

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

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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 Administration and Distribution of a Settlement
Payment.

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INDEX NO. 657387/2017
Motion Seq. No. 12
Friedman, J.

**ASSURED GUARANTY CORP.'S REPLY MEMORANDUM OF LAW IN
SUPPORT OF ITS MOTION FOR LEAVE TO APPEAR AND PARTICIPATE**

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PRELIMINARY STATEMENT

Assured Guaranty Corp. (“Assured”) submits this memorandum of law in further support of its motion for leave to appear and participate in this Article 77 special proceeding (the “Proceeding”) upon good cause shown, and to be heard in connection with the Petition dated December 15, 2017, NYSCEF Doc. No. 1 (the “Petition”), regarding a specific issue governing distribution of the Settlement Payment¹ allocated to a single Settlement Trust, the SACO Trust 2005-GP1 (the “GP1 Trust”). As set forth in its Memorandum of Law in Support of its Motion for Leave to Appear and Participate, NYSCEF Doc. No. 464 (the “Motion”), Assured does not take a position on the specific issues raised in the Petition (i.e., whether the distribution of the Settlement Payment allocated to the GP1 Trust (the “GP1 Settlement Payment”) should be treated as principal collections or interest collections, and whether the distribution of the GP1 Settlement Payment should be distributed according to the “Pay First” or “Write-up First” method (the “Petition Issues”)); rather, it seeks to appear to ensure that certain information about the *insured features* of the GP1 Trust is not overlooked in any order entered regarding the GP1 Settlement Payment. The opposition briefs filed by Nover Ventures, LLC (“Nover Ventures”) and the Institutional Investors (together, the “Opposing Parties”) quibble with the amount of time that has passed and speculate about prejudice that might be caused by granting Assured’s motion, but neither identifies any present, actual prejudice—indeed, neither party even disputes the merits of the issue that Assured raises. In sum, Assured respectfully requests that, in the Court’s discretion, its motion should be granted.

¹ Capitalized terms used but not defined herein have the same meaning as ascribed in the Petition.

ARGUMENT

Neither of the Opposing Parties disputes the “good cause” standard that is applicable to Assured’s Motion, and neither disputes that the Court has “broad discretion” to grant Assured’s motion “upon such terms as may be just.” *See* NYSCEF Doc. No. 484, Memorandum of Law in Opposition to Assured Guaranty’s Motion for Leave to Appear and Participate (“Inst. Inv. Opp.”) at 3; *see also* NYSCEF Doc. No. 480, Memorandum of Law in Opposition to Assured Guaranty’s Motion for Leave to Appear and Participate (“Nover Opp.”) at 7. Applying that standard here, the relevant factors weigh in favor of granting Assured’s request for leave to appear, and the Opposing Parties’ arguments do not alter that analysis.

First, the Opposing Parties place too much emphasis on the amount of time that has passed since the January 29 deadline and fail to give due weight to Assured’s reasons for not moving sooner. *See* Nover Opp. at 4-7; Inst. Inv. Opp. at 4-5. As set forth in its Motion, Assured did not initially conclude that an appearance in the Proceeding was warranted because it takes no position on the Petition Issues. But when it learned of the April 25, 2018 order entered for the BSABS 2005-HE7 Trust (the “BSAB Order”) and other similar orders, Assured contacted U.S. Bank, National Association (“U.S. Bank”), the securities administrator for the GP1 Trust, and engaged in discussions about the insured features of the GP1 Trust. It was after U.S. Bank informed Assured that—notwithstanding the fact that Assured does not take a position on the Petition Issues—if Assured wanted to ensure that those features are considered in connection with any order entered in the GP1 Trust, Assured should move for leave to appear in the Proceeding, and U.S. Bank would not oppose Assured’s motion. Accordingly, Assured promptly filed the instant motion.

While Assured disagrees with the Opposing Parties that this delay weighs against

granting the motion, the length of delay and the excuse offered are just two among several factors the Court may consider and balance. As discussed further below and in the Motion, other factors (in particular, lack of prejudice, and the benefit to U.S. Bank and the Court of receiving the GP1 Trust-specific information) are even more relevant here given the current procedural posture of the Proceeding, and strongly weigh in favor of granting the motion.

Second, the Opposing Parties' claims of prejudice to other investors are without merit. The Opposing Parties suggest that granting Assured's motion will deprive investors of an opportunity to challenge Assured's standing if there is to be no further delay in the schedule. Inst. Inv. Opp. at 6; Nover Opp. at 7-8. But Assured has already demonstrated its standing as an Interested Person by attaching as exhibits to the Motion the underlying documentation demonstrating that it is a note insurer for the GP1 Trust, which the Opposing Parties do not challenge. The Opposing Parties raise the specter of possible discovery, but do not identify any specific information they would seek to discover on standing that has not already been provided. Relatedly, note insurer Ambac, which like Assured, provided certificate insurance on other trusts, has been recognized as having standing in the Proceeding, without any challenge to its status. *See* NYSCEF 471, Decision and Order on Motion Sequence 005, dated 8/7/2018 ("Standing Order") at 2 n.3 (noting that the "Challenging Respondents . . . acknowledge that Ambac Assurance Corporation, as a certificate insurer in a trust, has standing to enforce the terms of the trust agreement"). The same should be true for Assured. Indeed, Nover Ventures recognizes in its opposition that Ambac, as a note insurer, is similarly situated to Assured.² *See* Nover Opp. at 5-6.

² In contrast to Assured's position here, Ambac *did* take a position with respect to one Settlement Trust regarding whether the Pay First or Write-up First method should apply. *See* NYSCEF Doc. No. 76, Response of Ambac Assurance Corporation and the Segregated Account of Ambac Assurance Corporation to the Petition ("Ambac Answer") at 4-5.

The Opposing Parties also suggest that granting Assured's motion is a slippery slope and will "open the doors for other interested persons to seek to appear and be heard at this late stage." Inst. Inv. Opp. at 6; Nover Opp. at 8 (same). But this argument is pure speculation, and neither opposition substantiates its argument with even one example of another investor seeking to appear. Nor is this likely to happen, given that, as the Institutional Investors note, merits briefing is about to begin in the Proceeding. See Inst. Inv. Opp. at 5. Further, the Opposing Parties ignore the unique circumstances of Assured's request; as a certificate insurer, Assured is not similarly situated to other investors, and the role it seeks to play in the Proceeding is extremely limited.

Nover Ventures also relies on the Court's recent denial of HBK's motion to amend its answer as somehow demonstrating that Assured's appearance would result in prejudice. Nover Opp. at 7-8. But the relief Assured presently seeks is completely distinct from that sought by HBK, as are the consequences of granting Assured's motion. In contrast to HBK, which moved to amend its answer to assert a new basis for its interest in *seventeen* Settlement Trusts—a central issue that had already been subject to discovery and briefing, see NYSCEF Doc. No. 476, Decision and Order on Motion Sequence 010, dated 8/07/2018 ("HBK Order") at 27, 30-31—Assured does not seek to assert any issue that has already been litigated or that would require further discovery, or that would affect any trust other than the single GP1 Trust.

Third, neither the Opposing Parties nor U.S. Bank appear to dispute any of the insurance features unique to the GP1 Trust that Assured seeks to present to the Court, or their relevance to the Proceeding, and none identifies any specific prejudice of the Court having the benefit of this information. At most, Nover Ventures argues that Assured is trying to take a position on the application of the "'Write-Up First Method' vs the 'Pay First Method,'" Nover Opp. at 4, but this

is incorrect. The structural features of the GP1 Trust that Assured seeks to highlight only become relevant in a situation where the Court has already decided that the GP1 Settlement Payment should be distributed as principal funds and using the Pay First Method. As Assured has stated, it takes no position on the issue of whether that is the correct method of distribution for the GP1 Trust.

The \$43.6 million that Assured has paid out under the GP1 Policy is relevant to the distribution of GP1 Settlement Payment proceeds under the Pay First Method because it affects the overcollateralization calculation under the terms of the GP1 Indenture. Contrary to the Petition's general statement that the "Pay First Method may cause the OC Trusts to appear to be temporarily overcollateralized," Petition at 14, in the case of the GP1 Trust, even the use of the Pay First Method of distribution will not cause the GP1 Trust to appear temporarily overcollateralized. *See id.* at 11-20. This is because of the mechanics for calculating the "Overcollateralization Amount" in the GP1 Trust, as Assured explained in its Motion. The Petition explains generally that "the overcollateralization amount for a given distribution date is calculated as the excess of the aggregate mortgage loan balances over the pertinent aggregate certificate principal balances," Petition at 14, but the GP1 Indenture expressly provides that, for purposes of this calculation, the aggregate certificate principal balance (called the "Note Principal Balance" in the GP1 Indenture) must include the full \$43.6 million Assured paid under the GP1 Policy. The result for the GP1 Trust, then, is that there can be no overcollateralization created by the GP1 Trust's receipt of the approximately \$6 million in settlement proceeds allocated to the GP1 Trust, and no certificates subordinate to the Class M-1 Insured Notes should receive any of the settlement proceeds. Thus, even under the Pay First Method, no distribution of any portion of the GP1 Settlement Payment should be made to subordinate securities in the

GP1 Trust.

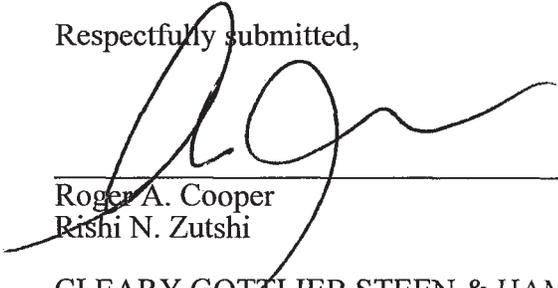
Finally, in the event the Court does not grant Assured's instant motion, Assured respectfully requests that the Court and U.S. Bank consider the insured features of the GP1 Trust and their application to the distribution of the Settlement Amount to the trust, and ensure that this critical information is factored into any order governing distribution of the GP1 Settlement Payment. Neither the Opposing Parties nor U.S. Bank have raised any argument disputing Assured's analysis of the governing provisions of the GP1 Indenture and other governing documentation. And those provisions should continue to apply regardless of how the Court decides the Petition Issues.

CONCLUSION

For the foregoing reasons, Assured respectfully requests that its motion for leave to appear and participate in the Proceeding be granted.

Dated: August 15, 2018
New York, New York

Respectfully submitted,



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