

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

PRESENT: MARCY S. FRIEDMAN PART 60
Justice

In the matter of the application of
WELLS FARGO BANK, NATIONAL ASSOCIATION, et al.
Petitioners,
For Judicial Instructions under CPLR Article 77 on the
Administration and Distribution of a Settlement Payment.
INDEX NO. 657387/2017
MOTION SEQ. 001
INTERIM ORDER

The following papers, numbered 1 to were read on this motion

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... No (s).
Answering Affidavits — Exhibits No (s).
Replying Affidavits No (s).

Cross-Motion: Yes No

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

WHEREAS, on December 15, 2017, petitioners 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 U.S.A., N.A.; and Deutsche Bank National Trust Company (collectively, Petitioners) appeared and presented an Order to Show Cause to the court for signature; and

WHEREAS, on December 19, 2017, the court granted certain relief requested in the Order to Show Cause, including but not limited to setting a "Final Hearing" date of March 19, 2018 for the Petition; directing, as an interim measure, that Petitioners cause the Allocable Shares<sup>1</sup> of the Settlement Payment for each Settlement Trust to be maintained as a deposit in escrow; and establishing a procedure for notifying certificateholders and other interested parties of this proceeding (the Notice Program); and

WHEREAS, the court declined to grant certain additional, affirmative relief requested in paragraphs 2 (2)-(3) and paragraphs 3-5 of the Order to Show Cause (the affirmative relief), but scheduled a further appearance for this date in Part 60 for argument on the affirmative relief, and directed Petitioners to take steps to notify potentially interested persons of the new date; and

WHEREAS, argument was heard today on the affirmative relief; and

WHEREAS, although no potentially interested person appeared to object to the affirmative relief, the court finds that additional notice should be provided to potentially interested persons so that any objections may be considered by the court.

Pursuant to the court's decision on the record on this date, it is accordingly hereby

1. ORDERED that paragraph 2 of this court's Order to Show Cause, signed on December

<sup>1</sup>Undefined terms in this order have the meaning set forth in the Order to Show Cause.

19, 2017 (the Order to Show Cause), is modified solely to the extent of clarifying that nothing in that paragraph shall be construed as a judicial determination that any particular provision in any of the Escrow Agreements is enforceable; and it is further

2. ORDERED that paragraph 6 (x) of the Order to Show Cause is modified solely to the extent of clarifying that, to the extent possible, a hyperlink to <http://www.rmbstrusteesettlement.com> should be included with the notice to investors; and it is further

3. ORDERED that the escrow agents under each Escrow Agreement (each, an “Escrow Agent” and collectively, the “Escrow Agents”) are directed to use commercially reasonable efforts to keep each Trustee’s Share invested and reinvested in the following money market funds (for each Escrow Agent, the “Approved Funds”):

- A. for The Bank of New York Mellon and The Bank of New York Mellon Trust Company: Goldman Sachs Financial Square Treasury Fund Institutional (ticker: FTIXX); Morgan Stanley Institutional Liquidity Funds Treasury Securities Portfolio Institutional (ticker: MSUXX); Blackrock Liquidity Funds Treasury Trust Institutional Shares (ticker: TTTXX); Federated U.S. Treasury Reserves Institutional Shares (ticker: UTIXX); Western Asset Institutional U.S. Treasury Reserves Institutional Shares (ticker: CIIXX); and Fidelity Institutional Money Market Funds Treasury Only Portfolio Class 1 (ticker: FSIXX);
- B. for Deutsche Bank National Trust Company: Goldman Sachs Financial Square Treasury Fund Institutional (ticker: FTIXX);
- C. for HSBC Bank U.S.A., N.A.: Federated Treasury Obligations Fund Institutional Shares (ticker: TOIXX);
- D. for U.S. Bank National Association: Goldman Sachs Financial Square Treasury Instruments Fund Institutional (ticker: FTIXX); Morgan Stanley Institutional Liquidity Funds Treasury Securities Portfolio Institutional (ticker: MSUXX); Federated U.S. Treasury Reserves Institutional Shares (ticker: UTIXX); and Fidelity Investments Treasury Only (ticker: FSIXX);
- E. for Wells Fargo Bank, N.A.: Goldman Sachs Financial Square Treasury Instruments Fund Institutional (ticker: FTIXX); Morgan Stanley Institutional Liquidity Funds Treasury Securities Portfolio Institutional (ticker: MSUXX); Federated U.S. Treasury Reserves Institutional Shares (ticker: UTIXX); and Fidelity Investments Treasury Only (ticker: FSIXX); and
- F. for Wilmington Trust, National Association: Federated Treasury Obligations Fund Institutional Shares (ticker: TOIXX); and Goldman Sachs Financial Square Treasury Instruments Fund Institutional (ticker: FTIXX); and it is further

4. ORDERED that each Escrow Agent shall allocate the related Trustee’s Share to each of the Approved Funds for such Escrow Agent pro rata on the basis of each such Approved Fund’s

NYSCEF Docket No. 32 of Wells Fargo (657387/17)

RECEIVED NYSCEF: 12/20/2017

respective assets under management;<sup>2</sup> and it is further

5. ORDERED that the Escrow Agents shall re-invest any interest earned on a Trustee's Share into such Escrow Agent's Approved Funds; and it is further

6. ORDERED that any interest or other earnings on a Trustee's Share shall inure to the benefit of Certificateholders for the related Settlement Trusts and each Allocable Share shall be deemed to include, and be increased by, the amount of any such interest or other earnings accrued thereon, as may be subject to future orders concerning the administration and distribution of the Settlement Payment; and it is further

7. ORDERED that paragraphs 3-6 of this order are provisional and subject to reconsideration by the court at a conference to be held on January 10, 2017 at 10:00 a.m. in Part 60, Rm. 248, 60 Centre St., New York, NY 10007 (the Conference Date); and it is further

8. ORDERED that any potentially interested person who wishes to be heard with respect to paragraphs 3-6 of this order may appear and be heard on the Conference Date, provided that such person e-files, or submits a hard copy to the Clerk of Part 60, of a notice of appearance on or prior to that date; and it is further

9. ORDERED that Petitioners shall provide notice of the Conference Date to potentially interested persons on or before December 21, 2017 by (1) posting a copy of this order and of the Order to Show Cause to <http://www.rmbstrusteesettlement.com>, the public settlement website created by the Petitioners; and by (2) electronically transmitting a copy of this order or, if not possible, a notice conforming to the language of this order, to The Depository Trust Company (DTC), for DTC to transmit through its "LENS" electronic notice system; and it is further

10. ORDERED that Petitioners shall mail a copy of this order and of the Order to Show Cause to all certificateholders listed on the certificate registry for each of the Settlement Trusts and Non-Settlement Trusts. Petitioners shall take all reasonable steps to mail the order and the Order to Show Cause by a date reasonably likely to ensure that the order and Order to Show Cause will be received at least 5 days prior to the Conference Date; and it is further

11. ORDERED that, with the exception of paragraph 2, above, nothing in this order shall be deemed to supersede, modify, or replace the Notice Program set forth in paragraph 6 of the Order to Show Cause with respect to the Final Hearing.

Dated: 12/20/17

Marcy S. Friedman, J.S.C.

- 1. Check one: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. Check as appropriate:.....Motion is:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. Check if appropriate:.....  SETTLE ORDER  SUBMIT ORDER  
 DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

<sup>2</sup>For the avoidance of doubt, this provision, as explained by Petitioners, would be implemented according to the following example: If the Trustee's Share is \$10, and the Escrow Agent has two approved funds, one with \$800 million in assets under management and one with \$200 million in assets under management, the Escrow Agent will invest \$8 of the Trustee's Share in the first fund and \$2 in the second.