("DEL Program") and its false certifications to the U.S. Department of Housing and Urban Development ("HUD") in connection with its residential mortgage origination practices. In the settlement papers:

> The DB Defendants admit[ted], acknowledge[d] and accept[ed] responsibility for the fact that after MortgageIT became a wholly-owned indirect subsidiary of DBSP and [Deutsche Bank AG] in January 2007, the DB Defendants were in a position to know that the operations of MortgageIT did not conform fully to all of the HUD-FHA's regulations, policies, and handbooks; that one or more of the annual certifications was signed by an individual who was also an officer of certain of the DB Defendants; and that, contrary to the representations in MortgageIT's annual certifications, MortgageIT did not conform to all applicable HUD-FHA regulations.

MortgageIT also admitted that it submitted certifications to HUD stating that certain loans were eligible for FHA mortgage insurance when they were not; that FHA insured certain loans endorsed by MortgageIT that were not in fact eligible for FHA insurance; and that HUD incurred losses when those loans defaulted.

96. MortgageIT's fraudulent practices were confirmed by CW 2, a compliance manager at MortgageIT in Boca Raton, Florida from August 2006 through January 2009. CW 2 recalled bi-weekly fraud meetings where due diligence managers from MortgageIT and Deutsche

Bank, including Joseph Swartz, vice president of Deutsche Bank's due diligence department who oversaw all of Deutsche Bank's residential mortgage business, would discuss questionable loans coming from brokers. At these meetings, according to CW 2, at which Swartz, and another Deutsche Bank managing director, Pat McEnerney, would be "the ones asking questions," branch managers would have to defend the loans that quality control had found to be questionable or potentially fraudulent. Swartz and McEnerney were "clear on the steps that needed to be completed, yet…[changes were not made]." These meetings make it clear that Deutsche Bank had knowledge of the fraudulent practices taking place at MortgageIT and did nothing to stop them.

97. CW 2 confirmed that MortgageIT placed an emphasis on funding loans and did not ensure employees' compliance with the underwriting guidelines. CW 2 recalled pressure from the sales people to get loans approved, where people would say "we don't care—do whatever you can to close this loan." The MortgageIT sales team worked on commission, which was, according to CW 2, based on loan volume and if loans went bad *after* closing, there was no impact on compensation. This compensation structure incentivized employees to fund as many loans as possible without concern for what would happen once the loans had been securitized and sold off to investors such the Irish SPVs.

98. As discussed in the USAO Complaint, MortgageIT repeatedly failed to verify borrower income, employment history, credit history, cash investment in the mortgaged property, and other due diligence requirements while underwriting mortgage loans, and failed to review all early payment defaults, in direct contradiction to the required certifications it provided to the government. In most instances, within six months to one year of the closing, the mortgage was in default.

99. According to the USAO Complaint, an outside vendor hired by MortgageIT in 2004 reported instances of serious underwriting violations in a series of findings letters and sent the findings letters to MortgageIT and its management throughout 2004. Among other underwriting violations, the vendor highlighted MortgageIT's complete abandonment of quality control. Instead of ameliorating the underwriting violations, the USAO Complaint alleges that MortgageIT employees stuffed the findings letters, unopened and unread, in a closet in MortgageIT's Manhattan headquarters. The letters remained in MortgageIT's closet for approximately one year—until December 2004 or January 2005.

100. MortgageIT and Deutsche Bank never hired more than one person to conduct quality control reviews for MortgageIT-originated loans, according to the USAO Complaint. In a demonstration of blatant disregard for MortgageIT's underwriting guidelines, MortgageIT shifted the responsibilities of the only staff member dedicated to auditing the quality of FHA-insured mortgages from quality control to increasing production. By the end of 2007, the only loan quality review employee at MortgageIT no longer spent any time conducting quality control reviews of closed mortgage files. Indeed, as detailed in the USAO Complaint, "not a single person at Deutsche Bank or MortgageIT was conducting quality control reviews of FHA-insured mortgages." Consequently, patterns of mortgage underwriting violations went unchecked or willfully ignored in order to originate as many loans as possible. Nonetheless, during that time, MortgageIT and Deutsche Bank continued to certify that MortgageIT, as an FHA approved lender, maintained proper quality control requirements and had conducted due diligence on the mortgage applications.

101. Such reckless practices have had severe consequences on the performance of MortgageIT-originated loans under the DEL program. The USAO Complaint alleges that by February 2011, approximately one-third of the 39,000 mortgages originated by MortgageIT

under the DEL Program were in default. Examining the performance of the defaulted loans, the USAO Complaint alleges that approximately 25% of such loans defaulted within six months of closing and over 55% of such loans defaulted within two years of closing.

102. The FHLBB Complaint (*see supra* at ¶93) provides additional facts showing that MortgageIT abandoned its stated underwriting standards. Specifically, the FHLBB Complaint alleges that a loan-level review of an RMBS comprised of MortgageIT-originated loans revealed numerous violations of MortgageIT's stated underwriting guidelines, including (1) loans originated without approval of income or proper credit checks; (2) misrepresentations concerning LTV ratios; (3) willful ignorance of prior delinquencies or conflicting income statements; and (4) originations not conducted in arms-length transactions.

103. For example, the FHLBB Complaint details a loan originated by MortgageIT in 2005 whereby a borrower listed stated earnings of over $270,000 per year as a self-employed business owner. The borrower, however, maintained only $4,000 in a bank account, the borrower's credit report listed the borrower's occupation as a construction foreman (rather than a self-employed business owner), and the loan file did not contain an appropriate audit of the borrower's income. In fact, the letter submitted by the borrower's certified public accountant bore a handwritten note indicating that the letter was "not acceptable." Further, the broker that completed the loan application and ordered the appraisal of the mortgaged property was the borrower's wife. After the borrower filed for bankruptcy in January 2008, the borrower's statement of financial affairs filed with the bankruptcy court reflected the borrower earned only $69,000 during the year that the loan was originated—approximately 75% less than the annual earnings stated on the loan application. Using the borrower's true income as a guidepost for originating mortgage loans, as set forth in the FHLBB Complaint, the borrower's DTI was

80.7%—a metric that clearly demonstrates that this borrower had no reasonable means to repay the mortgage loan.

104. In another example of MortgageIT failing to follow its stated underwriting guidelines, the FHLBB Complaint describes a MortgageIT-originated loan issued pursuant to inflated appraisal valuations that were unsupported by comparable properties. As such, the mortgage loan was not originated in accordance with the Uniform Standards of Professional Appraisal Practice as represented in the Offering Materials. Specifically, the loan file for that mortgage loan reveals that the mortgaged property was transferred in June 2004 for $519,000 and was appraised for the subject transaction—based on incomparable properties between one and two miles south of the relevant property, in a different marketing area—in October 2005 for $850,000. The FHLBB Complaint alleges that the value of the subject property at the time of the transaction was, in reality, only $547,000—approximately 36% less than the inflated appraisal valuation.

105. Allegations from a 2010 complaint filed by Assured Guaranty Corp., a Maryland insurance company, further support the Irish SPVs' claims that, contrary to MortgageIT's stated underwriting guidelines, those entities issued loans of extremely poor quality without regard to a borrower's ability to repay the mortgage loan and routinely excepted loans without compensating factors. According to the Assured Complaint, a third-party loan-level review of an RMBS—approximately 75% of which was originated by MortgageIT—revealed that 1532 out of a total 1774 loan files, or approximately 86% of the loan files examined, contained breaches of misrepresentations and warranties relating to MortgageIT's underwriting guidelines. As alleged, the defective loans originated by MortgageIT in the RMBS contained:

- Rampant fraud, primarily involving misrepresentation of the borrower's income, assets, employment, or intent to occupy the property as the borrower's residence (rather than as an investment), and subsequent failure to so occupy the property;

- Failure by the borrower to accurately disclose his or her liabilities, including multiple other mortgage loans taken out to purchase additional investment property; and

- Pervasive violations of underwriting guidelines and prudent mortgage-lending practices, including loans made to borrowers (i) who made unreasonable claims as to their income, (ii) with multiple, unverified social security numbers, (iii) with credit scores below the required minimum, (iv) with debt-to-income and/or loan-to-value ratios above the allowed maximum, or (v) with relationships to the originators or other non-arm's length relationships.

106. The Deutsche Bank Originators' reckless origination practices described above have had a dramatic impact on the average serious delinquency rates of the loans backing the Deutsche Bank RMBS purchased by the Irish SPVs. In the case of the ACE 2007-ASAP1 RMBS, over 25% of the loans stood seriously delinquent, over 33% of the loans backing the ACE 2007-ASAP2, DBALT 2006-AR4, DBALT 2006-AR6, and MHL 2007-1 stood seriously delinquent, and in the case of DBALT 2007-AR1 and DBALT 2007-AR2, over 50% of the loans stood seriously delinquent as of May 2012.

Deal Name	**At 12 Months**	**At 24 Months**	**At 36 Months**	**At 48 Months**	**At 60 Months**	**May 2012**
ACE 2007-ASAP1	27.55	33.48	37.02	30.10	25.76	25.92
ACE 2007-ASAP2	23.08	33.11	35.52	34.83	--	33.22
DBALT 2006-AR4	7.92	24.65	39.78	42.18	38.01	36.39
DBALT 2006-AR6	11.17	29.76	43.41	46.75	44.15	42.35
DBALT 2007-AR1	11.55	34.54	54.84	56.18	56.53	54.92
DBALT 2007-AR2	13.85	36.49	52.86	57.13	52.72	52.01
MHL 2007-1	19.88	37.22	42.06	36.24	36.35	36.35
Averages	16.42	32.75	43.64	43.34	42.25	40.16

B. The American Home Entities Violated Their Underwriting Guidelines

107. American Home Mortgage Corp. ("American Home Mortgage") and its parent company American Home Mortgage Investment Corp. ("American Home Investment," and collectively "American Home"), originated loans backing three Deutsche Bank RMBS purchased by the Irish SPVs, including DBALT 2007-AR1, DBALT 2007-AR2, and DBALT 2007-BAR1.

108. The prospectus supplements for the Deutsche Bank RMBS contained false and misleading statements of material fact regarding American Home's underwriting standards. For example, the DBALT 2007-AR2 prospectus supplement stated with respect to American Home's underwriting guidelines, in relevant part, as follows:

> The mortgage loans have been purchased or originated, underwritten and documented in accordance with the guidelines of Fannie Mae, Freddie Mac, the Federal Housing Administration (FHA), the U.S. Department of Veterans Affairs (VA), the U.S. Department of Agriculture Guaranteed Rural Housing Program (GRH), Ginnie Mae, the underwriting guidelines of specific private investors, and the non-conforming or Alt-A underwriting guidelines established by American Home.
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> * * *
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> ***American Home's underwriting philosophy is to weigh all risk factors inherent in the loan file, giving consideration to the individual transaction, borrower profile, the level of documentation provided and the property used to collateralize the debt.*** Because each loan is different, American Home expects and encourages underwriters to use professional judgment based on their experience in making a lending decision.
>
> ***American Home underwrites a borrower's creditworthiness based solely on information that American Home believes is indicative of the applicant's willingness and ability to pay the debt they would be incurring.***
>
> ***The non-conforming loans are generally documented to the requirements of Fannie Mae and Freddie Mac, in that the***

> ***borrower provides the same information on the loan application along with documentation to verify the accuracy of the information on the application such as income, assets, other liabilities, etc.*** Certain non-conforming stated income or stated asset products allow for less verification documentation than Fannie Mae or Freddie Mac require. Certain non-conforming Alt-A products also allow for less verification documentation than Fannie Mae or Freddie Mac require. For these Alt-A products, the borrower may not be required to verify employment income, assets required to close or both. For some other Alt-A products, the borrower is not required to provide any information regarding employment income, assets required to close or both. Alt-A products with less verification documentation generally have other compensating factors such as higher credit score or lower loan-to-value requirements.

109. The DBALT 2007-AR2 prospectus supplement also made false and misleading representations of material fact concerning American Home's appraisal practices. For example, the same prospectus supplement stated, in relevant part, that:

> ***Every mortgage loan is secured by a property that has been appraised by a licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation***. The appraisers perform on-site inspections of the property and report on the neighborhood and property condition in factual and specific terms. Each appraisal contains an opinion of value that represents the appraiser's professional conclusion based on market data of sales of comparable properties and a logical analysis with adjustments for differences between the comparable sales and the subject property and the appraiser's judgment. ***In addition, each appraisal is reviewed for accuracy and consistency by American Home's vendor management company or an underwriter of American Home or a mortgage insurance company contract underwriter***.

110. The above representations concerning American Home's underwriting guidelines were false and misleading when made. In truth, American Home disregarded its stated underwriting guidelines and issued mortgage loans regardless of the borrower's ability to repay the loan in order to approve as many loans as possible. At the same time, American Home

allowed pervasive exceptions to its established underwriting guidelines in the absence of existing compensating factors.

111. The SEC instituted fraud charges against the former top executives of American Home for their role in misleading investors regarding American Home's systematic disregard for sound underwriting standards and risky lending practices that ultimately led to the lender's demise. As was later revealed, American Home was anything but the "prime" lender it was represented to be, and instead routinely issued high-risk loans to borrowers with poor credit in order to drive growth and capture additional yield. American Home's former CEO paid $2.5 million to settle the SEC's fraud charges.

112. As reflected in an October 2005 internal American Home "Credit Update" presentation, American Home's underwriting guidelines became so lax as to be rendered essentially meaningless. Specifically, the internal credit update explained that these new "guideline interpretations" included: (i) not requiring verification of income sources on stated income loans; (ii) reducing the amount of time that need to have lapsed from the date in which the borrower was in bankruptcy or credit counseling; (iii) reducing the required documentation for self-employed borrowers; and (iv) broadening the acceptable use of second and third loans to cover the full property value.

113. Indeed, an internal American Home e-mail sent on November 2, 2006 from an American Home Senior Vice President and co-creator of the American Home's "Choice Point Loans" program, stated that American Home would make a loan to virtually any borrower, regardless of the borrower's ability to verify income, assets or even employment. That e-mail specifically encouraged loan officers to make a variety of loans that were inherently risky and extremely susceptible to delinquencies and default, including (1) stated income loans, where both the income and assets of the borrower were taken as stated on the credit application without

verification; (2) "NINA" or No Income, No Asset loans, which allowed for loans to be made without any disclosure of the borrower's income or assets; and (3) "No Doc" loans, which allowed loans to be made to borrowers who did not disclose their income, assets or employment history.

114. Numerous former American Home employees interviewed by the Irish SPVs' counsel agreed that American Home abandoned is stated underwriting guidelines. According to CW 3, a former Senior Underwriter at American Home from 2002 to 2007, American Home underwriters' objections to loans were frequently vetoed. CW 3 stated that underwriters would "say[] 'no way' on a lot of things, 'I would never give a borrower a loan like this,'" but the loans would be approved anyway. According to CW 3, loans would be approved over the underwriter's objection if he refused to put his name on a loan, and that this "happened more than it should have."

115. Moreover, American Home permitted numerous "exceptions" to its underwriting standards in the absence of compensating factors. CW 4, an Assistant Vice President for Direct Consumer Lending in American Home's loan origination business segment between July 2006 and August 2007, explained that exceptions were always being made to the underwriting guidelines. When CW 4's staff raised concerns with the sales department about loans that did not meet the underwriting guidelines, the sales department would contact the Melville, New York, headquarters to approve an exception to those guidelines so that the loan could be completed. Examples of such exceptions included reducing the required credit score or increasing the loan-to-value ratio. CW 4 stated that, when the exception at issue involved

accepting a reduced credit score, it was commonplace to overrule the objections of the underwriters in order to complete the loan.[8]

116. Confirming the fact that American Home consistently issued loans of extremely poor quality to borrowers without considering the borrowers' ability to repay the loans, the OCC crowned American Home as the eleventh worst mortgage originator in the United States based on the foreclosure rates of mortgage loans originated in metropolitan areas between 2005 and 2007.

117. American Home's reckless origination practices described above have had a devastating effect on the average serious delinquency rates of the Deutsche Bank RMBS backed by American Home-originated loans purchased by the Irish SPVs. For example, over 36% of the loans backing the DBALT 2006-AR4 RMBS, stood seriously delinquent as of May 2012. In addition, an average of over 43% of the loans backing the DBALT 2006-AR6 and DBALT 2007-BAR1 RMBS, which also contained a substantial percentage of American Home-originated loans, stood seriously delinquent as of May 2012:

Deal Name & Tranche	At 12 Months	At 24 Months	At 36 Months	At 48 Months	At 60 Months	May 2012
DBALT 2006-AR4	7.92	24.65	39.78	42.18	38.01	36.39
DBALT 2006-AR6	11.17	29.76	43.41	46.75	44.15	42.35
DBALT 2007-BAR1	18.21	37.33	47.95	45.99	44.36	45.01
Averages	12.43	30.58	43.71	44.97	42.17	41.25

C. Countrywide Violated Its Underwriting Guidelines

118. Countrywide Home Loans ("Countrywide"), one of the most notorious participants in the subprime meltdown, originated a portion of the loans contained in the DBALT

[8] CW 5, who reviewed the underwriting of loans before they were sold to secondary market investors for American Home from July 2005 through April 2007, stated that exceptions to underwriting guidelines were made "all the time."

2006-AR4, DBALT 2006-AR6, DBALT 2007-1, DBALT 2007-OA1, and DBALT 2007-OA4 RMBS purchased by the Irish SPVs.

119. The Offering Materials for the Deutsche Bank RMBS purchased by the Irish SPVs contained false and misleading statements of material fact regarding Countrywide's underwriting standards at the time those statements were made. For example, the DBALT 2006-AR4 prospectus supplement represented Countrywide's underwriting standards, in relevant part, as follows:

> ***Countrywide Home Loans' underwriting standards are applied in accordance with applicable federal and state laws and regulations.***
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> * * *
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> ***Countrywide Home Loans' underwriting standards are applied by or on behalf of Countrywide Home Loans to evaluate the prospective borrowers' credit standing and repayment ability and the value and adequacy of the mortgaged property as collateral***. Under those standards, a prospective borrower must generally demonstrate that the ratio of the borrower's monthly housing expenses (including principal and interest on the proposed mortgage loan and, as applicable, the related monthly portion of property taxes, hazard insurance and mortgage insurance) to the borrower's monthly gross income and the ratio of total monthly debt to the monthly gross income (the 'debt-to-income' ratios) are within acceptable limits.
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> * * *
>
> ***Exceptions to Countrywide Home Loans' underwriting guidelines may be made if compensating factors are demonstrated by a prospective borrower.***
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> * * *
>
> ***In addition to Countrywide Home Loans' standard underwriting guidelines (the 'Standard Underwriting Guidelines'), which are consistent in many respects with the guidelines applied to mortgage loans purchased by Fannie Mae and Freddie Mac***, Countrywide Home Loans uses underwriting guidelines featuring expanded criteria (the 'Expanded Underwriting Guidelines').

120. The DBALT 2006-AR4 prospectus supplement also represented that the collateral underlying the Countrywide-originated loans was valued by an independent appraiser who used appraisal standards matching the appraisal standards of Fannie Mae and Freddie Mac. For example, the prospectus supplements included the following representations:

> Except with respect to the mortgage loans originated pursuant to its Streamlined Documentation Program, ***Countrywide Home Loans obtains appraisals from independent appraisers or appraisal services for properties that are to secure mortgage loans. The appraisers inspect and appraise the proposed mortgaged property and verify that the property is in acceptable condition***. Following each appraisal, the appraiser prepares a report which includes a market data analysis based on recent sales of comparable homes in the area and, when deemed appropriate, a replacement cost analysis based on the current cost of constructing a similar home. ***All appraisals are required to conform to Fannie Mae or Freddie Mac appraisal standards then in effect.***

121. The statements set forth above were materially false and misleading when made. Countrywide did not originate the mortgage loans in accordance with its credit, appraisal and underwriting standards, did not take steps to verify borrower data, which was pervasively misstated, and did not obtain appraisals from independent appraisers. As such, the DTI ratios of the Countrywide-originated loans backing the Deutsche Bank RMBS were much higher, and therefore the loans and RMBS were far riskier than represented.

122. On October 15, 2010, the SEC announced a settlement of its securities fraud and insider trading action against Countrywide, requiring Countrywide's CEO, Angelo Mozilo, to pay $67.5 million in fines and disgorgements, including the "SEC's largest ever financial penalty against a public company's senior executive." Two other senior executives were required to pay an additional $5.65 million in penalties and disgorgement. The SEC's complaint alleged that the three senior officers "were aware that Countrywide was originating increasing percentages of poor quality loans that did not comply with Countrywide's underwriting guidelines" and that

Countrywide originated "a large volume of obviously deficient exception loans." Documents produced in the SEC action confirmed Countrywide's complete abandonment of its stated underwriting standards. For example, the SEC action revealed that Mozilo himself authored emails that explained that Countrywide's loans were "poison," and described one category of Countrywide loans as "the most dangerous product in existence…there can be nothing more toxic." Indeed, Mozilo admitted in his emails that he "personally observed a serious lack of [underwriting] compliance" and recognized that "it was just a matter of time that we will be faced with … much higher delinquencies."

123. Countrywide further detailed its fraudulent origination practices in a May 7, 2007 letter to the OTS, which stated that borrowers who obtained option ARM mortgages from Countrywide only qualified for the mortgage under the initial, low teaser rate and would not have qualified for the loan using the fully indexed rate. Specifically, Countrywide stated that in the fourth quarter of 2006 "***almost 60% of the borrowers who obtained subprime hybrid ARMs would not have qualified at the fully indexed rate***" and that "25% of the borrowers would not have qualified for any other [Countrywide] product."

124. Countrywide's blatant violations of its stated underwriting guidelines have also garnered scrutiny from federal and state authorities:

- To date, at least eleven State Attorneys General (the "State AGs"), including the State Attorneys General for Illinois, California, Connecticut, Washington, West Virginia, Indiana, and Florida filed complaints alleging Countrywide departed from its stated underwriting standards because employees were pressured to issue loans to unqualified borrowers by permitting exceptions to underwriting standards, incentivizing employees to extend more loans without regard to the underwriting standards for such loans, and failing to verify income, documentation and other information provided by borrowers that allowed them to qualify for loans. Countrywide announced it settled the State AGs' charges in October 2008 for ***$8.4 billion.***

- In March 2008, the *Wall Street Journal* reported that federal investigators found that "***Countrywide's loan documents often were marked by dubious or erroneous information about its mortgage clients***" and that "[t]he company … packaged many of those mortgages and sold them to investors, raising the additional question of whether Countrywide understated the risks such investments carried."

125. Numerous former Countrywide employees interviewed by the Irish SPVs' counsel confirm Countrywide's systematic failure to issue loans pursuant to its stated underwriting standards. CW 6, a Countrywide loan underwriter in Jacksonville, Florida between June 2006 and April 2007, stated that as much as 80% of Countrywide's loans involved significant variations from Countrywide's underwriting standards. CW 6 further stated that Countrywide's management pressured underwriters to approve as many loans as possible, and that this pressure came from "up top" because management was paid based, at least in part, on the volume of loans originated. Moreover, according to CW 6, most rejected loans would "come back to life" when new information would "miraculously appear."

126. CW 7, a Countrywide Executive Vice President of Production Operations and Executive Vice President of Process Improvement, who worked at Countrywide for 17 years before leaving in October 2005, explained that Countrywide created a computer system (or "rules engine") that routed very risky loans out of the normal loan approval process to a central underwriting group for evaluation. According to CW 7, loans identified by this "Exception Processing System" as violating Countrywide's underwriting standards were not rejected. Rather, Countrywide's central underwriting group was instructed to review such loans to evaluate whether they could fetch a higher price or a higher interest rate because of the non-compliance with the underwriting standards.

127. Claims arising out of Countrywide's fraudulent origination practices have already been sustained. On September 30, 2008, MBIA Insurance Corp. ("MBIA") filed a complaint

against Countrywide in New York Supreme Court, captioned *MBIA Insurance Corp. v. Countrywide, et al.*, No. 08/602825. MBIA alleges that, after reviewing Countrywide-originated loan portfolios and re-underwriting each loan, MBIA discovered that there was "an extraordinarily high incidence of material deviations from the underwriting guidelines Countrywide represented it would follow." According to the complaint, many of the loan applications that Countrywide approved "lack[] key documentation, such as a verification of borrower assets or income; includes an invalid or incomplete appraisal; demonstrate[] fraud by the borrower on the face of the application, or ***reflect[] that any of borrower income, FICO score, or debt, or DTI or CLTV, fails to meet stated Countrywide guidelines (without any permissible exception***)." Significantly, "MBIA's re-underwriting review … revealed that ***almost 90% of defaulted or delinquent loans in the Countrywide Securitizations [contained] material discrepancies***." The Court sustained MBIA's fraud claims and held that "MBIA has sufficiently pleaded a cause of action sounding in fraud." *MBIA Insurance Corp. v. Countrywide, et al.,* No. 08/602825 at 14 (1st Dep't July 8, 2009).

128. Common law fraud claims related to the misrepresentations in the same types of representations at issue here have also been sustained in *Thrivent Financial for Lutherans, et al. v. Countrywide Financial Corp. et al.,* Case No. 2:11-cv-07154-MRP-MAN (C.D. Cal. Feb. 17, 2012) and *Dexia Holdings, Inc. et al. v. Countrywide Financial Corp.*, Case No. 2:11-cv-07165-MRP-MAN (C.D. Cal. Feb. 17, 2012).

129. Countrywide's reckless origination practices described above have had significant consequences for the average serious delinquency rates of the loans backing the Deutsche Bank RMBS purchased by the Irish SPVs. For example, more than 40% of the loans backing the DBALT 2006-AR6, DBALT 2007-OA1, and DBALT 2007-OA4 RMBS, and more than 35% of

the loans backing the DBALT 2006-AR4 and DBALT 2007-1 RMBS stood seriously delinquent as of May 2012.

Deal Name	At 12 Months	At 24 Months	At 36 Months	At 48 Months	At 60 Months	May 2012
DBALT 2006-AR4	7.92	24.65	39.78	42.18	38.01	36.39
DBALT 2006-AR6	11.17	29.76	43.41	46.75	44.15	42.35
DBALT 2007-1	14.37	32.93	38.87	37.08	--	38.90
DBALT 2007-OA1	9.18	34.82	47.53	44.54	44.00	43.77
DBALT 2007-OA4	7.49	32.74	46.09	43.22	43.68	43.83
Averages	10.02	30.98	43.13	42.75	42.46	41.04

D. IndyMac Violated Its Underwriting Guidelines

130. IndyMac Bank, F.S.B. ("IndyMac"), a prolific mortgage originator that helped fuel the housing boom, originated a portion of the loans in the DBALT 2007-AR1, DBALT 2007-BAR1, DBALT 2007-OA2 and INDX 2006-AR27 RMBS purchased by the Irish SPVs.

131. The prospectus supplements for the Deutsche Bank RMBS backed by IndyMac-originated loans contained false and misleading statements of material fact regarding IndyMac's underwriting standards at the time those statements were made. For example, the INDX 2006-AR27 prospectus supplement represented IndyMac's underwriting standards, in relevant part, as follows:

> ***Mortgage loans that are acquired by IndyMac Bank are underwritten by IndyMac Bank according to IndyMac Bank's underwriting guidelines***, which also accept mortgage loans meeting Fannie Mae or Freddie Mac guidelines regardless of whether such mortgage loans would otherwise meet IndyMac Bank's guidelines, ***or pursuant to an exception to those guidelines based on IndyMac Bank's procedures for approving such exceptions.***
>
> * * *
>
> IndyMac Bank has two principal underwriting methods designed to be responsive to the needs of its mortgage loan customers: traditional underwriting and e-MITS (Electronic Mortgage Information and Transaction System) underwriting. E-MITS is an

> automated, internet-based underwriting and risk-based pricing system. ***IndyMac Bank believes that e-MITS generally enables it to estimate expected credit loss, interest rate risk and prepayment risk more objectively than traditional underwriting and also provides consistent underwriting decisions. IndyMac Bank has procedures to override an e-MITS decision to allow for compensating factors.***
>
> ***IndyMac Bank's underwriting criteria for traditionally underwritten mortgage loans includes an analysis of the borrower's credit history, ability to repay the mortgage loan and the adequacy of the mortgaged property as collateral.*** Traditional underwriting decisions are made by individuals authorized to consider compensating factors that would allow mortgage loans not otherwise meeting IndyMac Bank's guidelines.
>
> *   *   *
>
> ***Exceptions to underwriting standards are permitted in situations in which compensating factors exist.*** Examples of these factors are significant financial reserves, a low loan-to-value ratio, significant decrease in the borrower's monthly payment and long-term employment with the same employer.

132. The INDX 2006-AR27 prospectus supplement also made false and misleading representations of material fact concerning IndyMac's appraisal practices. For example, the same prospectus supplement communicated, in relevant part, that:

> To determine the adequacy of the property to be used as collateral, ***an appraisal is generally made of the subject property in accordance with the Uniform Standards of Profession Appraisal Practice. The appraiser generally inspects the property, analyzes data including the sales prices of comparable properties and issues an opinion of value using a Fannie Mae/Freddie Mac appraisal report form, or other acceptable form.*** In some cases, an automated valuation model (AVM) may be used in lieu of an appraisal. AVMs are computer programs that use real estate information, such as demographics, property characteristics, sales prices, and price trends to calculate a value for the specific property. ***The value of the property, as indicated by the appraisal or AVM, must support the loan amount.***

133. The above statements in the Deutsche Bank RMBS prospectus supplements were false and misleading when made. In fact, IndyMac (i) willfully disregarded its stated

underwriting guidelines and issued mortgage loans regardless of the borrower's ability to repay the loan; (ii) ignored its stated appraisal practices; (iii) engaged in unsound and abusive lending practices, including inflating borrowers' incomes and ignoring income or asset confirmations; and (iv) allowed pervasive exceptions to IndyMac's established underwriting guidelines in the absence of existing compensating factors.

134. IndyMac's Alt-A empire was built on reckless lending practices that often required no documentation or verification from the borrower.[9] In 2006 IndyMac originated almost $70 billion in Alt-A loans, or 17.5% of the Alt-A market—the most in the United States.[10] As a result of IndyMac's hunger for volume and profits, in June 2008, Senator Charles Schumer raised concerns about the bank's solvency due, in part, to "poor and loose lending practices." Shortly thereafter, on July 11, 2008, the Department of the Treasury and OTS, seized IndyMac and named the FDIC as conservator. The following day, IndyMac CEO Michael Perry confirmed the allegations surrounding IndyMac's deteriorating underwriting, stating "[w]e got too carried away and loosened our guidelines too far." On July 31, 2008, IndyMac filed for bankruptcy protection. As a result of IndyMac's reckless lending practices that precipitated the mortgage meltdown, the OCC named IndyMac as the twelfth worst mortgage originator in the United States based on the foreclosure rates of mortgage loans originated in metropolitan areas between 2005 and 2007.

135. The Center for Responsible Lending conducted an extensive independent investigation into IndyMac's risky lending practices—in part through interviews with numerous

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[9] Alt-A loans, otherwise known as alternative documentation loans, are loans to borrowers that are approved primarily based upon the borrower's credit score and do not meet the guidelines established by Fannie Mae or Freddie Mac. Alt-A loans were purportedly of a higher quality than subprime loans ***if*** properly underwritten.

[10] *See* Inside Mortgage Finance, 2007 MORTGAGE MARKET STATISTICAL ANNUAL – VOLUME I (2007).

former IndyMac employees—and issued a report in June 2008 entitled *IndyMac: What Went Wrong? How An "Alt-A" Leader Fueled Its Growth with Unsound and Abusive Mortgage Lending* ("CRL Report"), which concluded that Indymac "appear[ed] to have abandoned sound decision- making" while taking on unreasonable risk in its quest for "spectacular levels of growth." Indeed, the CRL report "uncovered substantial evidence that IndyMac Bank and its parent, IndyMac Bancorp, engaged in unsound and abusive lending during the mortgage boom, routinely making loans without regard to borrowers' ability to pay." CRL Report at 2. The investigation conducted by the CRL details instances of brokers inflating borrower incomes, former IndyMac employees intentionally failing to verify borrower information, and a company-wide appetite for greater loan production that ultimately lowered underwriting standards at the bank. CRL Report at 1-5.

136. The CRL Report detailed the prevailing attitude at IndyMac that underwriting was merely a procedural hurdle to approving and ultimately securitizing mortgages. CRL Report at 8. For instance, a former IndyMac fraud investigator referred to certain undocumented or outright fraudulent loans as "Disneyland loans – in honor of a mortgage issued to a Disneyland cashier whose loan application claimed an income of $90,000." CRL Report at 3. An underwriter from IndyMac from 2005-2007, told the CRL how senior management pressured underwriters to approve loans that were "wrong from the get-go . . . ." CRL Report at 9. In other instances, underwriting for so called "full-documentation" loans required only proof of employment, not income. CRL Report at 8. According to a former IndyMac underwriting team leader quoted in the report, "I would reject a loan and the insanity would begin. It would go to upper management and the next thing you know it's going to closing." CRL Report at 3.

137. On February 26, 2009, the Office of Inspector General (the "OIG") of the U.S. Department of Treasury issued a report entitled "Safety and Soundness: Material Loss Review of

IndyMac Bank, FSB" (the "OIG IndyMac Report"). The OIG IndyMac Report confirmed that IndyMac's "aggressive growth strategy . . . [and] insufficient underwriting" contributed to the lender's insolvency. According to the OIG, IndyMac's ultimate demise is attributable to "the unsafe and unsound manner in which the thrift was operated." OIG IndyMac Report, at 3. As reported:

> IndyMac often made loans without verification of the borrower's income or assets, and to borrowers with poor credit histories. Appraisals obtained by IndyMac on underlying collateral were often questionable as well. As an Alt-A lender, IndyMac's business model was to offer loan products to fit the borrower's needs, using an extensive array of risky option-adjustable-rate-mortgages (option ARMs), subprime loans, and other nontraditional products. Ultimately, loans were made to many borrowers who simply could not afford to make their payments. *Id.* at 2.

138. As a necessary consequence of IndyMac's growth strategy, the company systematically abandoned its underwriting standards in order to approve as many mortgages as possible. The OIG investigation uncovered "little, if any, review (by IndyMac) of borrower qualifications, including income, assets, and employment," as well as "weaknesses with property appraisals obtained to support the collateral." OIG IndyMac Report, at 11.

139. Contrary to Deutsche Bank's representations in the Deutsche Bank RMBS Offering Materials regarding IndyMac's origination practices and procedures, IndyMac's "appraisals . . . were not in compliance with the Uniform Standard of Professional Appraisal Practice (USPAP)." OIG IndyMac Report at 12. This included instances where "IndyMac obtained multiple appraisals . . . [without] evidence to support, or explain why different values were determined. In other instances, IndyMac allowed the borrowers to select the appraiser." *Id.* at 1. The OIG review uncovered numerous problems with IndyMac appraisals, including:

> (1) violated policies and procedures, (2) violated OTS and Uniform Standards of Professional Appraisal Practice, (3) used inflated appraised values, (4) lacked market analysis and feasibility studies

to support appraised value, (5) valued properties far in excess of the recent sale prices for the subject properties and (6) used retail values for subdivisions instead of prospective market value at the time of completion." OIG IndyMac Report at 24.

140. As reported by in *The New York Times* DealBook, the SEC filed civil fraud charges against three former executives of IndyMac Bancorp on February 11, 2011 for "filing 'false and misleading' documents with regulators" about the financial condition of IndyMac Bancorp and its subsidiary IndyMac Bank. According to the February 11, 2011 *Los Angeles Times* article entitled "SEC Files Fraud Lawsuit against Three Former IndyMac Executives," IndyMac's former Chief Executive and two former Chief Financial Officers "regularly received internal reports about IndyMac's deteriorating capital and liquidity positions in 2007 and 2008, but failed to ensure adequate disclosure of that information to investors as IndyMac sold millions of dollars in new stock."

141. The IndyMac-originated loans, serving as collateral for the DBALT 2007-AR1, DBALT 2007-BAR1, DBALT 2007-OA2 and INDX 2006-AR27 RMBS purchased by the Irish SPVs, have experienced severe levels of delinquencies and defaults caused by IndyMac's reckless origination practices. Indeed, an average of approximately 42% of the loans backing these RMBS were seriously delinquent as of May 2012:

Deal Name & Tranche	At 12 Months	At 24 Months	At 36 Months	At 48 Months	At 60 Months	May 2012
DBALT 2007-AR1	11.55	34.54	54.84	56.18	56.53	54.92
DBALT 2007-BAR1	18.21	37.33	47.95	45.99	44.36	45.01
DBALT 2007-OA2	7.49	32.74	46.09	43.22	43.68	43.83
INDX 2006-AR27	5.21	19.66	32.03	31.83	31.86	24.30
Averages	10.61	31.06	45.22	44.30	44.10	42.01

E. GMAC Violated its Underwriting Guidelines

142. Homecomings Financial, LLC ("Homecomings") is a wholly-owned subsidiary of Residential Funding Company ("RFC"). RFC and GMAC Mortgage, LLC ("GMAC Mortgage") are indirect wholly-owned subsidiaries of GMAC, LLC ("GMAC"). GMAC grew to be the fourth largest U.S. mortgage loan originator by 2010, issuing tens of billions of dollars of mortgages annually. Homecomings and GMAC Mortgage are herein after referred to as the "GMAC Entities."

143. The GMAC Entities originated or sponsored loans in the following Deutsche Bank RMBS purchased by the Irish SPVs: DBALT 2007-OA1, RALI 2007-QO2, and RAMP 2007-RS1.

144. The Offering Materials for the Deutsche Bank RMBS containing loans originated by the GMAC Entities made false and misleading statements of material fact regarding the GMAC Entities' underwriting standards. For example, the RALI 2007-QO2 prospectus supplement described the GMAC Entities' underwriting standards, in relevant part, as follows:

> In determining whether to approve a mortgage collateral seller, Residential Funding Company, LLC ***generally considers, among other things. . . the underwriting standards employed by the mortgage collateral seller and its quality control procedures;*** and, if applicable, the servicing operations of the mortgage collateral seller.
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> * * *
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> In accordance with the Seller Guide, ***the Expanded Criteria Program Seller is required to review an application designed to provide to the original lender pertinent credit information concerning the mortgagor.*** As part of the description of the mortgagor's financial condition, each mortgagor is required to furnish information, which may have been supplied solely in the application, regarding its assets, liabilities, income (except as described below), credit history and employment history, and to furnish an authorization to apply for a credit report which summarizes the borrower's credit history with local merchants and

> lenders and any record of bankruptcy. The mortgagor may also be required to authorize verifications of deposits at financial institutions where the mortgagor had demand or savings accounts.
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> * * *
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> ***Based on the data provided in the application and certain verifications, if required, a determination is made by the original lender that the mortgagor's monthly income, if required to be stated, will be sufficient to enable the mortgagor to meet its monthly obligations on the mortgage loan and other expenses related to the property, including property taxes, utility costs, standard hazard insurance and other fixed obligations.***

145. The Offering Materials also made material false and misleading representations concerning the GMAC Entities' appraisal practices. For example, the RALI 2007-QO2 prospectus supplement stated, in relevant part:

> ***The adequacy of the mortgaged property as security for repayment of the related mortgage loan generally is determined by an appraisal in accordance with appraisal procedure guidelines described in the Seller Guide. Appraisers may be staff appraisers employed by the originator. The appraisal procedure guidelines generally require the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property is in good condition and that construction, if new, has been substantially completed.*** The appraiser is required to consider a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property, or replacement cost analysis based on the current cost of constructing or purchasing a similar property. In certain instances, the LTV ratio is based on the appraised value as indicated on a review appraisal conducted by the mortgage collateral seller or originator.

146. The above statements of material fact were untrue when made. GMAC secretly abandoned its stated mortgage underwriting and appraisal standards in a drive to originate as many mortgages as possible to be sold and securitized into RMBS. GMAC's abandonment of its stated underwriting and appraisal standards is confirmed by the statements of former GMAC employees interviewed by the Irish SPVs' counsel.

147. CW 8, a senior mortgage underwriter for GMAC Mortgage in Troy, Michigan from 2003 through 2005, stated that GMAC's underwriting procedures were "pretty loose" and said, "[t]hey called it 'creative underwriting.'" For example, if a loan required six months of income but the applicant lacked the necessary income history, GMAC mortgage underwriters would divide the applicant's bank balance by six and treat that amount as the average monthly income. CW 8 saw quite a few "risky" loans where CW 8 "didn't agree with the way things were done." However, if CW 8 passed these loans to his supervisor, GMAC's head of underwriting for several states, the supervisor would ultimately approve the loans. People from "corporate" wanted loans approved, so it was a matter of "scratching people's backs," according to CW 17.

148. CW 9, a senior wholesale underwriter for GMAC from August 1997 to the spring of 2007, stated that supervisors frequently overrode underwriters' decisions and closed "bad loans." CW 9 explained that supervisors' bonuses were dependent on the volume of closed loans, so they were motivated to push loans through, even though "[t]hey were doing loans they knew were bad." CW 9 added, "[a] lot of times the sales director would raise holy commotion with the supervisor and directors, and under pressure, they'd approve bad loans." CW 9 also knew of underwriters falsifying loan information. CW 9 heard from another underwriter that a manager who "couldn't get the figures correct" was told to "[j]ust make it up, put anything; no one will ever check." CW 9 stated that GMAC did "a lot" of no-income/no-assets stated loans, which were "a big joke around there" and were called "liar loans, because we knew damn well they were lying. You can't tell me a manicurist in L.A. was making $12,000 a month." However, CW 9 did not challenge the stated incomes because it was just not done at GMAC and ultimately "you would get overruled [by a manager]." If CW 9 requested full documentation because a borrower's assets did not support the stated income, CW 9's request would be

overruled. According to CW 9, managers also waived bad appraisals that "you knew damn well did not support the value."

149. CW 9 specifically linked GMAC's poor underwriting to pressure to generate loans to be sold. GMAC's trading group approved exceptions to underwriting standards, and the underwriters "had a feeling they had to make exceptions to fill a pool." The underwriters "would get an email [from the trading department] saying, 'We need 10 more loans to put in the 5% pool.'" CW 9 recalled, "A lot of times I'd decline a loan, and if the sales director knew the supervisor wouldn't go for it, [the sales director] would call trading – they knew the weak links in that department – and they knew they'd approve it." There was even a person who worked as a liaison between trading and underwriting and was able to sign off on loans despite having no underwriting experience. CW 9 worked on bulk loan files, sorting them into approved loans, "pended loans" which were missing documentation, and declined loans. Another employee who was responsible for funding bulk loans did not address them according to their approved, pended or declined status, but "funded the whole load." CW 9 objected to this and raised it with her supervisor and her supervisor's supervisor, but "everyone knew [that GMAC employee] was funding declined, bad, or pended loans" and had no problem with it.

150. CW 10, an underwriter at GMAC in Monterey, California from 1997 to 2008, stated that GMAC's Desktop Underwriter ("DU") program had "very loose guidelines." 90% of loans were sent through DU, which did not require documentation and "rarely turned down a loan." GMAC's underwriting guidelines got "looser and looser" until 2007. CW 11, a former senior underwriter at GMAC Mortgage in Troy, Michigan from 1986 through 2008, confirmed that loan processors (who were not underwriters) were able to approve loans that went through DU, meaning that most conventional loans were never reviewed by actual underwriters.

151. CW 11 stated that GMAC's no documentation loans were in fact "'liar loans,' because anyone could say they made $8,000 a month [when] they really didn't." Because GMAC relied on automated underwriting with DU, these stated income/stated asset loans were taken at face value. CW 11 stated that "[i]f the application indicates it and the borrower says it, [DU treated it as] truth. And we as underwriters rarely saw them."

152. Finally, CW 12, a securities trading analyst at GMAC in Minneapolis from April 2006 to May 2007, stated that there was concern at GMAC about the quality of loans in late 2006 and early 2007, as they started to see a lot of early payment defaults on "fraudulent subprime loans." CW 12 said that GMAC could have detected the fraudulent loans if it had dug deeper but usually only looked at the basic information in the computer file such as FICO scores and LTV ratios. Because the underwriting was automated, mortgage brokers submitted information based on what criteria were needed to close loans, and "a lot of them didn't have documentation." CW 12 also stated that GMAC accepted inflated appraisals: "To make a loan work, an appraisal has to come in at a certain value. The problem is that appraisers would overinflate values. It's not right."

153. Claims arising out of GMAC's abandonment of its stated underwriting standards and its fraudulent representations concealing that abandonment from investors have also been sustained in other lawsuits against GMAC. In *MBIA Insurance Co. v. Residential Funding Co.*, No. 603552/2008 (N.Y. Sup. Ct. Mar. 19, 2010) (the "MBIA Complaint"), the New York State Supreme Court denied RFC's motion to dismiss MBIA's fraud claims based on Residential Funding's representations about the quality of the mortgages underlying five MBS offerings from July 2006 to 2007 that were insured by MBIA. When the mortgage pools became subject to substantial delinquencies and defaults, MBIA demanded access to the loan files and determined that 34% of the loans in the loan pools were already in default by December 2009,

and that more than 88% of those loans were not originated or acquired in compliance with RFC's underwriting guidelines. In fact, a significant number of the loans had DTI or CLTV ratios far in excess of RFC's guidelines or were issued on the basis of stated incomes that were unreasonable.

154. As alleged in the MBIA Complaint, these violations of the underwriting guidelines resulted largely from Residential Funding engaging in three improper underwriting practices: "negotiated commitment," in which RFC prospectively agreed with a loan originator that RFC would buy non-compliant loans to be originated by the originator; "bulk purchase programs," in which RFC agreed to buy bulk amounts of loans from a loan seller that had already been originated without re-underwriting them to confirm that they complied with the underwriting guidelines; and the use of RFC's proprietary automated electronic loan underwriting program, "Assetwise," which purportedly determined whether mortgages met underwriting criteria set up in the program but which did not actually apply RFC's stated underwriting guidelines.

155. According to the MBIA Complaint, the fraudulent representations made by RFC concerning underwriting guidelines, CLTV, DTI, and FICO scores, as well as compliance with applicable laws, were contained in the loan tapes, data schedules, and prospectus supplements for the offerings, the same types of documents that the Irish SPVs relied upon in making its investment decisions in connection with the RMBS at issue here. The systematic nature of the misrepresentations supports a strong inference that the same types of false statements were made by Deutsche Bank in the Offering Materials for the RMBS originated by the GMAC Entities and purchased by the Irish SPVs.

156. The MBIA Complaint includes numerous specific examples of improperly underwritten loans and violations of RFC's underwriting guidelines. For example, one stated income loan was given to a borrower who said he earned $9,800 per month as a dispatcher at a

freight company and who had a prior bankruptcy and automobile repossession; another was given to a borrower who said he earned $41,666 per month in 2006 as a liquor store owner but who filed for bankruptcy in 2007 claiming to have earned nothing in 2006. Loans were also made with DTI and LTV ratios exceeding the maximums under RFC's guidelines, including loans with LTV ratios over 100%.

157. MBIA made substantially similar allegations against GMAC Mortgage, which have also been sustained by the New York State Supreme Court. *See MBIA Insurance Co. v. GMAC Mortgage LLC*, Index No. 600837/2010 (N.Y. Sup. Ct. Dec. 14, 2010) (the "MBIA-GMAC Complaint"). The MBIA-GMAC complaint alleges that MBIA reviewed thousands of loan files after the transactions performed badly and determined that at least 89% of the delinquent or charged-off loans reviewed by MBIA were not originated in material compliance with GMAC Mortgage's stated underwriting guidelines.

158. The falsity of the same types of prospectus representations at issue here have also been sustained in *New Jersey Carpenters Health Fund v. Residential Capital LLC*, 2010 WL 1257528 (S.D.N.Y. Mar. 31, 2010). In that case, the Court denied defendants' motion to dismiss investors' claims under the Securities Act of 1933 based on false statements in GMAC prospectuses and prospectus supplements for RMBS offerings in 2006 and 2007, holding that "'Plaintiffs provide a credible inference that originators of these underlying loan pools systematically disregarded underwriting guidelines' because of 'widespread evidence' of this activity by the originator along with the fact that 'the loan pools provided by those same originators failed at considerable levels.'" *Id.* at *6. The court held that "these factual allegations about [Homecomings'] improper underwriting practices coupled with the loan pools' near-total credit rating collapse and default rate spike are sufficient to create a fair inference that

[Homecomings] totally disregarded the underwriting guidelines, contrary to what was stated in the Offering Documents." *Id.*

159. Common law fraud claims related to the misrepresentations in the same types of prospectus representations at issue here have also been sustained in *Thrivent Financial for Lutherans, et al. v. Residential Funding Co., LLC, et al.*, Index No. 27-CV-11-5830 (Fourth Judicial District, Hennepin County, Minnesota) (April 11, 2012).

160. GMAC's pervasive violations of its stated underwriting and appraisal guidelines led to immense losses and the near collapse of GMAC, which received enormous infusions of taxpayer money in a bailout in 2008. In September 2008, GMAC Mortgage closed all of its retail mortgage locations and Homecomings stopped originated loans.

161. The GMAC Entities' reckless origination practices described above have had significant consequences for the average serious delinquency rates of the loans backing the Deutsche Bank RMBS purchased by the Irish SPVs. For example, the DBALT 2007-OA1, RALI 2007-QO2, and RAMP 2007-RS1 RMBS, which were largely supported by loans originated by the GMAC Entities, have experienced delinquency rates of over 39% as of May 2012.

Deal Name	At 12 Months	At 24 Months	At 36 Months	At 48 Months	At 60 Months	May 2012
DBALT 2007-OA1	9.18	34.82	47.53	44.54	44.00	43.77
RALI 2007-QO2	11.60	36.77	52.86	49.01	43.32	43.62
RAMP 2007-RS1	21.09	34.89	37.62	34.37	33.29	32.32
Averages	13.95	35.49	46.00	42.64	40.20	39.90

F. WMC Mortgage Violated Its Underwriting Guidelines

162. WMC Mortgage Corporation ("WMC") originated all of the loans backing the ACE 2007-WM1 RMBS purchased by the Irish SPVs. According to Reuters, WMC was responsible for originating "some of the worst-performing loans in the . . . $575 billion market

for home equity asset-backed securities." Former WMC quality control manager David Riedel stated in an interview that his quality control team uncovered pervasive evidence of mortgage fraud as early as 2005.

163. The Offering Materials for the Deutsche Bank RMBS containing loans originated by WMC made false and misleading statements of material fact regarding WMC's underwriting standards. For example, the ACE 2007-WM1 prospectus supplement described WMC's underwriting standards, in relevant part, as follows:

> ***The Underwriting Guidelines are primarily intended to (a) determine that the borrower has the ability to repay the mortgage loan in accordance with its terms and (b) determine that the related mortgaged property will provide sufficient value to recover investment if the borrower defaults. On a case-by-case basis WMC may determine that, based upon compensating factors, a prospective mortgagor not strictly qualifying under the underwriting risk category or other guidelines described below warrants an underwriting exception.*** Compensating factors may include, but are not limited to, low debt-to-income ratio ("Debt Ratio"), good mortgage payment history, an abundance of cash reserves, excess disposable income, stable employment and time in residence at the applicant's current address. It is expected that a substantial number of the mortgage loans to be included in the trust will represent such underwriting exceptions.
>
> * * *
>
> ***Under the Underwriting Guidelines, WMC verifies the loan applicant's eligible sources of income for all products***, calculates the amount of income from eligible sources indicated on the loan application, reviews the credit and mortgage payment history of the applicant and calculates the Debt Ratio to determine the applicant's ability to repay the loan, and reviews the mortgaged property for compliance with the Underwriting Guidelines. The Underwriting Guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and ***require, among other things, (1) an appraisal of the mortgaged property which conforms to Uniform Standards of Professional Appraisal Practice*** and (2) an audit of such appraisal by a WMC-approved appraiser or by WMC's in-house collateral auditors (who may be licensed appraisers) and such audit

> may in certain circumstances consist of a second appraisal, a field review, a desk review or an automated valuation model.
>
> * * *
>
> All mortgage loans originated or purchased under the Underwriting Guidelines are based on loan application packages submitted through mortgage brokerage companies or on loan files (which include loan application documentation) submitted by correspondents. Loan application packages submitted through mortgage brokerage companies, containing in each case relevant credit, property and underwriting information on the loan request, are compiled by the applicable mortgage brokerage company and submitted to WMC for approval and funding.

164. The above statements of material fact were untrue when made because they misrepresented the true facts, known by Deutsche Bank, that WMC (i) systematically failed to apply sound underwriting standards and practices cutting across all of the loans it originated; (ii) routinely falsified or fabricated borrower information including tax forms, income, employment, and rental payment information; (iii) ignored reports of fraudulent borrower incomes; and (iv) failed to verify critical information relating to borrowers' creditworthiness such as occupancy. In 2004, WMC, then the sixth-largest subprime lender in the nation, was purchased by General Electric. In September 2007, General Electric closed WMC's operations because of its subprime-related losses, taking a $400 million charge as a result. WMC ranked fourth in the Office of the Comptroller of the Currency's ("OCC") "Worst Ten of the Worst Ten" list of subprime lenders presented to the FCIC in April 2010—the ten mortgage originators with the highest rate of subprime and Alt-A mortgage foreclosures in the ten metropolitan areas experiencing the highest foreclosure rates from 2005 through 2007.[11]

165. In a January 6, 2012 expose of the *Center for Public Integrity*, former WMC quality control manager David Riedel stated that his quality control team of a dozen people in

[11] *Available at* http://www.occ.treas.gov/news-issuances/news-releases/2009/nr-occ-20090112b.pdf.

Southern California found widespread evidence of mortgage fraud as early as 2005, including fake proofs of employment, fake verifications of borrowers' rent payment history, and fake borrower income verifications. For example, Riedel discovered that WMC employees were fabricating borrower income verifications and creating bogus W-2 tax forms with computer software that allowed them to create W-2 forms from scratch. Some WMC employees did it the old-fashioned way, cutting and pasting numbers from one W-2 photocopy to another. According to Victor Argueta, a former risk analyst at WMC, salespeople were putting down fake jobs on borrowers' loan applications—even listing their own cell phone numbers so they could pose as the borrowers' supervisors and "confirm" that the borrowers were working at the made-up employers.

166. In 2005, Riedel's team performed a loan audit revealing many instances of fraud and other defects such as missing documents. However, when Riedel reported the audit findings to officials at WMC's parent, General Electric, Riedel was demoted and forced to sit at a desk for months without office, staff, or job title. As Riedel explained, "I didn't have any files [and] I basically stared out of a window." Another former WMC executive confirmed Riedel's account, stating: "[h]e was branded as a whistleblower and not a team player. They didn't exactly fire him. They just marginalized him and he didn't really have anything to do. Nor was Riedel alone. The *Center for Public Integrity* investigation discovered that WMC management also ignored reports of inflated borrower incomes and other fraudulent loan applications by WMC loan auditor Gail Roman in New York. As Roman stated, "[t]hey didn't want to hear what you found, even if you had enough documentation to show that there was fraud or questionable activity." Another former WMC fraud investigator confirmed the accounts of Riedel and Roman, stating: "It was ugly. I would have nightmares about some of the things I'd find in a file. I'd wake up in the middle of the night going 'Oh my God, how did this happen?'"

167. After Riedel was given back some responsibilities, he performed an audit of poorly-performing loans and began developing software to automatically detect fraudulent loan applications. In May 2006, Riedel presented the results of the audit to General Electric executives, noting that 78% of the loans had been fraudulent – containing misrepresentations about borrowers' incomes or employment. Again, Riedel's message was not welcome, and the software program he developed was not adopted. As one WMC executive reportedly said, "Fraud pays."

168. WMC's systematic failure to apply sound underwriting standards and practices cut across all levels of the loans that it sold for securitizations as confirmed by a lawsuit filed by PMI Mortgage Insurance Co. in September 2009. A review of WMC's mortgage loan files in that action showed that WMC "followed few, if any, objective standards or criteria in underwriting [mortgage loans] and showed little concern if any, for any borrower's ability to repay." *PMI Mortg. Ins. Co. WMC Mortg. Corp.*, BC-391072 (Los Angeles Super. Ct.) (the "PMI Complaint").

169. According to PMI's allegations concerning WMC's failure to adhere to its contractual repurchase obligations relating to the securitization of a pool of mortgage loans, a review by Clayton into a sample of thousands of WMC-originated loans revealed that WMC "breached various representations and warranties [attesting that,] *inter alia*, the loan-to-value ratio at the time of origination was greater than 100%; fraud, errors, misrepresentations, or gross negligence took place on the part of WMC . . .; the loans did not comply with WMC's own underwriting standards at the time of origination; certain documents were missing; and/or WMC had failed to utilize a methodology in underwriting the loans that employed objective mathematical principles designed to determine that, at the time of origination, the borrower had the reasonable ability to make timely payments on the [m]ortgage [l]oans." In the defective

loans, "Clayton discovered unreasonable stated income and/or misrepresentations of income and/or employment by the borrower, the large majority of which could have been discovered by WMC prior to transfer via simple diligence procedures." Moreover, nearly a quarter of the loans sampled by Clayton were shown to contain "misrepresentations of occupancy by the borrower, another factor that could have easily been verified by WMC."

170. Similar to the PMI complaint, a lawsuit filed by U.S. Bank N.A. against WMC demonstrated that that the loans originated by WMC were seriously flawed. *MASTR Asset Backed Securities Trust 2006-HE3, by U.S. Bank National Association v. WMC Mortgage Corp. and Equifirst Corp.*, 11-cv-02542-PAM-TNL, ECF 1 (D. Minn.) (the "MASTR Complaint"). Specifically, the MASTR Complaint alleges that a sampling of the loan files for one securitization, for which WMC originated approximately 58% of the loans, revealed that 75% of the 200 loans sampled by the trust administrator were issued in material violation of the originators' representations and warranties. The loan level review revealed that 55 of the defective loans contained misrepresentations of income and/or employment by the borrower and 72 of the defective loans contained multiple underwriting defects. Specifically, according to the MASTR Complaint, one loan originated by WMC was issued to a borrower who claimed to earn almost $15,000 per month performing "account analysis," whereas that borrower's income tax returns stated that the borrower was a taxi driver with a monthly income of only $1,500 per month. Further, the borrower's credit report disclosed two additional mortgages in the amount of $435,000—information that was omitted from the loan application. Had WMC performed adequate due diligence to discover the true credit risk of the borrower, WMC would have learned that the borrower's DTI was an astounding 761.7%. The MASTR Complaint describes another WMC-originated loan plagued by similar underwriting defects such as misrepresentations of borrower income and undisclosed debt liabilities. Had WMC performed meaningful due

diligence on that loan, WMC would have discovered that the borrower's DTI was approximately 108.8%, a level at which the borrower would be unable to reasonably repay the mortgage loan.

171. On January 12, 2012, the *Los Angeles Times* reported that the FBI is investigating WMC's potentially criminal business practices. As the newspaper reported, "[t]he government is asking whether WMC falsified paperwork, overstated income and other tactics to push through questionable loans" and focuses on "whether senior managers condoned improper practices that enabled fraudulent loans to be sold to investors."

172. WMC's systematic failure to issue mortgage loans in accordance with its established underwriting guidelines has caused severe losses to the Irish SPVs. Over 68% of the principal balance of the loans backing the ACE 2007-WM1 RMBS set forth below, which was comprised entirely of WMC-originated loans, stood seriously delinquent as of May 2012 as reflected in the chart below.

Offering	1 Yr.	2 Yrs.	3 Yrs.	4 Yrs.	5 Yrs.	May 2012
ACE 2007-WM1	30.42	62.87	73.94	73.31	68.76	68.69

G. NovaStar Violated Its Underwriting Guidelines

173. NovaStar Mortgage Inc. ("NovaStar"), the now-defunct Missouri-based lender, specialized in the origination of subprime mortgages and was the sole originator of the loans backing the NHEL 2007-1 RMBS purchased by the Irish SPVs.

174. The Offering Materials for the NHEL 2007-1 RMBS contained false and misleading statements of material fact regarding NovaStar's underwriting standards at the time those statements were made. For example, the prospectus supplement represented NovaStar's underwriting standards, in relevant part, as follows:

> ***The underwriting guidelines of the sponsor are intended to evaluate the credit history of the potential borrower, the capacity and willingness of the borrower to repay the loan and the adequacy of the collateral securing the loan.*** Each loan applicant completes an application that includes information with respect to the applicant's income, liabilities and employment history. Prior to issuing an approval on the loan, the loan underwriter runs an independent credit report or pulls a reissue of the clients credit through an independent 3rd party vendor, which provides detailed information concerning the payment history of the borrower on all of their debts to verify that the information submitted by the broker is still accurate and up to date.

175. The NHEL 2007-1 prospectus supplement also made false and misleading representations of material fact concerning NovaStar's appraisal practices. For example, the same prospectus supplement represented, in relevant part, that:

> ***An appraisal is also required on all loans and in many cases a review appraisal or second appraisal may be required depending on the value of the property and the underwriter's comfort with the original valuation. All appraisals are required to conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and are generally on forms acceptable to Fannie Mae.***

176. The statements set forth in the prospectus supplement for the NHEL 2007-1 RMBS were materially false and misleading. NovaStar: (i) did not follow its stated underwriting standards; (ii) did not take steps to verify borrower data and ignored potential borrowers' creditworthiness and ability to repay the loan; (iii) allowed pervasive exceptions to its established underwriting guidelines in the absence of existing compensating factors; (iv) failed to review loan documents which contained misrepresentations and defects including, misstatements of income, and/or inflated appraisals of property values; and (v) allowed employees to re-underwrite loans that had significant defects to the documentation.

177. NovaStar's reckless lending practices made it a magnet for traditionally unqualified borrowers. In a federal securities class action lawsuit filed on October 19, 2007 (the

"NovaStar Complaint"), NovaStar investors alleged that loan officers were routinely instructed to disregard origination standards and approve loans at all costs.[12] As alleged in the NovaStar Complaint, between May 4, 2006 and February 20, 2007, the "underwriting process at NovaStar routinely deviated from the Company's guidelines, and…[underwriters] were granting exceptions for everything," including LTV ratios, credit scores, and inflated property value appraisals.

178. As alleged in the NovaStar Complaint, according to a former NovaStar underwriter, "the guidelines were just parameters and the 'unspoken law' was to make loans." Even more, the former underwriter said that exceptions to underwriting guidelines increased toward the end of a month in order to close more loans. According to the NovaStar Complaint, NovaStar also had a phone-in method for Account Executives to seek direct exceptions "for loans that were unusual and would not be approved in the normal underwriting process." As alleged, underwriters were told to be aggressive in granting exceptions via the telephone so Account Executives could bring in more business.

179. In addition to frequent exceptions, the NovaStar Complaint alleges that NovaStar underwriters were allowed to re-write loans that contained significant documentation issues and should never have been issued if properly underwritten. For instance, according to the NovaStar Complaint:

> [w]hen loans that were presented to the Underwriters as complete, full documentation or "Full Doc" loans, were found to be incomplete, lacking proof of salary information, or clearly showing that a proposed borrower's bank statements contradicted the information they had affirmed on the application. In many such cases, ***rather than rejecting the loan because of the defects, the Underwriters and Account Executives would merely discard the***

[12] *In re 2007 NovaStar Financial Inc. Sec. Litig.*, No. 07 Civ. 0139 (W.D. Mo. October 19, 2007), ECF No. 63.

contradicting information and switch the loan to a "low documentation" or "No documentation" loan, and approve its funding.

180. When a loan was unable to be re-written, according to the NovaStar Complaint, NovaStar Account Executives relied on bribes: "sometimes Underwriters received files from Account Executives with $50 in them because the Account Executives wanted the Underwriter to treat their loans favorably, and put their loans at the top of the review list."

181. NovaStar's emphasis on high-volume loan production combined with ever increasing exceptions to the underwriting guidelines meant that stated underwriting practices were regularly violated. As alleged in the NovaStar Complaint, according to NovaStar's Senior Fraud Investigator, 90% to 95% of the loans that he reviewed involved misstatements of income, misrepresentations in loan documents, and/or inflated appraisals of the property that secured the loan. The NovaStar Complaint alleges that auditors were expressly told not to detail issues relating appraisal values in the company's internal control system.

182. NovaStar's complete abandonment of its underwriting guidelines has had a devastating effect on the average serious delinquency rates of the loans backing the NovaStar-originated RMBS purchased by the Irish SPVs. For example, over 47% of the loans backing the NHEL 2007-1 RMBS, which was comprised of loans entirely originated by NovaStar, stood seriously delinquent as of May 2012:

Deal Name	At 12 Months	At 24 Months	At 36 Months	At 48 Months	At 60 Months	May 2012
NHEL 2007-1	27.90	52.82	59.35	49.22	47.90	47.77

H. GreenPoint Violated its Underwriting Guidelines

183. GreenPoint Mortgage ("GreenPoint") originated a portion of the mortgages that secure the DBALT 2006-AR4 Deutsche Bank RMBS purchased by the Irish SPVs. The

Offering Materials relied upon by the Irish SPVs in purchasing the DBALT 2006-AR4 RMBS contained false and misleading statements of material fact regarding GreenPoint's underwriting practices and guidelines.

184. The statements set forth in the Offering Materials were materially false and misleading when made. GreenPoint did not follow its stated underwriting standards, did not take steps to verify borrower data—which was pervasively misstated—and did not use disinterested appraisers to value the collateral. The DTI ratios for the loan pools were therefore much higher than represented. According to a review of GreenPoint documentation in connection with one of the numerous lawsuits against GreenPoint based on its reckless origination and underwriting practices, 93% of the GreenPoint loans suffered from serious defects.[13] Discovered defects included: (i) pervasive misrepresentations with respect to the statement of income, assets, or employment of the borrower; (ii) inflated and fraudulent appraisal values; and (iii) pervasive violations of GreenPoint's own underwriting guidelines and prudent mortgage-lending practices, including loans made to borrowers with unverified incomes and social-security numbers, and with credit scores and debt-to-income and/or loan-to-value ratios outside of the stated range.

185. That same review determined that two years after the closing of the securitized transaction, approximately 29% of the loans in the original loan pool were either completely written off or severely delinquent. Another lawsuit – brought by a former senior GreenPoint underwriter – alleged that GreenPoint forced underwriters to approve mortgage loan applications containing fraudulent information.[14]

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[13] See U.S. Bank Nat'l Ass'n, et al. v. GreenPoint Mortg.Funding, Inc., Index No. 09-600352 (New York Sup. Ct. Feb. 5, 2009); Bank of America, N.A. v. GreenPoint Mortgage Funding, Inc., No. 3:09-cv-0071 (W.D.N.Y. Feb. 26, 2009).

[14] *Steinmetz v. GreenPoint Mortg. Funding, Inc.*, No. 08-cv-5367 (S.D.N.Y. June 12, 2008).

186. The OCC ranked GreenPoint thirteenth on the list of the worst mortgage originators in the United States based on the foreclosure rates of mortgage loans originated in metropolitan areas between 2005 and 2007.

187. GreenPoint's reckless origination practices described above have had a devastating effect on the average serious delinquency rates of the loans backing the Deutsche Bank RMBS purchased by the Irish SPVs. For example, more than 36% of the loans backing the DBALT 2006-AR4 RMBS, stood seriously delinquent as of May 2012:

Deal Name & Tranche	At 12 Months	At 24 Months	At 36 Months	At 48 Months	At 60 Months	May 2012
DBALT 2006-AR4	7.92	24.65	39.78	42.18	38.01	36.39

I. PHH Mortgage Violated Its Underwriting Guidelines

188. PHH Mortgage originated or acquired all of the mortgages securing the PHHAM 2007-2 Deutsche Bank RMBS purchased by the Irish SPVs. The Offering Materials relied upon by the Irish SPVs in purchasing the PHHAM 2007-2 RMBS contained false and misleading statements of material fact regarding PHH Mortgage's underwriting practices and guidelines. PHH Mortgage's loans, comprising 87% of the PHHAM 2007-2 RMBS, which has experienced a delinquency rate of nearly 24% as of May 2012.

J. National City Violated Its Underwriting Guidelines

189. National City originated a portion of the mortgages securing the DBALT 2007-1 Deutsche Bank RMBS purchased by the Irish SPVS. The Offering Materials relied upon by the Irish SPVS in purchasing the DBALT 2007-1 RMBS contained false and misleading statements of material fact regarding National City's underwriting practices and guidelines. As of May 2012, the DBALT 2007-1 RMBS has experienced delinquency rates of over 38%.

K. SunTrust Violated Its Underwriting Guidelines

190. SunTrust originated a portion of the mortgages securing the RAMP 2007-RS1 RMBS purchased by the Irish SPVs. The Offering Materials relied upon by the Irish SPVs in purchasing the RAMP 2007-RS1 RMBS contained false and misleading statements of material fact regarding SunTrust's underwriting practices and guidelines. As of May 2012, the RAMP 2007-RS1 RMBS has experienced delinquency rates of over 32%.

L. Impac Mortgage Violated Its Underwriting Guidelines

191. Impac Mortgage ("Impac") originated a portion of the loans securing the DBALT 2007-OA2 RMBS purchased by the Irish SPVs. The Offering Materials relied upon by the Irish SPVS in the purchase of the DBALT 2007-OA2 RMBS contained false and misleading statements of material fact regarding Impac's underwriting practices and guidelines. As of May 2012, the DBALT 2007-OA2 RMBS has experienced delinquency rates of over 43%.

M. Doral Financial Violated Its Underwriting Guidelines

192. Doral Financial ("Doral") originated all of the loans securing the DMSI 2006-PR1 RMBS purchased by the Irish SPVs. The Offering Materials relied upon by the Irish SPVs in the purchase of the DMSI 2006-PR1 RMBS contained false and misleading statements of material fact regarding Doral's underwriting practices and guidelines. As of May 2012, the DMSI 2006-PR1 RMBS has experienced delinquency rates of over 17%.

N. DHI Mortgage Violated Its Underwriting Guidelines

193. DHI Mortgage ("DHI") originated a portion of the loans securing the DBALT 2007-BAR1 RMBS purchased by the Irish SPVs. The Offering Materials relied upon by the Irish SPVs in the purchase of the DBALT 2007-BAR1 RMBS contained false and misleading statements of material fact regarding DHI's underwriting practices and guidelines. As of May 2012, the DBALT 2007-BAR1 RMBS has experienced delinquency rates of approximately 45%.

VII. DEUTSCHE BANK KNEW THE LOANS IT WAS SECURITIZING WERE DESTINED TO FAIL

194. Well before underwriting and selling RMBS certificates to investors like the Irish SPVs, Deutsche Bank had identified (but never disclosed to investors) the rampant underwriting deficiencies at the mortgage originators discussed above, which directly contradicted the representations in the Offering Materials accompanying the RMBS sold to the Irish SPVs. In particular, Deutsche Bank was aware of the practices of its own mortgage origination arms, DBSP and MortgageIT, as admitted by the Deutsche Bank Defendants in the May 2012 settlement with the U.S. Attorney's Office, as detailed above.

195. Deutsche Bank also had extensive knowledge of the underwriting practices of the subprime lenders whose loans backed the RMBS purchased by the Irish SPVs through its multi-billion warehouse lending relationships with those lenders. Moreover, not only did Deutsche Bank's diligence undertaken in connection with those warehouse lines reveal the unsafe lending practices at those originators, but the data provided to Deutsche Bank by the loan-level reviews conducted by its third-party due diligence providers ***confirmed*** that the underwriting of the loans backing the RMBS purchased by the Irish SPVs flatly contradicted the representations contained in the Offering Materials used to solicit the Irish SPVs' investment in the Deutsche Bank RMBS.

196. Deutsche Bank exploited its knowledge of the true nature of the RMBS it had created by developing a massive short position in securities that referenced RMBS that Deutsche Bank sold to its clients, and which Greg Lippmann, the Deutsche Bank mortgage trader who rose to become Global Head of Asset-Backed Securities Trading, disparaged as "crap" and "pigs." Indeed, Deutsche Bank was able to profit handsomely off its knowledge of the inherently risky nature of the loans it securitized to place massive wagers against those assets through what Lippmann referred to as Deutsche Bank's involvement in the "CDO Machine"—a "ponzi

scheme" that enabled investment banks like Deutsche Bank to profit when the RMBS purchased by investors like the Irish SPVs failed—as well as the other proprietary trades Deutsche Bank entered into to bet against securities such as those it sold to the Irish SPVs. As Deutsche Bank expected, the value of the RMBS it sold to investors like the Irish SPVs plummeted in value as borrowers began to default on loans they were never qualified to receive in the first place.

A. Deutsche Bank's Relationships With Key Loan Originators And Other Major Players In The Securitization Of Loans Backing The RMBS Sold To the Irish SPVs

197. Deutsche Bank's key position in the principal securitization process as well as DBSP's and MortgageIT's role as an originator for many of the Deutsche Bank RMBS provides compelling evidence that Deutsche Bank was well aware of the true quality of the loans that it originated and securitized into RMBS and sold to the Irish SPVs.

198. Five of the Deutsche Bank RMBS Offerings sold to the Irish SPVs were backed by loans originated by Deutsche Bank's own lending arm, MortgageIT. As set forth in the USAO Complaint filed by the U.S. Attorney for the Southern District of New York, and as admitted by Defendants in the May 2012 settlement, Deutsche Bank and MortgageIT reaped millions of dollars in illicit profits by consistently failing to adhere to the strict underwriting standards and quality control measures required by the FHA.

199. Deutsche Bank was well aware of the quality concerns that pervaded the loans originated by MortgageIT. For example, when Deutsche Bank acquired MortgageIT in January 2007, MortgageIT was at the time embroiled in litigation with EMC concerning MortgageIT's alleged failure to repurchase loans experiencing early payment defaults, or "EPDs," in violation of MortgageIT's representations and warranties to EMC. Accordingly, Deutsche Bank was on notice that MortgageIT routinely issued loans to borrowers who were unable to make even the first several payments on their mortgage loans.

200. Indeed, MortgageIT became a central part of Deutsche Bank's residential mortgage business in Manhattan, with MortgageIT's former Chairman and Chief Executive Officer, Doug Naidus, ascending to Managing Director and the Head of Mortgage Origination within Deutsche Bank's RMBS group.

201. The USAO Complaint detailed the systemic failures by Deutsche Bank and MortgageIT to address widespread problems in underwriting and quality control. Deutsche Bank's upper management was aware, or should have been aware of the underwriting problems and dysfunctions in quality control at MortgageIT. Defendants admitted, acknowledged, and accepted in the May 2012 settlement that: "The Deutsche Bank defendants were in a position to know that the operations of MortgageIT did not conform fully to all of HUD-FHA's regulations, policies, and handbooks." Indeed, the USAO Complaint demonstrates that after Deutsche Bank acquired MortgageIT, the deficiencies in MortgageIT's quality control measures continued unabated and were, in fact, institutionalized and encouraged in the interests of increasing loan production. For example, as discussed above, MortgageIT tasked only ***one*** employee to audit its closed loans, a critical task to measure the efficacy of underwriting. By the end of 2007, Deutsche Bank had moved that single employee into production so that there was ***no*** quality control review of closed mortgage files. According to the USAO Complaint, as of February 2011, of the more than 39,000 mortgages for FHA endorsed by Deutsche Bank and MortgageIT, more than 12,500 of those mortgages (*i.e.*, approximately a third) defaulted. Of those, more than more than 3,100 defaulted within six months, more than 4,500 defaulted within a year, and more than 6,900 defaulted within two years of closing.

202. In addition to Deutsche Bank's activities as an originator, Deutsche Bank's role as a principal in the securitization process provides further evidence of Deutsche Bank's knowledge of the true quality of the loans underlying the Deutsche Bank RMBS purchased by

the Irish SPVs. Deutsche Bank's affiliate, ACE Securities, acted as the primary agent securitizing several of the securities purchased by the Irish SPVs. As revealed by the Senate Subcommittee's investigation into the causes of the financial crisis, ACE Securities was a Deutsche Bank affiliate exclusively devoted to acting as registrant, depositor, and issuer in connection with RMBS offerings underwritten by Deutsche Bank. The Senate Subcommittee expressed a particular interest in Deutsche Bank's relationship with ACE Securities, issuing an information request to Deutsche Bank for specific details regarding that relationship.

203. Through this relationship, Deutsche Bank had intimate knowledge and access to every aspect of the mortgage loan securitization process used to create the ACE Certificates that Deutsche Bank sold to the Irish SPVs, including: (i) the acquisition and selection of the loans in the pool; (ii) the creation of the securitization structure, including the segmentation of cash flows and risks into tranches; and (iii) the process of obtaining investment grade credit ratings for the certificates. Because of its central role in securitizing and selling the certificates, Deutsche Bank had exclusive access to information about the originators' defective underwriting practices and the highly risky nature of the loan pools – information that the Irish SPVs did not, and could not have, known.

204. As discussed below, due to this close relationship and intimate knowledge of the practices and quality of ACE Securities, Deutsche Bank senior executives described ACE Certificates as a "***bad name***" and "***generally horrible***."

B. Deutsche Bank's Due Diligence Identified Defects In the Loan Pools Deutsche Bank Purchased for Securitization

205. Deutsche Bank learned through its due diligence process that a substantial portion of the loans it securitized woefully failed to meet the stated underwriting standards of those originators, yet included those loans in RMBS sold to the Irish SPVs. In fact, Deutsche

Bank's due diligence process identified a pattern establishing that the loans Deutsche Bank purchased for securitization – including those included in the Deutsche Bank RMBS purchased by the Irish SPVs – failed to meet the originator's underwriting guidelines, had other deficiencies, and violated state and federal law.

206. As described in the transcripts of the FCIC's interview of Joseph Swartz, who served as a vice president of Deutsche Bank's due diligence department overseeing all of Deutsche Bank's residential mortgage business, Deutsche Bank relied heavily on Clayton Holdings to perform due diligence on the pools of loans that Deutsche Bank packaged into RMBS, including the securities purchased by the Irish SPVs. Deutsche Bank delegated this task to Clayton Holdings because, as the FCIC later pointed out, Deutsche Bank maintained only a small in-house due diligence department of five or less employees to scrutinize the billions of dollars in securities it underwrote. Notwithstanding its near-total reliance on Clayton's conclusions regarding the adequacy of the underwriting of the loans, Deutsche Bank rejected Clayton's credit due diligence findings as a matter of course.

207. During its review, Clayton would assign each loan a number – 1, 2 or 3 – to reflect Clayton's evaluation of the soundness of the loan. The numbering referred to three different levels, "1" being the best, where the loan met the originators' underwriting guidelines; "2" meaning that the loan violated some guidelines, but Clayton believed that the loan was acceptable based on other compensating factors; and a "3" being a rejection of the loan as being well outside of the underwriting guidelines or, as Swartz told the FCIC, "egregious enough" that Clayton flagged the loan as unacceptable. Swartz explained in his testimony before the FCIC that Deutsche Bank's internal due diligence team routinely rejected and re-designated the grades assigned by Clayton, explaining that "there would always be loans that we would waive"

Clayton's "3" grade and accept, regardless of the fact that the loan was well outside of the accepted guidelines.

208. In fact, as reflected in documents Clayton produced to the FCIC, over one-third of the Deutsche Bank-securitized loans sampled by Clayton during the height of the mortgage boom (from 2006 to mid-2007) constituted "egregious" loans that failed to meet the originator's underwriting guidelines. Moreover, the FCIC's report, based on Clayton trending reports, reveals that over this same period, Deutsche Bank overruled Clayton's findings and "waived" approximately ***50%*** of all such defective "exception" loans and securitized them into RMBS that were sold to investors like the Irish SPVs. Indeed, Deutsche Bank maintained this extraordinary "pass" rating notwithstanding the fact that, as Swartz observed, over time and particularly during the period in which the Irish SPVs purchased RMBS from Deutsche Bank, "you started seeing the level of issues growing and increasing and the severity increasing and growing as well." Deutsche Bank's 50% "waive in" rate of the loans Clayton had rejected for failing to meet originator's guidelines to the entire loan pools backing the Deutsche Bank RMBS reveals the extent to which Deutsche Bank ***knew*** the loans it had securitized were destined to fail.

209. Deutsche Bank was well aware of its stunning waiver rate. In an interview with the FCIC in September 2010, former Clayton President and Chief Operating Officer Keith Johnson testified regarding the information contemporaneously available to Deutsche Bank and other lenders regarding the due diligence performed by Clayton. According to Johnson, the same trending reports disclosed by the FCIC demonstrating Deutsche Bank's 50% waiver rate were made available to Deutsche Bank. Deutsche Bank was one of "four or five" clients who were debriefed on the results of Clayton's trending reports. According to Johnson, Michael

Commaroto, a Deutsche Bank Managing Director, was particularly unhappy that Clayton had produced the report demonstrating Deutsche Bank's abysmal record.

210. Although Deutsche Bank recognized that a large percentage of the sampled loans were graded unacceptable by Clayton, the remaining loans in the pool – which were not selected for review by Clayton – were purchased, packaged, and sold to investors like the Irish SPVs without further review. According to Swartz, the sample size of loans to be reviewed by Clayton was negotiated between the trader and the loan seller – neither of which had any incentive to increase the sample size because it could result in more loans being rejected from the pool. The traders were "very, very sensitive about sample size" and "they always wanted. . . to sample less." A sample size of 30% of the loans in pools sold by large originators like Fremont was considered "very good" by the due diligence group – leaving 70% unreviewed and packaged for sale.

211. As the FCIC Report concluded with regard to the Offering Materials for these RMBS:

> [M]any prospectuses indicated that the loans in the pool either met guidelines outright or had compensating factors, even though Clayton's records show that only a portion of the loans were sampled, and that of those that were sampled, a substantial percentage of Grade 3 loans were waived in. . . . ***[O]ne could reasonably expect [the untested loans] to have many of the same deficiencies, at the same rate, as the sampled loans***. Prospectuses for the ultimate investors in the mortgage-backed securities did not contain this information, or information on how few of the loans were reviewed, ***raising the question of whether the disclosures were materially misleading, in violation of the securities laws***.

FCIC Report at 167, 170.

212. Deutsche Bank's astounding 50% "waive in" rate, and the implications for the quality of the RMBS underwritten by Deutsche Bank, rendered materially false and misleading numerous statements in the Offering Materials relied upon by the Irish SPVs in purchasing the

Deutsche Bank RMBS. Each of the Deutsche Bank Offering Materials represented in sum or substance that the loans backing the Deutsche Bank RMBS were originated or acquired pursuant to the originators' stated underwriting guidelines and that exceptions to such underwriting guidelines would be granted on a case-by-case basis. Deutsche Bank knew, however, that these statements were materially false and misleading when made because, through its due diligence process, Deutsche Bank had determined that over one-third of the loans it sampled were exception loans that did not have compensating factors and, in fact, deliberately included over half of all such exception loans in the loan pools it securitized. Moreover, given that the loans actually reviewed by Clayton represented only a fraction of the loans Deutsche Bank actually purchased and securitized, Deutsche Bank either knew or recklessly disregarded the risk that a highly material number of the loans underlying the Deutsche Bank RMBS purchased by the Irish SPVs were not underwritten in compliance with the originator's guidelines.

213. Indeed, Deutsche Bank admittedly underreported in its prospectus supplements the delinquency rates of loans backing its securitizations, and similarly underreported the delinquency rates of loans in its static pool information (or historical loan performance data)—and continued to do so even after it had become aware of the issue. The accurate disclosure of delinquency rates is critical to investors such as the Irish SPVs because investors analyze delinquency rate information to deduce the investment risk of a particular securitization. Because Deutsche Bank misrepresented the delinquency rates for its RMBS, the delinquency rate information for certain Deutsche Bank RMBS were much higher, and the corresponding risks much greater, than represented to investors.

214. The Financial Industry Regulatory Authority ("FINRA") censured and fined DBSI $7.5 million arising out of DBSI's underreporting of delinquency rates in prospectus

supplements for six DBSI-underwritten RMBS worth approximately $2.2 billion at the time the securitization trust was created. *See* FINRA Letter of Acceptance, Waiver And Consent, No. 20080128087 (July 16, 2010) (the "Waiver And Consent"). In the Waiver and Consent, DBSI also settled FINRA charges that DBSI underreported the historical delinquency data for 16 DBSI-underwritten RMBS—even ***"[a]fter the Firm became aware that the static pool information underreported historical delinquency rates"*****—**including the DBALT 2007-AR1, DBALT 2007-BAR1 and DBALT 2007-AR2 Deutsche Bank RMBS purchased by the Irish SPVs at issue here. *See id.* The Irish SPVs expended over $196 million on these RMBS.

215. According to the Waiver and Consent, DBSI falsely represented to investors in prospectus supplements for DBSI-underwritten RMBS that DBSI calculated the delinquency figures pursuant to a methodology that considered loans to be delinquent "as soon as a payment is not received" by the mortgagee. In reality, however, DBSI- considered loans delinquent starting "***one month <u>after</u> the first such payment is missed*** by the mortgagee," and reported them this way in the relevant prospectus supplements (italics in original, underline added). As explained in the Waiver and Consent, had the delinquency rates been calculated as represented to investors in the relevant prospectus supplements, the delinquency rates of the loans would have been drastically higher.

216. According to the Waiver and Consent, in addition to falsely reporting information in the actual prospectus supplements for many of its securitizations, DBSI also referred investors to inaccurate static pool information on its Regulation AB website with regard to 16 of its 2007-vintage RMBS—including the DBALT 2007-AR1, DBALT 2007-BAR1 and DBALT 2007-AR2 Deutsche Bank RMBS purchased by the Irish SPVs at issue here—even after DBSI became

aware of the issue.[15] According to the Waiver and Consent, DBSI received an audit report in January 2007 that "indicated that four Servicers of certain securitizations underwritten by DBSI had been tracking delinquencies improperly, resulting in monthly reports that underreported delinquency rates." After confirming the underreporting of delinquency rate information, DBSI never ensured the delinquency data was updated and "continued to refer public investors through its prospectus materials to the inaccurate information." As of July 16, 2010, the date that the Waiver and Consent was accepted by FINRA, DBSI "has never corrected or disclosed the inaccurate delinquency calculations on its Reg AB website" for 16 DBSI-underwritten RMBS. As explained in the Waiver and Consent, "investors in these 16 subsequent RMBS securitizations were, and continue to be unaware that some of the static pool information published on the Reg AB website and referenced in the prospectus materials contains inaccurate historical data which underreported delinquencies."

217. According to the Waiver and Consent, because of DBSI's underreporting of the static pool information for many of its RMBS, "the fair market value, the yields on the certificates and the anticipated holding periods of each of those securitizations . . . could have been improperly evaluated by potential investors."

C. Deutsche Bank Gained Pointed Insight Into The True Quality Of The Loans Backing The Deutsche Bank RMBS Through Its Warehouse Lines Of Credit

218. Deutsche Bank also provided warehouse lines of credit to mortgage originators, including Countrywide. As of 2007, Deutsche Bank had warehouse lending commitments to subprime lenders totaling billions of dollars. Of course, before providing such funding,

[15] Regulation AB governs static pool reporting requirements and seeks to increase transparency of publicly issued asset-backed securities, such as RMBS. The information reported pursuant to Regulation AB is intended to assist investors in evaluating the investment risk of an asset-backed security by providing delinquency rate and other information.

Deutsche Bank became intimately familiar with the lending practices of these originators through extensive due diligence on their business operations.

219. Not only was Deutsche Bank able to profit off the interest it received on the billions of dollars in warehouse lending lines it provided, and collect fees for arranging such financing, it also became those originators' most valued customers.

220. According to notes of an interview published by the FCIC, former Clayton President Keith Johnson stated that investment banks like Deutsche Bank that extended warehouse lines of credit to mortgage originators in order to increase the amount of mortgage loans the investment banks could securitize and sell to investors, were particularly culpable in disregarding Clayton's findings and securitizing defective loans:

> For every hundred 3's that we found, forty were still purchased. Some firms would purchase way more (tended to be those that had warehouse lines related to them) and some would purchase way less. ***The ones with the warehouse lines had the highest.*** I think we actually talked to a law firm that was doing the prospectuses, and we said that they should disclose the due diligence, and they said that they spent 20 pages talking about the underwriting guidelines. I thought that the investors and the rating agencies would be interested in the exceptions.

Memorandum for the Record, Phone Interview with Keith Johnson, former President and COO of Clayton Holdings, (June 8, 2010).[16]

221. In a September 2, 2010 interview by FCIC investigators, Johnson offered the following hypothetical to FCIC staff member Bob Hinkley that highlights the conflict of interest that drove Deutsche Bank to waive in defective loans originated by those sellers to whom it provided warehouse lines of credit:

[16] *See also* FCIC Interview of Keith Johnson (Sept. 2, 2010) ("The one area that I think was probably abused and not disclosed correctly was the warehouse lines. So you know, I think our data would show that, you know, we saw bigger exceptions to any client that had warehouse lines.").

> [I]f Bob was originating for me as the client and I had a warehouse line to Bob, I think what happened is a conflict of interest. That if I put back [or 'kicked out'] loans to you, Bob[,] and you don't have the financial capability to honor those, then I'm kind of caught; right? If I – the present value of the pain, I'm going to take a loss on the warehouse line.
>
> And what I do think happened is that maybe those warehouse lines were extended and actually increased and I perhaps bought your production and I shouldn't have. That the quality wasn't—and I don't think any of the prospectuses disclosed the relationship between the warehouse lenders and the securitizers.

FCIC Interview of Keith Johnson (Sept. 2, 2010).

222. In sum, as a result of its close relationships with loan originators – as an affiliate, multibillion dollar lender, and multibillion dollar securitization partner – Deutsche Bank knew in granular detail the origination practices, underwriting guidelines, and the quality of the originated loans.

D. Deutsche Bank Knew The DTI Ratios Of The Loans Backing The Deutsche Bank RMBS Were Materially Understated In The Offering Materials

223. As represented in the Offering Materials, Deutsche Bank obligated itself to ensure that the subprime mortgage loans it purchased, securitized and sold to investors like the Irish SPVs were originated under appropriate underwriting standards. As an institution supervised directly or indirectly by a number of federal regulators that issued interagency federal guidance on subprime lending, Deutsche Bank was well aware of these standards and was duty bound to adhere to them.[17]

224. One critical metric that Deutsche Bank focused on in evaluating mortgage loans for purchase was the maximum debt-to-income ("DTIs") levels that it believed presented an acceptable credit risk. Deutsche Bank also considered the impact of certain loan features on a

[17] Indeed, entities responsible for the supervision of non-federally regulated institutions issued parallel statements incorporating substantially all of the relevant federal interagency guidelines.

borrower's DTI ratio, such as adjustable rate mortgages ("ARM") that had initial "teaser" rate periods that would reset at a higher rate. The vast majority of the mortgage loans backing the Deutsche Bank RMBS were adjustable rate mortgage loans. Because of increases in interest rates since those mortgage loans were made, mortgagees whose loans comprised the Deutsche Bank RMBS faced large payment increases once the initial two or three-year fixed "teaser" rate period ended. That was even more of a problem for interest-only borrowers who also faced higher monthly payments upon the expiration of the interest-only payment period, two to three years from origination, as they would, for the first time, also have to cover the fully-amortizing mortgage loan amount, not just interest.

225. To account for this risk, Deutsche Bank purportedly set limits on the DTI ratios it would accept, and considered borrowers with DTI ratios in excess of 50-55% to be unable to afford their loans. As reflected in a confidential Deutsche Bank presentation titled, "Shorting Home Equity Mezzanine Tranches," which was attached as an exhibit to the Senate Report (the "Shorting Report"),[18] Deutsche Bank represented that DTIs in excess of 50% leave "little [money] for the borrower to pay other expenses." Moreover, Deutsche Bank knew that, in accordance with federal guidance, this DTI ratio had to be calculated under "the fully indexed rate, assuming a fully amortizing repayment schedule."

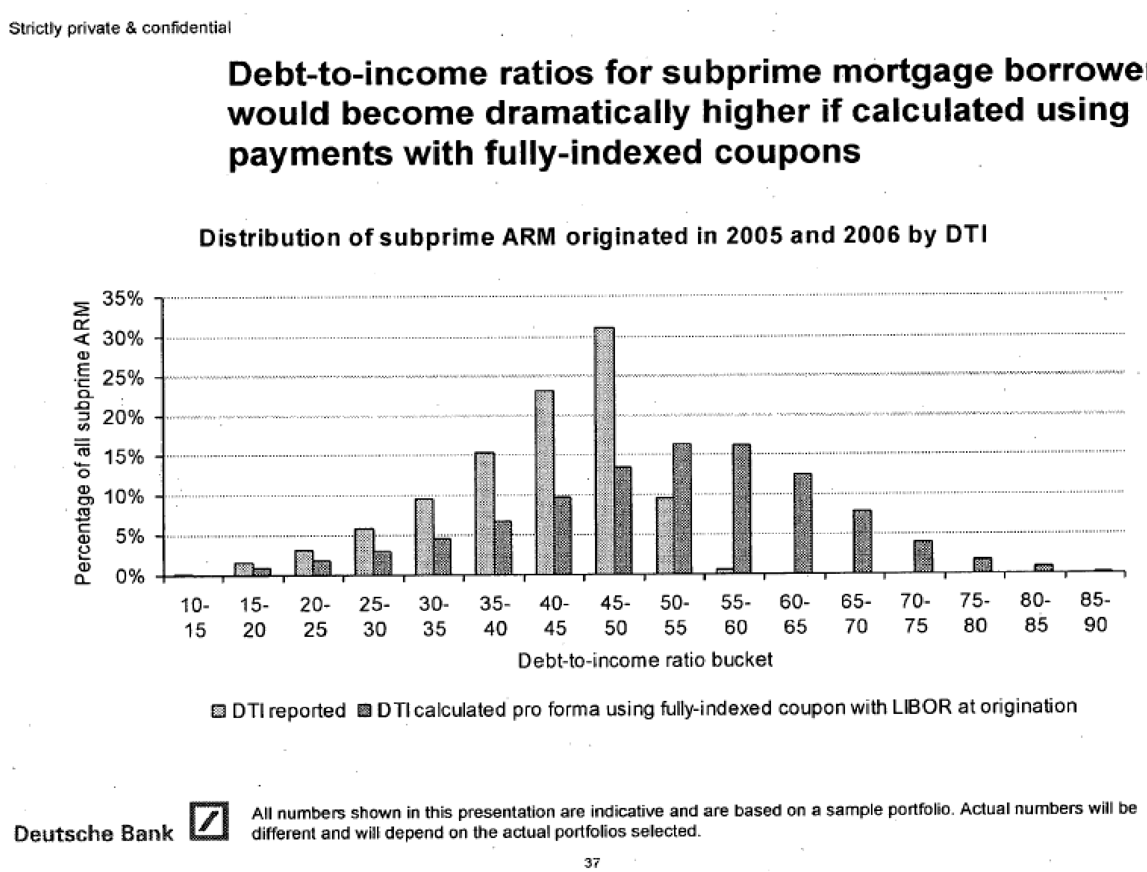
226. Contrary to its stated policy, however, Deutsche Bank routinely purchased and securitized ARM loans that had effective DTI ratios that were well over 50-55%. Each of the Deutsche Bank RMBS originators discussed above knowingly and routinely issued loans to borrowers based upon materially overstated incomes, especially in the case of stated income and "low-doc" loans. As such, because the borrowers' income was materially overstated, the DTI

[18] As noted in both the Senate Report and *The Big Short*, Deutsche Bank had prepared and begun using an earlier version of this presentation as early as September 2005.

ratios of the loans backing the Deutsche Bank RMBS were materially understated in the Offering Materials relied upon by the Irish SPVs.

227. Deutsche Bank knew that the DTI ratios of the loans backing the Deutsche Bank RMBS purchased by the Irish SPVs were materially understated. As stated in the Shorting Report, Deutsche Bank knew that a "[b]orrower's debt-to-income ratio may grow dramatically after resets in a typical subprime loan" and that "[w]ith a moderate growth assumption for the borrower's other debts, the borrower's total debt-to-income can grow to nearly 60% at the expiration of the [interest only] term."

228. In fact, the Shorting Report contained a chart based upon a sample portfolio illustrating the "dramatic" increase in the DTI ratios of loans should the DTI ratios have been calculated using the fully-indexed rate, as counseled by federal guidance:



229. As reflected in the chart above, substantially all of the DTIs reported under the initial teaser rate were below the critical 50-55% level that Deutsche Bank believed was the upper limit that borrowers could reasonably be expected to successfully repay the mortgage loan. As Deutsche Bank knew, however, by properly calculating borrowers' DTI ratios under the fully-indexed rate, a ***majority*** of the DTI ratios exceeded the crucial 50% metric—with a meaningful percentage of borrowers applying over 70% of their income to their mortgage debt—providing compelling evidence that such borrowers would be unable to repay the mortgage loan.

230. Deutsche Bank also knew that if the DTI ratios of the loans backing the Deutsche Bank RMBS were properly calculated pursuant to the fully-indexed rate, the borrower would be unable to realistically repay the mortgage loan. The Shorting Report reflects Deutsche Bank's knowledge that the payment shock to a borrower upon the interest rate reset would severely impair the borrowers' ability to repay the mortgage loan and would have devastating consequences on the value of the RMBS backed by those loans. According to the Shorting Report, ***"in the past, about 50% of the borrowers who did not refi at the payment reset would default eventually"*** (emphasis in original) and "[m]ost of losses in collateral happen between year 2 and year 4, especially after rate-adjustment induced payment shocks." The results for borrowers and RMBS investors such as the Irish SPVs would be even more ruinous if home prices stopped appreciating given that, as wagered by Deutsche Bank, "the borrower, with LTV virtually unchanged in the existing loan and likely credit card and other debts incurred in the meantime, may find it difficult to refinance into another affordable loan."

231. The scope of the harm to borrowers and to RMBS investors such as the Irish SPVs —as well as the benefit to Deutsche Bank in placing massive bets against CDOs containing or referencing the very same Deutsche Bank RMBS purchased by the Irish SPVs, and in collecting fees for arranging such bets for preferred clients—was clear. By understating the

DTI ratios, Deutsche Bank was able to obtain a higher price for the risky RMBS it sold to the Irish SPVs, and then profit from the inevitable collapse of those securities when borrowers' interest rates reset.

232. Contrary to the explicit representations in the Offering Materials relied on by the Irish SPVs, an astonishing percentage of the loans purchased by Deutsche Bank were dead on arrival and presumptively failed to comply with federal guidance and state laws requiring lenders to determine whether borrowers can repay mortgage loans according to their terms.[19] Given the importance of this metric, as well as the fact that the federal interagency guidelines—which, if not followed, could subject a noncompliant institution to adverse regulatory action—required that all loans be underwritten according to the borrowers' ability to repay the debt by final maturity at the fully indexed rate, such an omission could only have been intentional. Through Deutsche Bank's warehouse lines of credit with originators such as Countrywide, Deutsche Bank either knew, or recklessly disregarded, those lenders' unscrupulous qualification of borrowers based upon the initial teaser rate rather than the fully indexed rate.

E. Deutsche Bank Profited From Its Knowledge Of The Poor Quality Of The Loans It Securitized Through Its "CDO Machine"

233. Armed with the actual data confirming the poor quality of the loans underlying the RMBS it was arranging and promoting, Deutsche Bank's senior executives and traders formed an extremely negative view of these securities and devised a scheme to profit from their expected failure, while continuing to sell high-risk RMBS to the Irish SPVs and other investors. The Senate Report provides extensive detail of Deutsche Bank's internal views on the quality of the securities it was selling to investors like the Irish SPVs, as well as the results of Deutsche

[19] These improperly deflated DTI levels calculated under the initial teaser rate, and not the fully indexed rate, were also reproduced in loan tapes provided to investors such as the Irish SPVs.

Bank's practices. As detailed in the Senate Report, Deutsche Bank became one of the primary drivers of the subprime mortgage boom by creating, selling and trading complex structured finance investments—such as collateralized debt obligations ("CDOs") and credit default swaps ("CDSs")—whose values were based and dependent on the very RMBS the Irish SPVs and other investors purchased. Beginning as early as 2005, through its role as one of the primary participants in what its top trader termed the "CDO Machine," Deutsche Bank began shorting those same investments, betting that they – and the RMBS to which they were linked – would fail.

234. As explained in the Senate Report, in 2006 and 2007, Deutsche Bank's top CDO trader, Greg Lippmann, repeatedly warned his Deutsche Bank colleagues about the poor quality of the assets underlying many RMBS and CDO securities. Deutsche Bank senior management allowed Mr. Lippmann, beginning in 2005, to establish a large short position on behalf of the bank, essentially betting that mortgage related securities would fall in value. By the end of 2005, that short position stood at $1 billion; by 2007, Lippmann's short position had grown to over $10 billion.[20] According to an extensive report by Gregory Zuckerman in his book *The Greatest Trade Ever*, Deutsche Bank executives "told Lippmann to make sure to update them on how the trade was going, keeping the leash tight on the thirty-seven-year-old trader." According to Zuckerman, Lippmann discussed Deutsche Bank's billion-dollar short position directly with Rajeev Misra, who ultimately served as Global Head of Credit Trading, Securitization and Commodities at Deutsche Bank and as member of Deutsche Bank's Global Markets Executive Committee.

[20] Public reports have cited Deutsche Bank's short position as $5 billion and $10 billion. The full extent of Deutsche Bank's shorting of U.S. RMBS is known only to Defendants.

235. Mr. Lippmann's emails, released by the Senate Subcommittee, reveal his extremely negative views – which he repeated often and emphatically to his colleagues – regarding the poor quality of the RMBS shelves sold to the Irish SPVs and other investors. For example, these internal Deutsche Bank emails were consistently negative regarding the quality of "ACE" RMBS. In a May 2006 email, Lippmann termed them "***piece o crap***" securities and in a March 2007 email he bluntly stated "***ace is crap***." Lippmann also denigrated the entire Deutsche Bank-underwritten ACE shelf as a "***bad name***," and in another instance explained to a co-worker that the ACE deals were "***generally horrible***." In another instance, Lippmann agreed with a hedge fund client's assessment that Deutsche Bank "was one of the last ones to tighten standards on buying loans to securitize" and that the ACE deals, in particular, were ***"crap,"*** responding "INDEED . . . IT IS."

236. Other Deutsche Bank employees had an equally negative – and accurate – view of the securities issued pursuant to Deutsche Bank's DBALT shelf, as evidenced by the fact that when Deutsche Bank was unable to sell certain DBALT RMBS that it believed would perform poorly, it placed those RMBS into a CDO in order to get them off its own books. As explained by the Senate Report, by placing these securities into CDOs, "Deutsche Bank allowed [the CDO] to acquire a $10 million asset that its traders believed would perform poorly, and

effectively removed the financial risk of this asset from its own inventory, shifting it to its customers."[21]

237. Deutsche Bank encouraged its favored investors to adopt a strategy to short these securities. Deutsche Bank's shorting strategy – which it implemented on its own balance sheet and promoted to certain investors in order to profit from both sides of the RMBS transactions – was based on Deutsche Bank's proprietary knowledge of the true facts regarding the credit characteristics of the securitizations similar to those invested in by the Irish SPVs.

238. Lippmann criticized the true character of the loans issued by NovaStar. According to a *Wall Street Journal* article, one hedge fund manager wrote to Lippmann in early 2007 stating that "[NovaStar] is like the Plague." In response, Lippmann encouraged the hedge fund manager to bet against subprime bonds, telling the manager that "you should get some [courage] and do some shorts," because "these bonds are going much[,] much lower….." Deutsche Bank and Lippmann's negative views of the RMBS purchased by the Irish SPVs, and the amounts the Irish SPVs invested in those securities, are set forth in the chart below:

[21] Deutsche Bank's priority in minimizing its own exposure to RMBS it expected would perform poorly—even if that meant concealing the true quality from investors—was illustrated in numerous examples described in the Senate Report. For example, the Senate Report quotes a June 2007 email from a Deutsche Bank employee to Lippmann regarding one of five START CDOs that were underwritten by Deutsche Bank. The START CDOs had been created on behalf of a hedge fund investor who wished to "short" the U.S. housing market, even though other START CDO investors had bullish positions on the RMBS referenced by the CDO. According to the employee, if they were unable to sell the CDO securities Deutsche Bank had unwritten, they could create another CDO that would purchase those assets: "This along with our remaining held inventory if we can't sell away we repack into a CDO 2 balance sheet dump later this summer. Worst case we hold it but it is probably the lesser of two evils (the greater evil being our held START position)." In this example, the "greater evil" was for Deutsche Bank to retain the unwanted, high-risk assets—not deceiving investors of their quality. In another example, Lippmann was hesitant to purchase a particular CDO security because, he said, it "rarely trades," but nevertheless agreed to "take it and dupe someone" into buying it.

Shelf/RMBS	Lippmann's and Deutsche Bank's Undisclosed Negative Views	The Irish SPVs' Investment
ACE Shelf	Lippmann wrote to Deutsche Bank colleague, Rocky Kurita, "We traded that ACE piece of crap with Ike at 380." An email from Lippmann regarding the ACE "shelf"—a series of RMBS created by and associated with Deutsche Bank—states that "ace is generally horrible." In response to a client email to Lippmann in March 2007 stating that "[Y]ou were right - ACE is crap," Lippmann responded that: "INDEED … IT IS."	$81,229,000

239. As noted in the Senate Report, an early version of Lippmann's Shorting Report, dated September 2005, described to select investors a strategy of shorting (i.e., betting against) residential mortgage loans—a Deutsche Bank "strategy to cash in on a slowing housing market" by "shorting (or buying protection on)" certain securities. In this "[s]trictly private and confidential" presentation, Deutsche Bank explained that "[i]t is increasingly evident that the housing boom in the past 10 years has come to its end." According to Deutsche Bank, these expected losses in the housing market represented investment opportunities.

240. In later versions of the "Shorting Report," Deutsche Bank specifically pointed out the dangers of "[s]tated-income mortgage loans," whereby the "[i]ncome of the borrowers is not substantiated by the documentation, nor is it verified." In particular, Deutsche Bank noted that "[b]orrowers may inflate income to get loan approved." Thus, Deutsche Bank was on full notice that borrower misrepresentations were a significant concern, and this was further validated by the due diligence performed by Clayton, discussed above. Yet, despite its own knowledge and the evidence provided by third party firms, Deutsche Bank not only continued to include these flawed loans in its securitizations but devised an investment strategy to profit from its own fraud.

241. According to internal emails, Lippmann and the traders in his department knew disclosure of those efforts would severely undermine Deutsche Bank's "new issue" business responsible for securitizing and selling RMBS and CDOs to clients. As one of Lippmann's top traders, Rocky Kurita, explained: "[W]e have to make money. Customer happiness is a secondary goal but we cannot lose sight of the trading desk[']s other role of supporting new issue and the customer franchise"—*i.e.*, ensuring that Deutsche Bank was able to sell its RMBS and CDO securitizations to investors. Lippmann pleaded with his outside hedge fund clients who were "short" the RMBS Deutsche Bank was selling to keep his strategy a secret. In one email to a hedge fund client that was interested in "shorting" various RMBS, Lippmann explained that he did not want to scare investors or CDO managers away from purchasing RMBS issued by Deutsche Bank, requesting that "[P]lease please do not forward these emails outside of your firm. . . . I do not want to be blamed by the new issue people [at Deutsche Bank] for destroying their business." Accordingly, while Deutsche Bank was able to soften the impact of the economic crisis on its own financial condition by relying on Lippmann's massive short position, investors like the Irish SPVs were left holding millions of dollars in worthless securities.

VIII. DEUTSCHE BANK KNEW THE CREDIT RATINGS ASSIGNED TO THE DEUTSCHE BANK RMBS MATERIALLY MISREPRESENTED THE CREDIT QUALITY OF THE RMBS

242. To bring its RMBS to market, Deutsche Bank knew that it needed to obtain the highest "investment grade" ratings possible from the credit rating agencies ("CRAs")—Moody's, S&P and Fitch—that rated Deutsche Bank's securitizations. Indeed, Deutsche Bank featured the ratings prominently in the Offering Materials and discussed at length the ratings received by the different tranches of the RMBS, and the bases for the ratings. Yet, Deutsche Bank knew that the ratings were not reliable because those ratings were bought and paid for, and were supported by, false information that Deutsche Bank provided.

243. The ratings the CRAs assigned to the RMBS were a crucial factor in the Irish SPVs' decision to purchase the Deutsche Bank RMBS given the regulations governing the Irish SPVs' business. "Investment grade" products are understood in the marketplace to be stable, secure and safe. Using S&P's scale, "investment grade" ratings are AAA, AA, A and BBB, and represent, high credit quality (AAA), upper-medium credit quality (AA and A) and medium credit quality (BBB). Any instrument rated below BBB is considered below investment grade or "junk bond."

244. Each prospectus supplement for the Deutsche Bank RMBS the Irish SPVs purchased states that the issuance of each tranche of the RMBS was conditioned on the assignment of particular investment-grade ratings, and listed the ratings in a chart. All of the RMBS purchased by the Irish SPVs were AAA-rated tranches. The AAA rating denotes "high credit-quality," and is the same rating as those typically assigned to bonds backed by the full faith and credit of the United States Government, such as Treasury Bills. Indeed, Deutsche Bank represented in the prospectus supplements relied on by the Irish SPVs that:

> It is a condition to the issuance of the certificates that the Offered Certificates receive at least the following ratings from Standard & Poor's Ratings Service, a division of the McGraw-Hill Companies, Inc. ("S&P") and Moody's Investors Service, Inc. ("Moody's"):

Offered Certificates	S&P	Moody's
Class A-1	AAA	Aaa
Class A-2A	AAA	Aaa
Class A-2B	AAA	Aaa
Class A-2C	AAA	Aaa
Class A-2D	AAA	Aaa
Class M-1	AA+	Aa1
Class M-2	AA	Aa2
Class M-3	AA-	Aa3
Class M-4	A+	A1
Class M-5	A	A2
Class M-6	A-	A3
Class M-7	BBB+	Baa1
Class M-8	BBB	Baa2
Class M-9	BBB	Baa3
Class M-10	BBB	Ba1
Class M-11	BBB	Ba2

245. The above statements (and the substantially similar statements appearing in all of the Deutsche Bank RMBS Offering Materials) regarding the ratings assigned to the Deutsche Bank RMBS, as well as the ratings themselves, were materially false and misleading when made because Deutsche Bank touted these ratings while knowing that those ratings were based on the misleading information Deutsche Bank provided to the CRAs, and on Deutsche Bank's manipulation of the rating process.

246. Until recently, the CRAs were considered conservative institutions that provided independent opinions on the credit risk of corporations to a paying subscribership. In 1975, the SEC granted certain credit rating agencies—including Moody's, S&P and Fitch—Nationally Recognized Statistical Rating Organization ("NRSRO") status. In so doing, the SEC noted that "[t]he single most important factor in the Commission staff's assessment of NRSRO status is whether the rating agency is 'nationally recognized' in the United States as an issuer of credible and reliable ratings by the predominant users of securities ratings."[22]

247. A CRA's credibility, according to the SEC, was dependent on a number of factors, including whether the CRA "is able to operate independently of economic pressures or control from the companies it rates." Historically, before 2007, investments with AAA ratings had an expected cumulative loss rate of less than 0.5 percent, with an annual loss rate of close to nil. According to S&P, the default rate on all investment grade corporate bonds (including AA, A and BBB) from 1981 to 2007, for example, averaged about .094% per year with no year higher than 0.41%.

248. However, the CRAs' business model became stagnant, which prompted a change from the traditional subscriber fee-based business to one that derived revenue largely from the

[22] Report on the Role and Function of Credit Rating Agencies in the Operation of the Securities Markets, U.S. Securities and Exchange Commission, January 2003.

issuers of the securities the CRAs rated. As described by the Permanent Subcommittee on Investigations, "[i]n th[e issuer-pays] model, the party seeking to issue a financial instrument, such as a bond or security, pays the credit rating agency to analyze the credit risk and assign a credit rating to the financial instrument." However, the pressure from issuers to obtain a certain rating, and the CRAs dependency on fees from issuers created a naturally conflicted relationship that has called both the independence of the CRAs and the reliability of their ratings into question. The FCIC concluded that the "rating agencies felt pressured to give favorable ratings so that they might remain competitive."

249. Ratings were particularly important to investors with respect to structured products in the subprime area. Deutsche Bank recognized the importance of ratings to investors, as reflected by a 2006 email, which stated that "a CDO without a triple-A rated senior tranche would be unmarketable."

250. From 2004 to 2007, Moody's and S&P – two CRAs that were regularly employed by Deutsche Bank and rated all of the Deutsche Bank RMBS at issue here – produced a record number of ratings and revenues for rating structured finance products. Indeed, during that timeframe, Moody's issued over 4,000 RMBS ratings and over 870 CDO ratings, while S&P issued more than 5,500 RMBS ratings and more than 835 CDO ratings. To obtain an RMBS or CDO rating at the height of the market, CRAs charged issuers a fee ranging from $50,000 to more than $1 million.[23] The CRAs also charged an additional surveillance fee per RMBS or CDO ranging from $35,000 to $50,000. As a result, Moody's reported an increase its gross revenues for RMBS and CDO ratings from approximately $61 million in 2002 to over $208 million in 2006. Similarly, S&P's net annual revenues nearly doubled from $517 million

[23] Memorandum from Permanent Subcommittee on Investigations Chairman Carl Levin and Ranking Minority Member Tom Coburn to the Members of the Subcommittee.

in 2002, to $1.16 billion in 2007, with the structured finance group's revenues tripling from $184 million in 2002 to $561 million in 2007.

251. Indeed, CRAs were heavily involved in both the creation and marketing of RMBS, including the Deutsche Bank RMBS purchased by the Irish SPVs. Although CRAs earned massive profits from rating RMBS, those ratings were heavily influenced by the investment banks that hired them. CRAs undermined their own ratings because they were dependent upon investment banks to generate business, and were vulnerable to the threat that those banks would take their business elsewhere.

252. Issuers began to leverage their ability to shop for ratings as a method of securing investment grade ratings to sell to investors. As reported by Moody's Chief Credit Officer Andy Kimball in a hearing before the U.S. Senate Permanent Subcommittee on Investigations, the practice of "ratings shopping"—or choosing the ratings agency that offered the highest ratings—became prevalent during the mortgage boom. At an internal company Town Hall Meeting for Moody's employees, Raymond W. McDaniel, Moody's Chairman and CEO, said that: "[w]hat happened in '04 and '05 with respect to subordinated tranches is that our competition, Fitch and S&P, went nuts. Everything was investment grade. It didn't really matter."

253. Because rating RMBS was such a profitable business for CRAs, "keeping the customer satisfied" was of primary importance. In an article published in *The Wall Street Journal* on April 11, 2008, another former Moody's employee described the circumstances as "'a palpable erosion of institutional support for rating analysis that threatened market share.'" According to the article, "Moody's agreed to switch analysts on deals after bankers complained" so as to prevent the loss of market share. The pressure felt by CRAs was acknowledged by Moody's Chairman and CEO Raymond W. McDaniel who remarked in an

interview that "[e]verybody always seeks to pressure us. Anyone with a position in the credit markets will hope that the credit-rating agencies agree with its opinion. It's a conflict of interest question. We can't avoid conflicts of interest."

254. Furthermore, as outlined in a 2008 SEC Report titled, "Summary Report of Issues Identified in the Commission Staff's Examinations of Select Credit Rating Agencies" ("Summary Report"), RMBS issuers such as Deutsche Bank and the credit rating agencies worked together so that securities would receive the highest ratings:

> [T]ypically, if the analyst concludes that the capital structure of the RMBS does not support the desired ratings, this preliminary conclusion would be conveyed to the arranger. The arranger could accept that determination and have the trust issue the securities with the proposed capital structure and the lower rating or adjust the structure to provide the requisite credit enhancement for the senior tranche to get the desired highest rating. Generally, arrangers aim for the largest possible senior tranche, i.e., to provide the least amount of credit enhancement possible, since the senior tranche -- as the highest rated tranche -- pays the lowest coupon rate of the RMBS' tranches and, therefore, costs the arranger the least to fund.

255. As a result of this collaboration with the credit rating agencies, Deutsche Bank was able to manipulate the system to achieve inflated ratings. Through repeated interactions with the CRAs, Deutsche Bank could effectively reverse engineer aspects of the ratings models and then modify the structure of a financing to improve its ratings without actually improving its credit quality.

256. The credit ratings of the RMBS were further compromised by misinformation provided by Deutsche Bank regarding the abandonment of the originators' underwriting standards, rampant use of aggressive exceptions, Deutsche Bank's knowledge of pervasive fraud in the stated income loan programs, and the inflated appraisals assigned to the underlying collateral, as described above. The Defendants knew that the AAA and other investment grade

ratings assigned to the RMBS were false because the originators did not follow their own underwriting standards and, as such, no reliable estimate could be made concerning the level of enhancement necessary to ensure that the top tranches purchased by the Irish SPVs were of AAA quality. By including and endorsing these AAA ratings in the Offering Materials, Deutsche Bank was making a false representation that it actually believed that the AAA ratings were an accurate reflection of the credit quality of the RMBS.

257. A February 2007 version of the Shorting Report—the presentation that Deutsche Bank used to solicit preferred clients to take its "short" bets against U.S. RMBS as discussed above—supports the Irish SPVs' allegations that Defendants knew the ratings did not accurately reflect loan level information that Deutsche Bank was privy to. In the Shorting Report, Deutsche Bank explained that the CRA models for "subprime mortgage lending criteria and bond subordination levels are based largely on performance experience that was mostly accumulated since the mid-1990s, when the nation's housing market has been booming." In other words, this internal Deutsche Bank report mirrored the conclusions of the Senate Report that the CRAs' flawed models "operated with subprime data for mortgages that had not been exposed to stagnant or falling housing prices." Indeed, the head of Deutsche Bank's due diligence department, Joseph Swartz, admitted before the FCIC that Deutsche Bank had no idea how many of the new loan products it purchased and securitized, such as stated income loans, would perform:

> So, again, these were new products to me and very foreign and most people didn't really understand, even though they claim they may have, very difficult to understand how these products were going to perform because it was really new territory where we were providing hundred percent financing to so many Americans out there that had never owned a home before.

258. Defendants knew that even after the CRA's updated their RMBS model in 2006, existing RMBS securities were not re-reviewed, despite the increasing number of subprime and

Alt-A loans in Deutsche Bank's securitization pipeline, Deutsche Bank's increased tolerance for higher LTV ratios, increased "limited documentation" and "no documentation," and the rampant appraisal fraud that increased property values on Deutsche Bank loans used in securitizations.

259. Indeed, Greg Lippmann testified before the Senate Subcommittee that the CRAs' "decision not to retest existing securities was ridiculous." When asked about the failure of Moody's and S&P to retest existing securities after their model updates in 2006, Lippmann believed the credit rating agencies did not retest because to do so would have meant significant downgrades and "they did not want to upset the apple cart." Lippmann also stated that he was aware of the unusually high number of RMBS and CDO securities rated AAA, and did not believe the ratings were correct. However, Lippmann also said that "most people believed in the ratings," according to the Senate Report, and knew that investors—such as the Irish SPVs and the "stupid Germans" that Deutsche Bank convinced to take the long side of its CDS bets—took the rating agencies seriously and believed in the rules.

260. Deutsche Bank also pressured the CRAs to deliver ratings in time frames that did not allow for proper due diligence. Deutsche Bank used the short deadlines as part of a "ratings shopping" strategy that pressured CRAs to assign the ratings Deutsche Bank requested or face losing a client for the next RMBS offering. A March 2007 email from a Moody's analyst detailed the response from Deutsche Bank to Moody's suggested changes to the deal: "[Deutsche Bank] pushing back dearly saying that the deal has been marketed already and that we came back 'too late' with this discovery.… She claims it's hard for them to change the structure at this point." In another instance, Lippmann advised a trader at Mast Capital that the "[o]nly reasons I can think for my guys showing you a tighter level is that we are very short this one and that the June 06 deals have a taint that earlier months don[']t due to the theory that late June deals were crammed with bad stuff ***in order to beat the S&P [model] revisions***."

261. Subsequent downgrades confirm that the investment grade ratings reported in the Offering Materials were unjustifiably high and misstated the true credit risk of the RMBS purchased by the Irish SPVs. Every RMBS purchased by the Irish SPVs was initially awarded a triple-A rating—nearly all have since been downgraded to junk by at least one CRA. The *en masse* downgrade of AAA-rated RMBS indicates that the ratings set forth in the Offering Materials were false, unreliable and inflated.

IX. DEUTSCHE BANK MISREPRESENTED THAT TITLE TO THE UNDERLYING LOANS WAS EFFECTIVELY TRANSFERRED

262. An essential aspect of the mortgage securitization process is that the issuing trust for each RMBS offering must obtain good title to the mortgage loans comprising the pool for that offering. This is necessary in order for the Irish SPVs and other certificate holders to be legally entitled to enforce the mortgage and foreclose in case of default. Two documents relating to each mortgage loan must be validly transferred to the trust as part of the securitization process – a promissory note and a security instrument (either a mortgage or a deed of trust).

263. The rules for these transfers are governed by the law of the state where the property is located, by the terms of the pooling and servicing agreement ("PSA") for each securitization, and by the law governing the issuing trust (with respect to matters of trust law). Generally, state laws and the PSAs require the promissory note and security instrument to be transferred by indorsement, in the same way that a check can be transferred by indorsement, or by sale. In addition, state laws generally require that the trustee have physical possession of the original, manually signed note in order for the loan to be enforceable by the trustee against the borrower in case of default.

264. In order to preserve the bankruptcy-remote status of the issuing trusts in RMBS transactions, the notes and security instruments are generally not transferred directly from the

mortgage loan originator to the trust. Rather, the notes and security instruments are generally initially transferred from the originator (*e.g.*, Countrywide) to the depositor (*e.g.*, Deutsche Alt-A Securities, Inc.), either directly or via one or more special-purpose entities established by Deutsche Bank. After this initial transfer to the depositor, the depositor transfers the notes and security interests to the issuing trust for the particular securitization. Each of these transfers must be valid under applicable state law in order for the trust to have good title to the mortgage loans.

265. As set forth in the PSA, the trustee of the RMBS must ensure that the transfers of the note and the security instrument are proper and that all required mortgage documentation is present and complete. Deutsche Bank is one of the most prolific trustees of RMBS.

266. In addition, the PSA generally requires the transfers of the mortgage loans to the trust to be completed within a strict time limit after formation of the trust in order to ensure that the trust qualifies as a tax-free real estate mortgage investment conduit ("REMIC").

267. The applicable state trust law generally requires strict compliance with the trust documents, including the PSA, so that failure to strictly comply with the timeliness, indorsement, physical delivery, and other requirements of the PSA with respect to the transfers of the notes and security instruments means that the transfers would be void and the trust would not have good title to the mortgage loans.

268. To this end, the prospectus supplements for the Deutsche Bank RMBS relied upon by the Irish SPVs stated, in identical or substantially similar language, that:

> ***On the Closing Date, the Depositor will transfer to the trust all of its right, title and interest in and to each Mortgage Loan, the related mortgage note, mortgage, assignment of mortgage in recordable form to the trustee and other related documents*** (collectively, the "Related Documents"), including all scheduled payments with respect to each such Mortgage Loan due after the applicable Cut-off date. The Trustee, concurrently with such transfer, will deliver the certificates to the Depositor. Each Mortgage Loan transferred to the trust will be identified on a

> schedule (the "Mortgage Loan Schedule") delivered to the Trustee and the Servicer pursuant to the Pooling and Servicing Agreement.
>
> *   *   *
>
> ***The Pooling and Servicing Agreement will require that, prior to the Closing Date, the Depositor will deliver or cause to be delivered to the Trustee (or the applicable Custodian, as the Trustee's agent for such purpose) the mortgage notes endorsed in blank and the Related Documents.*** In lieu of delivery of original mortgages or mortgage notes, if such original is not available or lost, the Depositor may deliver or cause to be delivered true and correct copies thereof, or, with respect to a lost mortgage note, a lost note affidavit.

269. These statements were materially false and misleading when made. Rather than ensure legally effective transfer and assignment of the promissory note and security interest (mortgage), Deutsche Bank routinely failed to do so. This failure was driven by Deutsche Bank's desire to complete securitizations as fast as possible and maximize the fees it would earn on the deals it closed. Because ensuring the proper transfer of the promissory note and mortgage hindered Deutsche Bank's securitization process, Deutsche Bank chose to disregard the law.

270. The failure of Deutsche Bank to ensure proper transfer of the note and the mortgage to the trust at closing has already resulted in harm to securitizations underwritten by Deutsche Bank. Indeed, internal documents created by Deutsche Bank—which served as trustee for six of the Deutsche Bank RMBS purchased by the Irish SPVs—describe Deutsche Bank's difficulties with the dramatic increase in foreclosure proceedings nationwide and the corresponding rise in the filing of defective mortgage documents, showing that Deutsche Bank ***knew*** that loan documents had not been properly transferred to the trust. For example, a series of Deutsche Bank Trust memoranda to RMBS servicers beginning in August 2007 detail increasing concerns that "good housekeeping" measures were not being followed to establish the RMBS trust's ownership of the mortgage loans, warning servicers to "take care…not to confuse the

record regarding the time at which securitization trusts actually first obtain legally enforceable rights in the mortgage loans."

271. Deutsche Bank, in connection with its role as one of the largest trustees of RMBS, is currently being probed by the Attorneys General of New York and Delaware to discern whether the mortgage documentation for the loans backing the RMBS for which Deutsche Bank served as trustee were properly completed and transferred. Meanwhile, State Attorneys General from 50 states are investigating foreclosure practices after discovering that mortgage servicers used faulty or falsified paperwork to improperly seize homes from borrowers.

272. Facts disclosed in recent news reports and uncovered through government investigations and home owner foreclosure litigation over Deutsche Bank's securitizations confirm widespread problems with Deutsche Bank's and other loan securitizers' failure to ensure proper transfer of the required mortgage documentation, and highlight the damage that failure has caused to the Irish SPVs' Deutsche Bank RMBS investments. In an interview on *60 Minutes*, Lynn Szymoniak, a lawyer and fraud investigator who has uncovered instances in which banks appeared to have manufactured mortgage documentation, explained the issue as follows:

> When you could make a whole lotta money through securitization. And every other aspect of it could be done electronically, you know, key strokes. This was the only piece where somebody was supposed to actually go get documents, transfer the documents from one entity to the other. And it looks very much like they just eliminated that stuff all together.

273. As part of its exposé, *60 Minutes* interviewed Chris Pendley, a temporary employee of Docx who was paid $10 per hour to sign the name "Linda Green" who, on paper, purportedly served as a vice president of at least 20 different banks at one time, to thousands of mortgage documents that were later used in foreclosure actions. Pendley said he and other

employees of Docx were expected to sign at least 350 documents per hour using the names of other individuals on documents used to establish valid title. Asked if he understood what these documents were, Pendley said, “Not really,” and explained that he signed documents as a “vice president” of five to six different banks per day. Purported assignments bearing the signature of “Linda Green” were used to transfer mortgages from major originators to Deutsche Bank, which served as trustee for six of the Deutsche Bank RMBS in which the Irish SPVs invested.

274. Further illustrating the falsity of Deutsche Bank’s representations in the Deutsche Bank RMBS prospectus supplements regarding proper transfer of the mortgage documents to the issuing trust is Lynn Szymoniak’s letter to the Securities and Exchange Commission (the “SEC Letter”) detailing the fraudulent alteration and manufacture of mortgage documents by employees of Lender Processing Services, Inc. (“LPS”). LPS is a mortgage default company located in Jacksonville, Florida that, according to Szymoniak, “produced several million Mortgage Assignments, using its own employees to sign as if they were officers of the original lenders.” Szymoniak observed instances of mortgage assignments prepared by LPS employees that contained forged signatures, signatures of individuals as corporate officers on behalf of a corporation that never employed the individuals in any such capacity, and signatures of individuals as corporate officers on behalf of mortgage companies that had been dissolved by bankruptcy years prior to the assignment, among other things.

275. The need to fabricate or fraudulently alter mortgage assignment documentation provides compelling evidence that in many cases, title to mortgages backing the Deutsche Bank RMBS purchased by the Irish SPVs were never properly transferred. Indeed, the fabrication of the mortgage assignments appears intended to conceal the actual date that the interest in the property was acquired by the RMBS trust. The fraudulent assignments uncovered in foreclosure litigation often show that the assignments were prepared and filed in 2008 and 2009, when, in

reality, the mortgages and notes were intended to be assigned—albeit defectively—prior to the closing date of the trust, as stated in the Offering Materials relied on by the Irish SPVs.

276. For example, Cheryl Samons, an office manager for the Law Office of David J. Stern, a "foreclosure mill" under investigation by the Florida Attorney General for mortgage foreclosure fraud which was forced to shut down in March 2011, signed tens of thousands of documents purporting to establish mortgages assignments, including assignments for Deutsche Bank National Trust Co. and HSBC Bank as trustees for trusts that closed in 2005 and 2006 purporting to establish the transfer of thousands of mortgages in 2008, 2009 and 2010 from Mortgage Electronic Registration Services, an electronic registry system that was intended to eliminate the need to file assignments in the county land records. In depositions in foreclosure actions, Samons has admitted that she had no personal knowledge of the facts recited on the mortgage assignments that were used in foreclosure actions to recover the properties underlying the mortgages backing RMBS. *See, e.g.*, Deposition of Cheryl Samons, *Deutsche Bank Nat'l Trust Co., as Trustee for Morgan Stanley ABS Capital 1 Inc. Trust 2006-HE4 v. Pierre*, No. 50-2008-CA-028558-XXXX-MB (15th Judicial Circuit, Florida, May 20, 2009). HSBC Bank and Deutsche Bank National Trust Co. served as trustee for all but one of the Deutsche Bank RMBS purchased by the Irish SPVs.

277. HSBC, which served as trustee in 14 of the 19 Deutsche Bank RMBS purchased by the Irish SPVs, has been similarly plagued by defective assignments and transfers of mortgage documents. According to HSBC's annual report for the year ended 2010 filed with the SEC, HSBC suspended its U.S. foreclosures following a joint examination by the Federal Reserve and the OCC after the regulators issued supervisory letters to HSBC that noted, according to HSBC's annual report, "certain deficiencies in the processing, preparation and signing of affidavits and other documents supporting foreclosures and in governance of resources

devoted to our foreclosure processes, including the evaluation and monitoring of third party law firms retained to effect our foreclosures."

278. Further confirming the endemic problems of defective assignments in the Deutsche Bank RMBS, servicers that act on behalf of trustees such as Deutsche Bank and HSBC have also been unable to properly foreclose on mortgaged properties serve as collateral for the Irish SPVs' RMBS investments. For example, sworn deposition testimony from a longtime Countrywide employee regarding Countrywide-originated loans demonstrates that Countrywide systematically failed to properly transfer or assign the mortgage documents to the trustee. In *Kemp v. Countrywide Home Loans, Inc., et al.*¸ Bankr. No. 08-18700 (D.N.J.), Linda DeMartini, a ten-year employee of Countrywide's servicing division, testified that not delivering the original note to the trustee was standard Countrywide practice, stating that the "normal course of business would include retaining the documents" and that Countrywide "transferred the rights…not the physical documents." Based on this testimony, Chief Bankruptcy Judge Judith Wizmur held that the fact that the issuing trustee "never had possession of the note is fatal to its enforcement" and, thus, that the trustee could not enforce the mortgage loan. *Kemp v. Countrywide Home Loans, Inc.*, No. 08-18700-JHW, Slip Op., at *10-11 (Bkrtcy. D.N.J. Nov. 16, 2010). Judge Wizmur further held that Countrywide Servicing also could not enforce the mortgage loan, because as an agent for the owner of the note, Countrywide Servicing had no more authority to enforce the note than its principal, the issuing trust. *Id.* at *21. Countrywide Servicing acted as a servicer of the loans backing eleven of the RMBS purchased by the Irish SPVs.

X. DEFENDANTS' FALSE AND MISLEADING MISSTATEMENTS AND OMISSIONS OF MATERIAL FACT IN THE OFFERING DOCUMENTS

279. As set forth below, the Offering Materials the Irish SPVs relied upon in purchasing the Deutsche Bank RMBS contained numerous misrepresentations of material fact, or

omitted to state material facts necessary to make the statements therein not misleading, regarding: (i) the originators' underwriting practices and guidelines by which the loans were originated, including the prevalence and type of exceptions to those guidelines being applied to the underlying loans, and the rampant fraud in stated income loans; (ii) the value of the underlying property securing the loans, in terms of LTV and CLTV ratios and the appraisal standards by which such mortgaged properties were measured; (iii) the due diligence that Deutsche Bank conducted on the loan sellers and the mortgage loans backing the RMBS which identified pervasive defects in the loans underlying the securitizations; (iv) the credit ratings assigned to the RMBS; (v) the valid assignment and transfer of the mortgage loans to the issuing trusts; and (vi) the true risks of the RMBS.

A. The Offering Materials Misrepresented The Originators' And DBSP's Underwriting Guidelines

280. The originators discussed above in ¶¶78-193 originated the mortgage loans that backed the RMBS purchased by the Irish SPVs. The Offering Materials for the RMBS all contained materially similar statements of material fact regarding the originators' underwriting guidelines and practices. For example, the DBALT 2007-AR2 prospectus supplement stated that:

> MortgageIT offers a wide variety of mortgage loan products pursuant to various mortgage loan origination programs. The following generally describes MortgageIT's underwriting guidelines with respect to mortgage loans originated pursuant to its "prime" underwriting standards for mortgage loans with non-conforming balances and its Alt-A" underwriting guidelines for mortgage loans with conforming and non-conforming balances.
>
> * * *
>
> MortgageIT obtains a credit report that summarizes each borrower's credit history. The credit report contains information from the three major credit repositories, Equifax, Experian and TransUnion. These companies have developed scoring models to

> identify the comparative risk of delinquency among applicants based on characteristics within the applicant's credit report. A borrower's credit score represents a comprehensive view of the borrower's credit history risk factors and is indicative of whether a borrower is likely to default on a loan. Some of the factors used to calculate credit scores are a borrower's incidents of previous delinquency, the number of credit accounts a borrower has, the amount of available credit that a borrower has utilized, the source of a borrower's existing credit, and recent attempts by a borrower to obtain additional credit. Applicants who have higher credit scores will, as a group, have fewer defaults than those who have lower credit scores. The minimum credit score allowed by MortgageIT loan guidelines for non-conforming loans is 620 and the average is typically over 700. For MortgageIT Alt-A products, the minimum credit score is generally 650.
>
> In addition to reviewing the borrower's credit history and credit score, MortgageIT underwriters closely review the borrower's housing payment history. In general, for non-conforming loans the borrower should not have made any mortgage payments over 30 days after the due date for the most recent 24 months. In general, for Alt-A loans the borrower may have no more than one payment that was made over 30 days after the due date for the most recent 24 months.
>
> *   *   *
>
> The Alt-A loans are generally documented to the requirements of Fannie Mae and Freddie Mac in that the borrower provides the same information on the loan application along with documentation to verify the accuracy of the information on the application such as income, assets, other liabilities, etc.

281. The above statements of material fact and similar statements regarding the originators whose loans back the Deutsche Bank RMBS in which the Irish SPVs invested, were materially false and misleading when made because, as explained above in ¶¶194-241 they misrepresented the true facts, known by Deutsche Bank, that the originators: (i) systematically failed to follow their stated underwriting guidelines; (ii) allowed pervasive exceptions to their underwriting standards regardless of existing compensating factors; (iii) disregarded credit quality to fuel loan originations to sell to loan purchasers such as Deutsche Bank; and (iv)

routinely allowed fraudulent representations of an applicant's stated income, failed to verify a prospective borrowers' documentation or statements regarding income or assets, and, in many cases, knowingly falsified the borrower's stated or documented income or assets.

282. Indeed, as the FCIC Report concluded with regard to the due diligence on the mortgage pools by third party consultant firms such as Clayton:

> [M]any prospectuses indicated that the loans in the pool either met guidelines outright or had compensating factors, even though Clayton's records show that only a portion of the loans were sampled, and that of those that were sampled, a substantial percentage of Grade 3 loans were waived in….When securitizers did kick loans out of the pools, some originators simply put them into new pools, presumably in hopes that those loans would not be captured in the next pool's sampling….Some mortgage securitizers did their own due diligence, but seemed to devote only limited resources to it....Deutsche Bank...had only [a] small due diligence team[].

FCIC Report at 167-168.

283. Not only were the representations regarding the underwriting procedures and practices of the mortgage lenders that issued the loans backing the RMBS false and misleading, but Deutsche Bank also made false and misleading representations concerning DBSP's guidelines and review of mortgage loans purchased from other originators as set forth in five of the RMBS that the Irish SPVs purchased. For example, the ACE 2006-ASAP2 RMBS purchased by the Irish SPVs represented DBSP's loan purchasing guidelines as follows:

> All of the Mortgage Loans were acquired by the Depositor from the Sponsor. ***The Mortgage Loans were originated by various third party originators pursuant to the underwriting standard described in this section and were reviewed by the Sponsor to ensure conformity with such underwriting standards. The Sponsor's underwriting standards are primarily intended to assess the ability and willingness of a borrower to repay the debt of the mortgage loan and to evaluate the adequacy of the related mortgaged property as collateral for the mortgage loan.*** All of the mortgage loans in the mortgage pool were also underwritten with a view toward the resale of the mortgage loans in the

secondary mortgage market. ***In underwriting a mortgage loan, the Sponsor considers, among other things, a mortgagor's credit history, repayment ability and debt service-to-income ratio (referred to in this section of the prospectus supplement as the "Debt Ratio"), as well as the value, type and use of the mortgaged property.***

* * *

The Sponsor acquires mortgage loans secured by one-to-four unit residential properties made to eligible borrowers with a vested fee simple (or in some cases a leasehold) interest in the property. ***The Sponsor's guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and generally require an appraisal of the mortgaged property which conforms to Freddie Mac and/or Fannie Mae standards, and if appropriate, a review appraisal.*** Generally, appraisals are provided by an approved list of appraisers maintained by the Sponsor. Additionally, review appraisals may only be provided by appraisers other than the original appraiser approved by the Sponsor. In some cases, the Sponsor relies on a statistical appraisal methodology provided by a third-party.

* * *

The Sponsor conducts a number of quality control procedures, including a full re-underwriting of a random selection of mortgage loans to assure asset quality. Under the asset quality procedure, a random selection of each month's originations is reviewed. The mortgage loan review confirms the existence and accuracy of legal documents, credit documentation, appraisal analysis and underwriting decision. A report detailing audit findings and level of error is sent monthly to management for response. The audit findings and management response are then reviewed by the Sponsor's senior management. Adverse findings are tracked monthly over a rolling six month period. This review procedure allows the Sponsor to assess programs for potential guideline changes, program enhancements, appraisal policies, areas of risk to be reduced or eliminated and the need for additional staff training.

* * *

All of the Mortgage Loans were reviewed by the Sponsor's contract underwriters. ***On a case by case basis, the Sponsor may determine that, based upon compensating factors, a prospective borrower who does not strictly qualify under the underwriting risk category guidelines described below warrants an***

> ***underwriting exception.*** Compensating factors may include, but are not limited to, low loan-to-value ratio, low Debt Ratio, substantial liquid assets, good credit history, stable employment and time in residence at the applicant's current address. It is expected that an insignificant portion of the Mortgage Loans may represent such underwriting exceptions.

284. The above statements of material fact and similar statements regarding DBSP's loan purchasing guidelines as set forth in the Offering Materials of the Deutsche Bank RMBS in which the Irish SPVs invested, were materially false and misleading when made because, as explained above in ¶¶194-241, they misrepresented the true facts, known by Deutsche Bank, that DBSP: (i) systematically and flagrantly failed to follow its stated underwriting guidelines as demonstrated through the plethora of defective loans that plague the Deutsche Bank RMBS; (ii) allowed pervasive exceptions to its purchasing guidelines, regardless of existing compensating factors; (iii) disregarded credit quality to increase the amount of loans that it could purchase to fuel Deutsche Bank's RMBS securitization pipeline; and (iv) failed to review or recklessly ignored material defects in the mortgage loans it did review as part of a full-underwriting to assure asset quality.

B. The Offering Materials Misrepresented The Appraisals And LTV Ratios Of The Securitized Loans

285. The adequacy of the mortgaged properties as security for the repayment of the loans was purportedly determined by appraisals. The Offering Materials represented that independent appraisals were prepared for each mortgaged property and that reports were prepared to substantiate these appraisals. For example, as outlined in the DBALT 2007-BAR1 Offering Materials:

> The adequacy of the mortgaged property as security for repayment of the related mortgage loan will generally have been determined by an appraisal in accordance with pre-established appraisal procedure guidelines for appraisals established by or acceptable to the originator. ***All appraisals conform to the Uniform Standards***

> ***of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac.*** Appraisers may be staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established appraisal procedure guidelines established by the originator. The appraisal procedure guidelines generally will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal generally will have been based upon a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or a replacement cost analysis based on the current cost of constructing or purchasing a similar property.

286. As discussed above in ¶¶194-241, the representations regarding appraisals and LTV ratios were materially false and misleading in that they misrepresented that the appraisal process employed by the originators, including, among others things, the fact that: (i) the appraisers were not independent from the respective mortgage lenders, which pressured appraisers to value the mortgaged property at a pre-determined, preconceived, inflated, and false appraisal value; (ii) the actual LTV ratios for many of the mortgage loans underlying the RMBS would have exceeded 100% if the mortgaged properties had been appraised by an independent appraiser as represented in the Offering Materials; (iii) sales managers employed by the respective originators had and utilized the authority to override and inflate an appraiser's final professional valuation of the mortgaged property; and, as such, (iv) the appraisals failed to conform to the standards set by Fannie Mae and Freddie Mac.

C. The Offering Materials Misrepresented Deutsche Bank's Due Diligence Into The Loan Sellers And The Mortgage Loans Backing The RMBS

287. A substantial amount of the Deutsche Bank RMBS purchased by the Irish SPVs were securitized through principal securitizations whereby investors such as the Irish SPVs expect the involvement of a sophisticated investment bank such as Deutsche Bank throughout

the securitization process to warrant a high degree of oversight and due diligence conducted into the mortgages being selected for inclusion in the RMBS. The Offering Materials for the RMBS purchased by the Irish SPVs represented as much. For example, as discussed in the ACE 2007-ASAP2 Offering Materials:

> All of the Mortgage Loans were acquired by the Depositor from the Sponsor. The Mortgage Loans were originated by various third party originators pursuant to the underwriting standard described in this section and were reviewed by the Sponsor to ensure conformity with such underwriting standards.
>
> * * *
>
> ***The Sponsor conducts a number of quality control procedures, including a full re-underwriting of a random selection of mortgage loans to assure asset quality. Under the asset quality procedure, a random selection of each month's originations is reviewed. The mortgage loan review confirms the existence and accuracy of legal documents, credit documentation, appraisal analysis and underwriting decision. A report detailing audit findings and level of error is sent monthly to management for response.*** The audit findings and management responses are then reviewed by the Sponsor's senior management. Adverse findings are tracked monthly and over a rolling six month period. This review procedure allows the Sponsor to assess programs for potential guideline changes, program enhancements, appraisal policies, areas of risk to be reduced or eliminated and the need for additional staff training.

288. As outlined above in ¶¶194-241, these statements of material fact and similar statements appearing in the Offering Materials for each of the Certificates were false and misleading when made because, in truth: (i) Deutsche Bank routinely ignored the pervasive defects that its internal and external due diligence processes identified in the loans Deutsche Bank had purchased for securitization; (ii) Deutsche Bank routinely overruled the determinations of its due diligence providers and purchased defective mortgage loans to be placed in the mortgage pools backing its RMBS; and (iii) Deutsche Bank knowingly securitized loans it had

identified as defective through its due diligence process because doing so was in Deutsche Bank's own self-interest.

D. Defendants Materially Misrepresented The Accuracy Of The Credit Ratings Assigned To The Certificates

289. Defendants represented in the Offering Materials that most of the RMBS purchased by the Irish SPVs were worthy of being rated "AAA," signifying that the risk of loss was virtually non-existent.

290. By providing ratings, Defendants represented that they believed that the information provided to the rating agencies to support these ratings accurately reflected Deutsche Bank's underwriting guidelines and practices, and the specific qualities of the underlying loans. As explained above in ¶¶242-261, this representation was false.

291. Defendants further represented in the Offering Materials, in sum or substance, that:

> It is a condition to the issuance of the certificates that the Offered Certificates receive at least the following ratings from Standard & Poor's Ratings Service, a division of the McGraw-Hill Companies, Inc. ("S&P") and Moody's Investors Service, Inc. ("Moody's"):

Offered Certificates	S&P	Moody's
Class A-1	AAA	Aaa
Class A-2A	AAA	Aaa
Class A-2B	AAA	Aaa
Class A-2C	AAA	Aaa
Class A-2D	AAA	Aaa
Class M-1	AA+	Aa1
Class M-2	AA	Aa2
Class M-3	AA-	Aa3
Class M-4	A+	A1
Class M-5	A	A2
Class M-6	A-	A3
Class M-7	BBB+	Baa1
Class M-8	BBB	Baa2
Class M-9	BBB	Baa3
Class M-10	BBB	Ba1
Class M-11	BBB	Ba2

> The ratings assigned to mortgage pass-through certificates address the likelihood of the receipt by certificateholders of all distributions to which the certificateholders are entitled.

292. These statements regarding the ratings assigned to the RMBS were false and misleading because Defendants stated the assigned ratings while knowing that misleading information was provided to the rating agencies by Deutsche Bank to guarantee AAA or otherwise investment grade ratings were assigned to the RMBS.

E. Defendants Made False And Misleading Statements Of Material Fact Regarding The Transfer And Assignment Of Good Title Of The Mortgage Loans To The Issuing Trusts

293. Defendants stated in the Offering Materials that the issuing trusts possessed good title to the mortgage loans. For example, as discussed in the ACE 2006-ASAP2 prospectus supplement:

> ***On the Closing Date, the Depositor will transfer to the trust all of its right, title and interest in and to each Mortgage Loan, the related mortgage note, mortgage, assignment of mortgage in recordable form in blank and other related documents (collectively, the "Related Documents"), including all scheduled payments with respect to each such Mortgage Loan due after the Cut-off Date.*** The Trustee, concurrently with such transfer, will deliver the certificates to the Depositor. Each Mortgage Loan transferred to the trust will be identified on a schedule (the "Mortgage Loan Schedule") delivered to the Trustee and the Servicer pursuant to the Pooling and Servicing Agreement. The Mortgage Loan Schedule will include information such as the principal balance of each Mortgage Loan as of the Cut-off Date, its Mortgage Rate as well as other information with respect to each Mortgage Loan.

294. Similarly, the ACE 2007-WM1 prospectus supplement represented the following:

> The sponsor will make certain representations as to the accuracy in all material respects of certain information furnished to the Trustee with respect to each Mortgage Loan. ***In addition, the Sponsor will represent and warrant, as of the Closing Date, that, among other things: (i) at the time of transfer to the Depositor, the Sponsor has transferred or assigned all of its right, title and interest in***

> ***each Mortgage Loan and the Related Documents, free of any lien…***

295. These representations and similar representations in the Offering Materials for each of the Certificates were false because, as alleged in detail in ¶¶262-279, Defendants routinely failed to properly deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the pooling and servicing agreements. These representations were also false because Defendants routinely failed to execute valid indorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the pooling and servicing agreements. The issuing trusts therefore did not possess "all right, title and interest in and to each mortgage loan" and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

F. Defendants' Purported Warnings Regarding The Risks Of The RMBS Contained False And Misleading Statements And Omissions Of Material Fact

296. Defendants' representations regarding the risks of the RMBS contained false statements and omissions of material fact. For example, as stated in the ACE 2006-ASAP2 Offering Materials:

> As further described in this prospectus supplement, the underwriting standards applicable to the Mortgage Loans do not conform to Fannie Mae and Freddie Mac guidelines.
>
> * * *
>
> In addition, mortgage loans originated by the Originator generally bear higher rates of interest than mortgage loans originated in accordance with Fannie Mae and Freddie Mac guidelines and may experience rates of delinquency, foreclosure and bankruptcy that are higher, and that may be substantially higher, than those experienced by mortgage loans underwritten in accordance with Fannie Mae and Freddie Mac guidelines.
>
> Furthermore, changes in the values of mortgaged properties may have a greater effect on the delinquency, foreclosure, bankruptcy

and loss experience of the Mortgage Loans than on mortgage loans originated in accordance with Fannie Mae and Freddie Mac guidelines. No assurance can be given that the values of the related mortgaged properties have remained or will remain at the levels in effect on the dates of origination of the related Mortgage Loans. See "The Mortgage Pool—DB ASAP Program Description and Underwriting Standards" in this prospectus supplement.

* * *

Approximately 52.08% of the Group I Mortgage Loans and approximately 32.20% of the Group II Mortgage Loans, in each case by the related aggregate principal balance as of the Cut-off Date, had a combined loan-to-value ratio at origination in excess of 80%.

An overall decline in the residential real estate market, a rise in interest rates over a period of time and the condition of a mortgaged property, as well as other factors, may have the effect of reducing the value of the mortgaged property from the appraised value at the time the Mortgage Loan was originated. If there is a reduction in the value of the mortgaged property, the combined loan-to-value ratio may increase over what it was at the time the Mortgage Loan was originated. Such an increase may reduce the likelihood of liquidation or other proceeds being sufficient to satisfy the Mortgage Loan, and any losses to the extent not covered by the credit enhancement may affect the yield to maturity of your certificates. There can be no assurance that the value of a mortgaged property estimated in any appraisal or review is equal to the actual value of that mortgaged property at the time of that appraisal or review. Investors should note that the values of the mortgaged properties may be insufficient to cover the outstanding principal balance of the Mortgage Loans. There can be no assurance that the combined loan-to-value ratio of any Mortgage Loan determined at any time after origination will be less than or equal to its combined loan-to-value ratio at origination.

297. The Offering Materials also made the following representations concerning credit ratings:

Each rating agency rating the Offered Securities may change or withdraw its initial ratings at any time in the future if, in its judgment, circumstances warrant a change. No person is obligated to maintain the ratings at their initial levels. If a rating agency reduces or withdraws its rating on one or more classes of the Offered Securities, the liquidity and market value of the affected securities is likely to be reduced.

298. These and similar purported warnings in the Offering Materials were themselves materially false and misleading when made because they failed to convey the severity of the investment risk at the time of the offering because: (i) the stated underwriting standards and practices of the mortgage originators from which Deutsche Bank purchased the loans that comprised the RMBS, did not merely "not conform" to Fannie Mae's and Freddie Mac's underwriting guidelines—they were completely disregarded by the mortgage lenders discussed above, resulting in loans that presented extremely high risks of default; (ii) Deutsche Bank concealed that the due diligence it conducted on the mortgage loans that comprised the relevant RMBS revealed a substantial number of defective loans; (iii) Deutsche Bank materially misrepresented the originators' rampant use of exceptions in the absence of existing compensating factors in order to generate loan volume and profits; (iv) Deutsche Bank misrepresented that it routinely purchased loans with LTV and CLTV ratios over 100%, which it would then securitize into RMBS and sell to investors; (v) Deutsche Bank concealed that the loans underlying its RMBS were issued pursuant to inflated appraisals; (vi) Deutsche Bank misrepresented that the loans comprising the RMBS were issued to borrowers regardless of the borrowers' ability to repay the mortgage loan; and (vii) Deutsche Bank intentionally provided misleading information to the rating agencies to guarantee AAA or otherwise investment grade ratings were assigned to the RMBS, such that the initial ratings assigned to the RMBS were never justified and faced an extremely high risk of severe downgrades.

299. Moreover, Defendants' purported warnings about the financial distress of the mortgage lenders that originated the loans underlying the relevant RMBS, including statements regarding Novastar and PHH Mortgage in certain of the RMBS Offering Materials, were false and misleading when made because the purported warnings misrepresented: (i) that Deutsche

Bank had performed due diligence on the loans backing the Deutsche Bank RMBS that revealed they were not underwritten according to the originators' stated guidelines or with regard to a borrower's ability to repay the loan; (ii) that Deutsche Bank knowingly securitized loans that stood at high risk of default because doing so was in Deutsche Bank's own self-interest; and (iii) that Deutsche Bank never ensured proper transfer of title so that when borrowers defaulted, the Irish SPVs and other Deutsche Bank RMBS investors would be unable to seek recovery on the property that served as collateral for the underlying loans through foreclosure. Indeed, the fact that Deutsche Bank secured AAA ratings for the RMBS backed by loans originated by the originators discussed above, and touted its due diligence of those loans even while purportedly warning of the particular risks relating to the mortgages originated by those lenders conveyed to investors like the Irish SPVs that Deutsche Bank had verified that the loans conformed to the originators' stated underwriting guidelines.

300. By purporting to warn RMBS investors like the Irish SPVs of matters that Deutsche Bank already knew, or recklessly disregarded, to exist at the time the RMBS were issued, Deutsche Bank misled the Irish SPVs to believe that these risks were mere potentialities and not circumstances that already existed when the RMBS were issued.

XI. THE IRISH SPVS' INVESTMENT IN THE RMBS AND RELIANCE ON DEUTSCHE BANK'S MISREPRESENTATIONS

301. The Irish SPVs relied on Defendants' false representations and omissions of material fact regarding the origination and underwriting standards used to create the loan pools and the characteristics of the mortgage loans underlying the RMBS. But for Defendants' fraudulent representations and omissions, the Irish SPVs would not have purchased the RMBS.

302. The Irish SPVs used detailed guidelines and criteria for making investment decisions regarding subprime, prime and Alt-A RMBS, including "product papers" issued by the

Irish SPVs' risk office and applied by the Irish SPVs' personnel to determine whether RMBS were appropriate investment decisions. For example, the April 6, 2006 product paper for Subprime RMBS provided that the Irish SPVs would "only invest in sub-prime MBS transactions securitized by experienced issuers with sound underwritten procedures," that RMBS were to have a minimum credit rating by "at least two of the three rating agencies (Moody's, S&P and Fitch)," and that for AAA-rated RMBS the maximum effective LTV ratio was 85% and the minimum FICO score 600. The Irish SPVs' April 6, 2006 subprime RMBS product paper also provided owner-occupancy guidelines, stating under the heading "collateral characteristics" that:

> The mortgaged properties may be single family, multi-family, condo, co-op or Planned Unit Development (PUD). The residential status may be owner occupied, second home or investment properties. Historical data indicate that owner occupied property has the lowest probability of default, and single family property has the highest recovery ratio, all else being equal. Therefore, ***collateral with the highest owner occupied single family properties are preferred***.

303. The Irish SPVs performed similar analyses in reliance on information provided by Defendants in making investment decisions for all RMBS at issue and reasonably relied on Defendants' representations in the Offering Materials to implement applicable RMBS purchasing guidelines, and to make investment decisions for the RMBS at issue.

304. The prospectus supplements contained detailed descriptions of the mortgage pools underlying the RMBS. The respective prospectus supplements provided the specific terms of the particular RMBS offering. Each prospectus supplement included tabular data concerning the loans underlying the RMBS, including (but not limited to) the type of loans; the number of loans; the mortgage rate and net mortgage rate (the mortgage rate net of the premium for any lender paid mortgage insurance less the sum of the master servicing fee and the trustee fee on the mortgage loan); the aggregate scheduled principal balance of the loans; the weighted

average original combined LTV ratio; occupancy rates; credit enhancement; and the geographic concentration of the mortgaged properties. The prospectus supplements also contained a summary of the originators' underwriting and appraisal standards, guidelines and practices. The registration statements incorporated by reference the subsequently filed prospectuses and prospectus supplements.

305. In deciding to purchase the RMBS, the Irish SPVs relied on the Defendants' false representations and omissions of material fact regarding their underwriting standards and the characteristics of the mortgage loans underlying the RMBS. But for the Defendants' fraudulent representations and omissions, the Irish SPVs would not have purchased the RMBS.

306. The Irish SPVs reviewed and analyzed the information provided directly or indirectly by Deutsche Bank with respect to each offering of RMBS and performed various analyses of the RMBS-specific data for each offering before deciding to purchase RMBS in the offering. The analyses conducted by the Irish SPVs before deciding to purchase RMBS included various credit analyses based on the information provided by Deutsche Bank and Defendants with respect to both the credit characteristics of the mortgage loan pool (including, for example, geographic concentration; weighted average life; fixed- or floating-rate loans; full-, low-, or no-documentation "stated income" loans; and owner-occupied, second home, or investment properties), and the structure of the securitization with respect to the seniority and risk characteristics of the particular tranche of RMBS (including, for example, position in the payment "waterfall").

307. Thus, the Irish SPVs justifiably relied on the information in the term sheets, computational material, and other data provided directly or indirectly by Deutsche Bank and Defendants for each offering of the RMBS. These documents contained numerous statements of material fact about the RMBS, including statements concerning: (i) the mortgage originators'

underwriting guidelines that were purportedly applied to evaluate the ability of the borrowers to repay the loans underlying the RMBS; (ii) the appraisal guidelines that were purportedly applied to evaluate the value and adequacy of the mortgaged properties as collateral; (iii) the LTV ratios, debt to income ratios, and purported occupancy status of the mortgaged properties, including whether the properties were "owner occupied," "second homes," or "investment properties"; (iv) Deutsche Bank's and Defendants' due diligence of the loans and the originators' underwriting practices; (v) various forms of credit enhancement applicable to certain tranches of RMBS; and (vi) the ratings assigned to the RMBS.

308. These statements of material fact were untrue because: (i) the originators violated their stated underwriting guidelines and did not originate loans based on the borrowers' ability to repay and (ii) inflated appraisals caused the listed LTV ratios and levels of credit enhancement to be untrue. In addition, metrics such as debt-to-income ratios were untrue as a result of the other mortgage originators' acceptance of untrue information from mortgage applicants. For example, Deutsche Bank and the other mortgage originators allowed applicants for "stated income" loans to provide untrue income information and did not verify the applicants' purported income. In addition, the credit ratings on which the Irish SPVs relied were materially misleading, did not reflect the true credit quality of the RMBS and were the result of intentional manipulation.

XII. BECAUSE OF DEFENDANTS' FRAUDULENT CONDUCT, THE IRISH SPVS SUFFERED LOSSES ON ITS RMBS PURCHASES

309. The ratings on virtually all of the RMBS have since been downgraded and they are no longer marketable at the prices paid for them by the Irish SPVs. All of the RMBS in which the Irish SPVs purchased interests were rated "AAA" at issuance and have nearly all been downgraded to junk. *See* ¶47.

310. Further, the delinquency, bank ownership and foreclosure rates on the underlying mortgages have soared since issuance. The average percentage of loans that are currently 60 days or more delinquent, in foreclosure, or bank-owned approaches 41%. Moreover, these current performance numbers do not reflect the number of loans which have been foreclosed since issuance and which are no longer included within the loan pools. A substantial number of the original loans contained in the loan pools have been removed from the pools, largely due to either foreclosure or early payout, negatively impacting the income payable to certificate-holders.

FIRST CAUSE OF ACTION

(Common Law Fraud Against Deutsche Bank AG, Deutsche Bank Securities, Inc., ACE Securities Corp., Deutsche Alt-A Securities, Inc. and DB Structured Products, Inc.)

311. Sealink repeats and realleges the allegations set forth in the preceding paragraphs, as if fully set forth herein.

312. As alleged above, in the Offering Materials and in their public statements, Deutsche Bank AG, Deutsche Bank Securities, Inc., ACE Securities Corp., Deutsche Alt-A Securities, Inc. and DB Structured Products, Inc. (the "Defendants") made fraudulent and false statements of material fact, and omitted material facts necessary to make their statements, in light of the circumstances under which the statements were made, not misleading.

313. As a corporate parent, Deutsche Bank AG directed the activities of Deutsche Bank Securities, Inc., ACE Securities Corp., Deutsche Alt-A Securities, Inc., and DB Structured Products, Inc.

314. Defendants knew at the time they sold and marketed each of the RMBS that the foregoing statements were false or, at the very least, made recklessly, without any belief in the truth of the statements.

315. Defendants made these materially misleading statements and omissions for the purpose of inducing the Irish SPVs to purchase the RMBS. Furthermore, these statements related to these Defendants' own acts and omissions.

316. Defendants knew or recklessly disregarded that investors like the Irish SPVs were relying on their expertise, and they encouraged such reliance through the Offering Materials and their public representations, as described herein. Defendants knew or recklessly disregarded that investors like the Irish SPVs would rely upon their representations in connection with their decision to purchase the RMBS. Defendants were in a position of unique and superior knowledge regarding the true facts concerning the foregoing material misrepresentations and omissions.

317. It was only by making such representations that Defendants were able to induce the Irish SPVs to buy the RMBS. The Irish SPVs would not have purchased or otherwise acquired the RMBS but for Defendants' fraudulent representations and omissions about the quality of the RMBS.

318. The Irish SPVs justifiably, reasonably, and foreseeably relied upon Defendants' representations and false statements regarding the quality of the RMBS.

319. As a result of Defendants' false and misleading statements and omissions, as alleged herein, the Irish SPVs have suffered substantial damages.

320. Because Defendants committed these acts and omissions maliciously, wantonly and oppressively, and because the consequences of these acts knowingly affected the general public, including but not limited to all persons with interests in the RMBS, the Irish SPVs are entitled to recover punitive damages.

SECOND CAUSE OF ACTION

(Fraudulent Inducement Against Deutsche Bank AG, Deutsche Bank Securities, Inc., ACE Securities Corp., Deutsche Alt-A Securities, Inc. and DB Structured Products, Inc.)

321. Sealink repeats and realleges the allegations set forth in the preceding paragraphs, as if fully set forth herein.

322. As alleged above, in the Offering Materials and in other communications to the Irish SPVs, Deutsche Bank AG, Deutsche Bank Securities, Inc., ACE Securities Corp., Deutsche Alt-A Securities, Inc. and DB Structured Products, Inc. ("the Defendants") made fraudulent and false statements of material fact, and omitted material facts necessary in order to make their statements, in light of the circumstances under which the statements were made, not misleading.

323. This is a claim for fraudulent inducement against Defendants. As a corporate parent, Deutsche Bank AG directed the activities of Deutsche Bank Securities, Inc., ACE Securities Corp., Deutsche Alt-A Securities, Inc., and DB Structured Products, Inc.

324. Defendants knew at the time they sold and marketed each of the RMBS that the foregoing statements were false or, at the very least, made recklessly.

325. Defendants made these materially misleading statements and omissions for the purpose of inducing the Irish SPVs to purchase the RMBS. Furthermore, these statements related to these Defendants' own acts and omissions.

326. Defendants knew or recklessly disregarded that investors like the Irish SPVs were relying on their expertise, and they encouraged such reliance through the Offering Materials and their public representations, as described herein. Defendants knew or recklessly disregarded that investors like the Irish SPVs would rely upon their representations in connection with their decision to purchase the RMBS. Defendants were in a position of unique

and superior knowledge regarding the true facts concerning the foregoing material misrepresentations and omissions.

327. It was only by making such representations that Defendants were able to induce the Irish SPVs to buy the RMBS. The Irish SPVs would not have purchased or otherwise acquired the RMBS but for Defendants' fraudulent representations and omissions about the quality of the RMBS.

328. The Irish SPVs justifiably, reasonably, and foreseeably relied on Defendants' representations and false statements regarding the quality of the RMBS.

329. By virtue of Defendants' false and misleading statements and omissions, as alleged herein, the Irish SPVs have suffered substantial damages and are also entitled to rescission or rescissory damages.

THIRD CAUSE OF ACTION

(Aiding And Abetting Fraud Against Deutsche Bank AG, Deutsche Bank Securities, Inc., ACE Securities Corp., Deutsche Alt-A Securities, Inc. and DB Structured Products, Inc.)

330. Sealink repeats and realleges the allegations set forth in the preceding paragraphs, as if fully set forth herein.

331. This is a claim against the above-named Defendants for aiding and abetting the fraud by Deutsche Bank AG, Deutsche Bank Securities, Inc., ACE Securities Corp., Deutsche Alt-A Securities, Inc. and DB Structured Products, Inc. (the "Defendants"). Each of these Defendants aided and abetted the fraud committed by and among all of the other Defendants.

332. Defendants knew of the fraud perpetrated by Deutsche Bank AG, Deutsche Bank Securities Inc., ACE Securities Corp., Deutsche Alt-A Securities, Inc. and DB Structured Products, Inc. on the Irish SPVs. As alleged in detail above, each Defendant knew that the RMBS were not backed by high quality loans and were not underwritten according to the

originators' underwriting standards, conducted due diligence on the loan pools securitized into the Deutsche Bank RMBS purchased by the Irish SPVs that identified the originators' deviations from loan underwriting and appraisal standards, participated in those violations and had actual knowledge of their own acts, or participated in and had actual knowledge of Defendants' failure to convey good title to the mortgage loans underlying the Certificates to the issuing trusts.

333. Furthermore, the above-named Defendants provided Deutsche Bank AG, Deutsche Bank Securities, Inc., DB Structured Products, Inc. ACE Securities Corp., and Deutsche Alt-A Securities, Inc. with substantial assistance in advancing the commission of the fraud. As alleged in detail above, each of the Defendants participated in the violations of concealing the originators' deviations from their stated mortgage loan underwriting and appraisal standards, made false statements about the originators' mortgage loan underwriting and appraisal standards and Deutsche Bank's own underwriting guidelines, provided false information about the mortgage loans underlying the Certificates to the credit rating agencies, provided false information for use in the Offering Materials, or participated in the failure to properly endorse and deliver the mortgage notes and security documents to the issuing trusts.

334. It was foreseeable to the Defendants at the time they actively assisted in the commission of the fraud that the Irish SPVs would be harmed as a result of their assistance.

335. As a direct and natural result of the fraud committed by Defendants and the Defendants' knowing and active participation therein, the Irish SPVs have suffered substantial damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

(a) Awarding compensatory and/or rescissory damages in favor of Plaintiff against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(b) Awarding punitive damages for Plaintiff's common-law fraud claims;

(c) Awarding Plaintiff its reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all claims so triable.

Dated: June 22, 2012

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