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Via Electronic Filing and Hand Delivery

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Honorable Marcy S. Friedman
New York State Supreme Court
Commercial Division
Courtroom 248
60 Centre Street
New York, New York 10007

Re: In the matter of the application of U.S. Bank National Association, Wells Fargo Bank, National Association, et. al. for Judicial Instructions under CPLR Article 77 on the Administration and Distribution of a Settlement Payment

Dear Justice Friedman:

We are New York counsel to petitioner Wells Fargo Bank, National Association ("Wells Fargo"), and co-counsel with Faegre Baker Daniels LLP. We respectfully submit this letter on behalf, and with the consent, of the Petitioners in the above-referenced proceeding.

Wells Fargo and Petitioners U.S. Bank National Association, Wilmington Trust, National Association, Wilmington Trust Company, and Citibank, N.A., in their various capacities as trustees, indenture trustees, successor trustees, securities administrators, paying agents, and/or calculation agents (collectively, the "Petitioners") of certain residential mortgage-backed securitization trusts (the "Settlement Trusts"), commenced this proceeding pursuant to CPLR § 7701 by the filing of a Petition, a proposed Order to Show Cause, and supporting documents on April 4, 2018, seeking judicial instruction concerning the administration and distribution of settlement payments resulting from certain settlement agreements entered into by and among a group of institutional investors and Lehman Brothers Holdings Inc. and other debtors in the bankruptcy cases in the United States Bankruptcy Court for the Southern District of New York styled or related to *In re Lehman Brothers Holdings Inc., et al.* Chapter 11 Case No. 08-13555.

In its proposed Order to Show Cause, Petitioners seek interim relief authorizing Petitioners to maintain the respective shares of the settlement payment allocable to each of the Settlement Trusts in the escrow accounts described in the affidavit accompanying the Petition, and to invest those amounts for the benefit of certificateholders in identified and Court-approved investment vehicles pending the Court's determination of the administration and distribution issues presented in the Petition. The interim relief is similar to the relief proposed to, and approved by, Your Honor in the pending matter *Wells Fargo Bank, National Association, et. al.* (Index No. 657387-2017) (the "Pending RMBS Trust Proceeding").

Petitioners write in response to the April 5, 2018 letter submitted by certain institutional investors (the "Institutional Investors") (the "April 5 Letter") concerning the proposed Order to Show Cause, which is scheduled to be presented to Your Honor for review and consideration on Wednesday, April 11, 2018 at 10 a.m. EST.

While the Institutional Investors appear to object to the filing of the Petition with this Court, Petitioners respectfully submit that this action is properly venued in this Court, and that the interim relief requested is reasonable and necessary during the pendency of the proceeding.

Petitioners filed the Petition in a court of competent jurisdiction seeking the efficient adjudication of issues similar to those in the Pending RMBS Trust Proceeding, to which the Institutional Investors are also parties. This type of proceeding was contemplated by and addressed in the Covered Loan Settlement Agreement. *See* Petition, Ex. B, § 3.06(d) ("[E]ach Accepting Trustee and/or the party responsible for such implementation shall be entitled, prior to implementing the forgoing Subsections 3.06(a)-(c), to seek further guidance from a court of competent jurisdiction regarding the applicable procedures under the Governing Agreements related to the distribution of Plan Payments ....").

The April 5 Letter erroneously suggests that Petitioners were required to pursue this relief instead before the Bankruptcy Court overseeing the LBHI Debtors' bankruptcy proceeding, citing to and relying upon an Order of the Bankruptcy Court dated March 15, 2018 (the "Bankruptcy Order"), that was also filed as Exhibit E to the Petition. Contrary to the Institutional Investors' contentions in the April 5 Letter, the Bankruptcy Court did not retain jurisdiction over the issues raised in the Petition. Rather, the Institutional Investors erroneously conflate the "Plan Administrator's" payment of the "Allowed Claim" to the Accepting Trustees (as set forth in the Bankruptcy Order, and concerning which the Bankruptcy Court retained jurisdiction) ***with*** the Petitioners' distribution of "Allocable Shares" to Certificateholders (which goes unmentioned in the Bankruptcy Order, and is governed by the Governing Agreements).[1]

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[1] The Bankruptcy Court retained jurisdiction "arising from or related to the implementation of the Order," Bankruptcy Order, ¶ 5, but the implementation of the Order required allocation and distribution of the "Allowed Claim," which is undertaken by the Plan Administrator, and not the Petitioners, *see* id. at ¶ 4. Under that settlement agreement, the Petitioners do not allocate and distribute the Allowed Claim (which would require distributing it to themselves)—the Plan Administrator does that. Instead, the Petitioners distribute the "Allocable Shares" to Certificateholders under their respective Governing Agreements. Petition, Ex. B., Sec. 3.06. Distribution of Allocable Shares is not mentioned in the Bankruptcy Order.

The Bankruptcy Order does not make any provision for the Petitioners' administration of payments received ***after*** performance by the Plan Administrator, nor would it make sense to do so, as those payments are no longer a part of the LBHI Debtors' bankruptcy estate.[2] The Petition only involves competing claims among beneficial holders of securities of the Subject Settlement Trusts to the payment that the Plan Administrator already made in resolving its liability to those trusts. In other words, the Petition does not involve any claim of, or against, any debtor.

In any event, even if this Court concludes that the Bankruptcy Court sought to retain jurisdiction over the issues in the Petition, the Bankruptcy Court certainly did not maintain *exclusive* jurisdiction over it.

Moreover, where the Covered Loan Settlement Agreement mandates that a given action occur specifically in the Bankruptcy Court, it says so.[3] With respect to the filing of a proceeding seeking judicial guidance "regarding the applicable procedures under the Governing Agreements related to the distribution of Plan Payments or determining the balance of securities potentially affected by distribution of the Plan Payments," the Covered Loan Settlement Agreements provides only that the relief is to be sought in any "court of competent jurisdiction," without reference to the Bankruptcy Court. *See* Petition, Ex. B, § 3.06(d).

The Bankruptcy Court approved the Covered Loan Settlement Agreement—including the provision permitting Petitioners to seek a court of competent jurisdiction's guidance concerning the interpretation of their Governing Agreements. By filing the Petition in this Court—whose jurisdiction the Institutional Investors do not question—the Petitioners have complied with the terms of the Covered Loan Settlement Agreement. The Institutional Investors are likewise bound by that same agreement as they negotiated and signed it months *before* the Accepting Trustees accepted it.

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[2] Notably, two of the Petitioners were not parties to the Covered Loan Settlement Agreement nor to the proceeding that gave rise to the Bankruptcy Order.

[3] *See*, e.g., Petition, Ex. B, §§ 1.12 ("Estimation Proceeding" to occur in Bankruptcy Court); 1.37 ("Trustee Findings Order" to be entered by District Court based on "findings of fact and conclusions of law submitted by the Bankruptcy Court"); 2.01 (settlement agreement "binding and effective" "subject to Bankruptcy Court approval"); 2.03(a) (procedure for seeking settlement approval before the Bankruptcy Court); 3.01 (estimation proceeding before Bankruptcy Court).

As the Institutional Investors do not appear to be disputing the terms of the Covered Loan Settlement Agreement, or contesting that this Court indeed is a "court of competent jurisdiction," and, more importantly, as they have provided no reason to deny the interim relief sought by the Petitioners, and have the option of moving to dismiss the Petition under CPLR Rules 406 and 3211 (despite Petitioners' view that such a motion has no likelihood of success), Petitioners respectfully submit that the interim relief should be granted.

Finally, in order to provide as much as notice as practicable prior to such hearing, Petitioners intend to post the Petition, the proposed Order to Show Cause and all documents in support thereof to the investor reporting website for the applicable Settlement Trusts and to www.lbhirmbssettlement.com.

We thank the Court in advance for its attention and consideration of this matter.

Respectfully Submitted,

Zachary G. Newman

cc: All Counsel of Record (via NYSCEF)