

# **Exhibit 1**



Proceedings

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DEBRA SMITH,  
OFFICIAL COURT REPORTER

## Proceedings

1 THE COURT: Good morning, Counsel. This is  
2 Judge Friedman. I am here with a court reporter and my  
3 law clerk. This conference is continued from  
4 February 9. Let me ask you, as we did on the last  
5 date, to send us a list of all of the counsel who are  
6 on the call.

7 I will just ask those counsel who will be  
8 speaking today to say their names and the parties they  
9 are representing without full appearances and please  
10 say your name before you speak during this conference  
11 because the voices are very hard to distinguish over  
12 the phone.

13 MS. KLEIN: Good morning, Your Honor. This  
14 is Gayle Klein from McKool Smith representing Nover  
15 Ventures LLC.

16 MS. PATRICK: Good morning, Your Honor.  
17 Kathy Patrick representing the institutional investors  
18 Blackrock and PIMCO and others.

19 MR. GOLDSTEIN: Good morning, Your Honor.  
20 This is Jordan Goldstein representing the AIG parties.

21 MR. LUNDIN: Good morning, Your Honor. This  
22 is John Lundin representing HBK Master Card.

23 MR. BENTLEY: Good morning, Your Honor.  
24 Phillip Bentley of Kramer Levin representing Tilden  
25 Park Capital Management.

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1 MR. GILMAN: Good morning, Your Honor. This  
2 is Felix Gilman of Axinn Veltrop Harkrider representing  
3 the Poetic and Prophet parties.

4 THE COURT: Is that name as poetic as it  
5 sounds?

6 MR. GILMAN: Yes, Poetic and Prophet are two  
7 parties.

8 THE COURT: Thank you.

9 We're going to continue the discussion that  
10 we began on February 9. I have received the  
11 supplemental submission dated February 12 of Nover and  
12 the institutional investors. I have also received a  
13 copy of the February 9 transcript. A very diligent  
14 messenger for one of the parties made great efforts  
15 this morning to make sure that this was put into my  
16 hands on a timely basis.

17 Now, let's go back to this issue of the  
18 identification of the interests in the trusts.  
19 Ms. Klein, what is sensitive about giving a CUSIP or a  
20 Bloomberg ID number to identify the particular class in  
21 which your client holds an interest in?

22 MS. KLEIN: Certainly, Your Honor. The CUSIP  
23 or the Bloomberg ID number identified a particular  
24 certificate, which is the class of certificate that is  
25 held, and given that we own -- I am sorry, let me back

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1 up. Given that we allege an interest in 120 of the  
2 trusts, that discloses our investment strategy because  
3 it discloses where among the different trusts Nover has  
4 decided to take an interest and, therefore, it is  
5 confidential, proprietary, and very sensitive.

6 We don't believe that that is needed for  
7 purposes of standing. Proving that there is an  
8 ownership interest in the trust directly, it should be  
9 sufficient for the other parties and the CUSIP number  
10 need not be identified.

11 THE COURT: I think you have to identify the  
12 class in which your client has an ownership interest.  
13 The class, after all, is going to determine in certain  
14 instances whether your client is entitled to a  
15 distribution. You are not being asked to disclose the  
16 amount of the holdings or when you acquired them.

17 Now, if the mere fact of the CUSIP number,  
18 the Bloomberg number, is going to reveal something  
19 about the amount of the holdings or the date of  
20 acquisition, then tell me a different way that you can  
21 identify the class and we'll see what the response is  
22 of the institutional investors.

23 MS. KLEIN: Your Honor, we could identify the  
24 class generally without the certificates, such as  
25 whether it is a senior certificate, a senior

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1 subordinate, or, generally, Class A, Class B, Class M.  
2 That certainly would provide the information without  
3 the CUSIP.

4 THE COURT: All right, Ms. Patrick, would  
5 that be sufficient and, if not, why not?

6 MS. PATRICK: I think the issue, Your Honor,  
7 is that it is only with the CUSIP where the -- and,  
8 again, not the amount, just the certificate CUSIP, that  
9 the Court will be able to ascertain whether any portion  
10 of the resolution of the issue in this case will affect  
11 that certificate.

12 There are certificates that regardless of how  
13 the Court rules on the papers, right second or right  
14 first pay second issue will take nothing either way and  
15 so in that sense, a party holding those interests is  
16 not an owner of a cognizable stake in the outcome and  
17 so we do think the CUSIP is necessary in order to  
18 identify whether the interest held is one that really  
19 is affected by the proceeding or not.

20 MS. KLEIN: Your Honor, if I may a brief  
21 reply?

22 THE COURT: Just a moment, Please.

23 Ms. Patrick, I am afraid that you faded out  
24 for part of that statement.

25 MS. PATRICK: I am sorry, I have terrible

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1 problems with phones.

2 THE COURT: I know but we'll get through it.

3 What is the CUSIP number going to show that's  
4 saying we have an interest in Class A certificates will  
5 not. Can you explain that again, please.

6 MS. PATRICK: Yes, I can. So, if you were to  
7 take, for example, the BSABS 2006 AC-1.

8 THE COURT: Let's just get that number again.

9 MS. PATRICK: BSABS, Bear Stearns Asset  
10 Backed Securities is the abbreviation, 2006 A alpha C  
11 cat 1, that's a PSA that you have before you, and it  
12 has a number of loan groups and tranches in it, seven  
13 or eight different ones, so simply asserting that we  
14 hold Class A certificates or that we hold Class M  
15 certificates -- and this will be true of all of these  
16 highly structured vehicles -- there will be tranches in  
17 those vehicles that regardless of the outcome of the  
18 fundamental issue raised by the trustees, namely pay  
19 first right second or right first pay second number one  
20 or two, the issue of temporary over-collateralization  
21 will be so far down in their respective waterfall.

22 So, for example, Class M certificates,  
23 there's not just one Class M certificate, there's  
24 sometimes three levels of Class M certificates, three  
25 levels of As, etc., and so without the specific CUSIP,

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1 one cannot tell whether the interest held is one that  
2 would be in any way affected by the resolution of the  
3 issues raised.

4 To put it bluntly, there are certificates in  
5 these trusts that are so far out of the money or so far  
6 down that regardless of how the Court resolves this  
7 issue, they will not be affected, and that's why the  
8 CUSIP number is important because it will allow us to  
9 separate wheat from the chaff.

10 People who are actually affected by how the  
11 proceeds here are distributed have standing, people who  
12 don't and never will be affected by it likely do not,  
13 but we can't answer that question until we know not  
14 just the class of security but the particular CUSIP  
15 number.

16 THE COURT: Just a moment, please.

17 How does the CUSIP number identify the level  
18 of the class, for example?

19 MS. PATRICK: Each CUSIP is associated with a  
20 different class of the security, so if you go back --  
21 let me just get to the top of this PSA. If you go back  
22 up in this structure, so if you were to look at page --  
23 I'll get you the page number of that PSA -- there is a  
24 description of REMIC 1 and REMIC 2. In that  
25 description, 1 a-1 is a tranche. It has a CUSIP number

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1 that is different than 1 a-2 and each of them takes  
2 differently under the waterfall. In that first --  
3 there are two loan groups in this trust so it's a good  
4 example. There are 12 classes of certificates under  
5 this REMIC 1 in this structure: Three mezzanine  
6 tranches, three senior tranches, four B tranches, and  
7 each of those tranches will have a different CUSIP.

8 So simply saying I hold an A certificate  
9 doesn't tell you where that certificate sits in the  
10 water. Likewise, holding an M certificate doesn't tell  
11 you where that certificate sits in the waterfall. The  
12 only thing what you need to do that is you need to  
13 either know I own 1M-3 or, more accurately, I own this  
14 CUSIP because that allows you to identify whether that  
15 certificate is affected.

16 THE COURT: Thank you.

17 Ms. Klein, you've been very patient. Please  
18 feel free to respond.

19 MS. KLEIN: Thank you, Your Honor.

20 I think that while Ms. Patrick really would  
21 appreciate understanding where people sit in the  
22 waterfall so that they can understand how the  
23 distribution of the proceeds would impact that  
24 particular CUSIP, which is exactly the reason why we  
25 think that it's confidential, proprietary, and

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1 sensitive and do not want to the provide that  
2 information at this juncture, if you go back to Article  
3 77 itself, Article 7703 requires joinder of persons  
4 interested in trust property.

5 It doesn't say that we have to receive  
6 settlement funds or have the likelihood to receive  
7 settlement funds, we just have to be interested in  
8 trust properties, and that's very important in this  
9 proceeding, Your Honor, because the trustees have asked  
10 you to interpret the governing agreements and the  
11 interpretation of the governing agreement affects all  
12 certificate holders regardless which class, regardless  
13 whether they are entitled to any of the settlement  
14 payments.

15 For example, because lower tranches of  
16 classes may be written up and, therefore, in the future  
17 may have a right to receive subsequent recoveries or  
18 other payments or it affects which classes get written  
19 down faster and, therefore, could affect lower tranches  
20 because they could in the future receive the right to  
21 payments quicker.

22 So it doesn't matter whether any certificate  
23 holder has the right to receive funds under the  
24 settlement payment, the question that standing resolves  
25 is whether a party has an interest in trust property

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1 because when you interpret the governing agreements,  
2 you are necessarily affecting that interest. CUSIP  
3 doesn't matter, class doesn't matter, just the fact  
4 that you are a certificate holder in the trust gives  
5 rise to standing under Article 77.

6 I haven't addressed the secondary or indirect  
7 interests.

8 THE COURT: Not yet, please.

9 Does any of the counsel who indicated that he  
10 might wish to speak today want to be heard on this last  
11 issue of the identification of the direct interest?

12 MR. GOLDSTEIN: This is Jordan Goldstein for  
13 AIG, Your Honor.

14 THE COURT: I'm sorry, we didn't get who that  
15 is.

16 MR. GOLDSTEIN: Jordan Goldstein for AIG.

17 THE COURT: Yes.

18 MR. GOLDSTEIN: Thank you. So, I join in  
19 Ms. Patrick's remarks. The only part I would just note  
20 is that there is not a way of ascertaining, you know, a  
21 priori in advance which trusts will be at issue, will  
22 receive -- I am sorry, which will receive a  
23 distribution and will actually have some sort of  
24 cognizable interest in this proceeding.

25 In other words, it really varies from trust

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1 to trust based upon the historical level of each trust,  
2 which particular certificates in a given trust will  
3 receive any portion of the settlement or no portion of  
4 the settlement, and so there's not sort of a way to  
5 generically answer a question by saying that there is  
6 some threshold level of securities that below which or  
7 above which we can assume they will have some interest  
8 and so that's part of the reason why in order to answer  
9 this question we do need access to what Nover or any  
10 other certificate holder has in order to assess  
11 standing.

12 One of the points that came up in Ms. Klein's  
13 letter is that the trustees have this information,  
14 they're not being asked to assess standing at this  
15 point, and that's something, obviously, the Court has  
16 to do, and in order to do that, the parties have to be  
17 able to discuss these issues allegiantly so even if the  
18 trustees have access to this information, there is a  
19 step missing. That step is that the parties have  
20 access to it so they can brief the issues adequately.

21 THE COURT: Do any of the other counsel want  
22 to be heard on the direct identification issue?

23 MR. LUNDIN: Yes, Your Honor. John Lundin  
24 from Schlam Stone Dolan for HBK. I agree with  
25 institutional investors and AIG regarding the scope of

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1 the disclosure, I just think it's important to note  
2 that I, and I suspect others on this call, while we  
3 agree to the scheduling order and we might agree the  
4 scope of disclosure, we very much agree -- disagree,  
5 rather, with what our, essentially, legal arguments  
6 regarding the scope of standing that are in the  
7 institutional investors' letters and we would not want  
8 the Court to think in any way that that letter speaks  
9 on that legal issue for anyone other than -- well,  
10 certainly not for us or really anyone other than the  
11 institutional investors because we disagree with the  
12 legal point but we, nonetheless, agree on the scope of  
13 disclosure.

14 THE COURT: Why is it that you think that the  
15 CUSIP numbers should be disclosed, Mr. Lundin?

16 MR. LUNDIN: Well, Your Honor, really, I  
17 would say for the reasons Ms. Patrick said, it's  
18 important -- whether or not, you know, the argument  
19 ultimately prevails that someone who doesn't get this  
20 money has standing, I think it's important that we know  
21 exactly what we're talking about.

22 Indeed, in the cover letter to the order, the  
23 proposed order for institutional investors, there is a  
24 reference to parties who reserve the right to seek more  
25 broad disclosure. That was us. Ultimately, if people

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1 are going to talk about what's going on here, we need  
2 to have some clarity. You need to know how the  
3 settlement runs really varies to from tranche to  
4 tranche to tranche and that means from CUSIP to CUSIP  
5 to CUSIP.

6 At this point I think I am repeating  
7 Ms. Patrick's argument so I will stop.

8 THE COURT: Anyone else on the direct  
9 identification issue?

10 MR. BENTLEY: Yes, Your Honor. Phillip  
11 Bentley of Kramer Levin for Tilden Park.

12 Your Honor, we support the points that  
13 Ms. Patrick and Mr. Goldstein have made. Just to  
14 amplify very quick briefly on two points, Your Honor  
15 asked why is the CUSIP necessary. It's simply a matter  
16 of making sure we have sufficient specificity.

17 There is nothing more confidential about a  
18 CUSIP than about identification of a class but the  
19 CUSIP makes sure that you are identifying the actual  
20 tranche and not merely a class that contains multiple  
21 tranches.

22 The one other point I wanted to follow up on,  
23 Your Honor, is Ms. Klein drew a distinction. She said,  
24 well, even though some classes may not receive  
25 settlement funds, they will receive benefits of other

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1 sorts. It may be written up. Your Honor, we have  
2 looked at that issue. We have done a significant, a  
3 substantial analysis of the different trusts and the  
4 different classes and there are a substantial number of  
5 classes that however Your Honor decides the issues that  
6 are before you will get no benefit, no economic benefit  
7 of any sort. Not only will they not receive cash, but  
8 they won't be written up or they won't receive any  
9 other kind of noncash benefit. So I just wanted to add  
10 that in case that wasn't already clear.

11 THE COURT: We're going to move on to the  
12 issue of identifying indirect interest in the trusts.

13 Ms. Klein?

14 MS. KLEIN: Thank you, Your Honor.

15 Again, this is part and parcel of the same  
16 thing. Under Article 77 you just have to demonstrate  
17 an interest in the trust and in our joint letter we  
18 cited to you an Article 77 proceeding case where the  
19 Court submitted a party that had a possible contingent  
20 remainder interest in a trust to appear because that  
21 party had an interest or an indirect interest in the  
22 trust.

23 THE COURT: Excuse me, Ms. Klein, a holder of  
24 an interest in a CDO squared is not exactly analogous  
25 to an infant who may have a possible interest in a

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1 remainder. So let's address the complex financial  
2 interests with which we're dealing with here.

3 I think if one wanted to make that analogy,  
4 which is really inapt, one would say that the holder of  
5 the interest in the CDO-squared was more like an heir  
6 of an heir.

7 MS. KLEIN: Well, Your Honor, let's talk  
8 about CDO because I don't think that there are many  
9 people who have an interest on this call through a  
10 CDO-squared but someone who owns an interest through a  
11 CDO ultimately has the right to receive cash flows from  
12 a trust because the CDO is a certificate holder in a  
13 trust and those funds flow perhaps alone or perhaps  
14 with other assets to those with an interest in the CDO,  
15 so it is an indirect interest, but that person is  
16 interested in the cash flows of the trust, therefore,  
17 the interest in the trust property.

18 THE COURT: Ms. Klein, is there any PSA or  
19 governing document at issue in this proceeding which  
20 provides or contends any language that suggests that  
21 the trustee holds the assets not on behalf of the  
22 certificate holders in the trust but on behalf of  
23 indirect interest holders?

24 MS. KLEIN: I haven't looked at all 250. I  
25 would suspect that most PSAs or trust indenture

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1 agreements provide that trustee hold the certificate --  
2 I'm sorry, hold assets for the benefit of the  
3 certificate holders. However, the trustee of the  
4 re-REMIC or the NIM trust or the CDO would also make  
5 that same averment, so those cash flows do flow through  
6 people who have beneficial ownership and interests to  
7 the trust property.

8 THE COURT: Is there anything else you would  
9 like to say, Ms. Klein, before I hear the opposing  
10 positions?

11 MS. KLEIN: I think, Your Honor, that our  
12 letter said it all so I don't want to waylay your time.

13 THE COURT: You are not waylaying my time.  
14 The object here is to give you a full opportunity to  
15 call to my attention any issues which you think  
16 important.

17 MS. KLEIN: Very, well, Your Honor. I think  
18 that the disclosure of information about the type of  
19 indirect interest is not necessary for the Court to  
20 address this threshold issue of standing with respect  
21 to these different types of investment structures so  
22 that if a party were to aver that they have an indirect  
23 interest, Ms. Patrick or Mr. Goldstein or anyone else  
24 would be able to come to the Court with the threshold  
25 legal issue of is standing through a CDO or re-REMIC or

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1 a NIM trust sufficient to confer standing here without  
2 requiring the parties to disclose what their interests  
3 actually are, and so that reason sets forth why we  
4 think we need to say only a direct or indirect interest  
5 at this juncture.

6 Your Honor can determine the threshold issue  
7 of standing and then we can discuss who holds what in  
8 those different buckets but certainly understanding at  
9 this juncture what the actual interests are other than  
10 saying it's an indirect interest is not necessary to  
11 that legal analysis.

12 THE COURT: Ms. Klein appears to have  
13 concluded. Ms. Patrick, will you lead off in response?

14 MS. PATRICK: Yes, Your Honor, I will.

15 So let's begin by answering the question the  
16 Court asked. I direct you again to the same Bear  
17 Stearns asset backed securities governing agreements.  
18 This is the certificate form. I'm looking at the  
19 electronic PDF which is on file with the Court, so it  
20 would be Page 193 of the PDF, and on that page of the  
21 PDF is the following language:

22 The certificates in the aggregate evidence  
23 the entire beneficial ownership interest in the trust  
24 fund formed pursuant to the agreement. That matters  
25 because it is exactly why indirect interests, though we

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1 don't know what people claim, may not be sufficient to  
2 confer standing.

3 And let's talk about CDOs. There are three  
4 separate cases where a Court has considered who has the  
5 authority to appear, act, and sue on behalf of CDOs  
6 that hold interests already as trusts, and in all three  
7 of those cases, the Court held that it was the CDO  
8 trustee and no one else who had authority to appear and  
9 be heard.

10 Those cases are *Phoenix Light SF Limited*  
11 *against U.S. Bank Trustee*, 2015 Westlaw 2359358, and  
12 that's in the Southern District in May of 2015, noting  
13 that an assignment of all right, title and interest in  
14 trust collateral including RMBS certificates "divests  
15 plaintiffs of any rights they otherwise may have had to  
16 commence litigation on their own behalf."

17 Likewise, it's the holding of *House of Europe*  
18 *Funding against Wells Fargo Bank National Association*,  
19 2014 Westlaw 1383703, Southern District 2014: A party  
20 that has assigned away its right under a contract lacks  
21 standing to sue for the breach of that contract.

22 Similarly, *Triax Prime CDO 2006-1 against*  
23 *N.Y. Mellon*, same principle. The point being the trust  
24 defines the nature of the interests that are protected.  
25 Here, the trust instrument, the governing agreements,

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1 says the certificates evidence the entire beneficial  
2 ownership interest in the trust formed pursuant to the  
3 agreement. That means that when those certificates are  
4 moved into synthetic entities like a collateralized  
5 debt obligation or a CDO-squared.

6 Let's talk about first squared CDO. It is  
7 the trustee of the CDO that is the certificate holder  
8 because they receive under a grant. That's why it's  
9 important for all the parties to know, including the  
10 Court, whether the interest held is a CDO or a  
11 certificate because that has standing consequences.

12 I recognize we're at a brief standing at some  
13 point but we can't brief that in the abstract without a  
14 disclosure of the nature of the interest held and a  
15 simple averment that it is indirect is insufficient.

16 The same is true of a credit default swap  
17 counter-party. In the case of *Craft v EM CLO* -- that's  
18 Collateral Loan Obligation -- *2006-1 against Deutsche*  
19 *Bank AG*, the Court, likewise, held that because the  
20 indentures granted to the trustee all rights under the  
21 swap agreements, including the right to bring actions  
22 and proceedings, the issuer, *Craft*, lacked standing to  
23 sue. Now, that's just the reality of it. The trust  
24 defines the interests that are protected under Article  
25 77.

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1                   In the case they cited involving the infants,  
2                   the infants are clear remainderman under an inter vivos  
3                   trust, but here the trusts are created pursuant to  
4                   contract that define the entire beneficial ownership  
5                   interest in the trust fund as being the certificates,  
6                   so unless someone owns a certificate, there are reasons  
7                   to question their standing.

8                   That's why it is important to know whether  
9                   somebody holds a certificate or the certificate  
10                  insurer, which is a different issue, or have an  
11                  indirect interest through some synthetic instrument  
12                  because if the interest is indirect, that's another way  
13                  of saying the person appearing doesn't have their own  
14                  interest in the trust fund, they have an interest in  
15                  cash flows from the trust but the interest is held by  
16                  someone else; namely, a trustee.

17                  That's why we have asked for that information  
18                  because it's too amorphous for us to simply be faced  
19                  with an argument about whether it is indirect and it,  
20                  frankly, is inoffensive to say I am exposed to -- I  
21                  claim an interest in the trust because I own an  
22                  interest in CDO where a tranche of this is securitized.

23                  If that's the case, the Court then can look  
24                  at that and decide whether that is sufficient to confer  
25                  standing or not, but the mere averment of an indirect

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1 interest with no specificity at all concerning the  
2 nature of the interest is not sufficient to allow the  
3 Court or the parties to assess standing.

4 MS. KLEIN: Your Honor, two followup points  
5 to that.

6 THE COURT: Is that Ms. Klein?

7 MS. KLEIN: Yes, ma'am.

8 THE COURT: Before I hear from you, if any of  
9 the other parties want to be heard on this issue, they  
10 should let me know now and then we will give Ms. Klein  
11 the response. Who wants to speak?

12 MR. GOLDSTEIN: Jordan Goldstein. May I be  
13 heard briefly, Your Honor?

14 THE COURT: Just a moment. Who else besides  
15 Mr. Goldstein will want to be heard? Each counsel  
16 who's going to speak on this issue should just give me  
17 his name now, please.

18 MR. LUNDIN: John Lundin, Your Honor, for  
19 HBK.

20 MR. GILMAN: Felix Gilman for Poetic and  
21 Prophet.

22 THE COURT: Is that everyone? Let's start  
23 with Mr. Goldstein, please.

24 MR. GOLDSTEIN: Thank you, Your Honor.  
25 Jordan Goldstein for AIG. I just want to respond to

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1 one point Ms. Klein had raised, which was her  
2 suggestion, I think, that the parties could brief these  
3 issues in the abstract without knowing what structures  
4 were at issue.

5 I just wanted to add the practical point that  
6 this seems like a wildly inefficient approach of  
7 briefing, for example, for Your Honor, whether a CDO  
8 confers standing, whether a CDO-squared confers  
9 standing, whether a credit default swap confers  
10 standing, whether a NIM trust confers standing without  
11 even knowing whether any of those are at issue which  
12 would, in effect, ask the Court to enter a series of  
13 advisory opinions, which is generally outside the  
14 Court's mandate given that one or more of the  
15 structures may not be at issue for any interested  
16 person in this proceeding.

17 So, just as a practical matter, it is both  
18 inefficient to try to brief these issues without  
19 knowing which structures are actually at issue and it's  
20 requesting that the Court enter an advisory opinion,  
21 which is something Courts generally do not do.

22 Thank you, Your Honor.

23 MR. LUNDIN: Your Honor, this is John Lundin.  
24 First, I agree with Mr. Goldstein's excellent point.  
25 Second, we very much disagree with the institutional

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1 investors on the law regarding who is an interested  
2 person but that's still -- even if you agree with Nover  
3 on what the law is, as we do, you still need this  
4 information. I would like to explain why.

5 Article 7703 is what governs this proceeding  
6 and it says that the question of who is an interested  
7 person is based on who is interested in estates as  
8 provided in the Surrogate Court's Procedure Act. So,  
9 but that doesn't mean that we don't need a disclosure,  
10 I think it means we very much need it because under the  
11 proper standard, which is Article 7703, that is very  
12 much a fact-bound question.

13 So even if you agree with Nover on the law,  
14 as I do, I think you still need this disclosure because  
15 whether someone is interested in estates as provided in  
16 the Surrogate's Court Procedure Act, is not something  
17 to be answered in the abstract.

18 THE COURT: Mr. Gilman, are you still  
19 intending to speak?

20 MR. GILMAN: Yes, Your Honor. I just wanted  
21 to very briefly to clarify Poetic and Prophets'  
22 position. While we're not opposed to the order the  
23 institutional investors proposed, I did want to clarify  
24 that we don't join in their views of standing. We're  
25 not opposed to the order in the interest of moving this

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1 procedure along efficiently, but I think we do take a  
2 different view of standing.

3 What we have asked the Court is not to  
4 resolve the issue of standing at this point but to wait  
5 for full briefing as contemplated by the scheduling  
6 orders.

7 THE COURT: You can rest assured that I will  
8 await full briefing.

9 Ms. Klein, would you like to respond?

10 MS. KLEIN: Just very briefly, Your Honor.

11 First of all, the cases that Ms. Patrick  
12 cited, although I have not had the opportunity to  
13 review them all, I suspect very strongly that it  
14 relates to the right to sue and, of course, none of the  
15 investors on this call or in this proceeding have the  
16 right to sue on behalf of the trust absent meeting  
17 specific contractual requirements in the PSA, so I  
18 strongly suspect that the case authority that  
19 Ms. Patrick cited to you is in opposite.

20 The Court has invited those parties who claim  
21 an interest in trust property to be present and I would  
22 think that she would prefer to have as many people who  
23 claim an interest to participate and talk about how the  
24 four and a half billion dollars is going to be  
25 distributed regardless of them demonstrating to a tee

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1           what their specific interests and how much they would  
2           get if the funds were, in fact, distributed.

3                       That said, in the interest of compromise, if  
4           the Court were to order that we were to disclose  
5           whether this interest was indirect and if it were  
6           direct to state through which type of investment  
7           structure, i.e. through the indirect -- the interest is  
8           through a CDO or NIM trust or re-REMIC and certainly  
9           Nover would be willing to make that limited disclosure.

10                      THE COURT: Have you concluded, Ms. Klein?

11                      MS. KLEIN: Yes, ma'am.

12                      THE COURT: Thank you. Let's move to the  
13           next issue, which is the procedure for distribution  
14           where one or more parties has appeared and there is no  
15           disagreement as to the manner in which distribution of  
16           the settlement payment should be made. The  
17           institutional investors and Nover have a dispute about  
18           that.

19                      Ms. Klein, the question for you that I have  
20           is what financial effect could distribution of the  
21           settlement payment for a trust in which Nover is not  
22           claiming an interest have on the amounts of  
23           distributions to Nover in a trust or trusts in which it  
24           is claiming an interest?

25                      MS. KLEIN: I think the point, Your Honor, is

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1 that the institutional investors have raised the issue  
2 of standing. Standing is a gating issue and it should  
3 be applied consistently across all trusts. Many of  
4 these trusts have the same or identical language and,  
5 therefore, if parties who do not have standing to  
6 allege an interest in a trust are going to make  
7 agreements that allow distributions to happen but then  
8 parties who have a similar standing issue in another  
9 trust are not going to be allowed to be heard, I think  
10 that's a gating issue that the Court should decide  
11 regardless of what the financial interests are of any  
12 party.

13 THE COURT: Ms. Klein, you are repeating the  
14 argument that you made in your supplemental submission,  
15 you are not answering my question. Are you just not  
16 going to answer it?

17 MS. KLEIN: My apologies, Your Honor.

18 THE COURT: I asked you a specific question  
19 about the financial effect and I would like to have an  
20 answer to that question.

21 MS. KLEIN: Could you please repeat your  
22 question and I will answer it directly? My apologies,  
23 Your Honor, I don't remember your specific question and  
24 I certainly want to make efforts to answer it directly.  
25 Would you mind repeating it?

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1 (The question was read back.)

2 MS. KLEIN: The answer to that is, Your  
3 Honor, that the financial distribution of a specific  
4 allocable share of settlement payment to one trust does  
5 not affect the allocable share of payment to another  
6 trust so the financial effect of the distribution of  
7 the settlement payment in one trust does not affect  
8 those of the others.

9 THE COURT: Thank you. Is there anything  
10 else on this issue with respect to the procedure for  
11 distribution where one or more parties has appeared and  
12 there is no disagreement?

13 MS. KLEIN: Not from Nover, Your Honor.

14 THE COURT: Do any of the other parties wish  
15 to be heard?

16 Let's start with Ms. Patrick.

17 MS. PATRICK: Yes, Your Honor. We would just  
18 direct the Court back to the language of the proposed  
19 order that was submitted by the remaining investors on  
20 Page 2, which says that in any distribution that occurs  
21 early pursuant to an agreement of the investors, then  
22 the order will state that it is without prejudice to  
23 and shall have no precedential effect on any argument  
24 of any party concerning the appropriate distribution of  
25 the settlement payment where there is a dispute among

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1 the parties regarding how the payments should be  
2 distributed or the distribution methodology on trusts  
3 for which no investor has appeared.

4 We believe that language is more than  
5 adequate to assure that where there is no dispute, the  
6 distribution of those trusts as it occurs will have no  
7 effect and provide no thumb on the scale in deciding  
8 how disputed trusts will be distributed and we think  
9 that is perfectly appropriate as do all of the other  
10 investors who have supported this order.

11 THE COURT: If any of the other counsel wish  
12 to be heard on this procedure, please state your name  
13 first.

14 MR. GOLDSTEIN: That is Jordan Goldstein  
15 counsel for AIG.

16 THE COURT: I am not hearing that any of the  
17 other counsel want to be heard, so please go ahead,  
18 Mr. Goldstein.

19 MR. GOLDSTEIN: Thank you, Your Honor. I  
20 would just add I associated myself with Ms. Patrick's  
21 remarks. Just for a bit of context and while it's, of  
22 course, not in any way dispositive or binding, I would  
23 just note that in the prior Article 77 proceeding  
24 before Justice Scarpulla concerning the Countrywide  
25 RMBS settlement and trusts, a severance order was

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1 entered early on in the proceeding along the lines of  
2 what all parties except Nover proposed so that where  
3 there are not disputes, funds can be paid out to trusts  
4 and the holders of the securities who are entitled to  
5 these settlement proceeds can be paid without those  
6 payments being delayed or held hostage to some sort of  
7 fight over standing.

8 I just note that what we're advocating is  
9 consistent with what parties have agreed to in the  
10 prior proceeding including counsel who are all on this  
11 call.

12 THE COURT: Mr. Goldstein, that reminds me to  
13 ask on a different point, did Judge Scarpulla have any  
14 threshold issues that she decided about what would be  
15 the manner of identifying interests for purposes of  
16 briefing the standing issues?

17 MR. GOLDSTEIN: My understanding, I do not  
18 recall this issue being keyed up in that proceeding,  
19 although I will defer to others who may have a  
20 different recollection, but I do not recall issue this  
21 being keyed up.

22 MS. KLEIN: Your Honor, this is Ms. Klein.  
23 The parties to that proceeding were required to provide  
24 affirmations of their interests to the trustee and  
25 there was no challenge to standing.

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1 THE COURT: Thank you. Does anyone else want  
2 to be heard on that point? I am not hearing anything.

3 Unless you have a reply on the procedure,  
4 Ms. Klein, I am going to move to the next issue.

5 MS. KLEIN: If I may just make one reply,  
6 Your Honor, and that is Nover certainly doesn't intend  
7 to challenge standing. It's our understanding the only  
8 parties that may challenge standing are the  
9 institutional investors and AIG and, therefore, the  
10 expediency of sending out the funds from any trusts  
11 shouldn't forsake accuracy in determining who has  
12 standing in this proceeding when they're the ones who  
13 are raising the standing issue.

14 MR. GOLDSTEIN: This is Mr. Goldstein for  
15 AIG. May I just respond briefly, Your Honor?

16 THE COURT: Yes.

17 MR. GOLDSTEIN: So I don't fully understand  
18 Ms. Klein's argument. To be honest, to the extent  
19 standing is briefed before or after the proposal here  
20 that we have made is to permit payments as to trusts  
21 where there is no dispute including where -- and to the  
22 extent there is a trust where Nover claims an interest.  
23 Even if we disagree or may at some point brief whether  
24 or not Nover has standing, that will be in the disputed  
25 column.

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1 THE COURT: Right.

2 MR. GOLDSTEIN: The trusts we're talking  
3 about, for example, there is, approximately, 35, I  
4 believe, where the institutional investors and AIG hold  
5 interests. No other party holds an interest including  
6 Nover does not think to hold an interest and so I still  
7 have not heard any basis articulated why standing would  
8 need to be briefed.

9 THE COURT: I am sorry, I think I have heard  
10 what I am going to hear on this topic and taking  
11 account also what has been written in the supplemental  
12 submission. The next issue is how the disclosures are  
13 to be made. There is a dispute about external and  
14 internal counsel.

15 Ms. Patrick, is "External counsel" litigation  
16 counsel? I am not familiar with that terminology.

17 MS. PATRICK: Yes. What we mean by that,  
18 Your Honor, is many of the people on this call have  
19 in-house counsel that work on matters associated with  
20 this. We're talking here about providing it to counsel  
21 who are not employed by the particular parties who are  
22 appearing here so it is outside of the entity but  
23 counsel with an obligation to that entity obviously as  
24 any lawyer has to her client.

25 THE COURT: Why can't the identification of

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1 the interests be made either by in-house counsel based  
2 on the books and records or by a responsible corporate  
3 officer? You don't have any objection to that, do you?

4 MS. PATRICK: I am aware that I am repleading  
5 something we talked about last week so forgive me, but  
6 the only concern about having that certification  
7 verified by internal counsel is that it is in the  
8 nature of evidence of standing and if there is a lack  
9 of clarity in that declaration such that further  
10 disclosure should be sought, we would not want to be  
11 faced with an attorney/client privilege objection that  
12 would preclude the discovery of relevant materials and  
13 because the certification was signed by a lawyer so our  
14 preference would be that it will be somebody who is  
15 competent to be disclosed without restriction, and  
16 that's the basis on which we asked that it not be  
17 signed by counsel of any kind but, rather, by a witness  
18 with knowledge of the books and records.

19 THE COURT: All right, Ms. Klein, what is the  
20 objection to having a party with knowledge of the books  
21 and records make the disclosures as to the interest?  
22 Isn't that the way it would ordinarily be done?

23 MS. KLEIN: Absolutely, Your Honor, and we  
24 intend to designate someone either as a party or as an  
25 attorney, in fact, but as you might imagine, some

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1 entities have very few employees and so we would like  
2 to designate someone to make the disclosure who has  
3 knowledge who can participate if required in the  
4 process but we just didn't want to limit to who that  
5 was going to be particularly given it depends on the  
6 type of disclosure and the level of disclosure that's  
7 going to be required.

8 THE COURT: Does anyone else want to be heard  
9 on this issue of who should make the disclosure? If  
10 you want to speak on the issue, please just state your  
11 name first. I am not hearing that any of the other  
12 counsel want to be heard on this issue.

13 A couple of clerical issues. In the proposed  
14 order, are you referring Paragraph 12 in the new  
15 commercial division model confidentiality order or  
16 Paragraph 12 in the old order?

17 MS. KLEIN: I am reasonably confident, Your  
18 Honor, that it is Paragraph 12 of the new one, but I  
19 will confirm.

20 THE COURT: The new one is the one that sets  
21 forth a sealing procedure as opposed to an envelope  
22 procedure and we would like to see you follow the new  
23 procedure.

24 MS. PATRICK: Yes, that was the intent. I  
25 recall that it was referring to sealing, Your Honor, so

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1 that's the right one.

2 THE COURT: Ms. Klein, what that also your  
3 intent?

4 MS. KLEIN: Yes, Your Honor, we are in  
5 agreement on that provision.

6 THE COURT: Just bear with me one minute  
7 while I check to see if I have anything else on my  
8 list.

9 (Pause.)

10 THE COURT: I think we have an issue about  
11 dates and that is it. The first date for the exchange  
12 of information has passed, that was February 9, and the  
13 proposed date in the institutional investors' order is  
14 tomorrow, February 13, so that is not going to work.

15 I am going to order that the disclosure be  
16 made by a party with knowledge of the books and records  
17 and not by counsel provided that if there are  
18 difficulties given the staffing of the investor itself,  
19 then counsel can seek to have in-house counsel prepare  
20 the disclosure.

21 Counsel will have to meet and confer in  
22 advance before any application is made to have anyone  
23 other than a party with knowledge of the books and  
24 records prepare the disclosure.

25 So given that ruling, how much time is needed

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1 to prepare the initial disclosure that is referred to  
2 in the second ordering paragraph in the institutional  
3 investors' proposed order?

4 Ms. Patrick, can I hear from you first on  
5 that?

6 MS. PATRICK: Yes, Your Honor.

7 I would suggest that -- you know, we had  
8 originally contemplated that that would be provided in  
9 a week when we were first doing this so I think the  
10 same week's time rolled forward from today, so I guess  
11 what that would be would be February -- let's call it  
12 February 21st so people have the full day.

13 THE COURT: Okay, 21. That's a weekday.

14 Ms. Klein, do you want to be heard on that?

15 MS. KLEIN: No, Your Honor, I think a week  
16 would be sufficient time.

17 THE COURT: And do any of the other counsel  
18 want to be heard on that date? I'm not hearing  
19 anything.

20 I had indicated on the last conference that I  
21 did not see a reason for putting out the other dates.

22 Ms. Patrick, do you have a position on that?

23 MS. PATRICK: Yes, Your Honor. Part of the  
24 exercise that we're going to get the information about  
25 who holds what on the 21st, so if we could have until

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1 February 28th on an attempt to work through an  
2 agreement on the trust, I think that makes more sense  
3 at this point given the passage of time.

4 THE COURT: Well, you did have February 28th  
5 in the last proposed order. When I said I didn't see a  
6 need to put the date set beyond, I was thinking about  
7 these modified dates.

8 So what do you say about that, Ms. Klein?

9 MS. KLEIN: The February 28th date was the  
10 date that was in Nover's proposed order so we are  
11 amenable to that.

12 THE COURT: Okay, that's resolved then.

13 Are there any other issues on which any of  
14 the counsel wishes to be heard before I give you a  
15 ruling on the remaining issues?

16 MS. PATRICK: Your Honor, just to clarify,  
17 that would mean that the remaining dates in the order  
18 on Pages 2 and 3 would shift, 2, 3 and 4 would shift to  
19 February 28th?

20 THE COURT: Yes.

21 MS. PATRICK: Okay, got it. Thank you.

22 THE COURT: Does anyone have anything before  
23 I give you the ruling? I'm not hearing anything.

24 I am going to approve the institutional  
25 investors' proposed order with respect to the

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1 identification of both direct and indirect interests.

2 As to the indirect interests, there is, as it  
3 appears all parties agree, a question as to whether or  
4 to what extent holders of indirect interests may have  
5 standing, but we will need a record on that issue and I  
6 am persuaded that we will need identification of the  
7 types of indirect interests that the investors hold in  
8 order for that issue to be efficiently briefed and to  
9 avoid advisory opinions.

10 I am also persuaded that the identification  
11 of CUSIP or Bloomberg ID numbers is necessary to  
12 accurately identify the class of certificate in which  
13 the investors hold direct interests.

14 Next, I am going to approve the procedure in  
15 the institutional investors' order for distribution of  
16 the settlement payment where one or more parties has  
17 appeared and there is no disagreement as to the manner  
18 of distribution. I am persuaded there will be no  
19 financial impact of an order directing distribution  
20 under those circumstances on Nover in any other trust  
21 in which it may hold an interest.

22 I further find that the distribution where  
23 there is no disagreement serves the interest of  
24 expedited payment in undisputed circumstances. It is  
25 noteworthy that 19 of the 20 parties who have appeared

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1 do not oppose the form of the scheduling order proposed  
2 by the institutional investors. Although Nover has  
3 claimed substantial interests, it has not been willing  
4 to make a representation for purposes of these  
5 conferences and this preliminary scheduling order about  
6 the extent to which those interests are indirect and  
7 has continued to describe those interests in vague  
8 terms although given the opportunity on the February 9  
9 conference to submit a supplemental submission  
10 elucidating its claims.

11 In any event, it has not made any showing  
12 that distribution of settlement payments in trusts in  
13 which it does not assert an interest will have a  
14 financial impact on the amounts it receives in the  
15 trusts in which it does have an interest and appeared  
16 to acknowledge to the contrary that during this call  
17 that there would be no impact.

18 This concludes the ruling on the disputes  
19 over the proposed scheduling orders. The scheduling  
20 order will be signed today and it will be uploaded this  
21 afternoon on the NYSCEF filing system.

22 It is requested that the institutional  
23 investors obtain a copy of the transcript of today's  
24 proceedings, e-file it with an errata sheet, and file  
25 two hard copies with the errata sheet with the clerk of

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1 Part 60.

2 The errata sheet is necessary because there  
3 were a number of instances in which because we are  
4 doing this over the phone, counsel's statements  
5 momentarily faded out, so do the best you can on that.  
6 It doesn't have to be perfect because the important  
7 points came through very clearly but there may be a few  
8 errors in there for the reason I just stated.

9 Counsel are reminded that I reserve the right  
10 to correct errors in the transcript -- mine, that is --  
11 so that if it is needed for any further purpose, they  
12 should be sure they have a copy as so ordered by me and  
13 not merely as signed by the court reporter.

14 If there are any disputes over the  
15 disclosures of the interests, again, please be sure to  
16 meet and confer before you initiate a conference call  
17 to chambers for the resolution by this Court of the  
18 problem.

19 Now, I think that's it from my point of view.  
20 Can I close the record for today's proceedings? I am  
21 not hearing anything.

22 MS. PATRICK: Thank you so much for your  
23 time.

24 THE COURT: Thank you.

25 I will leave the call so that you can obtain

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1 the reporter's information.

2 \* \* \* \*

3 It is hereby certified that the foregoing is  
4 a true and accurate transcript of the stenographic  
5 record.

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\_\_\_\_\_  
DEBRA SMITH,  
Official Court Reporter

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