UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

GINNINE FRIED, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

JPMORGAN CHASE & CO., and JPMORGAN CHASE BANK, N.A. d/b/a Chase,

Defendants.

Case No. 2:15-cv-02512-MCA-MAH

Hon. Madeline Cox Arleo

BRIEF OF *AMICI CURIAE* AMERICAN BANKERS ASSOCIATION, CONSUMER BANKERS ASSOCIATION, CONSUMER MORTGAGE COALITION, HOUSING POLICY COUNCIL, INDEPENDENT COMMUNITY BANKERS OF AMERICA, AND MORTGAGE BANKERS ASSOCIATION IN SUPPORT OF DEFENDANTS' MOTION TO CERTIFY ORDER FOR INTERLOCUTORY APPEAL UNDER 28 U.S.C. § 1292(b)

Allyson N. Ho*
aho@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
1717 Main Street, Suite 3200
Dallas, Texas 75201
T. 214.466.4000
F. 214.466.4001
**Pro Hac Vice* Pending

John P. Lavelle, Jr.
New Jersey Attorney I.D. No. 004891989
jlavelle@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, Pennsylvania 19103-2921
T. 215.963.5000
F. 215.963.5001

Attorneys for *Amici Curiae*
American Bankers Association, Consumer Bankers Association, Consumer Mortgage Coalition, Housing Policy Council, Independent Community Bankers of America, and Mortgage Bankers Association

TABLE OF CONTENTS

Page

I. INTEREST OF *AMICI CURIAE* 1

II. SUMMARY OF ARGUMENT 3

III. ARGUMENT 5

A. The Court's Order Has Serious Practical Implications For The Mortgage Industry, Primary And Secondary Mortgage Markets, And Potential Borrowers 5

B. The Order Conflicts With Nationwide Mortgage Lending Practices 5

C. The Order Threatens Significant Disruption In The Primary And Secondary Mortgage Markets And Harm To Both Lenders And Borrowers 11

IV. CONCLUSION 13

TABLE OF AUTHORITIES

Page(s)

CASES

Bd. of Comm'rs of Montgomery Cnty., Ohio v. Fed. Hous. Fin. Agency,
758 F.3d 706 (6th Cir. 2014) 12

Fed. Hous. Fin. Agency v. Merrill Lynch & Co.,
903 F. Supp. 2d 274 (S.D.N.Y. 2012)....................5

STATUTES

12 U.S.C.

§ 1454(a)(2) 7

§ 1701j-3(a)(2) 7

§ 1701j-3(e)(1) 7

§ 1717(b)(2) 7

§ 4902(d) 8

28 U.S.C. § 1292(b) 12

REGULATIONS

12 C.F.R. § 191.2(g) 7

12 C.F.R. § 191.5(c)....................7

12 C.F.R. § 556.9(e)....................7

OTHER AUTHORITIES

About Fannie Mae—Company Overview, FANNIE MAE (Nov. 5, 2015),
http://www.fanniemae.com/portal/about-us/company-overview/about-fm.html 6

Andreas Fuster et al., *The Rising Gap Between Primary and Secondary Mortgage Rates*, 19 FED. RES. BANK OF N.Y. ECON. POL'Y REV. 17 (2013) 12

Announcement SVC-2010-05, FANNIE MAE (Mar. 30, 2010),
https://www.fanniemae.com/content/announcement/svc1005.pdf 7

TABLE OF AUTHORITIES
(continued)

Page(s)

David C. Wheelock, *The Federal Response to Home Mortgage Distress: Lessons from the Great Depression*, 90 FED. RES. BANK OF ST. LOUIS REV. 133 (2008).....................10

Fannie Mae, Freddie Mac, and the Federal Role in the Secondary Mortgage Market, CONGRESSIONAL BUDGET OFFICE (Dec. 2010), http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/120xx/doc12032/12-23-fanniefreddie.pdf..9

Home Prices In U.S. Rise 5.6 Percent Over Year In February, WORLD PROP. J. (Apr. 7, 2015), https://shar.es/1CfTzs..11

Kathleen M. Howley, *Rules for Signing Mortgages Online Boosts Black Knight*, BLOOMBERG BUSINESS (July 20, 2015), http://bloom.bg/1CKMIy6 8

Principal Reduction Alternative Under the Home Affordable Modification Program, INTERNAL REVENUE SERVICE (Oct. 13, 2015), https://www.irs.gov/uac/Principal-Reduction-Alternative-Under-the-Home-Affordable-Modification-Program...10

Quintin Johnstone, *Private Mortgage Insurance*, 39 WAKE FOREST L. REV. 783 (2004)..12

S. REP. NO. 105-129 (1997) 10

Servicing Guide, B-8.1-04, Termination of Conventional Mortgage Insurance (11/12/2014), FANNIE MAE (Feb. 10 2016), https://www.fanniemae.com/content/guide/servicing/b/8.1/04.html..6

I. INTERESTS OF *AMICI CURIAE*

The American Bankers Association ("ABA") is the principal national trade association of the financial services industry in the United States. Founded in 1875, the ABA is the voice for the nation's $13 trillion banking industry and its million employees. ABA members are located in each of the fifty States and the District of Columbia, and include financial institutions of all sizes and types, both large and small. The ABA, whose members hold a substantial majority of domestic assets of the banking industry of the United States and are leaders in all forms of consumer financial services, often appears as *amicus curiae* in litigation that affects the banking industry. Accordingly, the ABA has a strong interest in this case.

The Consumer Bankers Association ("CBA") is the trade association for today's leaders in retail banking. CBA's members include both the nation's largest financial institutions as well as many regional banks, and collectively hold two-thirds of the industry's total assets. CBA's mission is to preserve and promote the retail banking industry while striving to fulfill the financial needs of both small businesses and consumers.

The Consumer Mortgage Coalition is a trade association of national mortgage lenders, servicers, and service providers.

The Housing Policy Council ("HPC") is a division of the Financial Services Roundtable. HPC's members are thirty-three of the Nation's leading mortgage lenders, mortgage servicers, and mortgage insurance companies. HPC represents its member companies' interests in federal legislative, regulatory, and judicial forums. HPC supports balanced mortgage regulations and lending standards that enable mortgage credit to be made available to all qualified borrowers.

The Independent Community Bankers of America ("ICBA") is the national voice for more than 6,000 community banks of all sizes and charter types. The ICBA is dedicated exclusively to representing the interests of the community banking industry through effective

advocacy, best-in-class education, and high-quality products and services. With 52,000 locations nationwide, the ICBA's member banks employ over 700,000 Americans, hold $3.6 trillion in assets, $2.9 trillion in deposits, and $2.4 trillion in loans to consumers, small businesses, and the agricultural community.

The Mortgage Bankers Association ("MBA") is the national association representing the real estate finance industry—an industry employing more than 280,000 people in virtually every community in the country. MBA works to ensure the continued strength of American residential and commercial real estate markets and to expand access to homeownership and affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, life insurance companies, and more.

Amici respectfully submit this *amicus* brief in support of the pending motion to certify the Court's order for interlocutory review to underscore the serious practical concerns implicated by that order. As the Court has recognized (at 7-8), for purposes of computing automatic insurance termination dates for mortgage insurance, the industry-wide practice is to treat modified home mortgages similarly to newly originated or refinanced mortgages. In these circumstances, the industry recalculates the appropriate automatic termination date by using the new amortization schedule *and* the current value of the property. Fannie Mae and Freddie Mac, the Government Sponsored Enterprises (collectively, "GSEs") that purchase a large proportion of loans in the home mortgage industry, require this practice. The Court's order calls these nationwide practices into doubt, and the Associations believes this doubt—which will significantly affect

both mortgage markets and consumers—should be resolved sooner rather than later by expedient appellate review.

II. SUMMARY OF ARGUMENT

Broad availability of mortgage credit depends on lenders' ability to provide mortgage loans—including higher-risk loans that are more likely to default. Private mortgage insurance facilitates broad access to home ownership by protecting lenders and investors from the risk of a borrower defaulting on a home that is "underwater" on its mortgage. This risk occurs when the balance of the loan used to purchase the home is greater than the actual market value of the home.

Fannie Mae and Freddie Mac require additional credit protection far before a home is underwater. Fannie Mae and Freddie Mac's charters require mortgage insurance or lender recourse when a loan for a home exceeds 80 percent of the value of that home. The Homeowners Protection Act requires lenders to stop collecting premiums for mortgage insurance when the homeowner's equity exceeds 22 percent of the home's value. Under GSE guidelines, mortgage lenders nationwide must, when evaluating whether a mortgage qualifies for the federal Home Affordable Modification Program ("HAMP"), assess a property's value as of the time the loan is modified. The lending industry practice, therefore, is to recalculate the automatic mortgage insurance termination date using *both* the modified mortgage's new amortization schedule *and* the mortgaged home's appraised value when the modification is sought.

This Court, resolving an important question of statutory interpretation, concluded that a lender must rely on the new amortization schedule, but not upon the home's current value. Interlocutory review is needed to secure conclusive judicial guidance affirming the government, government-sponsored, and industry practice of using updated property values in calculating automatic insurance termination dates following loan modifications.

Fannie Mae and Freddie Mac—which jointly own or securitize roughly half of all U.S. mortgages—each *require* mortgage servicers to use a mortgaged property's value when the loan is being modified and a new automatic insurance termination date is calculated. Unsurprisingly, most home mortgage investors, lenders, and servicers have adopted this practice, which derives from the most natural reading of the relevant provisions of the Homeowners Protection Act of 1998. HAMP obligates lenders to assess a potentially qualifying property's present value as a condition of modifying a mortgage. Industry practice, as reflected in the Fannie Mae and Freddie Mac guidelines, correctly understands federal requirements—and this understanding aligns with both common sense and sound economic principles.

Private mortgage insurance protects a mortgage lender and investor from the increased risk of default presented by a borrower with less equity in his home. This risk necessarily tracks a home's value. Where borrowers avail themselves of a HAMP modification, this development both prompts the mortgage modification for the borrower and justifies the increased insurance duration for the lender. A contrary rule would not only lead to a perverse result—where a borrower could cherry-pick some parts of his original mortgage and others of his modified mortgage in determining his insurance obligations—but it would also expose the mortgage lending industry and investors to a new, significant risk of loss.

This new risk of loss will cause serious disruptions in the U.S. primary and secondary mortgage lending markets. The secondary mortgage market generally requires underlying mortgages to carry private mortgage insurance consistent with industry standards and guidelines, even when those mortgages have been modified under HAMP. As a consequence of the Court's order, the entities securitizing and selling these mortgages on the secondary market may inadvertently default on sales contracts for these mortgage-backed securities. This disruption—

combined with the additional risk borne by primary mortgage lenders, who must ultimately bear the risk of eventual noninsurance—will significantly impede the mortgage lending market, ultimately harming middle- and lower-income borrowers seeking to purchase homes.

These disruptions underscore the need for immediate appellate review to minimize the serious risks the Court's order poses to the primary and secondary mortgage markets. It is critical that the mortgage industry knows whether the Third Circuit will allow or prohibit its current practice in computing insurance obligations following a loan modification. This Court should therefore grant the motion certifying that question for interlocutory appeal to minimize uncertainty to both consumers and a nationwide industry.

III. ARGUMENT

A. The Court's Order Has Serious Practical Implications For The Mortgage Industry, Primary And Secondary Mortgage Markets, And Potential Borrowers.

Following direct guidelines from Government Sponsored Enterprises, the mortgage industry has routinely recalculated automatic insurance termination dates for mortgages modified under HAMP based on both the newly modified mortgage's expected payment schedule and the property's value as of the modification. It is no mystery why: this practice aligns with the Act's text, common sense, and sensible economics. The Court's order irreconcilably conflicts with these federal requirements and places mortgage servicers in the impossible position of being forced to choose which obligation to obey. Interlocutory appeal is necessary to minimize the significant disruption that this conflict will impose on primary and secondary mortgage market participants.

B. The Order Conflicts With Nationwide Mortgage Lending Practices.

Fannie Mae and Freddie Mac are entities whose influence in the mortgage lending sector is unparalleled. See *Fed. Hous. Fin. Agency v. Merrill Lynch & Co.*, 903 F. Supp. 2d 274, 282

n.5 (S.D.N.Y. 2012). Operated by the government in conservatorship since 2008, their missions are to keep mortgage markets liquid and stable while keeping mortgages affordable for consumers. *See generally About Fannie Mae—Company Overview*, FANNIE MAE (Nov. 5, 2015), http://www.fanniemae.com/portal/about-us/company-overview/about-fm.html. To this end, both Fannie Mae and Freddie Mac administer HAMP—and issue numerous guidelines about how mortgage lenders ought to service both prospective and existing loans to comply with federal law.

Their respective guidelines for calculating a borrower's automatic insurance do not just endorse Chase's practices—they unequivocally *require* this method of computing the mortgage insurance termination date. Both GSEs have promulgated extensive guidelines for how a mortgage servicer ought to calculate this date. *Servicing Guide, B-8.1-04, Termination of Conventional Mortgage Insurance (11/12/2014)*, FANNIE MAE (Feb. 10 2016), https://www.fanniemae.com/content/guide/servicing/b/8.1/04.html. These guidelines review a servicer's statutory obligations under the Act and explain in great detail how a servicer must calculate the appropriate termination date.

For a modified mortgage loan—one modified under HAMP—Fannie Mae's guidelines provide that the "termination eligibility criteria must be based on the terms and conditions of the modified mortgage loan." *Id.* "The servicer must use the amortization schedule of the modified mortgage loan and the property value at the time of the mortgage loan modification" in calculating an automatic termination date for a HAMP-modified loan. *Id.* This requirement was put in place almost six years ago, when Fannie Mae originally announced its policy requirements. These requirements not only obligate a mortgage servicer to use a property's value as of the time of modification, but also approve of the use of a broker price opinion in

assessing that value. *Announcement SVC-2010-05*, FANNIE MAE 2 (Mar. 30, 2010), https://www.fanniemae.com/content/announcement/svc1005.pdf.

The mortgage lending industry uniformly follows these two entities' guidance—as it must. Fannie and Freddie backed more than 60 percent of home mortgages between 2008 and 2013, and continued to own more than half of all mortgages in the U.S. as of 2014. Jason Lange, *Fannie Mae, Freddie Mac to lose market share to private capital: CBO*, REUTERS NEWS (Dec. 16, 2014), http://reut.rs/1uPIwCm. The Congressional Budget Office estimates that Fannie and Freddie will continue to own a plurality—at least 40 percent—of all U.S. mortgages through 2024. *Id*. And Fannie and Freddie condition their support on strict compliance with their requirements—and both *require* relying on a property's then-current value when calculating a modified mortgage's automatic insurance termination date.[1]

Fannie and Freddie's market influence, combined with their government-sponsored status, obligates mortgage market participants to follow their rules—even when termed mere "guidelines." And mortgage servicers understand that they must follow Fannie and Freddie's guidelines. For example, Black Knight Financial Services works with 23 out of the nation's 25

[1] Both GSEs' Charters protect taxpayers by requiring additional assurances for loans for single-family homes that are greater than 80% of the value of the home. 12 U.S.C. § 1717(b)(2) (Fannie Mae); 12 U.S.C. § 1454(a)(2) (Freddie Mac). In 1976, the Federal Home Loan Bank Board adopted a regulation permitting federal thrifts to require continued mortgage insurance after a new borrower assumes an existing loan obligation. 12 C.F.R. § 556.9(e) (1977). That regulation is still in place today, as a regulation of the Comptroller of the Currency ("OCC"), at 12 C.F.R. § 191.5(c).

In 1982, Congress reinforced this need for continued mortgage insurance coverage after a loan amendment by giving the Federal Home Loan Bank Board authority to write regulations for due-on-sale clauses and loan assumption conditions for all lenders. 12 U.S.C. § 1701j-3(e)(1). This included assignees such as Fannie Mae and Freddie Mac. 12 U.S.C. § 1701j-3(a)(2). The OCC's regulation continues to apply this authority—including to Fannie Mae and Freddie Mac. 12 C.F.R. § 191.2(g).

largest mortgage lenders to service their loans or analyze data on their assets. Kathleen M. Howley, *Rules for Signing Mortgages Online Boosts Black Knight*, BLOOMBERG BUSINESS (July 20, 2015), http://bloom.bg/1CKMIy6. Black Knight's clients service more than 30 million active loans comprising more than 20 percent of the market. *Id.* And Black Knight's software calculates the automatic insurance termination date for a HAMP-modified mortgage just as Fannie and Freddie require—by using both the amortization schedule and the value of the property as of the time of the modification.

Fannie, Freddie, and the rest of the American mortgage-lending industry arrived at this uniform understanding because it is the most natural reading of the Homeowner Protection Act's provisions. The Act requires a mortgage servicer to calculate a new mortgage's automatic insurance termination date based on both the amortization schedule of the new mortgage and the property's value as of the consummation of the mortgage. Thus when a mortgage is modified under HAMP—or any other modification agreement—that modification allows a lender to recalculate the automatic insurance termination date "to reflect the modified terms and conditions of such loan." 12 U.S.C. § 4902(d).

Just as a home's value relative to the debt it secures directly influences whether a mortgage lender can offer a prospective borrower a new home mortgage or a home mortgage refinance, a home's value in part determines whether a mortgage is eligible for modification under HAMP. The mortgage industry uniformly understands the Act to treat similarly new loan origination, mortgage refinance, and mortgage modification. The Court's decision to the contrary irreconcilably conflicts with this nationwide understanding—and conflicts with Fannie and Freddie's requirements.

Indeed, the industry practice not only aligns with the statutory scheme, but also makes common sense. A new mortgage, a mortgage refinance, and a loan modification each require certain steps, including a lender's determination that an asset is sufficiently valuable to secure a mortgage safely, and an estimated amortization schedule for the life of the mortgage. A new loan creates all of the information for an initial automatic insurance termination date for the first time, and is internally coherent: it reflects the circumstances of the home's original sale. A refinance is similarly internally coherent. It disregards the previous automatic insurance termination date, instead allowing a mortgage refinancer to evaluate the property's current value and requiring the lender to, once again, discern a termination date based on the new mortgage's planned amortization schedule. For a modification under HAMP, industry practice maintains this symmetry, using both the newly modified mortgage's amortization schedule and the value as of the modification. The contrary position is counterintuitive: it would require a mortgage lender to determine a modified mortgage's automatic insurance termination date using both a *new* amortization schedule while relying on a home's *original* value. This cherry-picking methodology is neither obvious nor intuitive to either consumers or to lenders, and risks the loan being deemed ineligible.

In contrast, the industry's internally consistent, nationwide practice also fits with the core purposes of private mortgage insurance. Private mortgage insurance exists to protect against default risk where a loan exceeds approximately 80 percent of a securing home's value. But by definition, this ratio can change in two ways—by a change in the amount of the loan *or* a change in the value of the property. The financial crisis of the late 2000s caused serious shocks in American housing valuations, driving down asset prices and prompting foreclosures nationwide. *Fannie Mae, Freddie Mac, and the Federal Role in the Secondary Mortgage Market*,

CONGRESSIONAL BUDGET OFFICE 7, 13 (Dec. 2010), http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/120xx/doc12032/12-23-fanniefreddie.pdf; *see also* David C. Wheelock, *The Federal Response to Home Mortgage Distress: Lessons from the Great Depression*, 90 FED. RES. BANK OF ST. LOUIS REV. 133, 133-34 (2008). This crisis precipitated HAMP, as the federal government recognized a need to help homeowners, lenders, and investors to negotiate standard new mortgage terms to keep homeowners in their homes. *Principal Reduction Alternative Under the Home Affordable Modification Program*, INTERNAL REVENUE SERVICE (Oct. 13, 2015), https://www.irs.gov/uac/Principal-Reduction-Alternative-Under-the-Home-Affordable-Modification-Program. In fact, HAMP primarily benefitted the owners of these distressed assets. And it is these distressed assets—having dropped in value significantly, and having already exposed lenders once to a serious risk of default—that most benefit from private mortgage insurance as a way to encourage additional investment and lower mortgage rates.

The industry's practice also aligns with what Congress attempted to protect against in passing the Act. The Act sought to prevent "excessive [insurance] coverage" which did "not benefit the homeowner, and provide[d] little extra protection to a lender." S. REP. NO. 105-129, at 3 (1997). Insurance for HAMP-modified mortgages where a home's value has decreased precipitously is not, by definition, excessive: it protects against precisely the risk of default for which the insurance is defined. Conversely, the industry considers this insurance, under these circumstances, an essential protection against loss.

The industry's practice also allows homeowners who modify their mortgages even where home value has *increased* relative to the post-modification value of the loan to advance their automatic insurance termination date. Though HAMP began in 2009, contemporaneous with

sharp declines in property values, home values—even for homes with modified mortgages—have steadily recovered since then. *See, e.g.*, *Home Prices In U.S. Rise 5.6 Percent Over Year In February*, WORLD PROP. J. (Apr. 7, 2015), https://shar.es/1CfTzs. As of April 2015, home prices had risen consistently for more than three years—including the prices of distressed homes. *Id.* A homeowner with a modified mortgage whose home value has improved relative to his mortgage ought to also capture the benefit of his reduced risk to his mortgage lender. The industry's current practice allows this, advancing these homeowners' automatic insurance termination date by employing the home's value at the time of the modification when calculating the new date. But using the home's original value would deny this benefit to homeowners—not only defying common sense, but also frustrating the purposes of both private mortgage insurance and the Act.

The industry's uniform approach is thus aligned not only with Fannie Mae and Freddie Mac's requirements for calculating an automatic insurance termination date for modified mortgages, but also with common sense and sound economics. The practices are standard in the primary and secondary mortgage markets nationwide for good reason. As the Court's order recognizes, however, its interpretation is in conflict with that uniform, nationwide standard—and interlocutory review is therefore particularly appropriate to resolve the conflict and minimize the potential disruption.

C. The Order Threatens Significant Disruption In The Primary And Secondary Mortgage Markets And Harm To Both Lenders And Borrowers.

If permitted to stand, the Court's order will require participants in the primary and secondary mortgage markets to change their business practices significantly. These changes will call mortgage lenders and servicers' compliance with Fannie and Freddie's guidelines into question; it may cause defaults in present sales contracts. The Court's ruling will generate

significant costs given the uncertainty of its ultimate implementation in other jurisdictions—thereby exposing primary and secondary market participants to serious risks while the order awaits eventual appeal. This will, in turn, harm lenders, investors, and consumers alike. Interlocutory review is available under § 1292(b) precisely for compelling circumstances such as these.

Single-family home mortgages are attractive investments in large part because of Fannie and Freddie's purchase and securitization activities—activities contingent on complying with GSE guidelines. Compliance with the guidelines is therefore one good indicator of a mortgage's fitness as an investment product. *See* Quintin Johnstone, *Private Mortgage Insurance*, 39 Wake Forest L. Rev. 783, 787-89 (2004). Mortgage originators therefore often guarantee compliance with these guidelines as part of sales contracts for these loans. But the order at issue makes compliance with these guidelines impossible for many HAMP-modified mortgages: its rationale will prohibit mortgage servicers from collecting private mortgage insurance for many loans which Fannie and Freddie would permit insurance. This asymmetry will cause loan originators to default on these sales contracts, and it will impede the sales of newly originated mortgages which even plausibly could be later modified.

Secondary market disruptions, in turn, will harm consumers. The primary mortgage market—actual loans to homeowners to buy or refinance homes—is largely financed by the resale of those mortgages. Andreas Fuster et al., *The Rising Gap Between Primary and Secondary Mortgage Rates*, 19 FED. RES. BANK OF N.Y. ECON. POL'Y REV. 17, 19, 21-22 (2013). This reselling provides additional investment capital for new loans, leading to a liquid and accessible market for potential middle-class homeowners. *Bd. of Comm'rs of Montgomery Cnty., Ohio v. Fed. Hous. Fin. Agency*, 758 F.3d 706, 712 (6th Cir. 2014). Protracted uncertainty

regarding whether current mortgage sales contracts are in default because of servicers' inability to collect private mortgage insurance will reduce investment in the primary mortgage market, which will in turn reduce liquidity and accessibility. Middle- and lower-income potential home buyers will be disproportionately affected by these secondary market disruptions through higher interest rates or reduced access to credit as the market compensates for the increased risk of losses.

The sooner the issues decided in the order can be resolved on appeal, then, the better. The questions are tremendously important to the American mortgage industry, and interlocutory review is needed to resolve the uncertainty as quickly as possible.

IV. CONCLUSION

Defendants' motion to certify this Court's order as appropriate for interlocutory appeal should be granted.

Dated: February 29, 2016

Respectfully submitted,

/s/ John P. Lavelle, Jr.

John P. Lavelle, Jr.
New Jersey Attorney I.D. No. 004891989
jlavelle@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, Pennsylvania 19103-2921
T. 215.963.5000
F. 215.963.5001

Allyson N. Ho*
aho@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
1717 Main Street, Suite 3200
Dallas, Texas 75201
T. 214.466.4000
F. 214.466.4001
**Pro Hac Vice* Pending

Attorneys for *Amicus Curiae*
Mortgage Bankers Association