APL-2019-00127
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Court of Appeals
State of New York

DEUTSCHE BANK NATIONAL TRUST COMPANY, solely in its capacity as Trustee of the MORGAN STANLEY ABS CAPITAL I INC. TRUST 2007-NC4,

Plaintiff-Respondent,

– against –

MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC, as Successor-by-Merger to MORGAN STANLEY MORTGAGE CAPITAL INC., and

MORGAN STANLEY ABS CAPITAL I INC.,

Defendants-Appellants.

BRIEF FOR *AMICUS CURIAE* JAMES M. PEASLEE IN SUPPORT OF DEFENDANTS-APPELLANTS

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Amicus Curiae

Dated: November 26, 2019

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

I am an attorney admitted to practice before the courts of the State of New York. I practiced as a tax lawyer for over 40 years with Cleary Gottlieb Steen & Hamilton LLP ("Cleary").

As *amicus curiae*, I can be of assistance to the Court by identifying law or arguments that might otherwise escape the Court's attention and of which I believe the parties may not have the expertise to provide a full and adequate presentation of these issues to the Court. Specifically, I am offering my substantial expertise in the tax treatment of securitizations and real estate mortgage investment conduit ("REMIC") transactions, a highly complex and specialized area of the law. In this brief, I invite the Court's attention to the tax law underpinnings of the buy-back remedy at issue in this case.

In over four decades of practice at Cleary, I have authored publications and advised on transactions that have helped to define the field of securitization in general and the REMIC market in particular.

I am co-author of FEDERAL INCOME TAXATION OF SECURITIZATION TRANSACTIONS AND RELATED TOPICS, the leading treatise on the tax treatment of securitizations, including the REMIC rules. I have also authored more than 50 articles and bar association reports on tax subjects,

many of which have focused on mortgage-backed securities and fixed income instruments.

I was the principal tax advisor on transactions that were the precursors for REMICs and participated in the development of the 1986 REMIC legislation. Since that time, I have served as tax counsel on many mortgage-backed securities transactions, and I have routinely advised on REMICs and rendered REMIC opinions.

I am a Member of the Executive Committee of the New York State Bar Association's Tax Section and was Chair of the Tax Section in 1991-1992.

Given my expertise in the field of securitizations and REMICs in particular, I am writing as *amicus curiae* to provide the Court with background about the REMIC rules and their relationship to the buy-back or "sole remedy" provision at issue in this appeal.

As explained more fully in the statements below, the buy-back remedy has its origin in, and takes its form from, the tax law rules relating to REMICs. Those rules govern the mortgage trust involved in this litigation. Under these rules, REMICs are only permitted to hold certain types of mortgages. If any mortgage is found, at any time over the life of a securitization, to be defective in a way that causes it not to be an asset a REMIC can hold, and the defect cannot be cured,

then the REMIC must dispose of the loan within 90 days of discovery of the defect. The continued holding after 90 days of a bad asset by a mortgage trust can result in the imposition of very substantial taxes on the trust, and other adverse tax consequences for investors. Buy-back remedies avoid these adverse results. Since all REMICs must comply with the same tax rules, buy-back remedies of this type are common. A decision that they are not enforceable according to their terms would be very troublesome for transactions governed by New York law.[1]

PRELIMINARY STATEMENT

I respectfully submit this brief as *amicus curiae* in support of defendants-appellants Morgan Stanley Mortgage Capital Holdings LLC as successor-by-merger to Morgan Stanley Mortgage Capital Inc. and Morgan Stanley ABS Capital I Inc. ("Morgan Stanley").[2]

This appeal relates to the enforceability of a contract term in a mortgage securitization that requires a defective mortgage (one that breaches

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[1] A copy of my biography and list of my publications is being submitted along with this Brief. Affirmation of James M. Peaslee, dated November 26, 2019, Appendix A.

[2] I have a professional interest in a resolution of this issue in a manner that does not undermine the tax treatment of REMICs. I am not being directly compensated for my time in preparing this brief. Cleary has assisted in the preparation of this brief and is being compensated for the time, but not by a party or party's counsel.

representations) to be repurchased from the securitization trust by the sponsor within strict time limits. By its terms, the buy-back remedy is exclusive.

I am a tax lawyer with substantial experience in mortgage securitizations. This brief explains the critical role that a buy-back remedy plays in protecting investors by achieving compliance with tax law requirements. To achieve its tax law purpose, the remedy must be enforceable and result in the physical removal of certain defective mortgages (specifically those that are not "qualified mortgages" under a tax law definition) from a mortgage trust within strict time periods dictated by the tax law.

If a buy-back remedy could not be enforced, so that defective mortgages remained in the trust, the tax results would be onerous. Either the trust would be subject to a 100% tax on income from the defective mortgages, or the mortgages would taint the trust so that it fails to qualify for a special tax regime for "REMICs" that exempts the trust from an otherwise applicable 21% (formerly 35%) corporate income tax. A multiple-class mortgage trust that fails to be a REMIC (or that is subject to a nontrivial risk of that result) would not be commercially viable.

The kind of buy-back remedy at issue here is present in most securitizations that rely on the REMIC rules. REMICs are significant in the U.S. economy.

There were more than $2.3 trillion of REMIC securities outstanding at the end of 2018.[3] A holding confirming that buy-back remedies are enforceable according to their terms is important to protect not only investors but the overall health of the mortgage markets.

This litigation involves a residential mortgage-backed securitization trust. The sponsor of this transaction, Morgan Stanley, acquired a pool of residential mortgages and transferred them through an affiliated depositor entity to the Morgan Stanley ABS Capital I Inc. Trust 2007-NC4 (the "Trust"). In exchange for the mortgage assets, the Trust issued investment certificates, divided into different classes with different maturities and other terms, that were then sold to investors. The certificates entitled investors to payments funded by payments received on the underlying mortgage assets.

This transaction was executed through several agreements, including the Representations and Warranties Agreement (the "RWA"), governing the transfer of mortgage assets to the depositor, and the Pooling and Servicing Agreement (the

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3 *See* Securities Industry and Financial Markets Association ("SIFMA"), *US Mortgage-Related Issuance and Outstanding* (Nov. 7. 2019), https://www.sifma.org/resources/research/us-mortgage-related-issuance-and-outstanding/. All agency CMOs and (I understand from SIFMA) non-agency deals are structured as REMICs. In certain years, the volume of REMIC securities was as high as $4.9 trillion.

"PSA"), governing the issuance of certificates by the Trust in exchange for the mortgage assets received from the depositor. Plaintiff-respondent Deutsche Bank National Trust Company (the "Trustee") is the trustee for the Trust. The agreements contain a number of representations and warranties by Morgan Stanley regarding the mortgage assets. In the event such provisions are breached, the agreements expressly provide that the Trustee's "sole remedy" is that defective loans be cured or repurchased within set time periods at their principal amount plus interest.

The issue on appeal is whether the buy-back remedy should be enforced or replaced with a claim for money damages.

As explained below, the buy-back remedy, as an exclusive, enforceable contract term, is needed to conform to relevant tax law rules governing real estate mortgage investment conduits ("REMICs").[4] The PSA requires that the Trust elect to be a REMIC and has a number of safeguards to ensure compliance with the REMIC rules.[5] These safeguards include the buy-back mechanism, which ensures that loans that are found to not meet REMIC requirements are removed in

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4 The REMIC rules are found at 26 U.S.C. §§ 860A-G.

5 These terms are described in footnote 8, below. For technical reasons, the Trust consists of five separate REMICs, with one of them being the direct holder of mortgages. The discussion of REMICs herein is not affected by the number of REMICs involved.

a timely manner from the Trust.

The discussion below will first describe what the REMIC rules accomplish and the consequences of failing to comply with them. It then describes the assets test that a REMIC must meet and safe harbor rules that allow that test to be met in practice. The buy-back remedy is needed to comply with one of the safe harbor rules.

ARGUMENT

I. THE REMIC RULES PROVIDE A CRITICAL TAX EXEMPTION AND OTHER BENEFITS FOR INVESTORS

A mortgage securitization trust such as the Trust holds a largely fixed pool of mortgages, collects the payments thereon and passes them through to different classes of certificate holders. The idea is to make the mortgages better investments by pooling them and allocating the cash flows in a way that suits investor needs.

It is critical to the commercial viability of the structure that there be no material additional taxes paid by the trust on the payments it receives.

Specifically, it is important that the trust not be treated for tax purposes as a corporation. A corporation, as a separate taxpayer, is subject to a federal tax on its income, currently at a top rate of 21% (formerly 35%), and may also be subject to state or local corporate income taxes. It pays that tax and then can distribute what

is left to investors as dividends. The dividends (79 cents (formerly 65 cents) on the dollar) are then subject to a second layer of income tax in the hands of investors.

Although the Trust and other securitization trusts are for state-law purposes trusts and not corporations, a trust that meets the definition of a "taxable mortgage pool" or "TMP" is deemed for tax purposes to be a taxable corporation unless it qualifies as a REMIC.[6] A TMP is generally defined as an entity that holds real estate mortgages and issues multiple classes of debt instruments (including for this purpose multiple classes of pass-through certificates) with different maturities. The Trust, like other typical mortgage securitization trusts, would be a TMP if it is not a REMIC. Accordingly, it must qualify as a REMIC to avoid being taxed as a corporation.

The REMIC rules were enacted by Congress in 1986 to provide a set of clear tax rules governing mortgage securitizations that both remove tax obstacles to those transactions and allow them to proceed and ensure that an appropriate amount of tax is ultimately collected. To that end, the REMIC rules grant a tax

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[6] 26 U.S.C. § 7701(i). The TMP rules were enacted in 1986 (at the same time as the REMIC rules) and became effective in 1992. Multiple class mortgage trusts were treated as corporations under another set of rule for multiple class trusts (found at Treas. Reg. § 301.7701-4(c)) for periods prior to 1992.

exemption to the securitization trust and provide rules for allocating trust income to certificate holders.[7] Congress intended that the REMIC rules would be the "exclusive means of issuing multiple class real estate mortgage-backed securities without the imposition of two levels of taxation."[8] In other words, the REMIC rules are the only game in town for a mortgage securitization trust to avoid being a taxable corporation subject to a corporate tax and a shareholder tax.

For trusts with contacts to New York, there is an exemption from New York taxes for REMICs that is parallel to the federal exemption.

Given the importance of the REMIC rules to the commercial viability of a securitization, the governing documents require that a REMIC election be made and have other safeguards to ensure compliance with the REMIC rules. That is true of the Trust.[9] As explained below, one of the safeguards is the buy-back

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7 26 U.S.C. § 860A(a) states that except as otherwise provided in the REMIC rules, "a REMIC shall not be subject to taxation under this subtitle (and shall not be treated as a corporation, partnership, or trust for purposes of this subtitle)." 26 U.S.C. § 860A(b) then provides that the income of the REMIC shall be taxable to holders of REMIC interests as provided in the REMIC rules.

8 H.R. Rep. No. 3838, pt. 2, at 239 (1986); Staff of the J. Comm. on Taxation, 100th Cong., Doc. No. JCS-10-87, *General Explanation of the Tax Reform Act of 1986* at 427 (1987).

9 PSA § 8.11 requires that the parties make and preserve the REMIC election. The PSA also generally requires the parties to act so as not to cause the loss of REMIC status or the imposition of the 100% prohibited transactions tax described below (each, an "Adverse REMIC Event"). *See, e.g.*, PSA § 8.11 (the parties shall not take or fail to take any action that could result in an Adverse REMIC Event

requirement for defective mortgages.

Also, it is common practice to require an unqualified legal opinion to the effect that a securitization trust "will" qualify as a REMIC (the strongest type of tax opinion). Such an opinion is based on, and assumes compliance with, the pooling and servicing agreement. This practice was also followed by the Trust.[10]

The importance of the REMIC election to investors is indicated by the fact that it is discussed extensively in the Prospectus and Prospectus Supplement.[11] The Prospectus describes the tax treatment of investors holding Certificates

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unless they receive an opinion of counsel that it will not); §3.01(c) (the parties may not consent to the modification of a loan if it would cause an Adverse REMIC Event). Amendments to the PSA, even those to which a supermajority of affected investors consent, cannot be made unless there is an opinion of counsel that the change will not cause an Adverse REMIC Event. PSA § 12.01.

[10] The opinion is described in the Prospectus Supplement at S-124 ("Upon the issuance of the LIBOR Certificates, Cadwalader, Wickersham & Taft LLP will deliver its opinion to the effect that, assuming compliance with the pooling and servicing agreement, for federal income tax purposes, each Trust REMIC will qualify as a REMIC within the meaning of Section 860D of the Code."). Relevant excerpts from the Prospectus Supplement and Prospectus are attached hereto as Addendum A-1 (Prospectus) and Addendum A-2 (Prospectus Supplement).

[11] The first sentence of the tax disclosure in the Prospectus Supplement states that the issuer will consist of tiered REMICs, and the rest of the disclosure essentially assumes this status to be true in describing the tax consequences to investors. *See* Addendum A-2 (Prospectus Supplement at S-124). The base Prospectus does briefly discuss the potential for corporate level income tax if the issuer fails to qualify as a REMIC, but it assures investors that with respect to each trust that elects REMIC status, counsel will deliver an opinion that the issuer will indeed qualify as a REMIC. *See* Addendum A-4 (Prospectus at 127, 142).

representing interests in REMICs. Those consequences would be significantly worse if the REMIC election were not valid (and investors were treated as holding corporate stock).[12]

II. TO QUALIFY AS A REMIC AN ASSETS TEST MUST BE SATISFIED

An entity must meet a number of tests to be a REMIC. The test that is relevant to the buy-back remedy is the assets test. It requires that substantially all of the assets of the entity consist of "qualified mortgages" and "permitted investments."[13] This test must be met at all times starting three months after the inception of the REMIC. The "substantially all" test is met only if the nonqualifying assets are de minimis (generally under one percent of the REMIC's

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[12] For example, a real estate investment trust ("REIT") is required to derive most of its income from, and hold most of its assets in the form of, real estate assets, including real property mortgages. Under a special rule in 26 U.S.C. § 856(c)(5)(E), REMIC interests are treated as real estate assets, and the offering document for this transaction highlights this benefit. *See* Addendum A-2 (Prospectus Supplement at S-125); Addendum A-4 (Prospectus at 127). Certificates treated as corporate stock would not qualify as real estate assets. It is also common to "re-REMIC" interests in a REMIC by placing them in a second REMIC, which further carves up the cash flows and risks. Corporate stock would not be permitted assets of a second REMIC. Finally, dividends paid by a trust that is treated as a corporation to foreign investors would generally be subject to a 30% withholding tax. Interest payable on REMIC regular interests is not subject to this tax. *See* Addendum A-4 (Prospectus at 140).

[13] 26 U.S.C. § 860D(a)(4).

assets).[14] If at any time during a year, a REMIC fails the assets test, then it ceases to be a REMIC as of the beginning of the year.[15]

Although a REMIC may hold a de minimis amount of nonqualifying assets without terminating the REMIC election, any income (no matter how small) from nonqualifying assets (even one loan) is subject to a 100% prohibited transactions tax.[16] Accordingly, there is no real margin for error.

A "qualified mortgage" (the type of mortgage a REMIC can hold without adverse consequences) has a special definition in the REMIC rules.[17] Generally, a qualified mortgage must be an obligation that has real property collateral with a value at the time of origination of at least 80% of the loan amount.[18] Other types of qualified mortgages include regular interests in another REMIC and certain qualified replacement mortgages.[19]

It is standard in REMIC transactions to have the sponsor represent that mortgages it transfers to a REMIC are qualified mortgages under the tax law

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[14] Treas. Reg. § 1.860D-1(b)(3).

[15] 26 U.S.C. § 860D(b)(2). The IRS can agree to overlook inadvertent failures to comply, although it may impose conditions such as a corporate tax for the period of noncompliance.

[16] 26 U.S.C. § 860F(a)(2)(B).

[17] 26 U.S.C. § 860G(a)(3).

[18] 26 U.S.C. § 860G(a)(3)(A); Treas. Reg. § 1.860G-2(a)(1).

[19] 26 U.S.C. § 860G(a)(3)(B), (C).

definition (as was done by Morgan Stanley here). However, many other representations that are typically given could also be relevant to the status of a loan as a qualified mortgage. A loan could fail to be a qualified mortgage because there is no legal obligation to pay, or no good security interest, or because the portion of the collateral that meets the tax law definition of real property (as distinguished from personal property) is too low. While sponsors intend that all mortgage assets transferred to a REMIC will be qualified mortgages, at least some of them could fail to be on a number of grounds.

III. REQUIRED BUY BACK REMEDIES ARE CRITICAL TO SATISFYING THE REMIC ASSETS TEST.

Because of the importance of meeting the REMIC assets test and not holding any nonqualifying assets for any period, the REMIC rules provide two safe harbor rules to help issuers meet the REMIC assets test.

The first rule treats loans acquired by a REMIC tentatively as qualified mortgages if a sponsor reasonably believes that they meet the test.[20]

A second rule applies when a REMIC "discovers" that a "defective obligation" (including one that fails to meet customary representations) is not a qualified mortgage.[21] Following such a discovery, the REMIC is allowed to treat

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[20] Treas. Reg. § 1.860G-2(a)(3).

[21] Treas. Reg. § 1.860G-2(f)(2).

the loan as a qualified mortgage until 90 days after discovery. During that period, it can either cure the defect (e.g., by perfecting a security interest) or, if the defect cannot be cured, dispose of the mortgage (which practically would be effected through a sale or, if the disposition is within two years of the start of the REMIC, an exchange for a qualified replacement mortgage).[22] This rule applies on a loan-by-loan basis, not to pools of loans. If the REMIC discovers that any particular loan is not a qualified mortgage and fails to cure the defect or dispose of the loan within 90 days, then that loan would cease to be a qualified mortgage, with the highly adverse consequences described above.

These regulatory safe harbors have led participants in REMICs to require a 90-day buy-back (absent a cure or replacement) as a standard remedy for the breach of a representation.

While the REMIC rules technically only require the sale or replacement of a loan where the defect affects its status as a qualified mortgage, given the broad range of factors that could cause a loan to not be a qualified mortgage, the burden of determining in a short period of time, on a loan-by-loan basis, whether a defect prevents a loan from being a qualified mortgage, and the serious adverse

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[22] Treas. Reg. § 1.860G-2(f)(2). However, if the defect does not affect the status of an obligation as a qualified mortgage, then it will continue to be treated as such regardless of whether the defect is or can be cured.

consequences of getting it wrong, pooling and servicing agreements generally require buy-backs of all loans with material misrepresentations within the 90-day period in the regulations (or shortly thereafter if the trustee is willing to take the view that it has not in fact "discovered" a disqualifying defect in a loan).

The buy-back provision in the RWA closely tracks the specific language and the general structure of the cure or disposition remedy in the REMIC regulations and its origin in the REMIC rule is unmistakable. For purposes of comparison, the texts of the RWA and REMIC regulations are reproduced in the notes.[23]

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[23] RWA § 4(a) provides that within 60 days of its discovery or receipt of notice of a breach or representation or warranty with respect to a Mortgage Loan, Morgan Stanley is required to promptly "cure such breach in all material respects," or in the event the defect or breach cannot be cured, at the depositor's option, to "repurchase such Mortgage Loan at the Repurchase Price" or , in certain circumstances, "rather than repurchase such Mortgage Loan as provided above, remove such Mortgage Loan . . . and substitute in its place a Qualified Substitute Mortgage Loan or Mortgage Loans. . . ." RWA § 4(d) provides that the representations and warranties under the RWA inure to the benefit of the depositor's successors and assigns. PSA § 2.01(a) conveys to the Trust all of the depositor's rights under the RWA.

Treas. Reg.§ 1.860G-2(f)(2) provides:

> If a REMIC discovers that an obligation is a defective obligation, . . . then, unless the REMIC either causes the defect to be cured or disposes of the defective obligation within 90 days of discovering the defect, the obligation ceases to be a qualified mortgage at the end of that 90 day period. Moreover, even if the REMIC holds the defective obligation beyond the 90 day period,

Nearly identical buy-back provisions are found in most REMIC securitizations. For example, one of the largest REMIC issuers, Ginnie Mae (which is part of the Department of Housing and Urban Development), has virtually the same remedy provisions in its form Trust Agreement for REMICs.[24]

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the REMIC may, nevertheless, exchange the defective obligation for a qualified replacement mortgage so long as the requirements of section 860G(a)(4)(B) are satisfied.

[24] Ginnie Mae's REMIC Standard Trust Provisions provide:

Section 4.03. Sponsor Breach; Repurchase Obligation; Substitution. Within 90 days of the earlier of Sponsor's discovery or notice to the Sponsor of any breach by the Sponsor of any of its representations, warranties or covenants under a Sponsor Agreement, Sponsor Certification, if any, or the related Trust Agreement which breach, in the judgment of Ginnie Mae, materially and adversely affects the value of any Trust Asset or the interest of the Trust therein, the Sponsor shall (i) cure such breach, (ii) in the case of Trust MBS other than HECM MBS, remove such affected Trust MBS from the Trust and substitute one or more Ginnie Mae Certificates [with similar terms], (iii) in the case of HECM MBS, remove such affected HECM MBS from the Trust and substitute one or more HECM MBS [with similar terms], or (iv) with the consent of Ginnie Mae purchase the affected Trust Asset from the Trust. The Sponsor shall effect any substitution of a Trust MBS by depositing with the Trust each Ginnie Mae Certificate to be substituted. However, no substitution for a Trust MBS may be made 90 days or more after the Closing Date unless such representations, warranties or covenants relate specifically to the characteristics of such Trust MBS. No substitution for a Trust MBS may be made for any reason two years or more from the Closing Date unless an Opinion of Counsel addressed to and satisfactory to Ginnie Mae is delivered to the effect that such substitution will not adversely affect the status of the related Trust REMIC or REMICs as REMICs for United States federal income tax purposes. In the event that the Sponsor effects a substitution of Trust Assets, the Sponsor is hereby deemed to make each of the Sponsor representations and warranties contained in the related

The buy-back remedy is also needed to address a practical issue in rendering tax opinions, which are critical for a deal to go forward. An opinion that a trust is a REMIC covers the entire life of the REMIC, and holding more than a de minimis amount of loans that are not qualified mortgages would result in the loss of REMIC status. Since it cannot reasonably be assumed that a large pool of loans will not in fact include some loans that are defective, it is standard to include in REMIC documentation a provision that unconditionally requires disposition of a loan within 90 days of discovery that it is not a qualified mortgage, as this allows counsel to render an unqualified REMIC opinion. However, the opinion must assume, and typically does, that the parties will

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> Trust Agreement, including in these Standard Trust Provisions, and in the Sponsor Agreement, including in the Standard Sponsor Provisions, as of the date of substitution of such Trust Assets.
> (a) The Sponsor shall effect a purchase of a Trust Asset from the Trust by depositing with the Trustee cash in an amount equal to the sum of (i) the then outstanding principal balance of the Trust Asset to be purchased, as reflected in the records of the Trustee, plus (ii) interest on that amount at the Certificate Rate for the period from the date on which the Trust ceases to be entitled to distributions of interest on the repurchased Trust Asset through the next succeeding Accounting Date.

Government National Mortgage Association, *Multiclass Securities Guide, Part II: Ginnie Mae Multiclass Securities Transactions: Additional Selected Transaction Documents*, at II-4-25 (Mar. 1, 2017), http://www.ginniemae.gov/investors/multiclass_resources/Documents/MS_Guide_Part-II.pdf.

comply with deal documents, which would include the buy-back remedy.[25]

CONCLUSION

While not every word of the buy-back remedies in the MLPA and PSA is taken from the REMIC rules, their tax law lineage is unmistakable. Also, because the same tax law rules govern all REMICs, substantially the same contract terms are present in virtually all REMIC securitizations. A decision adversely affecting the enforceability of such remedies would be troublesome for contracts governed by New York law. It would harm, not help, investors as a whole and not give them the tax deal they bargained for.

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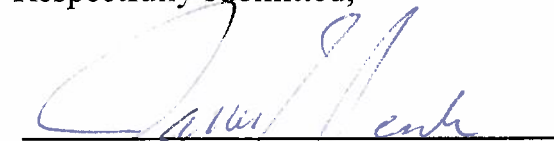
[25] For example, the Ginnie Mae form REMIC tax opinion assumes compliance with the Trust Agreement and provides:

> Also based on the foregoing and subject to the qualifications stated herein, we are of the further opinion that, if the Trustee, the Sponsor, Ginnie Mae, and the other parties to the documents referenced in the foregoing paragraph [including the Trust Agreement] comply (without waiver) with all of the provisions of such documents and elections properly are made and filed for [each of] the . . . [REMIC Assets] to be treated as separate REMICs pursuant to section 860D of the Code: (i) the . . . [REMIC Assets] will each qualify as a separate REMIC . . . .

Government National Mortgage Association, *Multiclass Securities Guide, Part II: Ginnie Mae Multiclass Securities Transactions: Additional Selected Transaction Documents*, at II-12-2 to II-12-3 (Mar. 1, 2017), http://www.ginniemae.gov/investors/multiclass_resources/Documents/MS_Guide_Part-II.pdf.

Dated: New York, New York
November 26, 2019

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with Rule 500.13(c), because it contains 4,638 words, excluding the parts of the brief exempted by Rule 500.13(c)(3).

2. This brief complies with the typeface and type style requirements of Rule 500.1 because the brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: New York, New York
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