

EXHIBIT S

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

**AMENDED EXPERT REPORT OF MARK
ADELSON**

April 27, 2021

MLRN LLC

- against -

U.S. Bank National Association

No. 652712/2018

The servicing criterion in Item 1122(d)(4)(i) requires an assessment of whether the mortgage and related documents, rather than the physical properties underlying the mortgages, are maintained as required by the transaction agreements or related pool asset documents. Moreover, an auditor attesting to an assertion regarding the Item 1122(d)(4)(i) criterion is only required to verify that the mechanics of performing the loan perfection or loan defeasance prescribed in the transaction agreements or related pool asset documents have been performed.¹⁵⁶

230. Despite the number of uncured document exceptions (and the associated non-compliance with servicing criteria pertaining to collateral or security on pool assets being maintained as required by the transaction agreements), the Trustee's assertions of compliance with servicing criteria failed to disclose the non-compliance or its full extent.¹⁵⁷
231. Disclosure of the true extent of non-compliance would have been material to MBS investors.

XI. Opinions Concerning the Covered Trusts

A. Market Participants Expect That a Prudent Person Would Have Acted Affirmatively to Address Events of Defaults

232. As discussed above (§§ 118, 159-168), the occurrence of an Event of Default is what triggers a non-agency MBS trustee's duty to act as a prudent person would in the conduct of his or her own affairs. There are a number of things that a non-agency MBS trustee can do once an Event of Default occurs. The trustee can initiate a review of defaulted mortgage loans and demand repurchase of those loans that have uncured document exceptions or breaches of R&Ws. If the responsible parties refuse to repurchase defective loans, the trustee can sue to enforce the repurchase obligation. Alternatively, the trustee can demand that the servicer improve its servicing practices.

¹⁵⁶ SEC Division of Corporation Finance, *Manual of Publicly Available Telephone Interpretations* § 11.04, available at https://www.sec.gov/interps/telephone/cftelinterps_regab.pdf.

¹⁵⁷ USBMLRN02728291, U.S. Bank Assertion of Compliance (26 Feb 2007); USBMLRN02725956, U.S. Bank Assertion of Compliance (12 Feb 2008); USBMLRN01260200, U.S. Bank Assertion of Compliance (2 March 2009); USBMLRN01260217, Ernst & Young, Report of Independent Registered Public Accounting Firm (2 Mar 2009); USBMLRN01260195, Ernst & Young, Report of Independent Registered Public Accounting Firm (2 March 2010); USBMLRN01260227, U.S. Bank Assertion of Compliance (4 March 2011); USBMLRN01260199, Report of Independent Registered Public Accounting Firm (4 March 2011).

(see footnote 95 for an instance of a trustee doing exactly that). Doing so would be somewhat analogous to the way in which Fannie Mae and Freddie Mac can require a mortgage servicer to improve its practices.¹⁵⁸ The trustee also can take more aggressive action, by terminating the servicer and replacing it with a successor (as can Fannie Mae and Freddie Mac). The trustee also might sue the original servicer for damages resulting from its failure to perform its obligations under the transaction's governing documents.

233. Plaintiff asserts that Events of Default occurred in the Trusts in several ways, including but not limited to:

- Servicing non-performance, including failure to maintain REO properties,¹⁵⁹ failure to meet industry standard foreclosure timelines,¹⁶⁰ and conducting foreclosures with missing defective, and/or fabricated loan documents.¹⁶¹
- Failure by servicers and master servicers to cause repurchase of defective loans instead of liquidating such loans.¹⁶²
- Filing of false servicer compliance documents and the failure to state noncompliance, particularly with respect to failure to disclose the existence of uncured document exceptions.¹⁶³
- Servicer and Master Servicer admissions of noncompliance on Reg AB compliance statements.¹⁶⁴
- Master Servicer or Servicer ratings downgrades.¹⁶⁵
- Failure to timely provide compliance documents.¹⁶⁶

¹⁵⁸ See, e.g., Freddie Mac, *Single-Family Seller/Servicer Guide*, Chap. 3501 (16 Dec 2020). I further understand that another expert witness will testify as to the specific things the agencies do in this regard.

¹⁵⁹ See, e.g., MLRN LLC's Responses and Objections to U.S. Bank National Association's Fourth Set of Interrogatories to Plaintiff at 32.

¹⁶⁰ See, e.g., *id.* at 32-33.

¹⁶¹ See, e.g., *id.* at 33-34.

¹⁶² See, e.g., *id.* at 35-36.

¹⁶³ See, e.g., *id.* at 41-43.

¹⁶⁴ See, e.g., *id.* at 34, 43-47, 56, Appendix C.

¹⁶⁵ See, e.g., *id.* at 107-108.

¹⁶⁶ See, e.g., *id.* at 48-51.

compliance with standards relating to the custody and safekeeping of loan documents would inform investors in all the MBS transactions in which the Trustee serves as such.

279. The whole point of assessing compliance at the platform level is that isolated and infrequent instances of non-compliance are not the issue. The issue is when instances of non-compliance are so severe or so frequent that they are material at the level of the whole operation – the whole platform.
280. Disclosure of the true extent of non-compliance would have been material to market participants.



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