

June 16, 2021

Via Email and NYSCEF

Hon. Joel M. Cohen
Supreme Court of the State of New York
New York County, Commercial Division
60 Centre Street, Room 570
New York, NY 10007

Re: ***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 (Index No. 150738/2019)***

Dear Justice Cohen:

We write to inform the Court that the parties have reached a resolution of this matter with respect to 170 of the 278 residential mortgage-backed securitization (“RMBS”) trusts at issue in this CPLR Article 77 proceeding.

Specifically, Silian Ventures LLC (“Silian”) recently entered into a settlement agreement with the AIG Parties and Tilden Park¹ (the “Settlement Agreement”) resolving their disputes with respect to 46 of the trusts at issue in this proceeding (the “Settlement Trusts”).² Following this Court’s issuance of its May 29, 2020 decision (the “Decision”) concerning the proper method of calculating the Pass-Through Rate for the interest-only certificates, Silian filed a notice of appeal of that Decision, and the AIG Parties and Tilden Park filed a notice of cross-appeal. The Institutional Investors³ and Federal Home Loan Bank of San Francisco (“FHLB”) did not appeal the Decision. The relevant parties’ appeals have yet to be perfected. Silian, the AIG Parties, and Tilden Park have now agreed to forgo their appeals with respect to the Settlement Trusts and to apply the methodology set forth in this Court’s Decision. The Institutional Investors and FHLB have no objection. Thus, we write jointly on behalf of Silian, the AIG Parties, Tilden Park, the Institutional Investors, and FHLB (collectively, the “Investors”). There is no longer any dispute among the Investors insofar as the Settlement Trusts are concerned.

Pursuant to the Settlement Agreement, Silian, the AIG Parties, and Tilden Park have also agreed to withdraw their appeals with respect to 124 undisputed trusts (the “Undisputed Trusts”)⁴

¹ The “AIG Parties” and “Tilden Park” are fully set forth in the accompanying Proposed Judgment.

² The Settlement Trusts are listed on Exhibit B to the Proposed Judgment.

³ The “Institutional Investors” are fully set forth in the accompanying Proposed Judgment.

⁴ The Undisputed Trusts are listed on Exhibit A to the Proposed Judgment.

in which Silian holds no interest.⁵ The only parties that have an interest in the Undisputed Trusts are the AIG Parties, Tilden Park, the Institutional Investors, and FHLB, which all hold principal and interest certificates. These interested parties have all agreed to the application of the methodology set forth in the Court’s Decision to the Undisputed Trusts. Thus, there is no dispute among the parties with respect to those trusts as well.

We request that the Court promptly enter the accompanying proposed partial severance order and partial final judgment (the “Proposed Judgment”) with respect to the Settlement Trusts and the Undisputed Trusts. Consistent with the parties’ agreements, the Proposed Judgment would require the Petitioner to apply the methodology set forth in the Court’s Decision to both the Settlement Trusts and the Undisputed Trusts. The Investors request that this Court promptly enter the Proposed Judgment in order to both effectuate the terms of the Settlement Agreement and narrow the scope of this proceeding to only those trusts that are actually in dispute. The Petitioner consents to the Proposed Judgment as well.

This matter is time-sensitive because the Settlement Agreement is contingent upon this Court’s entry of the Proposed Judgment *before* the AIG Parties and Tilden Park perfect their cross-appeal—which they must do by August 11, 2021. The cross-appealing parties’ work on their appellate brief would, of course, begin long before that date. The Court’s prompt entry of the Proposed Judgment would thus conserve the resources of the parties and the Court by limiting the issues on appeal before the First Department and avoiding unnecessary briefing on the cross-appeal, which will be withdrawn in its entirety upon entry of the Proposed Judgment.

In prior Article 77 proceedings concerning RMBS trusts, Commercial Division justices have routinely entered partial final judgments with respect to undisputed trusts in order to narrow the scope of the proceedings. *See, e.g., In the Matter of the Application of Wells Fargo Bank N.A., et al. (“Wells Fargo”),* Index No. 657387/2017, Dkt. No. 289 (Friedman, J.) (entering severance order and partial final judgment with respect to 91 undisputed trusts); *In the Matter of the Application of U.S. Bank N.A., et al. (“U.S. Bank”),* Index No. 651625/2018, Dkt. No. 107 (Friedman, J.) (entering severance order and partial final judgment with respect to 146 undisputed trusts); *In the Matter of the Application of The Bank of New York Mellon,* Index No. 150973/2016, Dkt. No. 77 (Scarpulla, J.) (entering severance order and partial final judgment with respect to 512 undisputed trusts); *cf. In the Matter of Wells Fargo in its Capacity as Securities Administrator of MLMI 2005-A10,* Index No. 653855/2019, Dkt. No. 18 (Sherwood, J.) (entering consent order and judgment as to undisputed trust).

Indeed, in two major Article 77 proceedings over which Justice Friedman presided, she permitted the interested certificateholders to submit proposed partial final judgments concerning trusts on which they had resolved their disputes even after she had issued rulings on the relevant merits issues. *See U.S. Bank,* Index No. 651625/2018, Dkt. No. 239, at 10 (“If all interested respondents in any remaining Trust in this proceeding are able, after the issuance of this decision and in consultation with petitioners, to resolve a dispute regarding any issue that is the subject of this proceeding by partial severance order and judgment, they may continue to do so.”); *see also*

⁵ Silian is not withdrawing its appeal of the Decision with respect to the other trusts at issue in this proceeding that are not the subject of the Proposed Judgment.

Wells Fargo, Index No. 657387/2017, Dkt. No. 843, at 45. Justice Friedman also entered several partial final judgments during the pendency of an appeal in the *Wells Fargo* matter. See Index No. 657387/2017, Dkt. Nos. 874, 875, 906, 909, 910, 912, 913.

Here, the Investors likewise seek entry of partial final judgment as to the 170 trusts on which there is no longer any dispute among the interested parties. Given the quickly approaching appellate deadlines, the Investors respectfully request that the Court enter the Proposed Judgment concerning the Settlement Trusts and the Undisputed Trusts as soon as possible. We appreciate the Court's attention to this matter.

Respectfully submitted,

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