

**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. _____/2017
Mot. Seq. 001

AFFIDAVIT OF ROBERT L. SCHNELL, JR.
IN SUPPORT OF PETITION AND PROPOSED ORDER TO SHOW CAUSE

MINNEAPOLIS)
) ss.:
MINNESOTA)

ROBERT L. SCHNELL, JR., being duly sworn, deposes and says:

1. I am a partner at Faegre Baker Daniels LLP and one of the attorneys representing Wells Fargo Bank, National Association (“Wells Fargo”) in this case. I make this affidavit in support of the Petition and in support of the application of Petitioners Wells Fargo, U.S. Bank National Association, The Bank of New York Mellon (“BNYM”), The Bank of New York Mellon Trust Company, N.A. (“BNYMTC”), Wilmington Trust, National Association, HSBC Bank U.S.A., N.A., and Deutsche Bank National Trust Company, solely in their respective and various capacities as trustees, indenture trustees, and/or successor trustees (collectively, the “Trustees”) and/or securities administrators, paying agents, and/or calculation agents of the residential

mortgage-backed securitization trusts listed on Exhibit A of the Petition (the “Settlement Trusts”) for entry of the Proposed Order to Show Cause (the “Proposed Order”).

BACKGROUND

2. As detailed in the Petition, this is a special proceeding pursuant to CPLR Article 77 to determine matters relating to express trusts, and in particular a matter relating to the administration and distribution of an approximately \$4.5 billion settlement payment (“Settlement Payment”). In accordance with the Settlement Agreement, the Trustees engaged a professional firm to provide a report (the “Allocation Report”) calculating each Settlement Trust’s Allocable Share—that is, the portion of the Settlement Payment allocable to each Settlement Trust. *See* Settlement Agreement, § 3.05. The Trustees expect to receive the Allocation Report on or around December 18, 2017. Within thirty days thereof, JPMorgan must transfer the Settlement Payment to the Trustees. *See id.* § 3.01.

3. The purpose of the Petition is to resolve contractual issues that bear directly upon the proper administration and distribution of the Settlement Payment to investors in the Settlement Trusts (collectively, the “Certificateholders”). *See id.* ¶¶ 8-9, 66-70.

4. Capitalized terms used but not defined in this Affidavit have the meanings ascribed to them in the Petition or in the Settlement Agreement, which is attached to the Petition as Exhibit

B.

ESCROW ARRANGEMENTS

5. The Settlement Agreement provides that:

With respect to each Accepting Trustee, JPMorgan will pay the portion of the Settlement Payment equal to the aggregate amount of the Allocable Shares of all Settlement Trusts for which such Accepting Trustee acts as Trustee to a single escrow account designated by such Accepting Trustee The Accepting Trustees shall use their reasonable best efforts to distribute the Settlement Payment to the Settlement Trusts as promptly as possible.

Settlement Agreement, § 3.01.

6. This proceeding's purpose—to obtain the Court's guidance on the administration and distribution of the Settlement Payment—would be frustrated if the Allocable Shares for the Settlement Trusts were immediately routed from escrow to the Settlement Trusts and distributed to Certificateholders without this Court's direction

7. Therefore, to maintain the status quo, the Trustees seek an immediate interim direction that each of the Trustees maintain the applicable Allocable Shares for the applicable Settlement Trusts (other than the Non-Covered Settlement Trusts) as a deposit in escrow pursuant to Escrow Agreements substantially in the forms attached as Exhibit 1 hereto. Each Petitioner, solely in its individual, non-trustee capacity unrelated to any of the Settlement Trusts, is designated as the "Escrow Agent" under the Escrow Agreement applicable to the Settlement Trusts for which such Petitioner is trustee, indenture trustee, or successor trustee (except that BNYM will act as Escrow Agent for both the Settlement Trusts for which BNYM is trustee and Settlement Trusts for which BNYMTC is trustee, under two separate Escrow Agreements). For example, Wells Fargo, solely in its capacity as Trustee of certain Settlement Trusts, would enter into the applicable Escrow Agreement with Wells Fargo, in its individual capacity unrelated to any of the Settlement Trusts, appointed as "Escrow Agent."

8. The Proposed Order explicitly provides that each Trustee deposit and hold its Allocable Shares of the Settlement Payment for each Settlement Trust for which such Trustee acts as trustee (such amounts being a "Trustee's Share") in escrow pursuant to such Trustee's Escrow Agreement until the time that this Court enters an order directing such Trustee to deposit the Trustee's Share into the appropriate collection accounts or distribution accounts for the related Settlement Trusts. It is necessary for the Settlement Payment to be held outside of the collection

accounts and distribution accounts because under the Governing Agreements and Settlement Agreement, any funds deposited in such accounts must generally be distributed to Certificateholders in a matter of days or weeks.

9. The Proposed Order directs the Escrow Agents under each Escrow Agreement to use commercially reasonable efforts to keep each Trustee's Share invested and reinvested in high quality money market funds described in the Proposed Order (for each Escrow Agent, the "Approved Funds"). I have reviewed the Expert Affidavit of Glenn Hubbard, attached as Exhibit 2 hereto, and, to the best of my knowledge, the Approved Funds are reasonable vehicles for investing the Escrow Accounts. The liquidity of these funds will facilitate the ability of the Petitioners to make interim or final distributions to Certificateholders during the pendency of this proceeding subject to further orders of this Court.

10. Based on my review of Expert Affidavit of Glenn Hubbard, and to the best of my knowledge, none of the Escrow Agents will receive any fees, interest or other monetary benefit under the Escrow Agreements. Any interest earned will be re-invested into such funds and inure to the benefit of Certificateholders.

11. Escrow arrangements similar to those described in the foregoing paragraphs were approved of in a similar dispute about distributions in the settlement involving Bank of America Corporation, Countrywide Financial Corporation, and other affiliated entities. *See In re Bank of New York Mellon*, Index No. 150973/2016, decision dated February 8, 2016 (Scarpulla, J.).

NOTICE AND SERVICE

12. The Petitioners propose a notice to Certificateholders and any person claiming an interest in any of the Settlement Trusts (“Interested Person” and, all such persons, collectively, “Interested Persons”) substantially in the form of Exhibit 3 hereto (the “Notice”).

13. The Proposed Order requires, within twenty-one (21) days of the entry of this Order to Show Cause, the Petitioners to cause notice of this proceeding and of the Initial Hearing to be provided by: (a) mailing a copy of a the Notice as well as the Order to Show Cause, the Petition, the Memorandum of Law in Support of Petition Seeking Judicial Instructions (the “Memo of Law”), and all other papers filed contemporaneously with the Petition (other than the compact disc that will be provided to the Court containing electronic copies of the agreements governing the Settlement Trusts) to all certificateholders listed on the certificate registry for each of the Settlement Trusts and Non-Covered Settlement Trusts and to any certificateholder in the Settlement Trusts or Non-Covered Settlement Trusts (or its counsel) that has requested such papers from any Petitioner; (b) electronically transmitting the Notice to The Depository Trust Company (“DTC”), which will post the Notice in accordance with its established procedures; (c) electronically posting any of the following (or causing the related securities administrator, paying agent, or calculation agent to electronically post any of the following as such party may so choose): (x) a hyperlink on the investor reporting website for the applicable Settlement Trusts to <http://www.rmbstrusteesettlement.com>; (y) a notice on the investor reporting website for the applicable Settlement Trusts referring investors to <http://www.rmbstrusteesettlement.com> for information about this proceeding; or (z) the Notice on the investor reporting website for the applicable Settlement Trusts; and (d) electronically posting the Notice as well as the Order to Show Cause, the Petition, the Memo of Law, and all other papers filed contemporaneously with the

Petition (other than the compact disc that will be provided to the Court containing electronic copies of the agreements governing the Settlement Trusts) to <http://www.rmbstrusteesettlement.com>, the public settlement website created by the Petitioners, and subsequently electronically posting all papers filed in this proceeding to the same website (collectively, the “Notice Program”).

14. This Notice Program is based on programs recently approved in other Article 77 proceedings concerning the distribution of settlement proceeds to RMBS investors. *See In re Bank of New York Mellon, in its capacity as Trustee or Indenture Trustee of 530 Countrywide Residential Mortgage-Backed Securitization Trusts*, Index No. 150793/2016 (Sup. Ct. N.Y. Cty. Feb. 5, 2016); *In re Bank of New York Mellon (GE-WMC 2006-1)*, Index No. 653558/2015 (Sup. Ct. N.Y. Cty. Oct. 27, 2015).

15. Due process does not require that every interested party actually receive direct notice from the Petitioners. Due process requires only “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). For that reason, DTC notice alone—a less robust notice program than the one requested here—has been approved in similar cases. *See, e.g., In the matter of the Trustships Created by Tropic CDO I Ltd.*, Case No. 1:13-cv-09428-NRB, ECF 1-1, at Ex. D, ¶ 2 (S.D.N.Y. Oct. 8, 2013).

REQUEST FOR BRIEFING AND HEARING SCHEDULE

16. The Proposed Order proposes an early status conference to discuss a schedule for future proceedings in this case. The Petitioners respectfully request that the status conference be held in January 2018. The Petitioners also request a Final Hearing in March 2018 on the merits of the issues raised by the Petition, with merits submissions and reply submissions to be due in

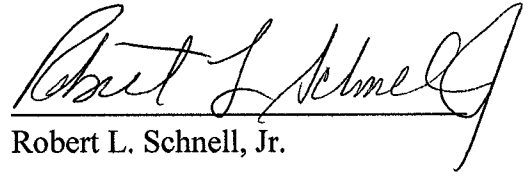
February 2018 or as otherwise adjusted by order of this Court. At the time of the proposed status conference, the Court and counsel will be in a better position to evaluate an appropriate timeline for the adjudication of the issues presented by the Petition.

NO PRIOR REQUEST, ETC.

17. No prior request for the relief sought herein has been made to this or any other Court. An *ex parte* order to show cause is sought to minimize disruption in the markets for securities of the Settlement Trusts and to ensure that no Certificateholder has an unfair information advantage. This application is made in good faith and to promote the ends of justice.

WHEREFORE, the Petitioners respectfully request that the Court enter the Proposed Order and grant the Petitioners such other, further and different relief as to the Court appears just and proper.

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Robert L. Schnell, Jr.

Subscribed and sworn to before me,
A Notary Public, this 14th day of December, 2017
Kathleen E. Spaulding
Notary Public



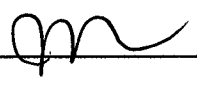
CERTIFICATE OF CONFORMITY OF ACKNOWLEDGMENT

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The undersigned does hereby certify that he/she is an attorney-at-law duly admitted to practice in the State of Minnesota with an office at Faegre Baker Daniels LLP; that he/she is a person duly qualified to make this certificate of conformity pursuant to Section 299-a of the Real Property Law of the State of New York; that he/she is fully acquainted with the laws of the State of Minnesota pertaining to the administration and taking of oaths and affirmations; that the foregoing acknowledgment by Robert L. Schnell, Jr. named in the foregoing instrument taken before Kathleen Spaulding, a notary public (or other officer) was taken in the manner prescribed by such laws of the State of Minnesota being the state in which it was taken; and that it duly conforms with such laws and is in all respects valid and effective in such state.

IN WITNESS WHEREOF, my signature this 14th day of December, 2017.

Print Name: Julie Landy

Signature: 

State Attorney ID No.: 0391256

Address: 90 So. 7th Street

2200 Wells Fargo Centre

Minneapolis, MN 55402-3901

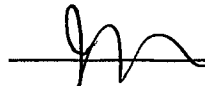
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IN WITNESS WHEREOF, my signature this 14th day of December 2017.

Print Name: Julie Landy

Signature: 

State Attorney ID No.: 0391256

Address: 90 So. 7th St.

2200 Wells Fargo Center

Minneapolis, MN 55402-3901