

At IAS Part 60 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York on the _____ day of _____, 2023

P R E S E N T : Hon. Melissa A. Crane, Justice.

In the matter of the application of

WELLS FARGO BANK, NATIONAL ASSOCIATION, U.S. BANK NATIONAL ASSOCIATION, THE BANK OF NEW YORK MELLON, THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., WILMINGTON TRUST, NATIONAL ASSOCIATION, HSBC BANK USA, N.A., and DEUTSCHE BANK NATIONAL TRUST COMPANY (as Trustees, Indenture Trustees, Securities Administrators, Paying Agents, and/or Calculation Agents of Certain Residential Mortgage-Backed Securitization Trusts),

Petitioners,

For Judicial Instructions under CPLR Article 77 on the Distribution of a Settlement Payment.

Index No. 657387/2017

**[PROPOSED]
ORDER THAT
PETITIONER PREPARE
EXEMPLAR MODELING
SUBMISSION IN AID OF
PROPOSED
DISTRIBUTION ORDER**

WHEREAS, the Petitioners identified in the above case caption commenced this proceeding under CPLR Article 77 by filing a petition (the “Petition”) seeking judicial instructions concerning the administration and distribution of a settlement payment (the “Settlement Payment”) for certain residential mortgage-backed securities trusts identified in Exhibit A to the Petition (the “Settlement Trusts”) under a settlement agreement dated as of November 15, 2013 and modified as of July 29, 2014 (the “Settlement Agreement”); and

WHEREAS, on August 30, 2022, the Institutional Investors (as defined below) submitted, on behalf of all interested parties (including the affected Petitioners), a Proposed

Final Judgment and Order for 37 trusts (NYSCEF No. 982) (the “37 Trusts Proposed Order”); and

WHEREAS, on August 31, 2022, the Court issued an Order to Show Cause (NYSCEF No. 983) why the 37 Trusts Proposed Order should not be entered; and

WHEREAS, on September 14, 2022, Petitioner, Wells Fargo Bank, National Association (“Wells Fargo”), submitted the Affirmation of Clay J. Pierce in Partial Opposition to the Institutional Investors’ Order to Show Cause Seeking Entry of Final Judgment and Order for 37 Trusts (NYSCEF No. 988), requesting that the Court revise the 37 Trusts Proposed Order to exclude 27 Settlement Trusts for which Wells Fargo indicated it intends to seek further guidance from the Court regarding the “Cross-Over Date” and “Allocation” issues¹; and

WHEREAS, on September 19, 2022, Wells Fargo submitted the Supplemental Affirmation of Clay J. Pierce in Partial Opposition to the Institutional Investors’ Order to Show Cause Seeking Entry of Final Judgment and Order for 37 Trusts (NYSCEF No. 993) (with the September 14, 2022 Affirmation of Clay J. Pierce, the “Wells Fargo Objection”), supplementing its Objection and limiting its applicability to 24 of the 27 Settlement Trusts it previously identified (the “Subject Trusts”); and

WHEREAS, the following parties (the “Responding Parties”) have appeared and negotiated a resolution to the issues raised in the Wells Fargo Objection: AEGON USA Investment Management, LLC, BlackRock Financial Management, Inc., Cascade Investment, LLC, the Federal Home Loan Bank of Atlanta, the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie

¹ See Doc. No. 988 at 3 (defining the “Cross-Over Date” and “Allocation” issues).

Mae), Goldman Sachs Asset Management L.P., Voya Investment Management LLC, Invesco Advisors, Inc., Kore Advisors, L.P., Metropolitan Life Insurance Company, Pacific Investment Management Company LLC, Teachers Insurance and Annuity Association of America, the TCW Group, Inc., Thrivent Financial for Lutherans, and Western Asset Management Company (each for themselves and, to the extent applicable, as investment managers of funds and accounts, and collectively, the “Institutional Investors”); Ambac Assurance Corporation; American General Life Insurance Company, American Home Assurance Company, Lexington Insurance Company, National Union Fire Insurance Company of Pittsburgh, Pa., The United States Life Insurance Company in the City of New York, and The Variable Annuity Life Insurance Company; Ellington Management Group, L.L.C.; Tilden Park Investment Master Fund LP, Tilden Park Management I LLC, and Tilden Park Capital Management LP, each on behalf of itself and its advisory clients; and Nover Ventures, LLC (“Nover”); and

WHEREAS, on November 10, 2022, counsel for certain of the Responding Parties filed submissions with the Court advising that there was agreement in principle regarding the Wells Fargo Objection resolving the Cross-Over Date and Allocation issues raised in the Wells Fargo Objection and requesting that the Court provide the interested parties additional time to finalize the details of the proposed final judgment for the 24 Trusts subject to the Wells Fargo Objection; and

WHEREAS, prior to the December 16, 2022 hearing, counsel for Nover informed Wells Fargo that, at the hearing, it would request that the Court enter an order directing Wells Fargo to provide a submission to the Court modeling the terms of the latest draft of the 24

Trust Proposed Judgment (attached hereto as Exhibit A) with respect to the Cross-Over Date issue identified in Wells Fargo's Objection; and

WHEREAS, on December 16, 2022, the Court held a hearing during which the Court stated that it would entertain an order directing Wells Fargo to model the proposed distribution methodology in one of the Subject Trusts for the Settlement Payment and for ordinary course distributions for a limited time thereafter, the terms of such order to be agreed to and submitted by the parties; and

WHEREAS, the Responding Parties have asked Wells Fargo to test the impact of the Parties' resolution of the Cross-Over Date Issue, as set forth in Exhibit A, attached hereto, on the Bear Stearns ALT-A 2006-3 Trust (the "Modeling Trust"), using the following inputs (the "Proposed Modeling Inputs"):

- a. The actual collateral data from servicer reporting for the September 2022 distribution date, combined with the assumption that the Allocable Share was distributed that month;
- b. Following the assumptions for Month 1 set forth in subpart a above, the actual collateral data from servicer reporting for the October 2022 distribution date;
- c. Following the assumptions for Months 1 and 2 set forth in subparts a and b above, the actual collateral data from servicer reporting for the November 2022 distribution date, along with the additional assumption that the Group II certificates suffered a \$5 million Realized Loss under the terms of the PSA, which for purposes of implementing the model, will be deemed to have been suffered across currently liquidating Group II sub-groups pro rata based on the Allocable Share amounts; and

- d. Following the assumptions for Months 1, 2, and 3, set forth in subparts a, b, and c above, the actual collateral data from servicer reporting for the December 2022 distribution date, along with the additional assumption that the Group II certificates received a \$5 million Subsequent Recovery under the terms of the PSA, which for purposes of implementing the model, will be deemed to have been realized across the Group II sub-groups pro rata based on the Allocable Share amounts; and

WHEREAS, Wells Fargo has advised the Responding Parties that it believes it is able to model the proposed distribution methodology using the Proposed Modeling Inputs, and produce a submission based on this modeling (the “Modeling Submission”); and

NOW, THEREFORE, IT IS

1. ORDERED that Wells Fargo shall provide the Court with the Modeling Submission showing the impact on the certificates of the proposed write up, write down, and distribution methodology in accordance with the provisions herein, and in accordance with the consensual resolution of the parties reflected in Exhibit A; and it is further

2. ORDERED that Wells Fargo will perform its modeling analysis on the Modeling Trust using the Proposed Modeling Inputs; and it is further

3. ORDERED that the purpose of the modeling required by this Order shall be to test the impact of the resolution reached by the Responding Parties on the Cross-Over Date issue raised in the Wells Fargo Objection; and it is further

4. ORDERED that the Modeling Submission shall include, for each month modeled: the effect (if any) on any of the Modeling Trust’s certificates, the classes affected

by the modeling, and the extent of the impact on each affected class of certificates resulting from the assumptions; and it is further

5. ORDERED that Wells Fargo shall make reasonable efforts to deliver the Modeling Submission to the Court and the Responding Parties no later than January 31, 2023; and it is further

6. ORDERED that immediately after the Modeling Submission is filed with the Court, Wells Fargo shall post the Modeling Submission on the public settlement website created by the Petitioners located at <http://www.rmbstrusteesettlement.com/>; and it is further

7. ORDERED that the Modeling Submission shall not be considered a forecast of how the Settlement Payment or any other funds will actually be distributed and administered, and that Wells Fargo shall not incur any liability for any claim or cause of action asserting, alleging or contending that the Modeling Submission represents the manner in which the Settlement Payment, or any other funds, must be distributed and administered under the Governing Agreements and/or the Settlement Agreement, as applicable; and it is further

8. ORDERED that no later than February 4, 2023 at 5:00PM EST, the Responding Parties shall inform Wells Fargo whether they consent to entry of an order to show cause why an order substantially in the form of Exhibit A should not be entered, and Wells Fargo shall file such order to show cause by no later than February 6, 2023; and it is further

9. ORDERED that the Clerk of New York County be, and hereby is, directed to enter this Order forthwith and without delay.

Dated: New York, New York

_____, 2023

Hon. Melissa Crane J.S.C.

Judgment signed and entered this _____ day of _____ 2023

Clerk of New York County