

At IAS Part 60 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York on the _____ day of _____, 2023

PRESENT: Hon. Melissa A. Crane, Justice.

In the matter of the application of

WELLS FARGO BANK, NATIONAL ASSOCIATION, U.S. BANK NATIONAL ASSOCIATION, U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, THE BANK OF NEW YORK MELLON, THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., WILMINGTON TRUST, NATIONAL ASSOCIATION, HSBC BANK USA, N.A., and DEUTSCHE BANK NATIONAL TRUST COMPANY (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 Distribution of a Settlement Payment.

Index No. 657387/2017

[~~PROPOSED~~] FINAL JUDGMENT AND ORDER CONCERNING 24 TRUSTS (24 TRUSTS PROPOSED JUDGMENT)

WHEREAS, the Petitioners identified in the above case caption commenced this proceeding under CPLR Article 77 by filing a petition (the "Petition") seeking judicial instructions concerning the administration and distribution of a settlement payment (the "Settlement Payment") for 270 residential mortgage-backed securities trusts identified in Exhibit A to the Petition (the "Settlement Trusts") under a settlement agreement dated as of November 15, 2013 and modified as of July 29, 2014 (the "Settlement Agreement"); and

WHEREAS, all capitalized terms used and not otherwise defined in this Final Judgment and Order (the "Order") shall have the meanings ascribed to such terms in the Petition; and

WHEREAS, on August 30, 2022, the Institutional Investors (as defined below) submitted, on behalf of all interested parties (including the affected Petitioners), a Proposed Final Judgment and Order for 37 trusts (NYSCEF No. 982) (the “37 Trusts Proposed Order”); and

WHEREAS, on August 31, 2022, the Court issued an Order to Show Cause (NYSCEF No. 983) why the 37 Trusts Proposed Order should not be entered; and

WHEREAS, on September 14, 2022, Wells Fargo Bank, National Association (“Wells Fargo”), an Interested Party (and affected Petitioner), submitted the Affirmation of Clay J. Pierce in Partial Opposition to the Institutional Investors’ Order to Show Cause Seeking Entry of Final Judgment and Order for 37 Trusts (NYSCEF No. 988), requesting that the Court revise the 37 Trusts Proposed Order to exclude 27 Settlement Trusts for which Wells Fargo indicated it intends to seek further guidance from the Court regarding the “Cross-Over Date” and “Allocation” issues;¹ and

WHEREAS, on September 19, 2022, Wells Fargo submitted the Supplemental Affirmation of Clay J. Pierce in Partial Opposition to the Institutional Investors’ Order to Show Cause Seeking Entry of Final Judgment and Order for 37 Trusts (NYSCEF No. 993) (the “Wells Fargo Objection”), supplementing its Objection and limiting its applicability to 24 of the 27 Settlement Trusts it previously identified; and

WHEREAS, on October 4, 2022, the Parties appeared before Justice Crane to address the Wells Fargo Objection to the Order to Show Cause and, at that hearing, Justice Crane ordered the Parties to brief their respective positions on the Wells Fargo Objection by November 3, 2022; and

¹ See Doc. No. 988 at 3 (defining the “Cross-Over Date” and “Allocation” issues).

WHEREAS, on November 3, 2022 counsel for the Institutional Investors emailed the Court to advise that progress had been made by the interested parties in resolving the Wells Fargo Objection and, consistent therewith, requested that the Court provide the interested parties additional time to resolve the issues raised in the Wells Fargo Objection; and

WHEREAS, on November 10, 2022, counsel for certain of the Responding Parties filed submissions with the Court advising that there was agreement in principle regarding the Wells Fargo Objection resolving the Cross-Over Date and Allocation issues raised in the Wells Fargo Objection and requesting that the Court provide the interested parties additional time to finalize the details of the proposed final judgment for the 24 Trusts subject to the Wells Fargo Objection; and

WHEREAS, Petitioners take no position on whether the instructions in this Order concerning the resolution of the issues raised in the Wells Fargo Objection comport with or were resolved by the Merits Ruling, and further, Petitioners reserve the right to seek additional clarification or instruction regarding any unforeseen consequences that may arise due to the implementation of this Order; and

WHEREAS, this Order concerns the 24 Settlement Trusts identified in Exhibit A hereto that are amenable to resolution on the terms set forth herein (the “Subject Trusts”);² and

² Separate and apart from the Objection Trusts, there are approximately 22 Settlement Trusts that remain in this proceeding that require resolution. The parties expect to file one or more additional proposed judgments concerning these approximately 22 remaining Settlement Trusts.

WHEREAS, pursuant to the Settlement Agreement, the Settlement Payment is to be apportioned among the Settlement Trusts, including the individual loan groups therein and classes of principal only certificates therein, based on "Allocable Shares" (as used herein, the "Allocable Share" or "AS") calculated in an expert report filed with the Court at NYSCEF Nos. 178 and 179;³ and

WHEREAS, by Order to Show Cause dated December 19, 2017 and Interim Order dated December 20, 2017 (collectively, the "December 2017 Orders"), the Court authorized and directed the Petitioners to place the Allocable Shares for the Settlement Trusts in escrow; and

WHEREAS, the Court has been advised that the escrow provisions of the December 2017 Orders have been complied with and that the Allocable Shares for the Settlement Trusts, plus any investment earnings thereon, are currently invested as directed in the December 2017 Orders; and

WHEREAS, under the December 2017 Orders, the Court directed the Petitioners to provide notice of this proceeding pursuant to the notice program described in the December 2017 Orders (the "Notice Program"), and the Court found that the Notice Program was the best notice practicable, was reasonably calculated to put interested persons on notice of the proceeding, and constituted due and sufficient notice of the proceeding in satisfaction of federal and state due process requirements and other applicable law; and

WHEREAS, the Notice Program directed that interested persons respond to the Petition on or before January 29, 2018; and

³ Additionally, the term "certificate" as used herein refers to certificates, notes, or other applicable securities.

WHEREAS, the following parties have standing to appear with respect to the Subject Trusts: AEGON USA Investment Management, LLC, BlackRock Financial Management, Inc., Cascade Investment, LLC, the Federal Home Loan Bank of Atlanta, the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae), Goldman Sachs Asset Management L.P., Voya Investment Management LLC, Invesco Advisors, Inc., Kore Advisors, L.P., Metropolitan Life Insurance Company, Pacific Investment Management Company LLC, Teachers Insurance and Annuity Association of America, the TCW Group, Inc., Thrivent Financial for Lutherans, and Western Asset Management Company (each for themselves and, to the extent applicable, as investment managers of funds and accounts, and collectively, the “Institutional Investors”); Ambac Assurance Corporation; American General Life Insurance Company, American Home Assurance Company, Lexington Insurance Company, National Union Fire Insurance Company of Pittsburgh, Pa., The United States Life Insurance Company in the City of New York, and The Variable Annuity Life Insurance Company; Ellington Management Group, L.L.C.; Tilden Park Investment Master Fund LP, Tilden Park Management I LLC, and Tilden Park Capital Management LP, each on behalf of itself and its advisory clients; and Nover Ventures, LLC (“Nover” and, collectively, with the other remaining respondents, the “Subject Interested Parties”); and

WHEREAS, Petitioners having given the additional Notice described in and pursuant to the Order to Show Cause filed contemporaneously herewith, such Notice being deemed adequate and sufficient under applicable law by this Court; and

WHEREAS, no other certificateholders or other interested parties having appeared or otherwise objected to the entry of this Order; and

WHEREAS, in 2018, various parties (including the Subject Interested Parties) filed merits briefing concerning the issues raised in the Petition and the Court held argument concerning the same; and

WHEREAS, the Petitioners did not participate in the merits briefing and take no position on the outcome of the issues raised in either the Petition or the Wells Fargo Objection, as more fully explained and described in the Petition; and

WHEREAS, on February 13, 2020, the Court issued a Decision and Order (NYSCEF No. 843) (the “Merits Ruling”) concerning settlement payment administration and distribution issues for certain Settlement Trusts, including the Subject Trusts; and

WHEREAS, the Merits Ruling was affirmed by the First Department, Appellate Division on August 19, 2021, and

WHEREAS, on April 26, 2022, the New York Court of Appeals denied motions seeking discretionary leave to appeal to the Court of Appeals on the grounds that the order sought to be appealed from does not finally determine the proceeding, and the Court of Appeals subsequently denied motions seeking reargument with respect to the same; and

WHEREAS, although Subject Interested Person Tilden Park Investment Master Fund LP (“Tilden”) and Subject Interested Person U.S. Bank, National Association, solely in its capacity as Indenture Trustee for certain NIM Trusts holding direct interests in certain of the Subject Trusts and solely at the direction of HBK Master Fund L.P. (“U.S. Bank as NIM Trustee”), may seek further appeal and/or review of the Merits Ruling, all Subject Interested Parties under this Order (including both Tilden and U.S. Bank as NIM Trustee) waive all appeal rights solely with respect to the Subject Trusts, as set forth further herein; and

WHEREAS, as identified in Exhibit A hereto, the following Petitioners have contractual roles with respect to the Subject Trusts: The Bank of New York Mellon (“BNYM”), U.S. Bank, National Association (“USBNA”), U.S. Bank Trust Company, National Association (“USBTC”), Wells Fargo, and Wilmington Trust, National Association (“Wilmington Trust”) who are the trustees, successor trustees, and/or indenture trustees for the Subject Trusts (in such capacities, the “Subject Trustees”) and Wells Fargo who is the securities administrator, paying agent, and/or calculation agent for the Subject Trusts (in such capacity, the “Subject Payment Administrator”) (the Subject Payment Administrator and the Subject Trustees collectively, the “Subject Petitioners”); and

WHEREAS, as used herein, the term “Judgment Entry Date” means the date on which counsel of record to the parties hereto receive a copy of this Order signed by the Court by email, NYSCEF service, or other means, without regard to when the Court actually signs or the Clerk actually enters this Order; and

WHEREAS, for each Trust included in Exhibit B hereto, the term “Overcollateralization Amount Calculation” is used herein to refer to the terms in the applicable Governing Agreements prescribing that the “overcollateralization amount” is equal to the excess of the aggregate balances of the mortgage loans held by the Subject Trust over the aggregate certificate principal balances of certain designated classes of certificates, as more fully defined and described in the applicable Governing Agreements; and

WHEREAS, as used herein the term “Transfer Month” means the second month after the month in which the Judgment Entry Date occurs; and

WHEREAS, as used herein, the term “Transfer Target Date” means the fifteenth day of the Transfer Month; and

WHEREAS, as used herein, the term “AS Distribution Date” means the Distribution Date (as that term is defined in the applicable Governing Agreements) for each of the Subject Trusts occurring in the Transfer Month; and

NOW, THEREFORE, on the motion of the Subject Petitioners, it is hereby

1. ORDERED, ADJUDGED and DECREED that, on or before the Transfer Target Date, the Subject Trustees (each with respect to the Subject Trusts for which each act as trustee) are to (i) cause escrowed assets to be liquidated to cash with a value equal to the Subject Allocable Shares plus any investments earnings thereon, and (ii) cause the Subject Allocable Shares and investment earnings thereon to be deposited in the respective distribution accounts of the Subject Trusts. From the time of the aforescribed deposit, the amount so deposited shall be deemed the Subject Allocable Shares for the Subject Trusts for all purposes under the Settlement Agreement and this Order; and it is further

2. ORDERED, ADJUDGED and DECREED that sums representing investment earnings accrued on the Subject Allocable Shares not received at the time escrowed assets are liquidated to cash pursuant to the immediately preceding paragraph (“Trailing Interest”) shall (i) for Subject Trusts where the Subject Trustee and Subject Payment Administrator are the same party, be distributed on the Distribution Date for the month the Trailing Interest is received by the Subject Trustee so long as the Trailing Interest is received on or before the fifteenth day of the month or, if the Trailing Interest is received after the fifteenth day of the month, on the Distribution Date for the immediately following month or (ii) for Subject Trusts where the Subject Trustee and Subject Payment Administrator are different parties, (x) be transferred from the Subject Trustee to the Subject Payment Administrator promptly following the Subject Trustee’s receipt of such Trailing Interest and (y) be distributed on the

Distribution Date for the month the Trailing Interest is transferred so long as such transfer takes place on or before the fifteenth day of the month or, if the Trailing Interest is transferred after the fifteenth day of the month, be distributed on the Distribution Date for the immediately following month. Any Trailing Interest shall be deemed a Subject Allocable Share for the Subject Trust on whose Allocable Share such Trailing Interest was accrued, and any Trailing Interest shall be administered and distributed as a Subject Allocable Share subject to the terms of the Settlement Agreement and this Order; and it is further

3. ORDERED, ADJUDGED and DECREED that the Subject Payment Administrator shall distribute and administer the Subject Allocable Shares for the Subject Trusts on the AS Distribution Date; and it is further

4. ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for the Subject Trusts in Exhibit B hereto, the Subject Payment Administrator (i) shall first distribute the Subject Allocable Shares to certificateholders based on certificate principal balances that have not been adjusted by the Settlement Payment Write-Up, and, after such distribution, (ii) shall then increase the applicable certificate principal balances in the amount of the Settlement Payment Write-Up in a manner consistent with this Order; and it is further

5. ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Trust identified in Exhibit B hereto, the Subject Payment Administrator shall account for both the distribution of the Subject Allocable Shares and accompanying Settlement Payment Write-Up when performing the Overcollateralization Amount Calculation; and it is further

6. ORDERED, ADJUDGED and DECREED that to effectuate the immediately preceding paragraph with respect to the Subject Allocable Shares for each Subject Trust identified in Exhibit B hereto, the Subject Payment Administrator shall calculate the aggregate certificate principal balances used for the Overcollateralization Amount Calculation by (i) first increasing such certificate principal balances by the amount of the Settlement Payment Write-Up and (ii) then reducing such certificate principal balances by an amount equal to the applicable Subject Allocable Share, and this paragraph and the immediately preceding paragraph shall have no application to the calculation of certificate principal balances for any purposes other than performing the Overcollateralization Amount Calculation, and, further, for the avoidance of doubt, with respect to the Distribution Date on which the Subject Allocable Shares are distributed, the instructions in this paragraph and the immediately preceding paragraph are intended to and shall prevent the Subject Trusts from being overcollateralized as a result of the receipt, administration, and/or distribution of the Subject Allocable Shares (but shall not impact whether the Subject Trusts are overcollateralized on such Distribution Date as a result of anything unrelated to the receipt, administration, and/or distribution of the Subject Allocable Shares); and it is further

7. ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for the Subject Trusts in Exhibit C hereto, the Subject Petitioner (i) shall first increase the applicable certificate principal balances in the amount of the Settlement Payment Write-Up or a portion thereof (the "Written-Up Certificate Principal Balances"), and, after applying the Settlement Payment Write-Up, (ii) shall then distribute the Subject Allocable Shares to certificateholders based on the Written-

Up Certificate Principal Balances, in each of the cases of (i) and (ii) above in a manner consistent with the other terms of this Order; and it is further

8. ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Subject Trust included in Exhibit D hereto, the Subject Payment Administrator shall not use the Settlement Agreement Write-Up Instruction for any purposes, and shall increase the certificate principal balances for the applicable classes of certificates in the amount of the Settlement Payment Write-Up using the instructions for writing up certificates in the applicable Governing Agreement (the "Governing Agreement Write-Up Instructions") as set forth in Exhibit D, including by applying language in the Governing Agreement Write-Up Instructions that renders certain classes of certificates ineligible to be increased by the Settlement Payment Write-Up as set forth in the Merits Ruling; and it is further

9. ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Subject Trust included in Exhibit E hereto, the Subject Payment Administrator shall increase the certificate principal balances for the applicable classes of certificates eligible to be written up consistent with this Order in the amount of the Settlement Payment Write-Up using the applicable Governing Agreement Write-Up Instructions. Where the Governing Agreements provide for certificate write-ups to be performed according to "payment priority," "order of seniority," or "sequentially," the terms "payment priority," "order of seniority," or "sequentially" shall mean in the reverse order in which Realized Losses are allocated under the Governing Agreements, and it is further

10. ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for the Subject Trusts included in Exhibit F hereto, the Subject Payment Administrator shall treat the Retired Class Provision as not prohibiting the Subject Payment Administrator from: (i) distributing the Subject Allocable Shares or a portion thereof to classes of certificates with aggregate certificate principal balances that were reduced to zero dollars (\$0.00) prior to the AS Distribution Date (“Zero Balance Classes”) or (ii) applying the Settlement Payment Write-Up or a portion thereof to write-up Zero Balance Classes in a manner consistent with the other terms of this Order; and it is further

11. ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for the Subject Trusts included in Exhibit G hereto, the Subject Payment Administrator shall (i) make distributions of the Subject Allocable Shares as though no Cross-Over Date has occurred; and (ii) make distributions of the Subject Allocable Shares before making any normal course distributions as of the AS Distribution Date. For the avoidance of doubt, nothing in this paragraph, nor in Paragraph 12 below, shall be construed to alter any other distribution provisions in the applicable Governing Agreement or to require distribution to any class or classes of certificates, and it is further

12. ORDERED, ADJUDGED and DECREED that, with respect to the Subject Trusts included in Exhibit G hereto, for any ordinary course distributions, write-ups or losses, the Subject Payment Administrator will treat the Cross-Over Date (as defined in the applicable Governing Agreement) as not having occurred if those certificates referenced in the definition of Cross-Over Date have a certificate balance (as defined in the Governing Agreements, the “Balance”) greater than zero as of the prior Distribution Date after

accounting for both (i) certificate write-ups in connection with Subsequent Recoveries (which may cause certificates that had been previously written down to zero to have a positive Balance going forward); and (ii) ordinary course loss allocations and/or distributions (which may reduce the Balance of certificates to zero once again). If it is determined that the Cross-Over Date has not occurred, the Subject Payment Administrator shall be permitted to make distributions and allocate losses to subordinate certificates in accordance with the applicable terms of the Governing Agreements. For the avoidance of doubt, the Cross-Over Date as defined in the applicable Governing Agreement is not a permanent condition, and has no bearing on the eligibility of certificates to be written up; and it is further

13. ORDERED, ADJUDGED and DECREED that any aspects of the administration and distribution of the Subject Allocable Shares not expressly addressed in this Order shall be performed as provided for in the Governing Agreements and the Settlement Agreement; and it is further

14. ORDERED, ADJUDGED and DECREED that paragraphs 10-13 of this Order are not applicable to, and shall be without prejudice to and shall have no precedential effect on any trust, indenture, or other securitization other than the Subject Trusts, and shall not have any application to certificate balances (e.g., write-ups) or distributions of payments or funds other than the Subject Allocable Shares, except as expressly stated herein; and it is further

15. ORDERED, ADJUDGED and DECREED that the Subject Interested Parties forfeit, surrender, and waive any and all rights to appeal or review of this Order or the Merits Ruling solely as it applies to the Subject Trusts (provided that, for the avoidance of doubt,

the Subject Interested Parties otherwise reserve and retain any rights of appeal or further review with respect to any disputed Settlement Trusts that remain in this action); and it is further

16. ORDERED, ADJUDGED and DECREED that certificateholders, noteholders, and any other parties claiming rights or interests in any of the Subject Trusts are barred from asserting claims against any of the Subject Petitioners with respect to any conduct taken to implement and comply with the terms of this Order and with respect to the Subject Petitioners' administration and distribution of the Subject Allocable Shares and other funds referenced herein, so long as such conduct is performed in accordance with the terms of this Order; and it is further

17. ORDERED, ADJUDGED and DECREED that certificateholders, noteholders, and any other parties claiming rights or interests in any of the Subject Trusts are barred from asserting that any of the Subject Petitioners modify any prior write-ups, distributions, or write-downs based on the Subject Petitioner's interpretation of the Cross-Over Date or of the terms "payment priority," "order of seniority," or "sequentially"; and it is further.

18. ORDERED, ADJUDGED and DECREED that upon the Judgment Entry Date, Subject Petitioners shall promptly post a copy of this Order, bearing the Court's signature, on <http://rmbstrusteesettlement.com>, the website established by Petitioners; and it is further

19. ORDERED that the Clerk of New York County be, and he hereby is, directed to enter this Order forthwith and without delay.

Dated: New York, New York

April 14, 2023



Hon. Melissa Crane, J.S.C.

Judgment signed and entered this

FILED
Apr 26 2023
NEW YORK
COUNTY CLERK'S OFFICE

2023.



Clerk of New York County

657387/2017

Judgment

