

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Court =

A =

B =

C =

Dear :

This letter is in reply to a letter dated July 11, 2016, and subsequent correspondence in which Trustee, solely in its capacity as trustee of each real estate mortgage investment conduit ("REMIC") identified above (each a "Taxpayer" and, collectively, the "Taxpayers"), requests certain rulings in connection with each Taxpayer's qualification as a REMIC under §§ 860A-860G of the Internal Revenue Code. Specifically, you have asked for the following rulings:

1. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement (as defined below), none of (i) the execution of the Settlement Agreement (as defined below), (ii) the right to receive the Settlement Payment (as defined below), or (iii) the receipt of the Settlement Payment will cause the Taxpayer to fail to meet the requirements of § 860D(a)(4).
2. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, the receipt of the Settlement Payment will be treated as payments received on qualified mortgages within the meaning of § 1.860G-2(g)(1)(ii) of the Income Tax Regulations.
3. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, the distribution of the Settlement Payment in

accordance with the applicable Governing Agreement and the Settlement Agreement will not cause any regular interest in such Taxpayer to fail to qualify as a “regular interest” as defined in § 860G(a)(1) or the sole class of residual interest in such Taxpayer to fail to qualify as a “residual interest” as defined in § 860G(a)(2).

4. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreement, the receipt of the Settlement Payment will not be treated as a “prohibited transaction” within the meaning of § 860F(a)(2) or as a contribution that is subject to the tax imposed under § 860G(d)(1).

Facts

Background

Each Taxpayer has elected to be treated as a REMIC within the meaning of § 860D and is evidenced by separate Pooling and Servicing Agreements and related Mortgage Loan Purchase Agreements and other related agreements (each a “Governing Agreement” and collectively, the “Governing Agreements”). Under the Governing Agreements, Trustee serves as trustee for each of the Taxpayers. The law of State governs the rights and obligations of the parties to the Governing Agreements, including the Trustee. The annual accounting period for each Taxpayer is the calendar year and each Taxpayer utilizes the accrual method of accounting for maintaining its accounting books and filing its U.S. federal income tax return.

Taxpayers function as residential mortgage loan securitization vehicles. The Taxpayers were established during Year for the primary purpose of raising money in the securitization market for pools of residential real estate mortgage loans originated or acquired by Company B and its affiliates, the sponsor of the mortgage securitizations. The aggregate principal balance of mortgage loans that were securitized through the Taxpayers was approximately \$A.

Trustee is a wholly-owned banking subsidiary of Company F, a public company whose shares of common stock are traded on Exchange.

The securitization process for each Taxpayer generally occurred as follows:

- (1) Company B and one or more of its affiliates (collectively, the “Seller”), sold portfolios of residential mortgage loans (the “Mortgage Loans”) to a Company A entity (the “Depositor”).
- (2) The Depositor conveyed the Mortgage Loans to Trustee, as trustee, to be held in trust, pursuant to Pooling and Servicing Agreements.

(3) Several classes of certificates representing various entitlements to the underlying mortgage pool's cash flows then were issued and sold through an underwriter or underwriters to investors including, with respect to certain Taxpayers, interests in an upper-tier REMIC that held all of the regular interests in such Taxpayer, directly or through one or more intermediate REMICs (the holders of any such interests in a Taxpayer or in such an upper-tier REMIC holding all of the regular interests in a Taxpayer, the "Investors").

(4) Company C (and, at times, Company D as successor to Company C) or Company E acted as "Master Servicer" for each of the Taxpayers and was charged with responsibility for, among other things, collecting debt service payments on the Mortgage Loans, taking (or delegating to another servicer) any necessary enforcement action against borrowers, and remitting payments on a monthly basis for distribution to the Investors pursuant to the Governing Agreements.

In each securitization, elections were made to treat the Mortgage Loans held by each Taxpayer and related assets as one or more REMICs under the Code.

The Governing Agreement for each Taxpayer contains a series of representations and warranties made by the Seller for the benefit of the Taxpayer. In general, these include representations: as to various characteristics of the Mortgage Loans held in each REMIC trust (which may include loan-to-value, property condition and related mortgage credit metrics); that the Mortgage Loans were underwritten in all material respects in accordance with certain underwriting guidelines; that the Mortgage Loans conform in all material respects to their descriptions in the investor disclosure documents; and that the origination, underwriting and collection practices of the Seller have been lawful and customary in the mortgage lending business.

The Governing Agreements also impose servicing obligations on the Master Servicer, requiring among other things, that the Master Servicer service and administer the Mortgage Loans in accordance with the terms of the Governing Agreements and customary and usual standards of prudent mortgage loan servicers.

Subsequent to the mortgage securitizations involving Taxpayers, Company A was acquired by Company D.

The Dispute

A dispute arose concerning the Seller's alleged breaches of certain representations and warranties under the Governing Agreements, and Company D's (and its affiliates') alleged past and continuing breaches and defaults under the Governing Agreements.

On Date 1, Company D presented the Trustee with a settlement offer (the “Original Settlement”) that sought to resolve all “Rep and Warranty Claims” (as defined below) held against Company D (as successor to Seller) under certain of the Governing Agreements, in exchange for settlement consideration consisting of a cash payment by Company D to the affected REMIC trusts that accepted the Original Settlement.

On or around Date 2, at the direction (the “Direction”) of certain investors (the “Directing Investors”), the Trustee declined to accept the Original Settlement on behalf of the Taxpayers. The Direction further directed the Trustee to initiate litigation against Company D with respect to the Taxpayers to, among other things, enforce covenants and obligations under the Governing Agreements to cure or repurchase certain Mortgage Loans identified to the Trustee as being subject to breaches of Seller’s representations and warranties that adversely and materially affect the value of the related Mortgage Loans, and to enforce covenants and obligations relating to servicing breaches.

On Date 3, the Directing Investors delivered to the Trustee an additional direction letter (the “Second Direction”) directing the Trustee to accept a new settlement offer proposed by Company D to settle the “Rep and Warranty Claims.” On Date 4, following an evaluation process, the Trustee accepted the Second Direction and entered into a settlement agreement with Company D (the “Settlement Agreement”) on behalf of the Taxpayers.

The Trustee’s acceptance of the Settlement Agreement on behalf of the Taxpayers was conditioned on the outcome of the judicial proceeding described further below.

The Settlement Agreement and the Settlement Payments

Under the Settlement Agreement, the term “Rep and Warranty Claims” means:

[a]ny claims against any [Company D] Releasee concerning or relating to any alleged breaches of representations and warranties made in connection with the origination, sale, and/or delivery of Mortgage Loans to the Trusts, including breaches of any obligation to notify or to cure any such alleged breaches of representations and warranties or to repurchase any Mortgage Loan.

The Settlement Agreement has two primary components. One, a settlement payment payable by Company D (i) to Taxpayer A in the amount of \$B and (ii) to Taxpayer B in the amount of \$C (collectively, the “Settlement Payment”) and, two, servicing and document improvements to be implemented with respect to each Taxpayer.

Each Taxpayer's Settlement Payment will be paid to an escrow account and thereafter will be deposited into the related REMIC trust's collection or distribution account, pursuant to the terms of the Governing Agreements, for further distribution in accordance therewith.

Each of the Taxpayers has represented that (1) the amount of its Settlement Payment does not exceed the losses suffered by such Taxpayer allegedly as a result of the Rep and Warranty Claims, (2) the Settlement Payment distribution provisions contained in the Settlement Agreement do not alter the rights or obligations of any REMIC trust or REMIC interests therein and (3) the distribution of a Taxpayer's Settlement Payment to its Investors is consistent with applicable provisions in such Taxpayer's Governing Agreement providing for the distribution of Subsequent Recoveries. For this purpose, a "Subsequent Recovery" is an unexpected amount that a REMIC trust might receive from time to time with respect to a Mortgage Loan, such as recoveries in respect of representations and warranties in the Mortgage Loan Purchase Agreement or when a Mortgage Loan has been foreclosed upon and the property sold for less than the debt, but the borrower subsequently repays all or some amount of the previously written-off Mortgage Loan balance. Distributions that are made pursuant to these provisions of the Governing Agreements are treated as, and constitute, distributions of underlying Mortgage Loan principal collections. Accordingly, the Settlement Agreement provides that each Taxpayer's distribution of Settlement Payment amounts to Investors are characterized the same way - as distributions of principal in respect of the REMIC regular interest classes entitled to receive such distributions.

The Settlement Agreement also provides that in the event a Taxpayer's distribution waterfall provisions would result in a distribution of any amount on or in respect of any Taxpayer's residual interest class, whether on the date of distribution of the Settlement Payment or on any subsequent distribution date that is not the final distribution date under the Taxpayer's applicable Governing Agreements, such amount shall not be paid on or distributed to such residual class. Instead, the Trustee shall retain this amount in the applicable Taxpayer's collection or distribution account, and on the next distribution date, the Trustee will distribute this retained amount to the applicable regular interest investor(s) entitled to receive a principal distribution of Subsequent Recoveries.

For the servicing component of the Settlement Agreement, Company D has agreed to implement various servicing improvements and remedies.

Judicial Proceeding

The Settlement Agreement was conditioned upon final court approval and the receipt of the rulings provided in this letter. To that end, the Trustee, on behalf of the Taxpayers, commenced in the Court on Date 5, a proceeding seeking judicial instructions and approval of the Settlement Agreement on behalf of the Taxpayers. On Date 6, the Court entered an order and judgment finding that the Trustee is authorized to accept,

execute, and implement the Settlement Agreement in accordance with the Second Direction, including the application and distribution of the Settlement Payment as Subsequent Recoveries, subject to the terms and conditions set forth in the Settlement Agreement. That order became non-appealable before the date on which this ruling was requested, thus resulting in final court approval of the Settlement Agreement.

Law and Analysis

Issue #1 and #2: Qualified Mortgages, Permitted Investments, and Payments Received on Qualified Mortgages

Section 860D(a) provides that the terms “real estate mortgage investment conduit” and “REMIC” mean any entity that meets several requirements including that as of the close of the third month beginning after the startup day and at all times thereafter, substantially all of the assets of the entity consist of qualified mortgages and permitted investments.

Section 860G(a)(3)(A) defines qualified mortgage to include any obligation (including any participation or certificate of beneficial ownership therein) which is principally secured by an interest in real property and which (i) is transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC, (ii) is purchased by the REMIC within the 3-month period beginning on the startup day if, except as provided in regulations, such purchase is pursuant to a fixed-price contract in effect on the startup day, or (iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase-(I) is attributable to an advance made to the obligor pursuant to the original terms of a reverse mortgage loan or other obligation, (II) occurs after the startup day, and (III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.

Section 860G(a)(5) defines “permitted investments” to mean any cash flow investment, qualified reserve asset, or foreclosure property. Section 860G(a)(6) defines “cash flow investment” to mean any investment of amounts received under qualified mortgages for a temporary period before distribution to holders of interests in the REMIC.

Section 1.860D-1(b)(3)(i) provides that for purposes of the asset test of § 860D(a)(4), substantially all of a qualified entity’s assets are qualified mortgages and permitted investments if the qualified entity owns no more than a de minimis amount of other assets. Section 1.860D-1(b)(3)(ii) provides that the amount of assets other than qualified mortgages and permitted investments is de minimis if the aggregate of the adjusted bases of those assets is less than one percent of the aggregate of the adjusted bases of all of the REMIC’s assets.

Section 1.860G-2(g)(1)(ii) states that, in determining what is a cash flow investment, the term “payments received on qualified mortgages” includes, among other payments,

payments by a sponsor or prior owner in lieu of the sponsor's or prior owner's repurchase of a defective obligation, as defined in § 1.860G-2(f), that was transferred to the REMIC in breach of a customary warranty.

Section 1.860G-2(f)(1) defines a defective obligation as a mortgage subject to certain defects including that the mortgage does not conform to a customary representation or warranty given by the sponsor or prior owner of the mortgage regarding the characteristics of the mortgage, or the characteristics of the pool of mortgages of which the mortgage is a part.

Each Taxpayer's right to receive its Settlement Payment under the Settlement Agreement arises from the Mortgage Loans. The Settlement Payment for each Taxpayer is a contract claim that stems directly from the rights held by the Trustee on behalf of such Taxpayer and its status as a REMIC. Therefore, a Taxpayer's right to receive a Settlement Payment does not constitute an asset that is newly acquired by a REMIC after its startup date. The execution of the Settlement Agreement, and the receipt of the Settlement Payment by a Taxpayer, arise from each Taxpayer's interest in the Mortgage Loans and its status as a REMIC, and, therefore, will not cause any Taxpayer to fail to meet the requirements under § 860D(a)(4).

The Settlement Payment under the Settlement Agreement is the result of a dispute between the Directing Investors and the Trustee with Company D regarding whether the Mortgage Loans conveyed to each Taxpayer violated customary representations and warranties under the respective Governing Agreements. For purposes of the REMIC rules, a defective obligation includes mortgages that do not conform to a customary representation or warranty given by the sponsor or prior owner of the mortgage regarding the characteristics of the mortgage, or the characteristics of the pool of mortgages of which the mortgage is a part. Each Taxpayer's right to the Settlement Payment under the Settlement Agreement is akin to a payment received by such Taxpayer from a sponsor or prior owner in lieu of the sponsor or prior owner's repurchase of such a defective obligation. Therefore, pursuant to § 1.860G-2(g)(1)(ii), the Settlement Payment will be considered a payment received on a qualified mortgage.

Issue #3: Regular and Residual Interests

Section 860G(a)(1) defines a "regular interest" in a REMIC to mean any interest in a REMIC which is issued on the startup day with fixed terms and which is designated as a regular interest if (A) such interest unconditionally entitles the holder to receive a specified principal amount (or other similar amount), and (B) interest payments (or other similar amount), if any, with respect to such interest at or before maturity (i) are payable based on a fixed rate (or to the extent provided in regulations, at a variable rate), or (ii) consist of a specified portion of the interest payments on qualified mortgages and such portion does not vary during the period such interest is outstanding.

Section 860G(a)(2) defines a “residual interest” in a REMIC to mean an interest in a REMIC which is issued on the startup day, which is not a regular interest, and which is designated as a residual interest.

Section 860G(a)(9) defines the term “startup day” to mean the day on which the REMIC issues all of its regular and residual interests.

Section 1.860G-1(a)(1) provides that, for purposes of § 860G(a)(1), a REMIC designates an interest as a regular interest by providing to the Internal Revenue Service the information specified in § 1.860D-1(d)(2)(ii) in the time and manner specified in § 1.860D-1(d)(2). Section 1.860G-1(c) provides that a residual interest is an interest in a REMIC that is issued on the startup day and that is designated as a residual interest by providing the information specified in § 1.860D-1(d)(2)(ii) at the time and in the manner provided in § 1.860D-1(d)(2). A residual interest need not entitle the holder to any distributions from the REMIC.

Section 1.860G-1(a)(4) provides that, for purposes of § 860G(a)(1), a regular interest in a REMIC has fixed terms on the startup day if, on the startup day, the REMIC’s organizational documents irrevocably specify (i) the principal amount (or other similar amount) of the regular interest, (ii) the interest rate or rates used to compute any interest payments (or other similar amounts) on the regular interest, and (iii) the latest possible maturity date of the interest.

Taxpayers represent that the distribution provisions of the Settlement Agreement do not alter the rights or obligations of any of the Taxpayers or the Investors’ interests therein and that the distribution of Settlement Payments to Investors is consistent with the distribution provisions contained in the Governing Agreements. The Settlement Payments will be distributed by the Taxpayers to the regular interest holders under the applicable Governing Agreements in accordance with the distribution provisions as a Subsequent Recovery. The Settlement Agreement also provides that should a principal payment become payable to a class of REMIC residual interests, such payment will be maintained in the distribution account and the Trustee shall distribute it to Investors on the next distribution date as though it was a Subsequent Recovery or an unscheduled payment of principal available for distribution on that date. Accordingly, the distribution of a Settlement Payment to Investors will not cause any regular interest in a Taxpayer to fail to qualify as a regular interest or the sole class of residual interest in any Taxpayer to fail to qualify as a residual interest.

Issue #4: Tax on Contributions after Startup Date and Prohibited Transaction

Except as provided in § 860G(d)(2), § 860G(d)(1) imposes on any amount that is contributed to a REMIC after the startup day a tax equal to 100 percent of the amount contributed. Section 860G(d)(2) provides that the tax on contributions after the startup date shall not apply to any contribution which is made in cash and is (A) a contribution

to facilitate a cleanup call (as defined in regulations) or a qualified liquidation, (B) a payment in the nature of a guarantee, (C) a contribution during the 3-month period beginning on the startup day, (D) a contribution to a qualified reserve fund by any holder of a residual interest in the REMIC, or (E) any other contribution permitted in regulations.

Section 860F(a)(1) imposes a tax equal to 100 percent of the net income derived from prohibited transactions. Section 860F(a)(2) defines prohibited transaction to mean one of the following: (A) disposition of any qualified mortgage transferred to the REMIC other than a disposition pursuant to (i) the substitution of a qualified replacement mortgage for a qualified mortgage (or the repurchase in lieu of substitution of a defective obligation), (ii) a disposition incident to the foreclosure, default, or imminent default of the mortgage, (iii) the bankruptcy or insolvency of the REMIC, or (iv) a qualified liquidation; (B) the receipt of any income attributable to any asset which is neither a qualified mortgage nor a permitted investment; (C) the receipt by the REMIC of any amount representing a fee or other compensation for services; or (D) gain from the disposition of any cash flow investment other than pursuant to any qualified liquidation.

As discussed above, the receipt of the Settlement Payment by a Taxpayer arises from the Mortgage Loans and each Taxpayer's status as a REMIC. The Settlement Payment arises in connection with each Taxpayer's interest in the Mortgage Loans and is neither a contribution of cash to the REMIC nor is it listed as a prohibited transaction in § 860F(a)(2). As a result, the receipt of the Settlement Payment by a Taxpayer will not be treated as a prohibited transaction within the meaning of § 860F(a)(2) or as a contribution subject to tax under § 860G(d)(1).

Conclusion

We hereby rule as follows:

1. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreements, none of (i) the execution of the Settlement Agreement, (ii) the right to receive the Settlement Payment, or (iii) the receipt of the Settlement Payment will cause the Taxpayer to fail to meet the requirements of § 860D(a)(4).
2. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreements, the receipt of the Settlement Payment will be treated as a payment received on qualified mortgages within the meaning of § 1.860G-2(g)(1)(ii).

3. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreements, the distribution of the Settlement Payment in accordance with the applicable Governing Agreements and the Settlement Agreement will not cause any regular interest in such Taxpayer to fail to qualify as a “regular interest” as defined in § 860G(a)(1) or the sole class of residual interest in such Taxpayer to fail to qualify as a “residual interest” as defined in § 860G(a)(2).

4. In the case of each Taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with the applicable Governing Agreements, the receipt of the Settlement Payment will not be treated as a “prohibited transaction” within the meaning of § 860F(a)(2) or as a contribution that is subject to the tax imposed under § 860G(d)(1).

This ruling’s application is limited to the facts, representations, Code sections, and regulations cited herein. Except as specifically ruled upon above, no opinion is expressed concerning any federal income tax consequences related to the facts herein under any other provisions of the Code. Specifically, we do not rule whether any Taxpayer qualifies as a REMIC under §§ 860A-860G or whether any Mortgage Loan qualifies as a qualified mortgage as defined in § 860G(a)(3).

This ruling is directed only to the taxpayers that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the provisions of a Power of Attorney on file, we are sending a copy of this ruling letter to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

John W. Rogers III
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: