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8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 IN THE MATTER OF:)
12 DB STRUCTURED PRODUCTS, INC.) Case No.: A - 13 - 690144 - B
13 Respondent) Dept No.: XXIX
14) BUSINESS COURT REQUESTED
) ARBITRATION EXEMPTION-Action in Equity

15 ASSURANCE OF DISCONTINUANCE

16 The Office of the Attorney General herein submits the attached Assurance of
17 Discontinuance, pursuant to NRS 598.0995, entered into between the STATE OF NEVADA,
18 acting through Attorney General Catherine Cortez Masto, Senior Deputy Attorney General
19 Kristine M. Kuzemka, and Senior Deputy Attorney General Sheri Ann Forbes, and DB
20 STRUCTURED PRODUCTS, INC., acting through its counsel, Richard H. Bryan of the law firm
21 Lionel Sawyer & Collins.

22 DATED this 14th day of October, 2013.

23 CATHERINE CORTEZ MASTO
Attorney General
24
25 Kristine M. Kuzemka (8836)
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DB Structured Products, Inc.

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Attorneys for Respondent

ASSURANCE OF DISCONTINUANCE

This Assurance of Discontinuance ("Assurance"), by and between the State of Nevada (the "State") and DB Structured Products, Inc. ("DBSP") is entered into under Nev. Rev. Stat. Chapter 598 *et seq.* as of this 10th day of October 2013 ("Effective Date"). State of Nevada, *ex rel.* Catherine Cortez Masto, Attorney General and DBSP hereby agree to the following:

PARTIES

1. State of Nevada, *ex rel.* Catherine Cortez Masto, Attorney General, 555 East Washington Ave. # 3900, Las Vegas, NV 89101.
2. DB Structured Products, Inc., 60 Wall Street, New York, NY 10005.

STIPULATION

3. The Nevada Attorney General initiated a confidential investigation into DBSP's residential mortgage acquisition and Securitization business, particularly its acquisition and Securitization of Subprime, Alt-A, and Payment Option Adjustable Rate Mortgage ("Option ARM") loans originated by New Century Mortgage Corporation ("New Century"), American Home Mortgage Corporation ("American Home Mortgage") and MortgageIt, Inc. (collectively, the "Mortgage Lenders"). From 2004 to 2007, DBSP provided credit to the Mortgage Lenders and sponsored Securitizations of Subprime, Alt-A, and Option ARM loans originated by the Mortgage Lenders.
4. The Nevada Attorney General's investigation centered upon whether the Mortgage Lenders made potential misrepresentations to Nevada consumers who took out subprime, Alt-A, and Option ARM loans that were bought and Securitized by DBSP, including: whether the Mortgage Lenders misrepresented the applicable interest rate and loan payments; whether the Mortgage Lenders used inflated income statements to support loans; and whether the Mortgage Lenders failed to disclose the potential payment shock when the Initial Teaser Rate expired. In addition, the investigation examined whether the Mortgage Lenders originated loans with layered risks and used undisclosed exceptions to underwriting guidelines to approve loans without disclosing to the borrowers their assessment of the borrowers' ability to repay. These layered risks included loans that were adjustable rate, stated income, 100% financed, had Extended Amortization Periods, included prepayment penalties, and/or qualified borrowers at the Initial Teaser Rate, not the adjusted rate that would be in effect for most of the loan's term. The Nevada Attorney General was concerned that many borrowers who took out these loans did not understand the likelihood that they would not be able to repay their loans or that they would have to refinance the loan in the short term, before the payment increased.
5. The Nevada Attorney General also examined the extent to which DBSP was aware of the Mortgage Lenders' allegedly deceptive practices through its due diligence process and whether DBSP substantially assisted these lenders by financing and purchasing their loans.

6. This Assurance sets forth a framework through which DBSP will address the subject of the Nevada Attorney General's investigation. DBSP enters into this Assurance solely to resolve the Nevada Attorney General's investigation and neither admits nor denies any wrongdoing. This Assurance is made without any trial or adjudication or finding of any issue of fact or law.
7. DBSP will provide a payment of \$11,500,000 to be used, at the State's discretion, to fund relief to be distributed to borrowers, for mortgage, foreclosure and housing related assistance and enforcement and pay the costs of the State's investigation.
8. DBSP will pay the costs, if any, of a settlement administrator, up to \$75,000, to manage two distributions of payments to borrowers. DBSP will select the settlement administrator, subject to the State's approval. From time to time, for twelve months after the Effective Date or until the completion of the relief distribution if sooner, DBSP will provide information to the State identifying loans that meet selected criteria, including names, property addresses, servicers, and standard loan characteristics, as requested by the State to the extent such information is maintained by DBSP or can be generated or obtained by DBSP with reasonable effort. DBSP will have no further reporting obligations under this settlement.

DEFINITIONS

9. **Usage.** The following rules apply to the construction of this Assurance:
 - a. the singular includes the plural and the plural includes the singular;
 - b. "include" and "including" are not limiting;
 - c. the headings of the Sections and subsections are for convenience and shall not constitute a part of this Assurance, and shall not affect the meaning, construction, or effect of the applicable provisions of this Assurance;
 - d. words such as "hereunder," "hereto," "hereof," and "herein" and other words of like import shall, unless the context clearly indicates to the contrary, refer to the whole of this Assurance and not to any particular Section, subsection or clause.
10. **Defined Terms.** The following italicized terms shall have the following meanings in this Assurance unless otherwise required by the context or definition:
 - a. *Adjustable Rate Mortgage ("ARM")*: a mortgage for which the rate of interest is subject to change. When such a change occurs, the monthly payment is adjusted or Reset to reflect a new interest rate.
 - b. *Alt-A Mortgage Loans*: First-lien loan products originated to borrowers that generally have Fannie Mae/Freddie Mac conforming credit, but with underwriting that allows for higher loan-to-values, less stringent documentation requirements regarding employment, income, assets or some combination of the three, a wider range of property types and occupancy.

- c. *Extended Amortization*: a loan whose monthly payments are calculated based on a longer repayment term than the mortgage itself. For example, an Extended Amortization period of forty (40) years would lower a borrower's monthly payments by allowing the borrower to make payments as if the loan term was forty (40) years, even if the loan's term was thirty (30) years.
- d. *Initial Teaser Rate*: the interest rate initially set on an ARM and advertised in the origination process that is in effect for a limited period of time and then Resets to an index plus a margin value that is potentially much higher than the initial rate.
- e. *Nevada Mortgage Loan*: a residential mortgage loan secured by a dwelling that is located in the State of Nevada.
- f. *Payment option adjustable rate mortgage loans ("Option ARM")*: U.S. primary residence mortgage loans financed, purchased in bulk, and/or Securitized by DBSP that have a low Initial Teaser Rate, and thereafter have a mortgage interest rate that adjusts periodically; however, the borrower is only required to make a monthly payment which may not be sufficient to pay the monthly interest accrued, resulting in negative amortization due to the increase in the principal balance of the mortgage loan by the amount of the unpaid interest.
- g. *Recast*: the point in time when the amortization schedule for an Option ARM is recalculated so that, based on the remaining principal balance and the fully indexed interest rate at the time, the future payments will amortize the mortgage over its remaining term and the borrower no longer may elect a less than fully amortizing payment.
- h. *Reset*: the point in time when the initial interest rate on an ARM changes.
- i. *Sampling/Sampled*: Samples will be selected based on full randomization. The greater of 100 loans or a statistically significant sample, as described below, will be tested for compliance with the factors set forth in Paragraph 11. A statistically significant sample will meet the following criteria: a 95% confidence interval (one-tailed, normally distributed) with a 2% margin of error sufficient to test for a 5% non-compliance rate. The testing will be performed to two decimal places using conventional rounding. Testing may be performed to three decimal places (i.e., 5.004% will round down to 5.00% and pass a 5% threshold; 5.005% will round up to 5.01% and will fail a 5% threshold).
- j. *Sample Failure*: A sample failure occurs if Sampling demonstrates a 5% or greater non-compliance rate based on the number of loans.
- k. *Securitize*: refers to the process of pooling assets, in this instance, mortgage loans, into securities backed by those assets to be sold to investors (each such transaction, a "Securitization.")

- l. *Subprime Mortgage Loans*: U.S. primary residence mortgage loans taken out by borrowers with FICO scores of 660 or lower at the time of origination.
- m. *Regulation Z*: means the substantive provisions of Regulation Z (12 C.F.R. Part 1026) issued pursuant to the Federal Truth in Lending Act (15 U.S.C. 1601 *et seq.*), as amended by the Final Rule issued January 10, 2013 and published in the Federal Register January 30, 2013. For the period after the Effective Date and prior to January 10, 2014, the parties agree that the provisions published as of January 30, 2013 shall apply for the purposes of construing this Assurance.
- n. *Relevant Warehouse Facility*: means a credit facility provided by DBSP to any mortgage lender and secured by residential mortgage loans originated or owned by such lender, and for which loans potentially eligible as security include Nevada Mortgage Loans.

PROSPECTIVE CONDUCT PROVISIONS

11. To the extent that DBSP purchases, Securitizes, or finances Nevada Mortgage Loans originated after the Effective Date of this Assurance which are not "Qualified Mortgages" as that term is defined under Regulation Z, DBSP agrees:
 - a. Before providing any mortgage lender (not limited to the Mortgage Lenders referred to above) with a Relevant Warehouse Facility, DBSP will perform a Sampling of Nevada Mortgage Loans to determine whether the reviewed loans: (1) were originated in compliance with Nevada law (and not deceptive within the meaning of Nevada law, including NRS § 598 *et seq.*) and the provisions of Regulation Z and (2) that the lenders disclosed the existence of any Initial Teaser Rates and/or the potential for negative amortization on the loan if only minimum payments are made, the potential maximum cost of the adjusted interest rate and/or negative amortization, the potential maximum payments that could be due through the term of the mortgage loan, and the potential for payment shock if payments increase after a loan Reset and/or loan Recast. DBSP agrees that if the Sampling results in a Sample Failure, DBSP will refuse to provide the Relevant Warehouse Facility.
 - b. Before purchasing, from any originating lender, residential mortgage loans that include Nevada Mortgage Loans originated after the Effective Date of this Assurance, DBSP will perform a Sampling of the Nevada Mortgage Loans (in the case of bulk purchases) or each Nevada Mortgage Loan (in the case of a loan-by-loan purchase) offered for purchase to determine whether they: (1) were originated in compliance with Nevada law (and not deceptive within the meaning of Nevada law, including NRS § 598 *et seq.*) and the provisions of Regulation Z, and (2) include disclosures by the lenders of the existence of any Initial Teaser Rates and/or the potential for negative amortization on the loan if only minimum payments are made, the potential maximum cost of the adjusted interest rate and/or negative amortization, the potential maximum payments that could be due through the term of the mortgage loan, and the potential for payment shock if payments increase after a loan Reset and/or loan Recast. DBSP agrees that it will not purchase, on a loan-by-loan basis, any Nevada Mortgage Loan that fails to satisfy Section (1) or (2) of this Subparagraph 11(b) ("Sections (1) and (2)"). In the case of bulk transactions, DBSP

agrees that if the Sampling results in a Sample Failure, DBSP will either: refuse to purchase any Nevada Mortgage Loan in the bulk offering or, alternatively, will eliminate the loans found to be noncompliant and retest a new sample in accordance with this Paragraph, which process may be repeated.

12. The restrictions set forth in paragraph 11 shall not apply to (a) re-Securitizations of RMBS; (b) Securitizations of mortgage loans acquired from or owned by lenders, banks, or other financial institutions that are in state or federal receivership, conservatorship, or other comparable oversight; or (c) purchases, Securitizations, or financing of mortgage loans seasoned for at least 180 days.
13. The parties agree that on the fifth (5th) anniversary of the execution of this Assurance, the obligations of Paragraph 11 of this Assurance will terminate unless the State reasonably has determined that DBSP has not materially complied with the terms of this Assurance as of that date.

PAYMENTS TO THE NEVADA ATTORNEY GENERAL

14. Within fifteen (15) days of the Effective Date, DBSP will pay \$11,500,000 to the State of Nevada for the purposes described in paragraph seven of this Assurance.

ENFORCEMENT

15. DBSP is responsible to the State of Nevada for performance of all of its undertakings in this Assurance.
16. Nothing in this Assurance shall be construed as authorizing any person or entity other than the State of Nevada, acting through its Attorney General, to enforce or seek remedies under this Assurance or as a result of this Assurance or a breach thereof.
17. This Court shall retain jurisdiction over this matter for the purpose of: (a) enabling the Nevada Attorney General to apply for enforcement of any provision of this Assurance; (b) enabling any party to this Assurance to apply, upon giving thirty (30) days written notice to all other parties, for such further orders and directions as might be necessary or appropriate either for the construction or carrying out of this Assurance; and (c) for the purpose of administering this Assurance, enabling any party to this Assurance to request information from a party or third party, with notice to counsel for the parties and subject to the parties' and any third parties' right to object and to move to quash.

RELEASES

18. Effective upon receipt of the payment specified in paragraph 14, the State releases and discharges any and all claims, known or unknown, by the State of Nevada against DBSP and all parents, subsidiaries, affiliates, assigns, predecessors, and successors (including any purchasers of all or substantially all of the assets of DBSP or its parents, subsidiaries, or affiliates as to the purchased assets), and any of their current or former directors, officers, and employees (the "DBSP Releasees"), relating to or concerning (i) residential mortgages

originated, financed, purchased and/or Securitized by any of the DBSP Releasees through the Effective Date of the Assurance or (ii) the offer or sale of residential mortgage backed securities by the DBSP Releasees. The State will not solicit or require borrowers to release any potential claims against DBSP as a condition of or in exchange for payments pursuant to this settlement.

19. In the event of a subsequent settlement between any of the DBSP Releasees and other state or federal government entities covering any of the conduct subject to the release set forth in paragraph 18 above, the State agrees to provide dollar for dollar credit for this settlement against the proportional share of any settlement amounts allocated to the State and to accept only that amount (if any) that exceeds \$11.5 million.
20. The costs and fees of the investigation are fully satisfied by DBSP's payment to the Nevada Attorney General's Office. The State releases DBSP from any claim relating to the costs and fees of the investigation.
21. This Assurance is not intended to indicate that DBSP or the DBSP Releasees shall be subject to any disqualifications contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or various states' securities laws, including any disqualifications from relying upon registration exemptions or safe harbor provisions. In addition, this Assurance is not intended to form the basis for any such disqualifications.

MISCELLANEOUS PROVISIONS

22. *Submission to Jurisdiction for Limited Purpose.* DBSP submits to the jurisdiction of the state courts in the State of Nevada for the limited purpose of entering into and enforcing this Assurance only. Any acts, conduct or appearance by DBSP does not constitute and shall not be construed as a submission to the general jurisdiction of any court in the State of Nevada for any purpose whatsoever.
23. *Jurisdiction; Choice of Law; Venue.* The Assurance shall be construed and enforced in accordance with the laws of the State of Nevada. In any action or dispute relating to this Assurance, the jurisdiction and venue shall be in the District Court of the State of Nevada.
24. *Voluntary Agreement.* This Assurance is entered into voluntarily and no promises, other than what is contained in this Assurance, or threats have been made by the Nevada Attorney General's Office or any member thereof to induce DBSP to enter into this Assurance.
25. *No Third Party Beneficiaries Intended.* This Assurance is not intended to confer upon any person any rights or remedies, including rights as a third party beneficiary. This Assurance is not intended to create a private right of action on the part of any person or entity other than the parties hereto.
26. *Service of Notices.* Service of notices or reports required or permitted by this Assurance or its enforcement shall be in writing and delivered on the following persons, or any person subsequently designated by the parties:

For DBSP:

DB Structured Products, Inc.

60 Wall Street

New York, NY 10005

Attn: Charlie Gambino, Esq. Managing Director & Senior Counsel

With copies to:

Patrick McEnerney by email: patrick.mcenerney@db.com

For the Nevada Attorney General:

Chief Deputy Attorney General Ernest Figueroa

Office of the Attorney General

100 North Carson Street

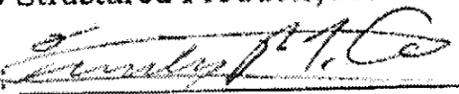
Carson City, NV 89701

Any party may change the designated person and address for delivery with respect to itself by giving notice to the other parties as specified herein.

27. *Waiver.* The failure of any party to exercise any rights under this Assurance shall not be deemed a waiver of any right.
28. *Severability.* If any part hereof shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder hereof, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

29. *Counterparts.* This Assurance may be signed in one or more counterparts, each of which shall be deemed an original. Facsimile or electronic copies of this Assurance and the signatures hereto may be used with the same force and effect as an original.
30. *Inurement.* This Assurance is binding and inures to the benefit of the parties hereto and their respective predecessors, successors and assigns.
31. *Integration.* This Assurance constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to the subject matter thereof.
32. *Amendment.* This Assurance may be amended solely by written agreement signed by the Nevada Attorney General and DBSP.
33. *Authority.* DBSP and the State of Nevada each represents and warrants that it has the full legal power, authority, and capacity to enter into and perform this Assurance and, as to DBSP, will coordinate with its affiliates involved in its mortgage financing and Securitization business as necessary to ensure such performance.

DB Structured Products, Inc.

By: 

Title: Timothy P. F. Crowley
Director

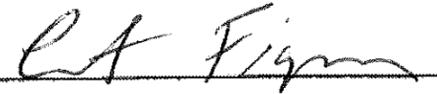
Date: Oct. 9, 2013

By: 

Title: Anthony Aulisa
Vice President

Date: 10/9/2013

Nevada Attorney General

By:  Ernest Figueroa

Title: Chief Nevada Deputy Attorney General

Date: 10/11/2013