

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY FRIEDMAN
Justice

PART 60

Index Number : 651625/2018
U.S. BANK NATIONAL ASSOCIATION
vs.
XXXX
SEQUENCE NUMBER : 002
APPROVAL OF NOTICE PROGRAM

INDEX NO.
MOTION DATE
MOTION SEQ. NO.

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

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

Upon the foregoing papers, it is ordered that this motion is

granted in accordance with the
Order to Show Cause dated June 28, 2018.

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

Dated: 6/28/18

Mary Friedman, J.S.C.
HON. MARY 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

At IAS Part 60 of the Supreme Court of the State of New York, held in and of the County of New York, at the Courthouse located at 60 Centre Street, New York, New York, on the 28th day of June, 2018.

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

In the matter of the application of
U.S. BANK NATIONAL ASSOCIATION, WELLS FARGO BANK, NATIONAL ASSOCIATION, WILMINGTON TRUST, NATIONAL ASSOCIATION, WILMINGTON TRUST COMPANY, and CITIBANK, N.A. (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. 651625/2018

Friedman, J.

[PROPOSED] ORDER TO SHOW CAUSE

MOTION SEQUENCE # 007

WHEREAS, Petitioners U.S. Bank National Association; Wells Fargo Bank, National Association; Wilmington Trust, National Association; Wilmington Trust Company; and Citibank, N.A., solely in their respective and various capacities as trustees, indenture trustees, securities administrators, paying agents, and/or calculation agents (collectively, the "Petitioners") of certain residential mortgage-backed securitization trusts, submitted a petition for judicial instructions under Article 77 of the CPLR filed on April 4, 2018 (the "Petition"); and

WHEREAS, all capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Petition; and

WHEREAS, on April 20, 2018, this Court issued an order to show cause (NYSCEF Doc. No. 37) approving a Notice Program (as defined therein, the "Notice Program") and directed Petitioners to provide notice in accordance with the Notice Program; and

This order shall be re-scanned on this date to correct the omission of page 6 from the order dated 6-28-2018 and scanned on 6-29-18.

M. Friedman 7-3-18

MARCY S. FRIEDMAN, J.S.C.

WHEREAS, on May 30, 2018, this Court issued an order (NYSCEF Doc. No. 53) (the "Escrow Order"), directing Petitioners to adhere to certain interim measures for each Subject Settlement Trust (the "Interim Escrow Measures"); and

UPON reading and filing the annexed Notice of Corrected Exhibits to Petition and the exhibits annexed thereto, whereby Petitioners submitted corrected exhibits to the Petition, which identified an additional residential mortgage-backed securities trust that was inadvertently omitted from Exhibit A to the Petition (listed on Exhibit A attached hereto) (the "Additional Subject Settlement Trust");

SUFFICIENT CAUSE THEREFOR BEING ALLEGED, IT IS

1. ORDERED that Certificateholders and any other person claiming an interest in the Additional Subject Settlement Trust (each, an "Interested Person," and all such persons collectively, "Interested Persons") show cause at IAS Part 60 in Room 248 of New York County Courthouse, 60 Centre Street, New York, New York on a date to be determined (the "Final Hearing") why an order and judgment should not be entered granting the Petition ~~as to the Additional Subject Settlement Trust~~; directing the release of each Allocable Share and the transfer of each Allocable Share of the Settlement Payments ~~for the Additional Subject Settlement Trust~~ into the appropriate account of ^{each} ~~the Additional Subject Settlement Trust~~; resolving the questions presented by the Petition ~~concerning the Additional Subject Settlement Trust~~ and directing the Petitioners as the Court may so order, permanently barring litigation outside of the context of this proceeding on any question, issue, objection, claim, or concern related to the receipt, escrow, investment, distribution, and administration of the Allocable Shares of the Settlement Payments for the ~~Additional~~ Subject Settlement Trust; and for such other and further relief as this Court deems just and proper; and it is further

#2 - REPLACED WITH INSERT A

~~2. ORDERED that Petitioners shall provide notice to all Certificateholders listed on the certificate registry for the Additional Subject Settlement Trust and to any Certificateholders in the Additional Subject Settlement Trust (or their counsel) that have requested such papers from any Petitioner in accordance with the Notice Program, and it is further~~

3. ORDERED that Petitioners shall apply the Interim Escrow Measures to the Additional Subject Settlement Trust; and it is further

4. ORDERED that any potentially interested person who wishes to be heard with respect to the *Interim Escrow Measures* may appear and be heard at IAS Part 60 in Room 248 of New York County Courthouse, 60 Centre Street, New York, New York at 12:00 A.M./P.M. on

July 17, 2018, provided that such person e-files or submits a hard copy to the Clerk of Part 60 of a notice of appearance and the grounds for any objection to the foregoing relief on or prior to that date; and it is further

5. ORDERED that, solely with respect to the Additional Subject Settlement Trust, any interested person who wishes to be heard on the merits of the questions presented by the Petition may appear by counsel or (subject to the limitations imposed by CPLR 321(a)) in person at the Final Hearing and present such evidence or argument as may be proper and relevant; provided, however, that, except for good cause shown, no interested person shall be heard and nothing submitted by any interested person shall be considered by the Court unless such interested person serves an answer to the Petition concerning the Additional Subject Settlement Trust, together with any supporting papers (a "Submission"), on or before *August*

2, 2018. Submissions shall only concisely set forth the interested person's positions, including, without limitation, opposition, if any, on each of the issues raised in the Petition concerning the Additional Subject Settlement Trust (in view of the need for

conciseness, this recitation shall not limit argument in additional, required submissions on standing and/or merits issues). Submissions shall be double-spaced and shall not exceed a total of two (2) pages, not including any notices of appearance or intention to appear; and it is further

6. ORDERED that by August 9, 2018, pursuant to the procedure outlined below, any interested person who claims to be an investor in the Additional Subject Settlement Trust shall exchange information, verified through affidavit by the party in question (not by external counsel, provided that, if provision of an affidavit of a party is not practicable, an application may be made for such information to be provided by in-house counsel), concerning the nature of the interests held by such interested person in the Additional Subject Settlement Trust. Such information shall: (i) describe the nature of the interests held; (ii) specify the relevant class, by either CUSIP number or Bloomberg ID, for each certificate held; (iii) state whether it is a direct holding of a certificate; and (iv) state whether the interest, if not a direct holding of a certificate, takes the form of a repurchase agreement (repo), or 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 the Additional Subject Settlement Trust, and shall specify the form in which any such interest is held. The information shall be provided only to external counsel of record for each party who has stated an interest in the Additional Subject Settlement Trust 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 for use in this action. 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; and it is further

7. ORDERED that by August 20 2018, the parties shall submit to the Court an agreed upon proposed judgment and severance order concerning the manner of distribution of the Allocable Share of the Settlement Payments to the Additional Subject Settlement Trust as to which, among the parties that have appeared to take a position on the Additional Subject Settlement Trust pursuant to this order, there is no disagreement regarding the method for distributing the Additional Subject Settlement Trust's Allocable Share of the Settlement Payments; 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 Allocable Share of the Settlement Payments of ^{any} ~~the Additional~~ Subject Settlement Trust where there is a dispute among the parties regarding how the payment should be distributed; or (ii) the distribution methodology on ^{any} ~~the Additional~~ Subject Settlement Trust for which no investor has appeared in this action; and it is further

8. ORDERED that by August 20 2018, the parties shall submit to the court:
- 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 for the Additional Subject Settlement 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

- ii. Which parties have interests in the Additional Subject Settlement Trust and wish to be heard on the resolution of issues pertinent to the Additional Subject Settlement Trust;
- 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; and it is further

9. ORDERED that by August 20, 2018, the Petitioners shall also advise the Court concerning a proposed procedure to resolve their Petition as to the Additional Subject Settlement 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 Allocable Share of the Settlement Payments for any Subject Settlement Trust if there is a dispute among the parties regarding how the payment should be distributed; and it is further

10. ~~ORDERED that, solely with respect to the Additional Subject Settlement Trust, any party wishing to challenge the standing of another party or parties shall submit an opening brief on standing on _____, 2018. Responsive briefs on standing shall be submitted on _____, 2018. Reply briefs on standing shall be submitted on _____, 2018; and it is further~~

410 - REPLACED WITH INSERT C

11. ORDERED that oral argument on the standing issues for the Additional Subject Settlement Trust, if any, will be held in Part 60 on a date to be determined. At the oral argument, the court will set a schedule for briefing on the merits; and it is further

12. ORDERED that all future papers required or permitted to be served by Petitioners or any party who appears shall be served by filing on the court e-filing system NYSCEF, unless a party or recipient is exempt, and by overnight mail or personal delivery unless the Court orders otherwise; and it is further

13. ORDERED that any written notice of intention to appear and any other written motions and papers required or permitted to be filed for any purpose in this proceeding, other than the Submission referenced above in paragraph 5, shall be double-spaced and shall not exceed a total of fifteen (15) pages, not including documentary evidence, unless an expansion of the page limit is granted by the Court in advance of filing of the papers; and it is further

14. ORDERED that any interested person who fails to appear at the Final Hearing in the manner described herein or fails to answer the Petition concerning the Additional Subject Settlement Trust in the manner described herein shall be deemed to have waived the right to be heard on the questions presented by the Petition concerning the Additional Subject Settlement Trust and from appealing any order, resolution, or judgment issued in this proceeding concerning the Additional Subject Settlement Trust and shall be forever and finally barred from raising the right to be heard on such questions in this or any other action or proceeding, unless the Court orders otherwise; and it is further

15. ORDERED that two hard copies of all papers served by any person, with proof of service thereof, shall also be filed with the Clerk of Part 60 by the date on which such papers are required to be filed. For any paper for which this Order to Show Cause does not specify a

service and filing date, the two hard copies shall be filed with the Part 60 Clerk in advance of the return date and, if possible, at least seven days before the return date. Except for good cause shown, no request to be heard will be granted unless such hard copies are filed pursuant to this paragraph.

ENTER: Marcy S. Friedman 6/28/18
MARCY S. FRIEDMAN, J.S.C.

NO PREVIOUS APPLICATION HAS BEEN MADE FOR THE RELIEF REQUESTED HEREIN. D.S.
(INITIAL)

In the Matter of the Application of U.S. Bank Natl. Assn.
Index No. 651625/2018
Order to Show Cause Dated June 28, 2018

Insert A

Replacement for Paragraph 2

2. ORDERED that within twenty-one (21) days after the entry of this Order, the Petitioners shall cause notice of the initiation of this proceeding and of the Final Hearing to be provided by the means set forth in paragraph 5 of the April 20, 2018 Order to Show Cause (April 20, 2018 OSC), provided that:

(a) the Notice annexed as Exhibit B to the April 20, 2018 OSC shall be modified to use the exact language of the April 20, 2018 OSC and this Order, and shall be further modified to reflect the dates set forth in this Order; and

(b) this Order, the Notice and the April 20, 2018 OSC, the Petition, the Corrected Exhibits to the Petition, the Memorandum of Law dated April 4, 2018, and all prior orders in this proceeding shall be served pursuant to paragraph 5 (a) of the April 20, 2018 OSC, except that: the mailing required by paragraph 5 (a) shall be made to all Certificateholders listed on the certificate registry for the Additional Subject Settlement Trust and to any Certificateholder in the Additional Subject Settlement Trust (or its counsel) that has requested such papers from any Petitioner; and

(c) the Notice shall also be served pursuant to paragraph 5 (b), (c), and (d) of the April 20, 2018 OSC; and it is further

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In the Matter of the Application of U.S. Bank Natl. Assn.
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Insert B

New Paragraph 4 (a)

4 (a). ORDERED that the Petitioners shall provide notice of the Interim Escrow Measures Hearing to potentially interested persons on or before July 6, 2018 by delivering a copy of this Order by the means set forth in paragraph 4 of the April 20, 2018 OSC, except that: the mailing required by paragraph 4 (c) shall be made to all Certificateholders listed on the certificate registry for the Additional Subject Settlement Trust and to any Certificateholder in the Additional Subject Settlement Trust (or its counsel) that has requested such papers from any Petitioner; and it is further

Insert C

Replacement for Paragraph 10

10. The court declines to set a schedule in this Order for briefs on standing with respect to the Additional Subject Settlement Trust. All appearing parties shall telephone the court on a conference call on July 3, 2018 at 11:30 a.m. The purpose of the call will be to inform the court whether they have any information at this time as to whether there is or will be any disagreement regarding the method for distributing the Additional Subject Settlement Trust's Allocable Share of the Settlement Payments; and to discuss a procedure to avoid duplication of briefing of standing issues that are currently being briefed by the investors that have already appeared, and to avoid delay of the hearing of such standing issues.

MF 6/25/18
HON. MARCY FRIEDMAN

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