

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 13<sup>th</sup> day of February, 2018

PRESENT:

HON. MARCY FRIEDMAN

Justice.

----- X  
In the matter of the application of  
WELLS FARGO BANK, NATIONAL ASSOCIATION, et al.,  
Petitioners,  
For Judicial Instructions under CPLR Article 77 on the Administration and Distribution of a Settlement Payment.  
----- X

Index No. 657387/2017  
~~[PROPOSED]~~ **AGREED SCHEDULING ORDER**

WHEREAS, following the January 31, 2018 preliminary status conference, the parties have conferred to try to narrow and streamline the resolution of issues raised by this action; and

WHEREAS, no party except Nover Ventures, LLC objects to the entry of this ~~[Proposed]~~ ~~Agreed~~ Scheduling Order; and

WHEREAS, the Court has determined that there is good cause for entry of this ~~[Proposed]~~ ~~Agreed~~ Scheduling Order; *and the court having heard the parties on the record on Feb. 9 and 13, 2018, and pursuant to the court's decision on the record of ~~that date~~ on Feb. 13, 2018*  
SUFFICIENT CAUSE THEREFORE BEING ALLEGED, IT IS THEREFORE

- ① ORDERED that all future dates in the Scheduling Order of December 19, 2017 are vacated;
- ② ORDERED that by February <sup>21</sup>, 2018, pursuant to the procedure outlined below, the investor parties shall exchange information, verified through affidavit by the party in question (not by external counsel), <sup>①</sup> concerning the nature of interests held in the trusts. Such information shall:

① Provided that: If provision of an affidavit of a party is not practicable, an application may be made, pursuant to the procedure set forth on the record on 2/13/18, for such information to be provided by in house counsel.

(i) describe the nature of the interest held; (ii) state whether it is a direct holding of a certificate and specify the relevant class, by either CUSIP number or Bloomberg ID, for each certificate held; and (iii) state whether the interest, if not a direct holding of a certificate, is synthetic in nature or held through a CDO, a credit default swap, a securities lending portfolio, a re-REMIC, a NIM trust, or any other form of interest that is not a direct holding of a certificate in one of the trusts listed in Exhibit A of the Petition (the "Trusts"), and shall specify the form in which any such interest is held. The information shall be provided only to (i) counsel for the relevant Trustee of a Settlement Trust and (ii) external counsel of record for each party who has stated an interest in the same trust(s) in which the party submitting the verified information has stated an interest. External counsel for such parties shall hold the information on an "outside attorneys' eyes only" basis for use in this action. Information exchanged pursuant to this paragraph shall be deemed to be Confidential Information for the purposes of any potential filings with the Court, as that term is defined in Paragraph 3(a) of the Commercial Division's Model Confidentiality Order ("Model Order"), and parties shall comply with Paragraph 12 of the Model Order in filing any Confidential Information with the Court;

28  
③ ORDERED that by February 28, 2018, the parties shall submit to the Court an agreed proposed judgment and severance order concerning the manner of distribution of the Settlement Payment to any trust as to which, among the parties that have appeared to take a position on such trust pursuant to the Dec. 19, 2017 and Jan. 23, 2018 Orders, there is no disagreement regarding the method for distributing the Settlement Payment; provided, however, that such order shall state that it is without prejudice to and shall have no precedential effect on any argument of any party concerning: (i) the appropriate distribution of the Settlement Payment where there is a dispute

among the parties regarding how the payment should be distributed (“Disputed Trusts”); or (ii) the distribution methodology on trusts for which no investor has appeared in this action;

④ ORDERED that by February <sup>28</sup>~~21~~, 2018, the parties shall also submit to the Court a proposed briefing schedule (or competing schedules if the parties cannot reach agreement) for briefs on standing, if needed, and on the merits concerning any remaining issues pertaining to Disputed Trusts, including deadlines for any responsive and reply briefs;

⑤ ORDERED that in addition, the February <sup>28</sup>~~21~~ submission shall include:

- a. A clear statement concerning whether any party is claiming ambiguity or scrivener’s error as to either the Settlement Agreement or any Governing Agreement of any Trust and, if so, describing briefly the alleged ambiguity or scrivener’s error and all parties asserting it;
- b. A chart identifying:
  - i. Which issues remain to be resolved and a list of the Trusts affected by each issue, and
  - ii. Which parties have interests in those Trusts and wish to be heard on the resolution of issues pertinent to those Trusts;
- c. A clear statement concerning whether any parties believe any issues require trial on the merits or, instead, can be resolved through briefing and oral argument and, if so, identifying such parties; and,
- d. A clear statement concerning whether any parties believe discovery is needed to resolve any issue and, if so, identifying such parties and the discovery each of them contends is required;

Matter of Wells Fargo  
Scheduling Order dated 2/13/18

657387/17

28

- ⑥ ORDERED that by February 28, 2018, the Trustees shall also advise the Court concerning a proposed procedure to resolve their petition as to any Trust where no investor has appeared and requested an opportunity to be heard; provided, however, that such procedure shall be without prejudice to and shall have no precedential effect on any argument of any party concerning the appropriate distribution of the Settlement Payment in Disputed Trusts;
- ⑦ ORDERED that the parties shall identify a liaison committee of counsel to confer with the Court on telephone conferences concerning administrative matters, including the page limits to be applicable to briefs and a schedule for final hearing and/or trial, as applicable;
- ⑧ ORDERED that the Trustees are directed to supplement the affidavit of Mr. Fraga to include information regarding persons given notice containing information similar to that set out in his earlier affidavit in Index No. 652382/2014, docket entry 591; and
- ⑨ ORDERED that any party requiring admission *pro hac vice* shall provide to counsel for the Institutional Investors a list of all counsel requiring admission. Counsel for the Institutional Investors shall then present an omnibus *pro hac vice* motion to the Court.

ENTERED:



Marcy S. Friedman, J.S.C.

**MARCY S. FRIEDMAN**