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*Via E-Filing*

Hon. Marcy Friedman  
Supreme Court, NY County  
60 Centre Street, Room 663  
New York, NY 10007

**Re: In re U.S. Bank Nat'l Ass'n, et al. (Lehman Article 77), No. 651625/2018**

Dear Justice Friedman:

This joint letter is submitted on behalf of Ambac Assurance Corporation, represented by the undersigned, and Petitioner U.S. Bank National Association (the "Trustee"). During a January 3, 2019 call to Chambers, the Court invited the parties to submit certain orders from the Lehman bankruptcy, and to address whether the proposed partial severance order and partial final judgment for LXS 2007-17H (the "Subject Trust"), NYSCEF Doc. No. 133 (the "Proposed Order"), is consistent with these orders or calls for further action by the bankruptcy court. Ambac and the Trustee agree that the issues resolved by the Proposed Order are properly before this Court and that entry of the Proposed Order would be consistent with the bankruptcy court's orders. Accordingly, we respectfully request that the Court enter the Proposed Order in the interest of the prompt distribution of this Allocable Share.

The bankruptcy court abstained from exercising jurisdiction over interpretation of the Governing Agreements, and following the filing of the Petition, this Court has jurisdiction to determine distribution questions arising under the applicable Governing Agreement, including the distribution of settlements funds to Ambac as set forth in the Proposed Order (an issue no interested party has disputed). While the bankruptcy court asked that this Court refer to the bankruptcy court any issues that may arise "regarding interpretation of the RMBS [Covered Loan] Settlement Agreement," the Proposed Order seeks no interpretation of that agreement.

## **A. Background Regarding the Lehman Bankruptcy**

The Covered Loan Settlement Agreement (attached as Ex. A) resolved certain claims asserted by RMBS trustees against the Lehman debtors ("Lehman") for breach of representations and warranties.<sup>1</sup> We attach three orders issued by the bankruptcy court that relate to the Covered Loan Settlement Agreement. Exhibit B is the bankruptcy court's July 6, 2017 order approving

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<sup>1</sup> See Recitals, Lehman Brothers RMBS Trust Settlement Agreement (attached as Ex. A).

the terms of the Covered Loan Settlement Agreement pursuant to Bankruptcy Rule 9019 (the “9019 Order”). Decretal paragraph D of the 9019 Order provided for an Estimation Proceeding under 11 U.S.C. § 502(c), as called for by the Covered Loan Settlement Agreement, to estimate and determine the size of the trustees’ claim. *See* Ex. A §§ 3.01-3.02. Exhibit C is a March 15, 2018 Order Estimating Allowed Claim Pursuant to RMBS Settlement Agreement (the “Estimating Order”). The Estimating Order contained the bankruptcy court’s findings after the 22-day Estimation Proceeding. Exhibit D is the bankruptcy court’s May 7, 2018 order denying a motion filed by the Institutional Investors to enjoin the instant Article 77 Proceeding. During the January 3 call, the Court referred to Exhibit D, but we understand the Court was not in possession of Exhibits B and C. Additionally, we submit as Exhibit E excerpts from the Trust Agreement for the Subject Trust.

**B. The Bankruptcy Court Orders Regarding the Covered Loan Settlement Agreement Do Not Address the Distribution of Payments to an Insurer**

None of the relevant bankruptcy court orders, attached as exhibits to this letter, addresses the distribution of Allocable Shares to insurers like Ambac. While a group of Institutional Investors participated in negotiations concerning the Covered Loan Settlement Agreement, the claims actually resolved were trust claims that the trustees had standing to assert.<sup>2</sup> The trustees pursued these claims on behalf of the trusts, whose beneficiaries include bond insurers where the Governing Agreements so provide.

The bankruptcy court’s disposition of the trusts’ claims was to determine the size of such claims to be allowed under the plan of distribution, and to provide that the “allocation and distribution of the Allowed Claims shall be conducted in accordance with the terms of the RMBS [Covered Loan] Settlement Agreement.” Estimating Order at 2. Section 3.06(a) of the Covered Loan Settlement Agreement directs that distribution of the settlement is determined by the Governing Agreements:

*Plan Payments on each Participating Trust’s Allocable Share shall be deposited into the related Trust’s collection or distribution account pursuant to the terms of the Governing Agreements, for further distribution in accordance with the distribution provisions of the Governing Agreements as though such Plan Payments are a subsequent recovery available for distribution on the related distribution date...*

Ex. A § 3.06(a) (emphasis added).

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<sup>2</sup> *See* 9019 Order ¶ 9 (“The Trustees, the only parties other than [Lchman] with standing to litigate the claims that will be determined in the Estimation Proceeding, entered into the RMBS Settlement Agreement and support the Estimation Process to be established by it.”).

Neither these bankruptcy court orders nor the Covered Loan Settlement Agreement address insurer reimbursements. Ambac asserts a claim to receive the Allocable Share for the Subject Trust based on the Governing Agreement, and raises no issue of interpretation of the Covered Loan Settlement Agreement. As a result, the issues resolved by the Proposed Order are properly before the Court as a stipulated implementation of the relevant Governing Agreement for the Subject Trust, and entry of the Proposed Order would be consistent with the bankruptcy court's May 7, 2018 order.

**C. Ambac's Position on the Merits**

From its first filing in this Proceeding, Ambac has contended that it is "entitled to payments that would otherwise be due to the insured certificates" based on subrogation rights provided in the Governing Agreements for the Subject Trust. NYSCEF Doc. No. 62. While the Trustee took no position on the merits, the Trustee sent holders in the Subject Trust notice of Ambac's position, as described in an affidavit filed with the Proposed Order. NYSCEF Doc. No. 133. The Trustee received no objection to Ambac's stated position, and no other interested party has appeared as to the Subject Trust.<sup>3</sup> Thus, Ambac's position as to the Subject Trust is unopposed.

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In the interest of having the Allocable Share promptly distributed, the parties respectfully request that the Court enter the Proposed Order. We thank the Court for the opportunity to submit this letter.

Respectfully submitted,

/s/ Henry J. Ricardo

Henry J. Ricardo

Cc: All counsel (via NYSCEF)  
Attachments

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<sup>3</sup> Ambac notes that the definition of "Certificate Principal Amount" in the Governing Agreement for the Subject Trust provides, "to the extent that any Applied Loss Amount was reimbursed under the Certificate Insurance Policy, **any Subsequent Recovery otherwise payable on the Insured Certificates shall instead be payable to the Certificate Insurer.**" Ex. E at 20 (emphasis added). Here, Ambac contends the entire Allocable Share is otherwise payable to the Insured Certificates, and the Applied Loss Amounts reimbursed under the Certificate Insurance Policy far exceed this Allocable Share. Accordingly, Ambac claims entitlement to the entire Allocable Share. No one has appeared to dispute these contentions.