



## INDEPENDENT VALIDATION FINAL REPORT SUMMARY – JANUARY 22, 2020

This summary of the Independent Validation Report is submitted in accordance with the terms of the September 25, 2019 Memorandum of Understanding (“MOU”) entered into between the Executive Office of the United States Trustee (“EOUST”) and Ditech Financial LLC (“Ditech”).

### BACKGROUND

The MOU documents the final resolution of the EOUST’s inquiries regarding Ditech’s historical escrow, loan modification, and corporate advance practices for loans where one or more Ditech customers had filed for chapter 13 bankruptcy relief. Such practices are described more fully in the MOU but summarized herein.<sup>1</sup>

The MOU addresses three (3) identified historical practices and related populations:

- **Escrow:** In chapter 13 bankruptcy cases filed before January 1, 2015, Ditech did not always run annual escrow analyses for accounts that had an escrow account.
- **Loan Modifications:** Historically, the Company or a prior servicer did not consistently seek approval and provide notice to bankruptcy courts through either a Motion for Approval, Amended Proof of Claim, and/or Payment Change Notice when a customer in a chapter 13 bankruptcy entered into a Loan Modification. As a result, Ditech continued to accept monthly mortgage payments at the pre-modification amount as well as arrearage payments even though such arrearages had been capitalized.
- **Advances:** Ditech had inconsistent legacy practices for timely noticing servicer advances or timely waiving them from the account at certain milestones.

The MOU has three main components: (1) remediation of the loans impacted by the historical practices noted above (“the Remediation Projects”), (2) operational enhancements to avoid recurrence of those historical practices (the “Operational Enhancements”), and (3) independent validation of the first two items. The Company’s independent testing division, the Compliance Testing Organization (“CTO”), under the direction of the Chief Risk and Compliance Officer, was assigned to confirm that Ditech properly remediated the loans in the populations as agreed by the parties and that Ditech addressed the Operational Enhancements via its current policies and procedures. CTO has concluded its work and submits this Final Report for the EOUST’s review.

In accordance with the MOU, Ditech engaged in the Remediation Projects related to the historical bankruptcy practices. The Remediation Projects resulted in approximately \$34.66M in remediation to Ditech’s current and former customers, including \$23.89M in escrow remediation, \$.90M in advances remediation, \$4.01M in LMA account adjustments and \$5.86M in LMA overpayments (some of which were returned to trustees and borrowers, and some of which remained on the

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the respective meanings given to them in the MOU.



borrowers' accounts, depending on whether the account met specific criteria).<sup>2</sup> The majority of remediation resulted in write-offs or other system adjustments and, in limited scenarios, customers and/or chapter 13 trustees received refund checks. None of the remediation included payment of penalties to the EOUST.

The Remediation Projects involved three (3) populations that have some overlap. The details of the populations are set forth in the Appendices to the MOU but can be broadly described as:

- **Escrow:** Loans with an escrow account which were serviced by Ditech for more than one year while one or more of the customers were in a chapter 13 bankruptcy, and where Ditech did not run yearly escrow analyses (the "Escrow Remediation Population"),<sup>3</sup>
- **Loan Modifications:** Loans which received a loan modification while the consumer was in a chapter 13 bankruptcy case and such modification was not sufficiently noticed to or approved by the bankruptcy court (the "LMA Remediation Population");
- **Advances:** Loans for which at least one (1) fee, cost or expense was assessed but Ditech did not timely notice or waive such advance(s) during or after the consumer's chapter 13 bankruptcy (the "Advances Remediation Population").

In 2Q19, CTO was charged with an independent review of: 1) the population approach for the Remediation Populations; 2) the completed Remediation Projects, via a full review of the remediation processes for a statistically valid sample of the remediated loans; and 3) the Operational Enhancements, via review of present day policies and procedures.

CTO drew its conclusions based on sample testing from each in-scope and each out-of-scope population using an industry standard sampling methodology. The sample sizes of the primary populations ranged anywhere from 100 to 400 loan files per segment. Smaller samples were identified for subsets of the populations. Where findings were noted, additional samples within the sub-segment of the finding were pulled at a much higher proportion of the total population to confirm that the re-remediation has been properly completed.

The detailed workpapers created during CTO's review address the three (3) components of the independent review and are summarized below. For each component, the workpapers and summary describe CTO's scope of work, sample population, testing protocol, conclusions, and file level validation documentation. Workpapers for each loan file sampled and tested will be made available for review by the EOUST. However, given the sensitive nature of our customers' Personally Identifiable Information ("PII"), the workpapers will not be available for external review. Ditech respects our customer's privacy and is committed to compliance with all state privacy laws.

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<sup>2</sup> The LMA account adjustment and overpayment figures reflect the third-party consultant's final summary of the project, dated January 16, 2020.

<sup>3</sup> Each of the remediation populations involved more criteria and requirements than described above. The criteria are summarized for purposes of this Report but can be found described in full in the appendix to the MOU.



## CONCLUSIONS

### **Escrow Review:**

CTO reviewed 375 of 13,735 original in-scope loans in the Escrow Population to confirm accurate application of any applicable credits for either the negative variance or pro forma shortage amount, the creation of a post-remediation escrow analysis, and agreed upon notice to the customer. Errors were noted in 7 of the 375 tested loans.

- One (1) error was related to the failure to file a Payment Change Notice and two (2) errors were related to late mailing of escrow credit letters. All other aspects of the remediation had been properly completed on these files. The Payment Change Notice was filed on the identified loan to correct the error. The late escrow credit letters did not require any cure.
- The final four (4) errors were related to some amount of shortage still remaining on the account when the full shortage should have been waived. A full review of these findings identified a total error population of approximately 90 loans in the Escrow Remediation Population. The errors identified in these loans were cured, and retesting was conducted for the error population. Following the cure, no defects were noted in the Escrow Population.

CTO confirms the Escrow Remediation process was complete and accurate.

1,806 of the Escrow Population loans required “re-remediation” and a second round of credits/refunds. Of those 1,806, CTO tested an additional 45 files to confirm accurate remediation for all loans in that subset of the Escrow Population. No defects were noted in the Escrow Re-remediation Population. The Escrow Re-remediation process is confirmed to be complete and accurate.

CTO reviewed 355 of the 8,798 loans that were originally excluded from the Escrow Remediation Population to confirm that they met the definition of an “out-of-scope” account as defined by the terms of the MOU. This testing identified four (4) loans with a defect.

- One (1) of the errors was a manual error in the type of lift of stay coding selected for the file. This loan will receive remediation review.
- The remaining errors were related to the bankruptcy status chosen by the case selection hierarchy applied to the potential Escrow Population. Upon such discovery, Ditech reviewed the full data for any similarly excluded loans based on the case selection hierarchy and determined that 27 loans were affected by the same issues and required remediation review. Following remediation of those 27 loans, CTO validated the remediation of each account and found no defects in the remediation.

### **LMA Review:**

Ditech retained a third-party consultant to assist with the development and implementation of the LMA Remediation. During the project, the consultant reviewed six (6) areas of the Loan



Modification Population to calculate any recommended remediation: (i) post-petition overpayments, (ii) missing or erroneous post-petition payment notices, (iii) pre-petition overpayments, (iv) pre-petition amounts applied post-modification, (v) missing post-petition fees notice, and (vi) capitalization of fees or costs without proper notice). The consultant worked in conjunction with Ditech to implement all remediation necessary for each account. The consultant reviewed the original 2,730 in-scope files (100% review) and documented support of the remediation conducted for each. CTO has reviewed and adopted the consultant's review of the in-scope files.

CTO reviewed 100 of the 2,115 loans that were originally excluded from the LMA Remediation Population to confirm that they met the definition of an "out-of-scope" account as defined by the terms of the MOU. This testing identified one (1) loan with a defect, related to the existence of two modifications that were close in time to each other, only one of which was used in the population determination. The loan was reviewed for remediation and no other defects were identified in this sample population.

Following the completion of initial CTO testing, outside counsel for Ditech determined that 28 accounts had been incorrectly excluded from the LMA Population. These errors were all loans with some type of lift of the automatic stay in the consumer's chapter 13 bankruptcy but such lifts of stay were not the type excluded by the MOU. Ditech re-engaged the third-party consultant to complete a full review of each account and those loans were remediated in January 2020. As above, CTO adopts the consultant's review of the in-scope files. CTO confirms that the LMA Remediation process was complete and accurate.

#### **Advances Review:**

CTO reviewed 230 of the 785 loans in the Advances Remediation Population. CTO confirmed remediation, via waiver or credit, as appropriate, was completed for these loans. Two (2) errors were found. These mistakes were the result of human error.

CTO reviewed 50 of the 675 loans that had at least one advance excluded from remediation to confirm that they met the definition of an "out-of-scope" account as defined by the terms of the MOU. No defects were noted in this review.

#### **Operational Enhancements Review:**

The Company has implemented a number of Operational Enhancements to address the historical escrow, loan modification, and corporate advance practices as defined in the MOU. CTO reviewed all applicable current policies and procedures and confirmed that these documents comply with the Bankruptcy Code, Bankruptcy Rules, and the terms of the MOU.

In summary, CTO accomplished the objectives spelled out in section V.A. of the MOU and has validated and documented Ditech's compliance with the terms of the MOU. Other than as noted above regarding LMA files still under review, all remediation is complete and accurate and the Company's current policies and procedures are structured to prevent similar errors.