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March 24, 2022

Via NYSCEF

The Honorable Robert R. Reed
60 Centre Street, Room 691
New York, NY 10007

Re: *Ambac Assurance Corp. v. Countrywide Home Loans, Inc., et. al.,* Index No. 651612/2010

Dear Justice Reed:

As counsel to Plaintiff Ambac Assurance Corporation ("Ambac"), we, and our co-counsel, write jointly in response to the Countrywide Defendants' letter dated March 23, 2022 regarding the Court of Appeals' decision in *U.S. Bank N.A. v. DLJ Mortgage Capital, Inc.*, APL-2020-00018 (N.Y. Mar. 17, 2022) ("*U.S. Bank*"). *See* NYSCEF 2246 & 2247.

The Court of Appeals' decision in *U.S. Bank* confirms that there are two independent paths to the repurchase remedy: (i) discovery, and (ii) notice. Contrary to Countrywide's claim that *U.S. Bank* is relevant to the meaning of "discovery", the Court of Appeals clearly stated that the theory that the trustee independently discovered the breaches "***is not before us*** and thus, we address only whether the complaint may be maintained . . . insofar as the trustee seeks recovery based upon the theory that it provided sufficient notice to pursue a remedy. . . ." Slip Op. 6 n.2 (emphasis added); *see also id.* at 16 (concluding that "the trustee cannot seek recovery on those loans to the extent it asserts that DLJ's repurchase obligation was triggered by notice, ***as compared to independent discovery***.") (emphasis added). As such, *U.S. Bank* concerns only the notice prong of the repurchase protocol, ***not*** the separate and independent prong of discovery, which Ambac has always intended to prove and which the First Department previously held is to be decided at trial. *Ambac Assur. Corp. v. Countrywide Home Loans, Inc.*, 179 A.D.3d 518, 521 (1st Dep't 2020). We therefore respectfully submit that the *U.S. Bank* decision has no impact on pending Motion Sequence No. 58, other than to further confirm that the evidence Countrywide seeks to preclude remains highly relevant to Ambac's trial proof on the issue of "discovery."[1]

[1] Countrywide's letter also mischaracterizes Ambac's briefing on Motion Sequence No. 58. In its opposition brief, Ambac argued that evidence of Countrywide's practices and procedures is relevant to show "discovery" on both a global and loan-by-loan basis. *See, e.g.,* NYSCEF 2170 at 18-20.

Thank you for Your Honor's consideration of this submission. We look forward to addressing this issue at oral argument before Your Honor at the Court's earliest convenience.

Respectfully submitted,

/s/ Michael B. Carlinsky
Michael B. Carlinsky

/s/ Harry Sandick
Harry Sandick

/s/ Mark C. Zauderer
Mark C. Zauderer

Cc: Counsel for Defendants Countrywide and Bank of America