

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 \_\_, 2020

**PRESENT:** Hon. Marcy S. Friedman, Justice.

In the matter of the application of

WELLS FARGO BANK, NATIONAL ASSOCIATION, U.S. BANK 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

**NOTICE OF [PROPOSED]  
PARTIAL SEVERANCE  
ORDER AND PARTIAL  
FINAL JUDGMENT  
(BSABS 2007-HE7)**

Pursuant to Section (3) of the Court’s Scheduling Order dated February 13, 2018, the Institutional Investors and The Bank of New York Mellon Trust Company, N.A., solely in its capacity as the Duke IX Trustee (“BNYMTC”), respectfully submit a [Proposed] Partial Severance Order and Partial Final Judgment concerning the administration and distribution of the Allocable Shares of the Settlement Payments for BSABS 2007-HE7 (the “Trust”), as set forth in the proposed judgment attached as Exhibit A. The Trust has not been the subject of any previous proposed severance orders presented to the Court in this proceeding.

As fully set forth in the proposed judgment, the Institutional Investors and BNYMTC are the only parties claiming an interest in the Trust with standing to appear with respect to the Trust,

and respectfully urge the Court to enter the proposed judgment. As there is no triable issue of fact as to the above Trust or the entry of this judgment, the Institutional Investors and BNYMTC request that the judgment be entered without further delay so that the Subject Allocable Shares can promptly be paid.

The Institutional Investors and BNYMTC have conferred with the trustee for the Trust, U.S. Bank National Association, who has confirmed that it can implement the proposed judgment and has no objection to it.

Dated: January 7, 2020

**MCKOOL SMITH, P.C.**

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# **Exhibit A**

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 \_\_\_, 2020

**PRESENT:** Hon. Marcy S. Friedman, Justice.

In the matter of the application of

WELLS FARGO BANK, NATIONAL ASSOCIATION, U.S. BANK 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),

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**[PROPOSED]  
PARTIAL SEVERANCE  
ORDER AND PARTIAL  
FINAL JUDGMENT  
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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, 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” calculated in an expert report filed with the Court at NYSCEF Nos. 178 and 179; and

WHEREAS, by Order to Show Cause dated December 19, 2017 and Interim Order dated December 20, 2017 (collectively, the “December 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 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 Orders; and

WHEREAS, under the December Orders, the Court directed the Petitioners to provide notice of this proceeding pursuant to the notice program described in the December 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 laws; and

WHEREAS, the Notice Program directed that interested persons respond to the Petition on or before January 29, 2018, and only (1) 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 Advisers, 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”), and (2) The Bank of New York Mellon Trust Company, N.A., solely in its capacity as the Duke IX Trustee and acting pursuant to a direction from the Duke IX Controlling Class (“BNYMTC”), have asserted a direct interest in certificates issued in the Settlement Trust BSABS 2007-HE7 (the “Undisputed Trust”); and

WHEREAS, U.S. Bank, National Association (“U.S. Bank”) is the trustee and payment administrator for the Undisputed Trust (in such capacities, the “Subject Petitioner”); and

WHEREAS, the Undisputed Trust is governed by a Pooling and Servicing Agreement (the “Subject PSA”); and

WHEREAS, all capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Petition or the Subject PSA, as applicable;

WHEREAS, the Institutional Investors and BNYMTC agree and consent to this [proposed] Partial Severance Order and Partial Final Judgment (the “Order”), which resolves the issues for which judicial instruction was sought concerning the administration and distribution of the Allocable Shares for the Undisputed Trust (the “Subject Allocable Shares”); and

WHEREAS, the term “Overcollateralization Amount Calculation” is used herein to refer to the terms in the Subject PSA prescribing that the “overcollateralization amount” is equal to the excess of the aggregate balances of the mortgage loans held by the Undisputed

Trust over the aggregate certificate principal balances of certain designated classes of certificates, as more fully defined and described in the Subject PSA; and

WHEREAS, as used herein, the term “Judgment Entry Date” means the date on which the Clerk’s docketing of this Order first appears publicly on the New York State Court Electronic Filing System, without regard to when the Court actually signs or the Clerk actually enters this Order; and

WHEREAS, as used herein, the term “Transfer Month” means the month of the Judgment Entry Date if the Judgment Entry Date is on or before the eighth calendar date of that month, and otherwise the month immediately following; 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 for the Undisputed Trust occurring in the Transfer Month, and

NOW, THEREFORE, on the motion of Warner Partners, P.C. and Gibbs & Bruns LLP, attorneys for the Institutional Investors, and McKool Smith, P.C., attorneys for BNYMTC, it is hereby

ORDERED, ADJUDGED, and DECREED that, on or before the Transfer Target Date for the Undisputed Trust, the Subject Petitioner is 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 Distribution Account of the Undisputed Trust. From the time of the aforementioned deposit, the amount so deposited shall be deemed the Subject

Allocable Shares for the Undisputed Trust for all purposes under the Settlement Agreement and this Order; and it is further

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 be distributed on the Distribution Date for the month the Trailing Interest is received by the Subject Petitioner 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, the Trailing Interest shall be distributed on the Distribution Date for the immediately following month. Any Trailing Interest shall be deemed the Subject Allocable Shares for the Undisputed Trust and any Trailing Interest shall be administered and distributed as the Subject Allocable Shares subject to the terms of the Settlement Agreement and this Order; and it is further

ORDERED, ADJUDGED, and DECREED that the Subject Petitioner shall distribute the Subject Allocable Shares to certificateholders of the Undisputed Trust on the AS Distribution Date; and it is further

ORDERED, ADJUDGED, and DECREED that in administering and distributing the Subject Allocable Shares for the Undisputed Trust, the Subject Petitioner (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



ORDERED, ADJUDGED, and DECREED that in administering and distributing the Subject Allocable Shares for the Undisputed Trust, the Subject Petitioner 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

ORDERED, ADJUDGED, and DECREED that to effectuate the immediately preceding paragraph, the Subject Petitioner shall calculate the aggregate certificate principal balance used for the Overcollateralization Amount Calculation by (i) first increasing such certificate principal balance by the amount of the Settlement Payment Write-Up; and (ii) then reducing such certificate principal balance by an amount equal to the applicable Subject Allocable Shares, and this paragraph and the immediately preceding paragraph shall have no application to the calculation of certificate principal balance 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 Undisputed Trust from being overcollateralized as a result of the receipt, administration, and/or distribution of the Subject Allocable Shares (but shall not impact whether the Undisputed Trust is 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

ORDERED, ADJUDGED, and DECREED that in administering and distributing the Subject Allocable Shares for the Undisputed Trust, the Subject Petitioner shall: (i) apply the Retired Class Provision to prevent the distribution of the Subject Allocable Shares to any applicable class of certificates with aggregate certificate principal balances of zero dollars

(\$0.00) at the time of the distribution of the Subject Allocable Shares (“Retired Classes”); (ii) apply the Retired Class Provision to permit the Settlement Payment Write-Up to be applied only to classes of certificates with aggregate certificate principal balances greater than zero dollars (\$0.00) at the time of the distribution of the Subject Allocable Shares (the “Outstanding Classes”); *provided, however*, if and to the extent that the Settlement Payment Write-Up for a corresponding Loan Group exceeds the aggregate unpaid realized losses of all Outstanding Classes related to such Loan Group, such excess amount of the Settlement Payment Write-Up shall be applied to the Retired Classes in the Undisputed Trust; and (iii) if the aggregate certificate principal balance of the Class A Certificates in a Loan Group in the Undisputed Trust is zero dollars (\$0.00) at the time of the distribution of the Subject Allocable Shares (the “Zero Balance Loan Group”), apply the Class A Redirection Provision to cause the Subject Allocable Shares assigned to the Zero Balance Loan Group to be distributed to Class A Certificates that are both from a different Loan Group and have an aggregate certificate principal balance greater than zero dollars (\$0.00) (the “Outstanding Class A Certificates”), and cause the accompanying Settlement Payment Write-Up to be applied to the certificates in the same Loan Group as the Outstanding Class A Certificates in a manner consistent with this Order; and it is further

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 Subject PSA and the Settlement Agreement; and it is further

ORDERED, ADJUDGED and DECREED that this Order is not applicable to, shall be without prejudice to, and shall have no precedential effect on (i) any argument of any

party concerning the appropriate administration and distribution of the Settlement Payment for the Settlement Trusts for which there is a dispute among the parties regarding how the Settlement Payment should be administered or distributed; (ii) the Settlement Trusts for which no investors have appeared in this proceeding or any trust, indenture, or other securitization other than the Undisputed Trust, or (iii) any applications to certificate balances (e.g., write-ups) or distributions of payments or funds other than the Subject Allocable Shares; and it is further

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

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  
January \_\_\_\_\_, 2020

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Hon. Marcy Friedman. J.S.C.

Judgment signed and entered this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

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Clerk of New York County