

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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 DEUSTCHE 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

Hon. Marcy S. Friedman  
Part 60

**SUBMISSION PURSUANT TO  
ORDER TO SHOW CAUSE  
AND CLARIFYING ORDER**

Nover Ventures, LLC (“Nover”) is an Interested Person, as that term is defined in the Order to Show Cause entered on December 19, 2017, in certain of the Settlement Trusts identified in the Petition filed by Wells Fargo 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 U.S.A., N.A. and Deutsche Bank Trust Company (collectively, “Petitioners”). Nover respectfully files this Submission under that Order to Show Cause and the Clarifying Order (collectively, the “Orders”).

**I. LIST OF TRUSTS IN WHICH NOVER CLAIMS AN INTEREST**

Nover is an Interested Person with respect to each of the Settlement Trusts listed on Exhibit 1 attached hereto. Further, Exhibit 1 identifies the exhibit to the Petition to which each trust corresponds.

## II. STATEMENT OF POSITIONS

Each of the Settlement Trusts is governed by a pooling and servicing agreement or an indenture (the “Governing Agreements”), all of which contain provisions setting forth the means for an amendment or modification. Such provisions are intended to—and negotiated specifically to—to protect the interest of certificateholders. The Settlement Agreement explicitly states that it is not intended to amend any of the Governing Agreements.

Nover seeks instruction from the Court that the provisions of the Governing Agreements protective of certificateholders’ rights be respected.

### A. **Write-Up First Is The Only Appropriate Method.**

The Settlement Agreement<sup>1</sup> does not specify whether the Settlement Payment Write-Up should occur either after distribution of the Settlement Payment to: (a) Certificateholders (the “Pay First Method”); or (b) the Petitioners but *before* distribution to Certificateholders (the “Write-Up First Method”). The only plausible interpretation of the Settlement Agreement is, however, that the Write-Up First Method should be used. Indeed, the Write-Up First Method is consistent with the plain language of the Governing Agreements and the trusts’ structures and is the *only* method that produces consistent results across all scenarios.

To the contrary, applying the Pay First Method would create inconsistent results and multiple layers of uncertainty. The Pay First Method also may lead to absurd, commercially unreasonable distributions, which are contrary to the reasonable expectations of investors and drafters of the Settlement Agreement—and the original parties to the Governing Agreements. The absurdity of the Pay First Method is highlighted by the fact that leakage to subordinate certificateholders is dependent upon on both the unusually large amount of subsequent recoveries

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<sup>1</sup> Capitalized terms used but not defined herein have the same meanings as ascribed in the Settlement Agreement attached to the Petition as Exhibit B.

*and* the timing of when those funds are received. Such wild swings in recovery are not contemplated by the Settlement Agreement or the Governing Agreements. Nover respectfully requests the Court instruct Petitioners to distribute the Settlement Payment pursuant to the Write-Up First Method.

*i. The Write-Up First Method Is Prescribed By The Settlement Agreement.*

The Settlement Agreement prescribes that the Write-Up First Method must be employed. Section 3.06 contains detailed instructions regarding how the Settlement Payment should be distributed to the Trusts, as well as how the Settlement Payment should be distributed to investors. Specifically, Section 3.06(a) states, in relevant part:

Each Trust's Allocable Share shall be deposited into the related Trust's collection or distribution account pursuant to the terms of the Governing Agreements, for further distribution to Investors in accordance with the distribution provisions of the Governing Agreements....

Section 3.06(a) clearly contemplates two separate payments: the first being the distribution of the Allocable Share to a Settlement Trust and the second being a subsequent distribution to investors. Section 3.06(a) is clear that the Allocable Shares are to be distributed to investors "in accordance with the distribution provisions of the Governing Agreements." (*Id.*) Therefore, the Settlement Agreement contemplates that there are multiple steps involved in the distribution of the funds, and that distribution to the Trust is a distinct step from distribution to investors.

Section 3.06(b), thereafter, delineates that there is a step in between distribution to a trust itself and the investors. Section 3.06(b) provides, in relevant part:

**After the distribution of the Allocable Share to a Settlement Trust** pursuant to Subsection 3.06(a), the Accepting Trustee for such Settlement Trust will apply . . . the amount of the Allocable Share for that Settlement Trust in reverse order of previously allocated losses, to increase the balance of each class of securities . . . to which such losses have been previously allocated, but in each case by not more than the amount of such losses previously allocated to that class of securities pursuant to the Governing Agreements. . . .

(Emphasis added.)

Given that Section 3.06 specifically contemplates two payments—one to each Trust and then one to Investors—if the write-up of losses were to be applied after payment to investors, Section 3.06(b) would state that the write-up occurs “after the distribution of the Allocable Share to Investors.” It does not. Section 6.03(b) states that a write-up is to be applied “[a]fter the distribution of the Allocable Share to a Settlement Trust.” Accordingly, Section 3.06(b) evidences that the Trustees should use the Write-Up First Method. The Court should therefore instruct Petitioners to do so.

ii. *Pay-First Is Contrary to Settlement Agreement Section 3.06(b) Because It Affects The Distribution Of The Settlement Payment By Causing Inconsistent And Absurd Results.*

Other provisions in Section 3.06 evidence that the Write-Up First Method is the only appropriate method. The last sentence of Section 3.06 provides:

For the avoidance of doubt, this Subsection 3.06(b) [describing the write-up] is **intended only to increase the balances of the related classes of securities**, as provided for herein, and **shall not affect the distribution of the Settlement Payment** provided for in Subsection 3.06(a).

(Emphasis added.) Thus, because the Settlement Agreement provides that the write-up methodology used must not affect how the Settlement Payment is distributed, the Write-Up First Method must apply because it is the only distribution method that results in a consistent distribution, regardless the scenario. Conversely, the Pay First Method leads to inconsistent (and, in some cases, absurd) results. The Pay-First Method, therefore, violates Section 3.06(b) of the Settlement Agreement.

By way of example, the Pay First Method could result in the distribution of a large portion of the Settlement Payment to a certificate insurer (*see* Petition at ¶ 33), when the Settlement Payment was intended to be distributed entirely to Investors. (Settlement Agreement

at §3.06(a)) (stating that each Trust's Allocable Share shall be deposited into Trust accounts "for further distribution to Investors"). And in some instances it is entirely unclear how to distribute the Settlement Payment under the Pay First Method. (Petition at ¶¶ 38-40.) These problems do not arise under the Write-Up First Method. (Petition at ¶ 29; 40.)<sup>2</sup>

The application of the Pay First Method causes "leakage" of the Settlement Payment to junior certificateholders only in certain trusts that have an overcollateralized structure. (See, e.g., Petition ¶¶ 24, 29-34.). That "leakage" occurs only because of a fiction; under the Pay First Method certain trusts merely "appear to be temporarily overcollateralized." (See Petition at ¶ 28.) But the OC Trusts receiving the Settlement Payment are not, in fact, overcollateralized ***and no one will claim to the contrary.*** Rather, the appearance of overcollateralization is temporary, fleeting, and caused solely by the size and timing of the Settlement Payment.

Additionally, junior classes' level of recovery due to "leakage" is highly variable under the Pay First Method depending on when the settlement proceeds are distributed. The illusory, temporary overcollateralization of certain trusts occurs under the Pay First Method because of the unusual, coincidental collision of a sufficiently large subsequent recovery and the timing of when those funds are received. The Settlement Payment is a one-time anomaly and the timing of its distribution under the Pay First Method (but not under the Write-Up Method) dictates who will recover.

For example, had the Settlement Payment been allocated as of the date the Settlement Agreement was executed, or even as of the date of the filing of the original Article 77 proceeding

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<sup>2</sup> Petitioners note other problems evident with the Pay First Method that are not present with the Write-Up First Method, including the fact that the Pay First Method could cause the certificate principal balances to be artificially inflated such that they do not reflect the actual future cashflows available from the underlying mortgage loans. (Petition at 34.)

seeking approval of same, the “leakage” to junior classes of holders under the Pay First Method would be different. In fact, the Allocable Shares are consideration for the trusts’ release of claims against the mortgage loan sellers for breaches of their representations and warranties. If those breaches had been remedied timely—*i.e.* if the sellers had repurchased defective mortgage loans promptly after loans defaulted or breaches were otherwise discovered—those subsequent recoveries would have been paid to the trusts *years ago*, and the junior certificates would not under any contract interpretation be situated to receive any portion of the Settlement Payment, much less a disproportionate windfall. Conversely, with the exception of the circumstance in which the passage of time results in more senior certificateholders being paid in full, the dollar amount of the Allocable Shares to certificateholders in a trust is not time dependent under the Write-Up First Method.

Allowing leakage to junior classes, the amount of which is entirely dependent upon timing of the distribution, is contrary to the specific term of the Settlement Agreement that provides the write up shall not effect distribution of the Settlement Payment. Moreover, such “leakage” from a one-time circumstance that the drafters of the Governing Agreements could not have foreseen is absurd, commercially unreasonable, and contrary to the expectations of the certificateholders.

*iii. Write-Up First Is Consistent With A Proper Interpretation Of The Governing Agreements.*

Each Governing Agreement contains a specific “waterfall” provision that dictates the principal amounts and interest amounts distributable to classes of certificates and the order of priority in which such amounts are distributed among such classes. (Petition at ¶ 3.) The Settlement Agreement provides that the Allocable Shares shall be distributed to investors “in accordance with the distribution provisions of the Governing Agreements....” (Settlement

Agreement § 3.06(a).) The clear and unambiguous terms of the Governing Agreements indicate the distribution must be made pursuant to the Write-Up First Method. Given that the Settlement Agreement does not purport to alter the Governing Agreements (Settlement Agreement at Section 7.05), the Petitioners should follow the “order of operations” expressed in the related Governing Agreements: namely, the Write-Up First Method.<sup>3</sup>

Generally, the order of operations to write-up certificate principal balances before distributing subsequent recoveries is expressed in the definition of “Certificate Principal Balance,” among other contractual provisions. Given the number of trusts involved and the complexity of the Governing Agreements, which would require more than the Court-ordered 15-page submission, Nover respectfully requests the Court permit it additional pages to describe how the Governing Agreements expressly require the Write-Up First Method.

**B. The Court Should Instruct Petitioners To Write-Up Subordinate Certificates Only To The Extent Provided By The Governing Agreements.**

Petitioners have identified certain trusts where losses have been realized in senior and subordinate certificates, but where the Governing Agreements allow only for write-up of subordinated certificates. Where the drafters of the Governing Agreements have specifically set forth the terms and conditions under which senior certificates will and will not be written up, and investors purchased their tranches of certificates in reliance thereon, the Settlement Agreement should not be allowed to alter the Governing Agreements. With respect to those trusts, the Settlement Agreement Write-Up still applies in the reverse order for previously allocated losses as intended, but should do so only as to those classes of certificates so allowed under the terms of the Governing Agreements.

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<sup>3</sup> The Settlement Agreement, therefore, requires the Court to instruct Petitioners to follow the methodology set forth by the Governing Agreements.

Provisions governing the application losses and the allocation of subsequent recoveries against certificates are trust-specific and can be and group and certificate dependent, even within a particular trust. For example, the BALTA 2006-2 Trust has two groups of certificates, Group I and Group II. While there is only one definition of Certificate Principal Balance, each BALTA 2006-2 group is governed by its own distribution provisions. (See Excerpts from BALTA 2006-2 PSA, attached hereto as Exhibit 2, at §§ 1.01, 6.01 and 6.02.) And while both Group I and Group II each have senior and subordinated classes, those groups allocate losses and subsequent recoveries differently. For example, Subsequent Recoveries are to be applied first to the Group I Senior Certificates to the extent of any Applied Realized Loss Amounts before being applied to the Group I Subordinate Certificates:

(b) In addition, in the event that the Master Servicer or the Securities Administrator receives any Subsequent Recoveries from a Servicer, the Master Servicer shall deposit such funds into the Distribution Account pursuant to Section 4.01(c)(ii). If, after taking into account such Subsequent Recoveries, the amount of a Realized Loss is reduced, the amount of such Subsequent Recoveries will be applied to increase the Certificate Principal Balance of the Class of Group I Subordinate Certificates with the highest payment priority to which Applied Realized Loss Amounts have been allocated, but not by more than the amount of Applied Realized Loss Amounts previously allocated to that Class of Group I Subordinate Certificates. The amount of any remaining Subsequent Recoveries will be applied to sequentially increase the Certificate Principal Balance of the Group I Certificates, beginning with the Class of Group I Certificates with the next highest payment priority, up to the amount of such Applied Realized Loss Amounts previously allocated to such Class or Classes of Group I Certificates. Notwithstanding the forgoing, any Subsequent Recoveries will be allocated to the Group I Senior Certificates to the extent of any Applied Realized Loss Amounts before being applied to the Group I Subordinate Certificates. Holders of such Group I Certificates will not be entitled to any payments in respect of Current Interest on the amount of such increases for any Interest Accrual Period preceding the Distribution Date on which such increase occurs. Any such increases shall be applied to the Certificate Principal Balance of each Group I Certificate of such Class in accordance with its respective Fractional Undivided Interest.

(BALTA 2006-2 PSA at § 6.03(b)).

Conversely, Subsequent Recoveries are applied only as to the Group II Subordinate Certificates, and the application of Subsequent Recoveries does not reference Group II Senior Certificates.

(h) In addition, in the event that the Master Servicer receives any Subsequent Recoveries from a Servicer, the Master Servicer shall deposit such funds into the Distribution Account pursuant to Section 4.01(c)(ii). If, after taking into account such Subsequent Recoveries, the amount of a Realized Loss is reduced, the amount of such Subsequent Recoveries will be applied to increase the Certificate Principal Balance of the Class of Group II Subordinate Certificates with the highest payment priority to which Realized Losses have been allocated, but not by more than the amount of Realized Losses previously allocated to that Class of Group II Subordinate Certificates pursuant to this Section 6.02.2. The amount of any remaining Subsequent Recoveries will be applied to sequentially increase the Certificate Principal Balance of the Group II Subordinate Certificates, beginning with the Class of Group II Subordinate Certificates with the next highest payment priority, up to the amount of such Realized Losses previously allocated to such Class or Classes of Group II Certificates pursuant to this Section 6.02.2. Holders of such Certificates will not be entitled to any payments in respect of current interest on the amount of such increases for any Interest Accrual Period preceding the Distribution Date on which such increase occurs. Any such increases shall be applied to the Certificate Principal Balance of each Group II Subordinate Certificate of such Class in accordance with its respective Fractional Undivided Interest.

(BALTA 2006-2 PSA at § 6.04(h).)

The different treatment of subsequent recoveries among Groups in the BALTA 2006-2 Trust demonstrates that drafters of Governing Agreements sometimes negotiated for subsequent recoveries to write-up only certain classes of certificates, and when they did the Governing Agreements expressly provide therefore. Accordingly, when a Governing Agreement expresses that only one class of certificates should be written up, the Court should give meaning and effect to the omission of other classes and instruct Petitioners to follow the language of the Governing Agreements and write up only those classes of certificates expressly provided for therein.

The language of the Settlement Agreement supports this conclusion. The Settlement Agreement is not intended to supersede the Governing Agreements. (*See* Settlement Agreement Section 7.13) (carving out the Governing Agreements from those agreements that the Settlement Agreement supersedes). To that end, the Settlement Agreement expressly provides that it is not intended to, and shall not be argued or deemed to constitute an amendment of any term of the Governing Agreement. (Settlement Agreement ¶ 7.05.) Therefore, Nover requests the Court instruct Petitioners to apply the plain and unambiguous terms of the Governing Agreements and use the Allocable Shares to write-up only those classes of certificates where the Governing Agreement expressly so provides.

**C. The Court Should Follow The Subsequent Recovery Write-Up Orders Specified In The Governing Agreements.**

The Settlement Agreement purports to require Petitioners to write-up certificates by the amount of the Allocable Share for that trust in the reverse order of previously allocated losses. (Settlement Agreement at § 3.06(b).) As Petitioners note, this instruction is not consistent with all Governing Agreements. (Petition at ¶¶ 49-52.) Again, the Settlement Agreement is not intended supersede or amend any Governing Agreement. (Settlement Agreement ¶¶ 7.05; 7.13.) Nover respectfully requests the Court apply the plain and unambiguous terms of the Governing Agreements and use the allocation methods expressly provided for in the Governing Agreements.

For example, there are two outstanding classes of certificates in the BSABS 2006-HE6 Trust, Class I-A-2 and I-A-3. The BSABS 2006-HE6 Pooling and Servicing Agreement requires that principal be distributed to Class I-A-2 and I-A-3 “sequentially” (*i.e.* first to Class I-A-2 until the Certificate Principal Balance thereof is reduced to zero, and then to Class I-A-3).

- (i) From the Principal Distribution Amount with respect to Loan Group I for such Distribution Date, sequentially, to the Class I-A-1, Class I-A-2 and Class I-A-3 Certificates, in that order, in each case until the Certificate Principal Balance thereof is reduced to zero; and

(See Excerpts from BSABS 2006-HE6 PSA, attached hereto as Exhibit 3, at § 5.04(a)(2)(A)(i).)

Although principal is to be paid to those classes sequentially, Class I-A-2 and I-A-3 incur losses on a pro rata basis:

Section 5.05 Allocation of Realized Losses.

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zero; twelfth, to the Class I-M-2 Certificates, until the Certificate Principal Balance thereof has been reduced to zero; thirteenth, to the Class I-M-1 Certificates, until the Certificate Principal Balance thereof has been reduced to zero; and fourteenth, to the Class or Classes of Class I-A Certificates, on a *pro rata* basis, until the Certificate Principal Balances thereof have been reduced to zero. All Realized Losses on the Group II Mortgage Loans allocated to any REMIC III Group II Regular Interest pursuant to

(*Id.* at § 5.05.)

Despite the fact that losses in the BSABS 2006-HE6 Trust are allocated to the Class I-A certificates on a pro-rata basis, subsequent recoveries are nonetheless applied the in the same manner as distributions of principal—sequentially in the order of payment priority:

(c) In addition to the foregoing distributions, with respect to any Subsequent Recoveries, the Master Servicer shall deposit such funds into the Protected Account pursuant to Section 4.01(b)(iii). If, after taking into account such Subsequent Recoveries, the amount of a Realized Loss is reduced, the amount of such Subsequent Recoveries will be applied to increase the Certificate Principal Balance of the Class of Certificates with the highest payment priority to which Realized Losses have been allocated, but not by more than the amount of Realized Losses previously allocated to that Class of Certificates pursuant to Section 5.05, provided, however, to the extent that no reductions to a Certificate Principal Balance of any Class of Certificates currently exists as the result of a prior allocation of a Realized Loss, such Subsequent Recoveries will be applied as Excess Spread. The amount of any remaining Subsequent Recoveries will be applied to increase the Certificate Principal Balance of the Class of Certificates with the next highest payment priority, up to the amount of such Realized Losses previously allocated to that Class of Certificates pursuant to Section 5.05, and so on. Holders of such Certificates will not be entitled to any payment in respect of Current Interest on the amount of such increases for any Interest Accrual Period preceding the Distribution Date on which such increase occurs. Any such increases shall be applied to the Certificate Principal Balance of each Certificate of such Class in accordance with its respective Percentage Interest.

(*Id.* at §5.04(c).)

Thus, it is not always appropriate to apply subsequent recoveries to offset realized losses in the reverse order in which they were allocated. To do so would directly conflict with the express terms of the BSABS 2006-HE6 Governing Agreement. The Court therefore should instruct Petitioners to apply subsequent recoveries in accordance with the terms of the BSABS 2006-HE6 Governing Agreement, as well as comply with the terms of all other Governing Agreements that conflict with the Settlement Agreement Write-Up Instruction. Never further requests the Court afford it additional merits briefing to describe the priority of write-up for each Trust in which it holds an interest.

**D. The Court Should Write-Up Zero Balance Certificates.**

Petitioners seek instruction on the distribution of Allocable Shares for classes of certificates or loan groups that have a current aggregate certificate principal balance of zero. (Petition at ¶¶ 54, 58.) Just because a class of certificates has a zero balance does not mean that it cannot be written up. Indeed, neither of the provisions Petitioners cite preclude writing up the principal balance of the certificates after they have been reduced to zero. Therefore, because the Governing Agreements permit writing-up class and group certificate principal balances after they

have been reduced to zero and because not doing so would lead to absurd results, the Court should instruct the Petitioners to first write-up those class certificate balances and then distribute the funds accordingly.

Although some Governing Agreements state that once a Class of Certificates has been reduced to zero, they will be retired or not entitled to certain distributions, it does not follow that such Classes of Certificates necessarily have actually been retired or otherwise cannot be written up to receive distributions. Governing Agreements that provide for retirement of certificates generally have specific provisions contemplating a final distribution of on the certificates. (*See, e.g.*, Excerpts from BSABS 2005-AC7 PSA, attached hereto as Exhibit 4, at § 11.02.) A final distribution on the certificates is not just a last payment. Rather, a final distribution on certificates requires notice to certificateholders that a final distribution in retirement is scheduled to be made and the surrender of the related certificates at the office of the securities administrator specified in the final notice. There has been no notice of final distribution, surrender of certificates, or formal final distribution in retirement on the Trusts. Accordingly, the certificates are still subject to write-up and entitled to payment.

Moreover, the Governing Agreements do not expressly (or impliedly) prohibit a write-up of those certificate principal balances or a reclassification of the certificates to “unretired” or outstanding. As Petitioners note, if those classes of certificates are not written up, the meaning and intention of the Settlement Agreement would not be applied because the Settlement Payment would be redirected to loan groups that either already have been compensated for the same claims or that are not subject to the Settlement Agreement. (Petition at ¶ 60.) Thus, the Court should order Petitioners to follow the Settlement Agreement Write-Up Instruction and apply the

Settlement Payment Write-Up in the reverse order of previously allocated realized losses. To do otherwise would allow a commercially unreasonable and absurd result.

**E. The Settlement Payment Should Always Be Treated As Principal.**

Finally, Petitioners note that, for a very small number of Settlement Trusts, the applicable Governing Agreements contain provisions that appear to suggest that subsequent recoveries are included in interest collections as opposed to principal collections. (Petition at ¶ 63.) However, the Settlement Agreement makes clear that the Allocable Shares are to be treated as payments of principal. (*See* Settlement Agreement § 3.06(a).) Indeed, there is no concomitant concept of write-up that applies to the interest waterfall. Therefore, to the extent that any Governing Agreement provides that subsequent recoveries are to be treated as payments of interest, the Court should instruct Petitioners to distribute any affected Allocable Share as though it were unscheduled principal. This result is dictated by the Settlement Agreement.

The Settlement Agreement recognizes that there are limited circumstances where a Governing Agreement will not include the concept of a subsequent recovery relating to principal proceeds. Specifically, the Settlement Agreement describes what is to occur if a particular Settlement Trust does not include the concept of a “subsequent recovery.” The Court may interpret that provision as if a Settlement Trust that does not include the concept of a “subsequent recovery’ relating to principal proceeds.” That is, the Court should instruct Petitioners if a Settlement Trust’s Allocable Share were to be distributed as interest, it should instead, distribute the Share “as though it was unscheduled principal available for distribution on such immediately following distribution date...” To do otherwise would be contrary to the terms of the Settlement Agreement and the purpose thereof.

### III. REQUEST FOR ADDITIONAL MERITS BRIEFING AND RELIEF

Given the complexity of the issues described herein, as well as the number of trusts to which they relate and in which Nover has an interest, Nover respectfully requests further merits briefing to the extent that any of the foregoing positions are contested.

To the extent that any of Nover's positions are not contested by another Interested Person on any trust, Nover respectfully requests the Court instruct Petitioner(s) to immediately release that trust's Allocable Shares to the trust for immediate distribution to investors in accordance with Nover's position.

To the extent that the distribution of the Allocable Shares for any trust to investors in that trust is not affected by the issues raised herein, Nover respectfully requests the Court instruct Petitioner(s) to immediately release that trust's Allocable Shares for immediate distribution pursuant to any order in a form acceptable to Petitioner(s).

Nover requests the Court modify paragraph 10 of the December 19, 2017 Order to Show Cause to enter a reasonable briefing schedule in accordance with the number of trusts for which there are issues and the length of time in which it would take to brief them for the Court. As is stated in the conclusion below, Nover also requests all other relief, at law or in equity, to which it may be justly entitled.

#### IV. CONCLUSION

For the foregoing reasons, as well as those to be presented in additional briefing and at oral argument before the Court, Nover respectfully requests the Court to instruct Petitioners to distribute the Allocable Shares for the Settlement Trusts in a manner that is consistent with the terms, meaning, and intent of the Governing Agreements by following the language of those agreements, including without limitation by using the Write-Up First Method. Nover also requests all other relief, at law or in equity, to which it may be justly entitled.

DATED: January 29, 2018  
New York, New York

Respectfully submitted,

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