

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 ___ day of __, 2020

P R E S E N T: Hon. Marcy S. Friedman, Justice.

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 Distribution of a Settlement Payment.

Index No. 657387/2017

**[PROPOSED]
PROCEDURAL ORDER
CONCERNING
SETTLEMENT TRUSTS
FOR WHICH NO
INVESTORS HAVE
APPEARED**

WHEREAS, pursuant to the Interim Order Concerning Settlement Trusts For Which No Investors Have Appeared (NYSCEF No. 270) (the “No Appearance Interim Order”), U.S. Bank National Association (“U.S. Bank”), Wells Fargo Bank, National Association (“Wells Fargo”), and Wilmington Trust, National Association (“Wilmington Trust”) (collectively, the “Relevant Petitioners”) hereby file this [Proposed] Procedural Order Concerning Settlement Trusts For Which No Investors Have Appeared (the “No Appearance Procedural Order”) regarding the following Settlement Trusts: BSABS 2007-AC1, GPMF 2007-HE1, PRIME 2007-3, SACO 2005-WM2, and SACO 2006-1 (the “No Appearance Settlement Trusts”); and¹

¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Petition (NYSCEF No. 1).

WHEREAS, U.S. Bank is the Payment Administrator and Trustee for PRIME 2007-3 and SACO 2005-WM2, U.S. Bank is the Payment Administrator and Wilmington Trust is the Trustee for GPMF 2007-HE1 and SACO 2006-1, and Wells Fargo is the Payment Administrator and U.S. Bank is the Trustee for BSABS 2007-AC1; and

WHEREAS, the No Appearance Interim Order directed the Relevant Petitioners to “submit to the Court a proposed procedure for addressing the issues for the No Appearance Settlement Trusts”; and

WHEREAS, on January 4, 2019, the Relevant Petitioners filed a Proposed Modified Interim Order Concerning Settlement Trusts For Which No Investors Have Appeared (NYSCEF No. 786) (the “Proposed Modified Interim Order”), which proposed a procedure for addressing the issues for the No Appearance Settlement Trusts; and

WHEREAS, the Court has not acted on the Proposed Modified Interim Order and it has not been entered; and

WHEREAS, the Relevant Petitioners now seek entry of this No Appearance Procedural Order to establish a procedure for addressing the issues for the No Appearance Settlement Trusts; and

WHEREAS, no investors appeared in the above-captioned proceeding with respect to the No Appearance Settlement Trusts²; and

² Nover Ventures, LLC (the “Indirect Holder”) previously asserted an interest in SACO 2005-WM2 through an ownership interest in a CDO, but not in certificates issued by that trust. The Court subsequently dismissed the Indirect Holder with respect to any Settlement Trust in which it does not hold certificates (NYSCEF No. 471). The Court afforded the Indirect Holder an opportunity to substitute in the trustee of the CDO through which the Indirect Holder asserted an interest in SACO 2005-WM2, but the Indirect Holder did not do so (NYSCEF No. 514). The dismissal Order was later affirmed. 173 A.D.3d 626 (1st Dep’t 2019).

WHEREAS, for certain Settlement Trusts not subject to this No Appearance Procedural Order (the “Disputed Settlement Trusts”), the Settlement Payment Application Process has been subject to dispute among certain respondents; and

WHEREAS, on February 13, 2020, the Court issued a Decision and Order (NYSCEF No. 843) (the “Merits Ruling”) concerning the disputed issues related to the Settlement Payment Application Process for the Disputed Settlement Trusts; and

WHEREAS, certain respondents have filed Notices of Appeal of the Merits Ruling (the “Notices of Appeal”); and

WHEREAS, the No Appearance Settlement Trusts are not subject to the Notices of Appeal, as no respondents have standing with respect to the No Appearance Settlement Trusts; and

WHEREAS, for the No Appearance Settlement Trusts, the Petition identifies issues concerning the Settlement Payment Application Process that require judicial instruction; and

WHEREAS, many or all of the issues related to the Settlement Payment Application Process for the No Appearance Settlement Trusts may be resolved in a manner consistent with the Merits Ruling; and

WHEREAS, it is also possible that some of the issues related to the Settlement Payment Application Process for the No Appearance Settlement Trusts may require further judicial instruction;

SUFFICIENT CAUSE THEREFORE BEING ALLEGED, IT IS

1. ORDERED that if all of the Settlement Payment Application Process issues applicable to a No Appearance Settlement Trust can be resolved in a manner consistent with the Merits Ruling, the Relevant Petitioner(s) for the applicable No Appearance Settlement Trust shall file a proposed partial severance order and partial final judgment (“Proposed Resolved No Appearance Settlement

Trust Order”) with the Court, ordering that the Allocable Share(s) for the applicable No Appearance Settlement Trust be distributed in a manner consistent with the Merits Ruling as described more fully in the corresponding Proposed Resolved No Appearance Settlement Trust Order; and it is further

2. ORDERED that if one or more of the Settlement Payment Application Process issues applicable to a No Appearance Settlement Trust is not sufficiently addressed in the Merits Ruling or requires further guidance from the Court, the Relevant Petitioner(s) for the applicable No Appearance Settlement Trust shall file with the Court a proposed procedure for resolving the Settlement Payment Application Process issues applicable to the No Appearance Settlement Trust (“Proposed Unresolved No Appearance Settlement Trust Order”); and it is further

3. ORDERED that a Proposed Resolved No Appearance Settlement Trust Order or a Proposed Unresolved No Appearance Settlement Trust Order may address one or more No Appearance Settlement Trusts; and it is further

4. ORDERED that the Relevant Petitioners shall promptly file a Notice of Entry of this No Appearance Procedural Order following the date on which the Relevant Petitioners receive a copy of this No Appearance Procedural Order executed by the Court (the date on which the Notice of Entry is filed, the “Entry Date”); and it is further

5. ORDERED that within 45 days of the Entry Date, the Relevant Petitioners shall file any Proposed Resolved No Appearance Settlement Trust Order(s) and any Proposed Unresolved No Appearance Settlement Trust Order(s); and it is further

6. ORDERED that this No Appearance Procedural Order shall have no application to, shall be without prejudice to and shall have no precedential effect on, the distribution and administration of the Settlement Payment for any Settlement Trusts other than the No Appearance Settlement

Trusts or any argument of any party concerning the distribution and administration of the Settlement Payment for any Settlement Trusts other than the No Appearance Settlement Trusts.

ENTERED:

Marcy S. Friedman, J.S.C.