

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, 60 Centre Street, New York, New York, on the 1<sup>st</sup> day of ~~January~~, 2019  
*February*

PRESENT:

Hon. **MARCY S. FRIEDMAN, J.S.C.**  
J.S.C.

In the matter of the application of

THE BANK OF NEW YORK MELLON, in its Capacity as Trustee for 278 Residential Mortgage-Backed Securitization Trusts,

Petitioner,

For Judicial Instructions Under CPLR Article 77 Concerning the Proper Pass-Through Rate Calculation for CWALT Interest Only Senior Certificates.

Index No. *150738/2019*

**ORDER TO SHOW CAUSE**

UPON reading and filing the annexed Petition, the Affirmation of Matthew D. Ingber, dated January 24, 2019 (Ingber Affirmation”), and the exhibits annexed thereto, and The Bank of New York Mellon’s Memorandum of Law in Support of Its Petition Seeking Judicial Instructions (“Memorandum of Law”),

SUFFICIENT CAUSE THEREFORE <sup>BEING ALLEGED,</sup> APPEARING, IT IS

1. ORDERED, that anyone <sup>any "Interested Person" - that is, any Certificateholder or any other person claiming</sup> having an interest in the trusts identified in Exhibit A to the

annexed Petition (the “Covered Trusts”) show cause before this Court at IAS Part 60, to be held at the Courthouse, 60 Centre Street, New York, New York, on the \_\_\_\_\_ day of \_\_\_\_\_, <sup>Room 248, a date to be determined</sup>

<sup>“Final Hearing”</sup> at ~~\_\_\_\_\_~~ <sup>at \_\_\_\_\_</sup> (“Hearing Date”), or as soon thereafter as counsel may be heard, why an

order should not be issued, pursuant to CPLR § 7701, granting judgment in favor of The Bank of New York Mellon, as trustee (the "Trustee" or "Petitioner"), on its Petition; and it is further

2. ORDERED that the Court reserves the right to adjourn the ~~Hearing Date~~ <sup>Final Hearing</sup> or any

adjournment thereof without further notice of any kind other than oral announcement on the Hearing Date or any adjournment thereof; and it is further

3. ~~ORDERED that service of process shall be effectuated, and notice of the commencement~~ <sup>Omit and Replace with Insert #3 and #4</sup>

~~of this special proceeding and of the above hearing shall be given by the Trustee to all Certificateholders in the Trust, within seven (7) days hereof in the following manner:~~

~~a. by mailing a copy of the notice in the form attached to the Ingber Affirmation as Exhibit A ("Notice"), along with the Petition, the Order to Show Cause, and all other papers filed contemporaneously with the Petition, by first class, registered mail to Certificateholders listed on the Certificate Registry for the Trust;~~

~~b. by transmitting the Notice electronically to The Depository Trust Company ("DTC"), which will post the Notice to Certificateholders in accordance with DTC's established procedures; and~~

~~c. Posting the Notice on BNYM's investor reporting website.~~

5. ~~ORDERED that within 7 days of completing the steps above, the Trustee shall file with~~ <sup>Omit and Replace with Insert #5</sup>

~~the Court proof of compliance; and it is further~~

6. ~~ORDERED that any Certificateholder who wishes to be heard in support of or in~~ <sup>Omit and Replace with Insert #6-9</sup>

~~opposition to the Petition may appear in person or by an attorney on the Hearing Date and present evidence or argument that may be proper and relevant; provided, however, that, except for good cause shown, no Certificateholder shall be heard and nothing submitted by any Certificateholder shall be considered by the Court unless a written notice of intention to appear along with a statement of such Certificateholder's support or opposition and the grounds~~

therefor, shall be filed with this Court and served upon Petitioners' counsel, by electronic filing, on or before \_\_\_\_\_; and it is further

10. ORDERED that any <sup>Interested Person</sup> Certificateholder who fails to appear in the manner described above shall be deemed to have waived the right to support or oppose the Petition (including any right of appeal) and shall forever be barred from raising such support or opposition in this or any other action or proceeding, unless the Court orders otherwise; and it is further

~~ORDERED, that, on or before \_\_\_\_\_, any papers in response to any such support or opposition, shall be filed with this Court and served upon any person who filed a notice of intention to appear; and it is further~~

~~ORDERED that, except for good cause shown, no person other than Petitioner's counsel shall be heard on the Hearing Date unless such person has appeared in accordance with this Order to Show Cause; and it is further~~

~~ORDERED that, during the pendency of this proceeding, all actions filed after the date of this Order to Show Cause relating to the subject matter of this proceeding shall be assigned or transferred to the Justice before whom this proceeding is pending; and it is further~~

~~ORDERED that the Court hereby retains exclusive jurisdiction over the Petitioner, the Covered Trusts, and all trust beneficiaries (whether past, present, or future) for all matters relating to this Article 77 Proceeding; and it is further~~

~~ORDERED that, during the pendency of this proceeding, the Trustee may seek an instruction from the Court before responding to or taking any action with respect to assertions, allegations, notices, or directions from any trust beneficiary relating to the subject matter of this proceeding.~~

11. See Insert # 11.

Marcy Friedman 2/1/19

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MARCY S. FRIEDMAN, J.S.C.

Matter of Bank of NY Mellon (Article 77), Index No. 150738/2019

Insert to Order to Show Cause dated January 31, 2019

Insert ¶¶ 3 and 4

3. ORDERED that within seven (7) days of the entry of this Order to Show Cause, the Petitioner 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 substantially in the form attached as Exhibit A to the Ingber Affirmation (the "Notice")<sup>1</sup> as well as the Petition, the Order to Show Cause, and all other papers filed contemporaneously with the Petition to (i) all Certificateholders listed on the certificate registry for the Covered Trusts; and (ii) any Certificateholder of the Covered Trusts (or its counsel) of which Petitioner has actual knowledge; and (iii) any Certificateholder of the Covered Trusts (or its counsel) that has requested such papers from the Trustee; and

(b) electronically transmitting the Notice to The Depository Trust Company, which will post the Notice in accordance with its established procedures; and

(c) electronically posting a copy of the Notice, as well as this Order to Show Cause, the Petition, and all other papers filed contemporaneously with the Petition, on the Trustee's investor reporting website. All papers subsequently filed in this proceeding shall be posted promptly after filing on the Trustee's investor reporting website; and it is further

4. ORDERED that within twenty-one (21) days of the entry of this Order to Show Cause, the Petitioner shall cause notice of this proceeding and of the Final Hearing to be provided by publicizing the Notice in the online version of the Wall Street Journal for at least one business day per week for two consecutive weeks; and it is further

Insert ¶ 5

5. ORDERED that within seven (7) days of service of the notice of this special proceeding set forth above, Petitioner shall file with the Court proof of such service. The affidavits of service by the various means shall be made on personal knowledge and the affidavit of service of the mailings shall identify the certificateholders to which the mailings were made; and it is further

Insert ¶ 6

6. ORDERED that any Interested Person who wishes to be heard in support of or in opposition to the Petition may appear by counsel or (subject to the limitations imposed by CPLR 321(a)) in person at the Final Hearing and at any prior appearance and, subject to further order of the Court, may present such evidence or argument as may be proper and relevant; provided, however, that except for good cause shown, no Interested Person shall be heard and nothing

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<sup>1</sup> The Notice shall be modified to use the exact language of this Order on all matters addressed by this Order.

submitted by any Interested Person shall be considered by the Court unless such Interested Person files and serves an answer to the Petition, setting forth the Interested Person's notice of intention to appear, along with a statement of such Interested Person's objection or other position as to any matters before the Court, and the grounds therefor, as well as any supporting documents (the "Submission"), on or before March 8, 2019; and it is further

Insert ¶ 7

7. ORDERED that all papers required or permitted to be served by Petitioner or any party who appears shall be served by filing on the court e-filing system ("NYSCEF"), unless a party or recipient is exempt, and by overnight mail or personal delivery; and it is further

Insert ¶ 8

8. ORDERED that any written notice of intention to appear and any other written motions and papers required or permitted to be filed for any purpose in this proceeding shall be subject to the following requirements. Such papers shall be double-spaced and shall not exceed a total of 20 pages, not including documentary evidence, unless an expansion of the page limits is granted by the Court in advance of the filing of the papers. (For example, a notice of intention to appear, statement of grounds for the appearance, and a memorandum of law in support shall together not exceed 20 pages); and it is further

Insert ¶ 9

9. ORDERED that two hard copies of all papers served by any person, with proof of service thereof, shall be provided to the Clerk of Part 60 within two days of the date on which such papers are required to be served. For any paper for which this Order or a subsequent order does not specify a service date, the two hard copies, with proof of service, shall be provided to the Part 60 Clerk within two days of the date on which such papers are served. Except for good cause shown, if a return date has been set and hard copies have not been filed with the Part 60 Clerk at least two days before the return date, no request to be heard will be granted; and it is further

Insert ¶ 11

11. ORDERED that a preliminary status conference will be held in Part 60 of this Court (60 Centre Street, Room 248, New York, New York) on March 21, 2019, at 10:00 a.m., to discuss the scheduling of future proceedings herein, including but not limited to responses by Petitioner or Interested Persons to Submissions filed pursuant to ¶ 6 above.

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MSF