

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 DEUSTCHE 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

Hon. Marcy S. Friedman  
Part 60

**NOTICE OF [PROPOSED]  
SCHEDULING ORDER**

Nover Ventures, LLC (“Nover”) respectfully submits a [PROPOSED] Scheduling Order. At the January 31, 2018 initial status conference, the parties agreed that they would seek to negotiate a process by which limited, competitively sensitive information would be exchanged on an “outside counsel’s eyes only” basis so that counsel could assess whether to challenge a party’s standing. During the ensuing discussions, however, the Institutional Investors rejected all comments seeking to limit the competitively sensitive information exchanged to only that which is required to assess standing, and further rejected all comments that would limit the use of such competitively sensitive information solely to the issue of standing. Nover, therefore, submits this competing [PROPOSED] Scheduling Order to protect its proprietary and commercially sensitive information and to resolve the other very limited issues to which there is disagreement. A redline between the two proposed orders is also submitted for the Court’s convenience.

Nover believes that briefing on the issues would be of assistance to the Court. Accordingly, pursuant to Part 60 Practices and Procedures, Nover will contact the Court to obtain a time for a conference call between all appearing parties and Chambers.

DATED: February 5, 2018  
New York, New York

Respectfully submitted,

MCKOOL SMITH, P.C.

By: /s/ Gayle R. Klein  
Gayle R. Klein  
Robert W. Scheef

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*Attorneys for Nover Ventures, LLC*

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 February, 2018

**PRESENT:**

HON. MARCY FRIEDMAN

Justice.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the matter of the application of	:	
	:	
WELLS FARGO BANK, NATIONAL ASSOCIATION, et	:	Index No. 657387/2017
al.,	:	
	:	<b><u>[PROPOSED] SCHEDULING</u></b>
Petitioners,	:	<b><u>ORDER</u></b>
	:	
For Judicial Instructions under CPLR Article 77 on the	:	
Administration and Distribution of a Settlement Payment.	:	
	:	
	:	

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, the parties have requested that the Court enter a [Proposed] Scheduling Order; and

WHEREAS, the Court has determined that there is good cause for entry of this [Proposed] Scheduling Order;

SUFFICIENT CAUSE THEREFORE BEING ALLEGED, IT IS THEREFORE

ORDERED that all future dates in the Scheduling Order of December 19, 2017 are vacated;

ORDERED that by February 13, 2018, pursuant to the procedure outlined below, the investor parties shall exchange information, verified through affidavit by the party in question

(not by counsel of record), concerning the interests held in the trusts. Such information shall state the name of the trust and whether it is a direct or indirect interest in 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 and shall not share with any non-outside attorney (*e.g.*, experts or consultants). 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;

ORDERED that subsequent to the resolution of the standing of a party with respect to the trusts in which it alleges an interest, the parties shall submit to the Court an agreed proposed judgment and severance order or briefing on opposition to any severance order proposed 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;

ORDERED that by February 28, 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;

ORDERED that in addition, the February 28 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;

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;

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;

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

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:

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Marcy S. Friedman, J.S.C.

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 February, 2018

**PRESENT:**

HON. MARCY FRIEDMAN

Justice.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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	:	<b><u>[PROPOSED] AGREED</u></b>
Petitioners,	:	<b><u>SCHEDULING ORDER</u></b>
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For Judicial Instructions under CPLR Article 77 on the	:	
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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, the parties have requested that the Court enter this [~~Proposed~~] ~~Agreed~~ Scheduling Order; and

WHEREAS, the Court has determined that there is good cause for entry of this [~~Proposed~~] ~~Agreed~~ Scheduling Order;

SUFFICIENT CAUSE THEREFORE BEING ALLEGED, IT IS THEREFORE

ORDERED that all future dates in the Scheduling Order of December 19, 2017 are vacated;

ORDERED that by February 9~~1~~3, 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 of record~~), concerning the ~~nature of interests~~ held in the trusts. Such information shall: (i) ~~describe the nature of the interest held;~~ (ii) state the name of the trust and whether it is a direct or indirect interest in 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. 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;

ORDERED that subsequent to the resolution of the standing of a party with respect to the trusts in which it alleges an interest, ~~by February 21, 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 or briefing on opposition to any severance order proposed, 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;

ORDERED that by February ~~21~~28, 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;

ORDERED that in addition, the February ~~21~~28 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;

ORDERED that by February ~~21~~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;

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;

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

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:

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Marcy S. Friedman, J.S.C.