

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,
NATIONAL ASSOCIATION (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. _____/2018
Mot. Seq. 001

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

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

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 U.S. Bank National Association, Wells Fargo Bank, National Association, Wilmington Trust, National Association, Wilmington Trust Company, and Citibank, National Association, solely in their respective and various capacities as trustees, indenture trustees, successor trustees, securities administrators, paying agents, and/or calculation agents (collectively, the “Petitioners”) of the residential mortgage-backed securitization trusts listed on Exhibit A of the Petition (each a “Subject

Settlement Trust” and collectively, the “Subject 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 the proper administration and distribution of a Covered Loan Settlement Payment and a Transferor Loan Settlement Payment (the “Settlement Payments”) with respect to the Subject Settlement Trusts (the “Settlement Payment Application Process”). The Settlement Payments are being made as a result of certain allowed claims of the Settlement Trusts 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 (the “Allowed Claims”). In accordance with the Covered Loan Settlement Agreement and Transferor Loan Settlement Agreement, the Trustees engaged a professional firm to calculate each Settlement Trust’s Allocable Share—that is, the portion of the Settlement Payments allocable to each Settlement Trust. The Trustees are in receipt of the professional firm’s calculation of each Settlement Trust’s Allocable Share. The Petitioners anticipate that the next distribution of plan payments on April 5, 2018 in the bankruptcy proceeding will include amounts paid in respect of the Allowed Claims.

3. The purpose of the Petition is to resolve contractual issues that bear directly upon the proper administration and distribution of the Settlement Payments to holders of the certificates, notes, or other securities issued by the Subject Settlement Trusts (the beneficial owners thereof, “Certificateholders”). The Covered Loan Settlement and the Transferor Loan Settlement also cover certain residential mortgage-backed securitization trusts that are not subject to the Petition listed on Exhibit D to the Petition (the “Non-Subject Settlement Trusts”).

For the Non-Subject Settlement Trusts, the applicable Petitioners individually and respectively determined that, at this time, there are no material issues concerning administration and distribution of the Settlement Payments that warrant judicial instruction and for that reason the relief sought in the Petition is not intended to apply to Non-Subject Settlement Trusts.

4. Capitalized terms used but not defined in this Affidavit have the meanings ascribed to them in the Petition, in the Covered Loan Settlement Agreement (Exhibit B to the Petition), or in the Transferor Loan Settlement Agreement (Exhibit C to the Petition).

ESCROW ARRANGEMENTS

5. The Covered Loan Settlement Agreement and Transferor Loan Settlement Agreement provide that:

To the extent that any Accepting Trustee is the party responsible for distributing payments for a given Trust under the applicable Governing Agreement(s), that Accepting Trustee shall use its reasonable best efforts to distribute the amounts received from the LBHI Debtors on account of the Allocable Shares of the Net Allowed Claim promptly.

Covered Loan Settlement Agreement, § 3.01; Transferor Loan Settlement Agreement, § 3.01.

6. This proceeding's purpose—to obtain the Court's direction about how to distribute Allocable Shares—would be frustrated if the Settlement Payments were immediately routed to the Subject Settlement Trusts and distributed to Certificateholders without this Court's direction. Immediate distribution using any of the various approaches to the Settlement Payment Application Process discussed in the Petition would irreversibly alter the status quo, as it would be impracticable for the Petitioners to claw-back and redistribute the substantial Settlement Payments in the face of contrary judicial instruction.

7. Therefore, to maintain the status quo, the Petitioners request that the Court immediately order each Petitioner, solely in its individual, non-trustee capacity unrelated to any

of the Settlement Trusts, to maintain the Allocable Shares of the Settlement Payments as the “Escrow Agent” under the Escrow Agreement applicable to the Settlement Trusts for which such Petitioner is trustee, indenture trustee, successor trustee, paying agent, or securities administrator, substantially in the forms attached as Exhibit 1 hereto, until such time as the Court enters an order concerning the Settlement Payment Application Process and directing the transfer of the Settlement Payments to the applicable collection accounts or distribution accounts for the related Subject Settlement Trusts.

8. For example, Wells Fargo, solely in its capacity as Trustee of certain Subject Settlement Trusts, would enter into the applicable Escrow Agreement with Wells Fargo, in its individual capacity unrelated to any of the Subject Settlement Trusts, appointed as “Escrow Agent.”

9. The Proposed Order explicitly provides that each Petitioner deposit and hold its Allocable Shares of the Settlement Payments for each Subject Settlement Trust as a deposit in escrow pursuant to such Petitioner’s Escrow Agreement until the time that this Court enters an order concerning the Settlement Payment Application Process and directs the transfer of the Settlement Payments to the applicable collection accounts or distribution accounts for the related Subject Settlement Trusts. It is necessary for the Settlement Payments for the Settlement Trusts to be held outside of the collection accounts and distribution accounts because under the Governing Agreements and Settlement Agreements, any funds deposited in such accounts must generally be distributed to Certificateholders in a matter of days or weeks.

10. Maintenance of the applicable Allocable Shares pursuant to the Escrow Agreements is needed as an urgent interim measure, but the Escrow Agreements are, in accordance with their terms, subject to future direction by the Court concerning alternative

means of handling the Settlement Payments during the pendency of this proceeding. The Escrow Agreements are of indefinite duration and if necessary can continue in place until the Court resolves the distribution issues presented by the Petition.

11. The Proposed Order directs the escrow agents under each Escrow Agreement (the “Escrow Agents”) to use commercially reasonable efforts to cause the Settlement Payments for the Settlement Trusts to be invested and reinvested in high quality money market funds (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.

12. 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 and neither will the Petitioners, servicers, securities administrators, or other administrators of the Subject Settlement Trusts. Any interest earned will be re-invested into such funds and inure to the benefit of Certificateholders.

13. The same escrow arrangement described in the foregoing paragraphs has been approved in similar disputes about distributions of settlement payments. *See In re Wells Fargo Bank, National Association, et al.*, Index No. 657387/2017 (Sup. Ct. N.Y. Cty. Dec. 15, 2017) (Friedman, J.); *In re Bank of New York Mellon*, Index No. 150973/2016 (Sup. Ct. N.Y. Cty. Feb. 8, 2016) (Scarpulla, J.).

NOTICE AND SERVICE

14. The Trustees 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”) in the form of Exhibit 3 hereto.

15. The Proposed Order requires that within twenty-one (21) business days of the entry of this Order to Show Cause, the Petitioners shall cause notice of this proceeding and of the Final Hearing to be provided by: (a) mailing, by first class, registered mail, a copy of a notice in substantially the form submitted as Exhibit 3 to the Schnell Affidavit (the “Notice”), as well as the Order to Show Cause, the Petition, the Memorandum of Law dated April 4, 2018, and all other papers filed contemporaneously with the Petition (other than the compact disc containing electronic copies of the Governing Agreements) to all Certificateholders listed on the certificate registry for each of the Settlement Trusts and to any certificateholder in a Settlement Trust (or its counsel) that has requested such papers from any Petitioner; (b) electronically transmitting the Notice to The Depository Trust Company, which will post the Notice in accordance with its established procedures; (3) electronically posting, as soon as reasonably practical but no later than twenty-one (21) days from the date hereof, 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 notice on the investor reporting website for the applicable Settlement Trusts referring investors to <http://www.lbhirmssettlement.com> for information about this proceeding; or (y) the Notice on the investor reporting website for the applicable Settlement Trusts; and (d) electronically posting, as soon as reasonably practical but no later than twenty-one (21) days from the date hereof, a copy of the Notice, as well as the Order to Show Cause, the Petition, the Memorandum of Law dated April 4, 2018; and all other

papers filed contemporaneously with the Petition (other than the compact disc containing electronic copies of the Governing Agreements) to www.lbhirmssettlement.com, and subsequently electronically posting all papers filed in this proceeding to the same website (collectively, the “Notice Program”).

16. 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 Wells Fargo Bank, National Association, et al.*, Index No. 657387/2017, decision dated December 15, 2017 (Friedman, J.); *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).

17. Due process does not require that every interested party actually receive direct notice from the Trustees. 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

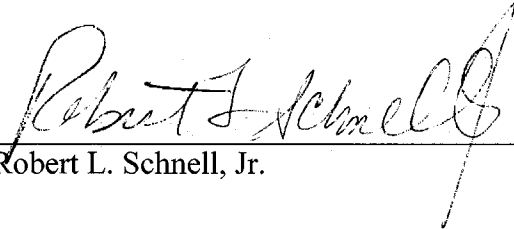
18. The Proposed Order proposes an early status conference to discuss a schedule for future proceedings in this case. The Petitioners respectfully request that the status conference be held in April 2018. The Petitioners also request a Final Hearing in August 2018 on the merits of

the issues raised by the Petition, with merits submissions and reply submissions to be due in July 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.

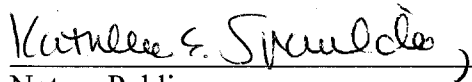
NO PRIOR REQUEST, ETC.

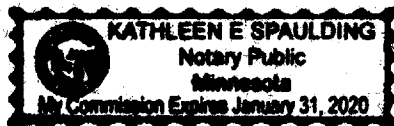
19. No prior request for the relief sought herein has been made to this or any other Court. An *ex parte* order to show cause is sought to minimize disruption in the markets for securities of the Settlement Trusts and to ensure that no Certificateholder has an unfair information advantage. This application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


Robert L. Schnell, Jr.

Subscribed and sworn to before me,
a Notary Public, this 3rd day of April, 2018.


Notary Public



CERTIFICATE OF CONFORMITY OF ACKNOWLEDGMENT

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

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 3rd April, 2018.

Print Name KAELA MCCABE

Signature [Handwritten Signature]

State Attorney ID No.: 0399630

Address 2200 WELLS FARGO CENTER

90 SOUTH SEVENTH ST MINNEAPOLIS, MN 55402