

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

IAS Part 60

Honorable Marcy S. Friedman

**PREARGUMENT STATEMENT**

Respondent-Appellant, Nover Ventures, LLC (“Nover”) submits the following Pre-Argument Statement pursuant to Rule 600.17 of the Rules of the Supreme Court of the State of New York, Appellate Division, First Judicial Department.

1. The title and index number of this proceeding are set forth in the caption above.

2. The full names of the parties to this proceeding are:

a. Respondent-Appellant:

Nover Ventures, LLC

b. Petitioners in the proceeding below:

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.  
Deutsche Bank National Trust Company

c. Respondents in the proceeding below:

D.E. Shaw Refraction Portfolios, L.L.C.  
Ambac Assurance Corporation  
Segregated Account of Ambac Assurance Corporation  
HBK Master Fund L.P.  
Olifant Fund, Ltd.  
FFI Fund Ltd.  
FYI Ltd.  
Ellington Management Group L.L.C.  
Prophet Mortgage Opportunities LP  
Poetic Holdings VI LLC  
Poetic Holdings VII LLC  
DW Partners LP  
FT SOF IV Holdings, LLC  
Fir Tree Capital Opportunity Master Fund, L.P.  
Fir Tree Capital Opportunity Master Fund III, L.P.  
Tilden Park Investment Master Fund LP  
Tilden Park Management I LLC  
Tilden Park Capital Management LP  
AEGON USA Investment Management, LLC  
BlackRock Financial Management, Inc.  
Cascade Investment, LLC  
Federal Home Loan Bank of Atlanta  
Federal Home Loan Mortgage Corporation (Freddie Mac)  
Federal National Mortgage Association (Fannie Mae)  
Goldman Sachs Asset Management L.P.  
Voya Investment Management LLC  
Invesco Advisers, Inc.  
Kore Advisors, L.P.  
Metropolitan Life Insurance Company  
Pacific Investment Management Company LLC  
Teachers Insurance and Annuity Association of America  
TCW Group, Inc.  
Thrivent Financial for Lutherans  
Western Asset Management Company  
American General Life Insurance Company  
American Home Assurance Company  
Lexington Insurance Company  
National Union Fire Insurance Company of Pittsburgh, Pa.  
The United States Life Insurance Company in the City of New York

The Variable Annuity Life Insurance Company  
GMO Opportunistic Income Fund  
GMO Global Real Return (UCITS) Fund  
Axonic Capital LLC  
Strategos Capital Management, LLC

3. The names, address, and telephone number of counsel for Nover are:

MCKOOL SMITH, P.C.  
Gayle R. Klein  
Robert W. Scheef  
David I. Schiefelbein  
One Bryant Park, 47th Floor  
New York, NY 10036  
(212) 402-9400

4. The names, address, and telephone number of counsel for Petitioners in the proceeding below are:

HAHN & HESSEN LLP  
Zachary G. Newman  
Stephen J. Grable  
Brigitte R. Rose  
488 Madison Avenue  
New York, New York 10022  
(212) 478-7200

FAEGRE BAKER DANIELS LLP  
Robert L. Schnell  
Stephen M. Mertz  
Michael F. Doty  
Julie R. Landy  
2200 Wells Fargo Center  
90 S. Seventh Street  
Minneapolis, Minnesota 55402  
(612) 766-6000

*Attorneys for Petitioner Wells Fargo Bank, National Association*

JONES DAY  
Nina Yadava  
250 Vesey Street  
New York, New York 10281-1047  
(212) 326-3939

Matthew A. Martel  
Keith Kollmeyer  
100 High Street  
Boston, MA 02110-1781  
(617) 449-6923

*Attorneys for Petitioner U.S. Bank National Association*

MAYER BROWN LLP  
Matthew D. Ingber  
Christopher J. Houpt  
1221 Avenue of the Americas  
New York, New York 10020-1001  
(212) 506-2500

*Attorneys for Petitioners The Bank of New York Mellon and The Bank of New York Mellon Trust Company, N.A.*

ALSTON & BIRD LLP  
Alexander S. Lorenzo  
90 Park Avenue  
New York, New York 10016  
(212) 910-9400

*Attorneys for Petitioner Wilmington Trust National Association*

MAYER BROWN LLP  
Jean-Marie L. Atamian  
James Ancone  
1221 Avenue of the Americas  
New York, NY 10020-1001  
(212) 506-2500

*Attorneys for Petitioner HSBC Bank USA, N.A.*

MORGAN, LEWIS & BOCKIUS LLP  
Kurt W. Rademacher  
1701 Market Street  
Philadelphia, Pennsylvania 19103  
(215) 963-5000

*Attorneys for Petitioner Deutsche Bank National Trust Company*

The names, address, and telephone number of counsel for Respondents in the proceeding below are:

DECHERT, LLP  
Mauricio Espana  
Three Bryant Park  
1095 Avenue of the Americas  
New York, New York 10036  
*Attorneys for Strategos Management*

GOULSTON & STORRS  
Charles R. Jacob III  
Nicholas Cutaia  
885 Third Avenue – 18th Floor  
New York, New York 10022  
(212) 336-3500

*Attorneys for Respondent D.E. Shaw Refraction Portfolios, L.L.C.*

PATTERSON BELKNAP WEBB & TYLER LLP  
Henry J. Ricardo  
1133 Avenue of the Americas  
New York, NY 10036-6710  
(212) 336-2000

*Attorneys for Respondents Ambac Assurance Corporation and the Segregated Account of Ambac Assurance Corporation*

SCHLAM STONE & DOLAN LLP  
John M. Lundin  
Niall D. O'Murchadha  
Seth D. Allen  
Alexandra M.C. Douglas  
26 Broadway  
New York, New York 10004  
(212) 344-5400

-and-

John J.D. McFerrin-Clancy  
17 State Street, 40th Floor  
New York, New York 10004  
(646) 771-7377

*Attorneys for Respondent HBK Master Fund L.P.*

PATTERSON BELKNAP WEBB & TYLER LLP  
Peter W. Tomlinson  
Daniel A. Friedman

1133 Avenue of the Americas  
New York, NY 10036-6710  
(212) 336-2000

*Attorneys for Respondents Olifant Fund, Ltd., FFI Fund Ltd. and FYI Ltd.*

BECKER, GLYNN, MUFFLY, CHASSIN AND HOSINSKI LLP  
Robin L. Alperstein  
299 Park Avenue  
New York, NY 10171  
(212) 888-3033

*Attorneys for Respondent Ellington Management Group L.L.C.*

AXINN, VELTROP & HARKRIDER LLP  
Donald W. Hawthorne  
Felix J. Gilman  
114 W 47th Street  
New York, NY 10036  
(212) 728-2200

*Attorneys for Respondents Prophet Mortgage Opportunities LP, Poetic Holdings VI LLC and Poetic Holdings VII LLC*

DOGRAMACI KUSHNER LLP  
Amiad Kushner  
1120 Avenue of the Americas, 4th Fl.  
New York, NY 10036  
(212) 309-7580

PERRY, JOHNSON, ANDERSON, MILLER & MOSKOWITZ LLP  
Isaac M. Gradman  
Kristin A. Mattiske-Nicholls  
E. Page Allinson  
438 First Street, 4th Floor  
Santa Rosa, CA 95401

*Attorneys for Respondents DW Partners LP, FT SOF IV Holdings, LLC, Fir Tree Capital Opportunity Master Fund, L.P., and Fir Tree Capital Opportunity Master Fund III, L.P.*

SCHINDLER COHEN & HOCHMAN LLP  
Jonathan L. Hochman  
Anna Vinogradov  
100 Wall Street, 15th Floor  
New York, NY 10005

(212) 277 6330

**KRAMER LEVIN NAFTALIS & FRANKEL LLP**

Thomas Moers Mayer  
Philip Bentley  
Andrew Pollack  
1177 Avenue of the Americas  
New York, New York 10036  
(212) 715-9100

*Attorneys for Respondents Tilden Park Investment Master Fund LP,  
Tilden Park Management I LLC and Tilden Park Capital Management LP*

**WARNER PARTNERS, P.C**

Kenneth E. Warner  
950 Third Avenue, 32nd Floor  
New York, New York 10022  
(212) 593-8000

**GIBBS & BRUNS LLP**

Kathy D. Patrick  
David M. Sheeren  
1100 Louisiana, Suite 5300  
Houston, Texas 77002  
(713) 650-8805

*Attorneys for Respondents AEGON USA Investment Management, LLC,  
BlackRock Financial Management, Inc., Cascade Investment, LLC, the  
Federal Home Loan Bank of Atlanta, the Federal Home Loan Mortgage  
Corporation (Freddie Mac), the Federal National Mortgage Association  
(Fannie Mae), Goldman Sachs Asset Management L.P., Voya Investment  
Management LLC, Invesco Advisers, Inc., Kore Advisors, L.P.,  
Metropolitan Life Insurance Company, Pacific Investment Management  
Company LLC, Teachers Insurance and Annuity Association of America,  
the TCW Group, Inc., Thrivent Financial for Lutherans, and Western  
Asset Management Company (the "Institutional Investors")*

**QUINN EMANUEL URQUHART & SULLIVAN, LLP**

Kevin S. Reed  
51 Madison Avenue, 22nd Floor  
New York, New York 10010  
(212) 849-7000

*Attorneys for Respondents American General Life Insurance Company,  
American Home Assurance Company, Lexington Insurance Company,  
National Union Fire Insurance Company of Pittsburgh, Pa., The United*

*States Life Insurance Company in the City of New York, The Variable Annuity Life Insurance Company (the "AIG Investors")*

ROPES & GRAY LLP  
Lee S. Gayer  
Joshua Y. Sturm  
1211 Avenue of the Americas  
New York, NY 10036  
(212) 841-0626

*Attorneys for Respondents GMO Opportunistic Income Fund and GMO Global Real Return (UCITS) Fund*

BINDER & SCHWARTZ  
Neil S. Binder  
Lindsay A. Bush  
166 Madison Avenue – 6<sup>th</sup> Floor  
New York, NY 10017

*Attorneys for Respondent Axonic Capital LLC*

HOFFNER PLLC  
David S. Hoffner  
800 Third Avenue, 13th Floor  
New York, New York 10022  
(212) 471-6203

*Attorneys for Respondent Strategos Capital Management, LLC*

5. These appeals are taken from the Orders of the Supreme Court, New York County, Commercial Division, Part 60 (per Justice Friedman) (the "Court"), dated May 22, 2018 and August 7, 2018, and duly entered with the Clerk of the Court on those same days, copies of which are filed herewith.

6. Nature and Object of the Proceeding: Petitioners initiated this special proceeding to obtain judicial guidance on the administration and distribution of the \$4.5 billion settlement payment by JPMorgan Chase & Co. for certain residential mortgage-backed securities trusts (the "Settlement Trusts").



7. Results Reached in the Court Below:

a. In the appealed Order dated and entered August 7, 2018 (NYSCEF Doc. No. 471) (“Standing Order”), the Court below granted the motion of certain respondents (“Challenging Respondents”) to limit standing to participate in the proceeding to holders of certificates in the Settlement Trusts. The Court held that for those Settlement Trusts in which it held only an indirect economic interest, *i.e.* through a CDO, Nover lacked standing to participate in the proceeding. A copy of the Standing Order, and the corresponding Notice of Entry, is attached hereto as Exhibit 1.

b. In the appealed Order dated and entered May 22, 2018 (NYSCEF Doc. No. 401) (“Repo Disclosure Order”), the Court below denied Nover’s request that Interested Persons be ordered to exchange supplemental affidavits stating whether their holdings were or are subject to repurchase agreements, and identifying same. Nover sought this additional disclosure only to the extent that the Court held that investors with “indirect” holdings lack standing to participate in the Article 77 Proceeding—which it ultimately did—because a certificate holder whose only holdings are subject to a repurchase agreement is an “indirect” holder. A copy of the Repo Disclosure Order is attached hereto as Exhibit 2.

c. In the appealed Order dated and entered August 7, 2018 (NYSCEF Doc. No. 475) (“Repo Reargument Order”), the Court granted Nover’s request for reargument of the Repo Disclosure Order, but adhered to its prior decision denying Nover’s request for the repo disclosure. Specifically, Nover sought to clarify that its position was conditional: it did not advocate limiting standing to parties with a “direct” interest as certificate holders in the Settlement Trusts sought, but rather maintained that if the Court did decide to limit standing,

then repo interests must be disclosed and taken into consideration. A copy of the Repo Reargument Order, and the corresponding Notice of Entry, is attached hereto as Exhibit 3.

8. Grounds for Seeking Reversal:

a. Nover appeals the Standing Order because the Court erred in dismissing Nover as a respondent with respect to any Settlement Trust in which it does not hold a certificate.

b. Nover appeals the Repo Disclosure Order because the Court erred to the extent that it ruled that Interested Persons should not be required to exchange supplemental affidavits clarifying whether their direct holdings are subject to repurchase agreements.

c. Nover appeals the Repo Reargument Order because the Court erred to the extent that it adhered to its prior decision.

9. Related Actions Pending in a Court of This or Any Other Jurisdiction: No related actions are pending.

10. Pending Appeals:

a. On August 28, 2018, Respondent HBK filed a Notice of Appeal with respect to the Standing Order. Copies of HBK's Notice of Appeal and Pre-argument Statement for the Standing Order are attached hereto as Exhibit 4.

b. On August 28, 2018 Respondent HBK filed a Notice of Appeal with respect to Justice Friedman's August 6, 2018 Order denying HBK's motion for leave to amend its Answer. Copies of HBK's Notice of Appeal and Pre-argument Statement for the Order denying leave to amend its Answer are attached hereto as Exhibit 5.

