

B254 (Form 254 - Subpoena for Rule 2004 Examination) (12/07)

## UNITED STATES BANKRUPTCY COURT

Middle

District of

Florida

In re Taylor, Bean, Whitaker Mortgage Corp.  
Debtor

## SUBPOENA FOR RULE 2004 EXAMINATION

Case No.\* 3:09-bk-07047-JAF

To: Melissa Henry  
12730 Tar Flower Drive  
Tampa, FL 33626

Chapter 11


 YOU ARE COMMANDED to appear and testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure, at the place, date, and time specified below. A copy of the court order authorizing the examination is attached.

PLACE OF TESTIMONY	DATE AND TIME
Offices of Holland & Knight L.L.P. 100 North Tampa Street, Suite 4100 Tampa, FL 33602	June 15, 2010; 9 a.m.

 YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See attached Exhibit A

PLACE	DATE AND TIME
Offices of Holland & Knight L.L.P. 100 North Tampa Street, Suite 4100 Tampa, FL 33602	June 1, 2010; 12 p.m.

ISSUING OFFICER SIGNATURE AND TITLE	DATE
	4/20/2010
ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER	
Stephen P. Sorensen, 725 Twelfth Street, NW, Washington, DC 20005; 202-434-5000	

\* If the bankruptcy case is pending in a district other than the district in which the subpoena is issued, state the district under the case number.

B254 (Form 254 -- Subpoena for Rule 2004 Examination) (12/07)

## PROOF OF SERVICE

<b>SERVED</b>	DATE	PLACE	
SERVED ON (PRINT NAME)		MANNER OF SERVICE	
SERVED BY (PRINT NAME)		TITLE	

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2007, made applicable in cases under the Bankruptcy Code by Rule 9016, Federal Rules of Bankruptcy Procedure:

## (c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

## (2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

## (3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

## (d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

## (2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

## (e) Contempt.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

Taylor, Bean & Whitaker Mortgage Corp.,  
Debtor.

Chapter 11

Case No. 3:09-bk-07047-JAF

**ORDER GRANTING IN PART AND DEFERRING IN PART THE MOTION OF  
DEUTSCHE BANK, AG, FOR AN ORDER AUTHORIZING  
2004 EXAMINATIONS OF TAYLOR BEAN & WHITAKER  
MORTGAGE CORP. AND CERTAIN THIRD PARTIES PURSUANT  
TO BANKRUPTCY RULE 2004 AND SECTION 105(A) OF THE BANKRUPTCY CODE**

**THIS MATTER** came before the Court for hearing on October 15, 2009, at 10:00 a.m. upon the motion of Deutsche Bank, AG (“Deutsche Bank”) for an Order Authorizing 2004 Examinations of Taylor, Bean & Whitaker Mortgage Corp. (the “Debtor”) and Certain Third Parties Pursuant to Bankruptcy Rule 2004 and Section 105(A) of the Bankruptcy Code (Doc.No. 246; the “Motion”). The Court, having reviewed the Motion, heard argument thereon, and considered the relief requested therein, it is hereby

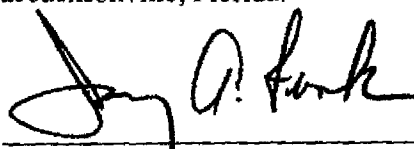
**ORDERED** that:

1. Deutsche Bank’s Motion to serve on Deloitte LLP and former employees of the Debtor, as identified in the Motion, subpoenas to (i) compel the production of the documents identified in the Motion, and (ii) appear for examination at and on date(s), time(s), and place(s) mutually convenient to, and to be determined in good faith by, Deutsche Bank, the Debtor, and the Official Committee of Unsecured Creditors, is **GRANTED** without the need for a further order of this Court.

2. The balance of the Motion, directed to Rule 2004 examinations of the Debtor, Navigant Consulting Inc., the Federal Deposit Insurance Corporation, and the Federal Home

Loan Mortgage Corporation, is **ADJOURNED** to November 5, 2009, unless earlier consideration is requested by Deutsche Bank.

DATED: October 23, 2009, at Jacksonville, Florida.



---

JERRY A. FUNK  
United States Bankruptcy Judge

COPIES FURNISHED TO:

EXHIBIT A

DEFINITIONS

1. "TBW" means Taylor, Bean & Whitaker Mortgage Corporation and any of its predecessors and successors in interest, and any of their respective present or former agents, officers, directors, employees, representatives, and any other person acting or purporting to act on its behalf.

2. "Bank of America" means Bank of America, National Association, and any of its predecessors and successors in interest (including LaSalle Bank, National Association), and any of their respective subsidiaries and divisions, and any of their respective present or former agents, officers, directors, employees, representatives, and any other person acting or purporting to act on its behalf.

3. "DB" means Deutsche Bank, AG, and any of its predecessors and successors in interest, and any of their respective present or former agents, officers, directors, employees, representatives, and any other person acting or purporting to act on its behalf.

4. "BNPP" means BNP Paribas and any of its predecessors and successors in interest, and any of their respective present or former agents, officers, directors, employees, representatives, and any other person acting or purporting to act on its behalf.

5. "Ocala Funding" means Ocala Funding LLC and any of its predecessors and successors in interest, and any of their respective present or former agents, officers, directors, employees, representatives, and any other person acting or purporting to act on its behalf.

6. "Colonial" means Colonial Bank and any of its predecessors and successors in interest (including, but not limited to, the Federal Deposit Insurance Corporation, as receiver for Colonial Bank), and any of their respective present or former agents, officers, directors, employees, representatives, and any other person acting or purporting to act on its behalf.

7. “Deloitte” means Deloitte & Touche LLP, Deloitte Consulting LLP, Deloitte Financial Advisory Services LLP, and Deloitte Tax LLP, and any of their respective parents, subsidiaries, affiliates, predecessors and successors in interest, and any of their respective present or former agents, officers, directors, employees, representatives, and any other person acting or purporting to act on its behalf, or on behalf of any of them.

8. “You” or “your” means Melissa Henry or any agents, employees, representatives, and any other person acting or purporting to act on your behalf.

9. The terms “and” and “or” shall be construed either disjunctively or conjunctively so as to bring within the scope of a particular request all documents that otherwise might be construed to be outside its scope.

10. The term “communication(s)” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes any oral or written utterance, notation, or statement of any nature whatsoever, by and to whomever made, including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, e-mails, and other understandings between or among two or more persons.

11. The term “concerning” means referring to, relating to, reflecting, constituting, leading to, containing, discussing, commenting upon, mentioning, evidencing, modifying, quoting, describing, bearing upon, regarding, made in connection with or be reason of, or deriving or arising from.

12. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term. The term includes, without limitation, any and all e-

mails and other electronic communications, letters, and other correspondence, facsimiles, transmittals, records of telephone conversations, notes, meeting minutes, memoranda, reports, studies, summaries, statements, policies, manuals, agreements, contracts, working papers, brochures, charts, appointment books, journals, diaries, photographs, films, videotape, recordings, time sheets, logs, inventories, accounting records and bank statements, computer printouts, and all other written, computerized or recorded matter of any kind or nature whatsoever.

13. The terms "all" and "each" shall be construed as all and each.

14. A party's full or abbreviated name or a pronoun referring to a party means the party and, where applicable, its officers, directors, employees, partners, corporate parents, subsidiaries, and affiliates.

#### INSTRUCTIONS

1. This document request calls for the production of all documents in your possession, custody or control, regardless of whether such documents are held by you or your present or former affiliates, designees, agents, employees, representatives, attorneys, or other persons under your control.

2. Where any copy of any document called for by this Subpoena is not identical to any other copy by reason of any alteration, notes, comments, or material contained therein or attached thereto, or otherwise, all such non-identical copies shall be produced separately.

3. Documents produced in response to this document request shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond to the specific request(s) in this document request to which they are responsive. If no documents exist that are responsive to a particular request, you shall so state in writing.

4. Documents produced in response to this document request shall be produced in full, without abbreviation or redaction, and shall include all attachments and enclosures. Documents attached to each other in their original form shall not be separated.

5. For each document responsive to this document request withheld under a claim of any privilege and/or immunity, state the following at the same time you produce the documents responsive to this document request:

- a. the nature and basis of the privilege and/or immunity which is being claimed and, if applicable, the rule or law allegedly governing such claim;
- b. the type of document;
- c. the general subject matter of the document;
- d. the date(s) on which the document was created, sent and/or received;
- e. such other information as is sufficient to identify the document and establish the privilege and/or immunity claimed, including, where appropriate, the author(s), addressee(s), and other recipient(s) of the document and, if not apparent, the relationship of the author(s), addressee(s) and recipient(s) to each other; and
- f. the identity and position, if any, of the person or persons supplying the information requested in the subparagraphs above.

6. If you claim a document responsive to this document request contains both privileged and non-privileged material, you shall disclose the non-privileged material to the fullest extent possible without thereby disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a document, you shall indicate clearly the portions for which the privilege is claimed.

7. You shall produce electronically stored information in a format mutually agreeable to the parties.

8. The fact that a document has been or will be produced by another person shall not relieve you of the obligation to produce the document. The fact that a document has been or will



be produced in paper format (as opposed to electronic format) shall not relieve you of the obligation to produce the document in its electronic format if the document is maintained in electronic format in the usual course of business.

9. If a document responsive to this document request was formerly in your possession, custody or control and has been lost, destroyed or otherwise rendered unavailable, at the same time you produce the documents responsive to this document request, provide a written statement which:

- a. describes in detail the nature of the document and its contents;
- b. identifies the person who prepared the document and, if applicable, the persons to whom the document was sent;
- c. specifies the date on which the document was prepared or transmitted; and
- d. specifies the date on which the document was lost, destroyed or made unavailable, and, if destroyed, the reason for such destruction and/or the persons requesting and/or performing such destruction.

10. If you object to any request below or any part thereof, you shall identify the request or part thereof to which you object, state with specificity all grounds for the objection and respond to any portion of the request to which you do not object.

11. If you object to any request below on the grounds that the request is ambiguous, vague, overbroad or unduly burdensome, you shall produce documents responsive to that request as understood or narrowed to the least extent necessary, in your judgment, to render that request not overbroad or unduly burdensome, and you shall state specifically your understanding of that request and/or the extent to which you have narrowed that request for purposes of your response.

12. Unless stated otherwise with respect to a certain request below, this document request encompasses the period from December 1, 2007, through and including the date of your response.

13. Deutsche Bank reserves the right to amend, supplement, and/or modify the Requests for Production contained herein.

REQUESTS FOR PRODUCTION

1. All documents evidencing, reflecting, or otherwise concerning transfers to and/or from any of the following bank accounts from December 1, 2007, to the present:

- i. Freddie Mac Principal & Interest Custodial Accounts (Account Nos. 8027625410 and 8037151506);
- ii. Colonial Master Account, Account # 8026069362;
- iii. Clearing Account, Account # 8037152645;
- iv. Colonial Operating, Account # 8030377314;
- v. ITF Henley Holdings Account, Account # 8037244822;
- vi. Colonial Assignment of Trade Account;
- vii. Colonial Investor Funding, Account # 8026069354;
- viii. Account # 722347.2;
- ix. Account # 722493.15;
- x. Collateral Accounts maintained pursuant to the Security Agreement;
- xi. Ocala Collections Account, Account # 722493.4; and
- xii. All other TBW accounts maintained at Colonial.
- xiii. All TBW accounts maintained at Bank of America and/or LaSalle.

2. All documents evidencing, reflecting, or concerning instructions and/or directions given to Bank of America or LaSalle with respect to any and all accounts maintained by Bank of America or LaSalle for the benefit of DB, BNPP, and/or Ocala Funding.

3. All documents evidencing, reflecting, or concerning the servicing during the period from December 1, 2007, through the date of your response, of mortgage loans which

served as collateral for notes issued by Ocala Funding including, but not limited to, any servicing reports.

4. All documents evidencing, reflecting, or concerning payments or advances made on account of or with respect to any and all mortgage loans which, at any time, constituted security for notes issued by Ocala Funding.

5. All documents evidencing, reflecting, or concerning the sale, transfer, or other disposition by TBW to third-parties including, but not limited to, Platinum Bank, Colonial Bank, Bank of America, Wells Fargo, and/or Freddie Mac or mortgage loans which, at any time, constituted security for notes issued by Ocala Funding.

6. All documents evidencing, reflecting, or concerning the repurchase by TBW of mortgage loans including, but not limited to funds used by TBW to repurchase mortgage loans.

7. All documents evidencing, reflecting, or concerning information received from any lender or investor regarding collateral necessary or required to support credit lines maintained for the benefit of TBW.

8. All documents evidencing, reflecting, or concerning the delivery by TBW of cash or collateral in connection with a margin call (i.e. a demand for cash or collateral) made by a lender or investor with respect to a credit line maintained for the benefit of TBW.

9. All documents evidencing, reflecting, or concerning mortgage loans serving as security for notes issued by Ocala Funding including, but not limited to, "Gatekeeper" and "Pipeline" reports and any and all drafts thereof.

10. All documents evidencing, reflecting, or concerning the payment for mortgage loans serving as security for notes issued by Ocala Funding including, but not limited to, Cash Balance Reports.

11. All Bailment Letters (also known as Transmittal Letters) transmitted between LaSalle and Colonial from December 1, 2007, through and including the date of your response.

12. All Transfer Supplements created or issued pursuant to that certain Mortgage Loan Purchase and Servicing Agreement between Ocala Funding, as purchaser, and TBW, as seller and servicer.

13. All documents evidencing, reflecting, or concerning the value of mortgage loans which served, at any time, as collateral for notes issued by Ocala Funding to DB and/or BNPP.

14. All documents evidencing, reflecting, or concerning the release of mortgage loans from any security interest claimed by Bank of America or LaSalle including, but not limited to, Freddie Mac Form 996s.

15. All documents evidencing, reflecting, or concerning communications between TBW and Bank of America regarding the sale of mortgage loans held by Bank of America as security for notes issued by Ocala Funding (including, but not limited to, communications regarding the release by Bank of America of any security interest in loans proposed to be sold by Ocala Funding).

16. All documents evidencing, reflecting, or concerning communications between TBW and third-parties regarding the sale of mortgage loans held by Bank of America as security for notes issued by Ocala Funding.

17. All documents evidencing, reflecting, or concerning communications between and among TBW employees regarding the sale of mortgage loans in which Bank of America maintained a security interest.

18. All documents evidencing, reflecting, or concerning servicing advances paid by TBW from December 1, 2007, through the date of your response, and/or reimbursements paid to TBW during that period.

19. All documents evidencing, reflecting, or concerning the assets and liabilities of Ocala Funding including, but not limited to, all Borrowing Base Reports and Borrowing Base Certificates, and all drafts thereof.

20. All documents evidencing, reflecting, or relating to communications with ABN Amro regarding any swap agreement with TBW and/or Ocala Funding.

21. All documents evidencing, reflecting, or relating to payments made by TBW or Ocala Funding to ABN Amro.

22. All documents evidencing, reflecting, or relating to communications between Deloitte and TBW and/or Ocala Funding regarding financial, accounting, audit, or other services performed or to be performed by Deloitte as such services relate to Ocala Funding.

23. All documents evidencing, reflecting, or relating to communications between Deloitte and (a) Bank of America and/or LaSalle, (b) DB, (c) BNPP, and/or (d) any swap counterparty regarding financial, accounting, audit, or other services performed or to be performed by Deloitte as such services relate to Ocala Funding.

24. All documents evidencing, reflecting, or comprising reports, or drafts thereof, prepared by Deloitte and delivered to any of (a) Bank of America and/or LaSalle, (b) DB, (c) BNPP, (d) TBW, and/or (e) any swap counterparty, which relate to Ocala Funding.

25. All documents, not otherwise requested herein, which relate in any way to (a) Ocala Funding, and/or (b) any mortgage lending/warehouse facility maintained by TBW.