

**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 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.

Index No. 657387/2017

Motion Sequence No. 008

IAS Part 60

Honorable Marcy S. Friedman

**AFFIRMATION OF NEIL S. BINDER IN SUPPORT OF AXONIC CAPITAL LLC'S
APPLICATION TO FILE UNDER SEAL CERTAIN DOCUMENTS CONCERNING ITS
OPPOSITION TO THE CHALLENGING RESPONDENTS' JOINT MOTION TO
LIMIT STANDING**

NEIL S. BINDER, an attorney duly admitted to practice law before the courts of the state
of New York, affirms the following under penalty of perjury:

1. I am a partner at Binder & Schwartz LLP, counsel for Axonic Capital LLC
("Axonic") in the above-captioned action. I submit this affirmation in support of Axonic's
motion for an order permitting Axonic to file under seal certain documents or portions thereof
that it filed in Opposition to the Challenging Respondents' Joint Motion To Limit Standing To
Certificateholders In The Settlement Trusts. Specifically, Axonic seeks an order permitting it: (i)
to file under seal exhibits A, C, D, G, H, and I annexed to the Affirmation of Neil S. Binder,
dated April 12, 2018 (the "Binder Affirmation"); and (ii) to file under seal unredacted versions of

(a) Axonic's Memorandum of Law (the "Axonic Opposition Brief") and (b) the Affirmation of Jamshed Engineer, dated April 11, 2018 (the "Engineer Affidavit," and, together with the Axonic Opposition Brief and the Binder Affirmation the "Opposition Papers").

2. As set forth in Axonic's Opposition Papers, Axonic has an interest in certain Settlement Trusts based on its holdings in pass-through re-REMIC trusts. The Axonic Opposition Papers contain information concerning the nature of the interests held by the re-REMIC trusts in the Settlement Trusts and other underlying RMBS trusts that are not the subject of this proceeding.

3. Pursuant to this Court's scheduling order dated February 13, 2018 (the "February 13 Order"), NYSCEF Doc No. 194, the Court ordered parties to these proceedings to exchange information regarding "the nature of interests held in the trusts," including, for example, the nature of the interest and the form in which any interest is held (e.g., certificate in the Settlement Trust, or whether the interest is held through a CDO, re-REMIC, etc.). *Id.* ¶ 2.

4. The February 13, 2018 Order further specified that information concerning the nature of the investor parties' financial interests in the Settlement Trusts "shall be deemed to be Confidential Information for the purposes of any potential filings with the Court" *Id.* Consistent with the February 13 Order, the investor parties have exchanged this information on an "Outside Attorneys' Eyes Only" basis.

5. In order to comply with the Court's February 13 Order and the designation of the information exchanged among counsel for the investor parties, Axonic seeks an order substantially in the form of the proposed order attached hereto as Exhibit A.

6. In addition, the exhibits to the Binder Affirmation that Axonic seeks to file under seal are copies of the private trust agreements, a private placement memorandum, and a

communication from the re-REMIC Trustee for the re-REMIC Trusts in which Axonic holds an interest. These are proprietary and commercially sensitive documents that are only available to the investors in the re-REMIC Trust. These documents contain information regarding the specific investments held by the re-REMIC Trusts, as well as information concerning the investors in the re-REMIC Trusts and the Trust administration. During a conference on March 9, 2018, the Court entertained the Challenging Respondents' request for the production of the transactional documents governing the nature of the Challenged Respondents' interest in the Settlement Trusts but recognized the "persuasive argument that there should be a written confidentiality order in place" and stated that "if the Institutional Investors want those documents, they should enter into a written confidentiality order" NYSCEF Doc. No. 279, at 17.

7. Axonic is today providing outside counsel for the parties with unredacted copies of Axonic's Opposition Papers on an "Outside Attorneys' Eyes Only" basis. There is currently no written confidentiality order in place for this action, but Axonic intends to designate the redacted information as Outside Attorneys' Eyes Only pursuant to the confidentiality order that will be presented to the Court. Accordingly, Axonic requests that the exhibits to the Binder Affirmation and the portions of the Axonic Opposition Brief that cite thereto be filed under seal.

8. A trial court may seal court records upon a showing of good cause by the moving party. 22 N.Y.C.R.R. § 216.1(a). Proprietary financial information meets this standard when "disclosure could harm the private corporation's competitive standing." *Mancheski v. Gabelli Grp. Cap. Partners*, 39 A.D.3d 499, 502-03 (2d Dep't 2007) ("Proprietary information may be in the nature of current or future business strategies which are closely guarded by a corporation and maybe viewed as akin to a trade secret which, if disclosed, would give a competitor an unfair

advantage.”). Moreover, sealing a court file “may be appropriate to preserve the confidentiality of materials which involve the internal finances of a party and are of minimal public interest.”

D’Amour v. Ohrenstein & Brown LLP, No. 601418/2006, 2007 WL 4126386, at *21 (N.Y. Sup. Ct. Aug. 13, 2007).

9. The public has no interest in the disclosure of Axonic’s or the re-REMIC’s interests in the Settlement Trusts and the disclosure of this information would reveal proprietary financial information regarding Axonic’s investment positions and strategy. Thus, good cause exists to permit Axonic to file under seal unredacted versions of the Opposition Papers.

10. Accordingly, I respectfully request that the Court issue an order permitting the filing of these papers under seal so that Axonic may file its Opposition Papers to the Standing Motion while complying with this Court’s February 13 Order.

Dated: New York, New York
April 12, 2018

/s/ Neil S. Binder
Neil S. Binder