

McKool Smith

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VIA ECF AND HAND DELIVERY

Justice Marcy S. Friedman
New York State Supreme Court
County of New York, Commercial Division
60 Centre Street, Courtroom 248
New York, New York 10007

RE: *In re application of Wells Fargo Bank, National Association, et. al.*,
Index No. 657387/2017 (the “Article 77 Proceeding”).

Dear Justice Friedman:

Pursuant to the May 31, 2018 call with the Court, and further to Nover Ventures, LLC (“Nover’s”) May 14, 2018 letter advising of its intent to direct certain trustees to appear in this proceeding, I write to advise the Court that Nover has reached agreement with the Bank of New York Mellon Trust Company, N.A. (“BNYMTC”) on the terms of a Direction and Indemnity Agreement for one of the CDOs in which it is a bondholder.

Nover also sought to direct the trustees of two other CDOs to appear in this proceeding.¹ However, neither of those trustees was willing to accept Nover’s direction. Particularly problematic was the fact that, with respect to one of the CDOs, the failure to accept direction was not related to Nover’s holdings. Instead, the trustee of that CDO informed Nover that the collateral manager was the appropriate party to appear. The collateral manager, for its part,

¹ Nover determined that the time and expense required to pursue the direction of each CDO in which it is a bondholder was cost prohibitive.

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disputed any contractual obligation and likewise refused to consider appearing on behalf of Nover.

As Nover has stated on numerous occasions, all persons claiming an interest in the Settlement Trusts should be given a voice in this proceeding to avoid uncertainty about the uniformity and finality of judgment and to avoid delay in the proceedings and distribution of settlement funds. There is no dispute that Nover has asserted such an interest. It would be unfair and antithetical to Article 77 to refuse to hear Nover's position on trusts in which it has claimed an interest simply because direction is either cost prohibitive or because the trustee and collateral manager dispute whose obligation it is to appear. Indeed, Nover's above referenced experiences with the D&I process, coupled with the risk of prejudice, only serve to further underscore why Nover's right to participate in this proceeding should not be limited to Settlement Trusts in which it is a certificate holder.

Sincerely,

/s/ David I. Schiefelbein

David I. Schiefelbein

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