

May 14, 2019

**VIA NYSCEF AND HAND DELIVERY**

Justice Marcy S. Friedman  
Supreme Court of the State of New York  
County of New York  
60 Centre Street, Room 663  
New York, New York 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 Friedman:

We represent petitioner The Bank of New York Mellon in the above-captioned case. Pursuant to Commercial Division Rule 24 we write regarding an issue that has arisen concerning the scope of the proceeding and the sufficiency of the notice program that the Court previously approved.

As the Court will recall, the Petition raises the question of whether the Trustee should compute the Pass-Through Rate for Interest-Only Certificates using the *original* interest rate of each Non-Discount Mortgage Loan or the *current* interest rate (accounting for any modifications to that rate since origination). We refer to this issue as the “Static vs. Dynamic Rate Issue”.

Certain respondent investors have indicated that they intend to raise an issue that the Trustee does not believe was presented in the Petition. That second issue (the “Computation Method Issue”) relates to the method by which the Pass-Through Rate is computed by the Trustee, even assuming that the Trustee’s practice of using the dynamic method is correct. In brief, the issue is whether to treat loans whose modified rates are below the Required Coupon as having *zero* excess interest, or *negative* excess interest. (This issue is relevant only if the Trustee’s practice of using the dynamic method is correct. If the Court decided that the Trustee is required to use the static method—that is, the original rates of the Non-Discount Mortgage Loans—then the two competing approaches under the Computation Method Issue would be mathematically equivalent.)

While the Petition seeks an order approving the Trustee’s computation of the Pass-Through Rate in all respects, the Computation Method Issue is not specifically addressed in the Petition. Nor was it raised by Silian in its federal complaint or in prior discussions with the Trustee.

Nor, most importantly, was it mentioned in the previous Court-approved notice regarding this proceeding. Whereas the previously noticed issue regarding this proceeding—the Static vs. Dynamic Rate Issue—involves an argument that the Trustee should *increase* payments to IO

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Certificateholders (by using the original unmodified interest rates of the Non-Discount Mortgage Loans), the change in the Trustee's practice with respect to the Computation Method Issue would *reduce* or *entirely eliminate* payments to IO Certificates. It is possible that some IO Certificateholders may have chosen not to appear in this proceeding to date, because they disagreed with (or at least were not interested in supporting) Silian's view on the Static vs. Dynamic Rate Issue and assumed that the proceeding would result either in no change to the Trustee's calculation method or in a change that would increase payments to IO Certificates. In other words, based on the prior notice IO Certificateholders may have concluded that a reduction in IO Certificate payments was not a possible outcome of the case.

Accordingly, the Trustee seeks leave to disseminate the enclosed form of supplemental notice, attached as Exhibit A, (1) through the DTC LENS system, (2) on its trust-specific investor reporting website pages, and (3) on [inre278rmbstrusts.com](http://inre278rmbstrusts.com), the website previously set up for notice purposes in this case. The Trustee respectfully submits that further notice by publication is not necessary, because more effective means of notice are available and prior notice of the proceeding has been given by publication.

The Trustee further requests that any additional investors be given until May 30 to appear. If no such investors appear, then the existing parties could file their opening briefs as currently schedule on May 31. If additional investors do appear, then the Trustee suggests that the briefing schedule be moved out by two weeks to accommodate those investors.

Finally, the Trustee requests that the Court order that any Interested Person who fails to appear in the manner required by the Court shall be deemed to have waived the right to support or oppose the Petition (including any right of appeal) and shall be forever barred from raising such objection before the Court or in any other action or proceeding, unless the Court orders otherwise.

Respectfully submitted,

/s/ Christopher J. Houpt

Christopher J. Houpt

Enclosure

cc: All Counsel of Record (by NYSCEF)

# **Exhibit A**



BNY MELLON

**COVERED TRUSTS LISTED IN APPENDIX A TO THIS NOTICE**

**INFORMATIONAL NOTICE REGARDING DEVELOPMENTS IN THE JUDICIAL INSTRUCTION PROCEEDING IN THE SUPREME COURT OF THE STATE OF NEW YORK CONCERNING THE PROPER PASS-THROUGH RATE CALCULATION FOR CWALT INTEREST ONLY SENIOR CERTIFICATES (INDEX NO. 150738/2019)**

**TO DEPOSITORIES, NOMINEES, CUSTODIANS, OTHER INTERMEDIARIES: THIS TRANSMITTAL CONTAINS IMPORTANT INFORMATION THAT IS OF INTEREST TO THE BENEFICIAL OWNERS OF THE CERTIFICATES, NOTES OR OTHER SECURITIES (THE “SUBJECT SECURITIES”) ISSUED BY THE TRUSTS IDENTIFIED IN APPENDIX A TO THIS NOTICE (THE “PETITION TRUST”). ALL DEPOSITORIES, NOMINEES, CUSTODIANS, AND OTHER INTERMEDIARIES RECEIVING THIS NOTICE ARE REQUESTED TO EXPEDITE RETRANSMITTAL TO THE BENEFICIAL OWNERS OF THE SUBJECT SECURITIES OR OTHER SUCH REPRESENTATIVES WHO ARE AUTHORIZED TO TAKE ACTION IMMEDIATELY. YOUR FAILURE TO ACT PROMPTLY IN COMPLIANCE WITH THIS PARAGRAPH MAY IMPAIR THE ABILITY OF THE BENEFICIAL OWNERS ON WHOSE BEHALF YOU ACT TO TAKE APPROPRIATE ACTIONS CONCERNING THE MATTERS DESCRIBED IN THIS NOTICE.**

**TO HOLDERS OF THE SUBJECT SECURITIES: YOU SHOULD READ THIS NOTICE THOROUGHLY AND CAREFULLY. YOUR RIGHTS MAY BE AFFECTED. ANY INSTRUCTIONS GIVEN BY THE COURT AS PART OF THE ARTICLE 77 PROCEEDING DESCRIBED IN THIS NOTICE COULD MATERIALLY AFFECT YOUR INTERESTS. YOU SHOULD DISCUSS THE INFORMATION HEREIN WITH YOUR ATTORNEY AND/OR OTHER ADVISORS. IF YOU DO NOT HAVE AN ATTORNEY OR ADVISOR, YOU MAY WISH TO ENGAGE ONE. YOU SHOULD NOT RELY ON THIS NOTICE AS YOUR SOLE SOURCE OF INFORMATION.**

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To: The Holders of the certificates, notes or other securities (the “Subject Securities”) issued by the trusts identified in Appendix A hereto (the “Petition Trusts”):

### **I. Background**

In a prior notice to Holders, dated February 1, 2019 (the “February 2019 Notice to Holders”), the Trustee informed Holders, among other things, that, on January 29, 2019, it filed the petition attached as Exhibit A to the February 2019 Notice to Holders (the “Petition”) and commenced a judicial instruction proceeding pursuant to CPLR § 7701, *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) (the “Article 77 Proceeding”), in the Supreme Court of the State of New York, County of New York (the “Court”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in, or by reference in, the February 2019 Notice to Holders or the Petition, as applicable.

As described in the February 2019 Notice to Holders, the Trustee is seeking in the Article 77 Proceeding instruction regarding the proper construction of the PSAs that govern the Petition Trusts, as to whether the Pass-Through Rate used to make distributions to Class X interest only certificates (the “IO Certificates”) should be calculated as a dynamic rate based on the current interest rate of each Non-Discount Mortgage Loan—which takes into account modifications to the mortgage rate that have been made since the inception of the loan—or as a static rate that is based on the original interest rate of each Non-Discount Mortgage Loan, without taking into account any adjustments or modifications to the mortgage rate over time (the “Static vs. Dynamic Rate Issue”). The Trustee maintains that the PSAs governing the Petition Trusts dictate use of the dynamic method for calculating the Pass-Through Rate.

### **II. Notice of Developments in the Article 77 Proceeding**

The Trustee hereby gives notice that, during the course of the Article 77 Proceeding, certain respondent investors have indicated that they intend to raise an additional issue for determination by the Court. That additional issue relates to the method by which the Pass-Through Rate is computed by the Trustee, even assuming that the Trustee’s practice of using the dynamic method is correct. In brief, the issue is whether to treat loans whose modified rates are below the Required Coupon as having zero excess interest, or negative excess interest (the “Computation Method Issue”).<sup>1</sup> The Trustee currently assigns those loans zero excess interest. If the Trustee was required to follow the other computation method, it would lead to less or no interest being paid to the IO Certificates.

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<sup>1</sup> The Computation Method Issue is only relevant if the Trustee’s practice of using the current rate of each Non-Discount Mortgage Loan is correct. If the Court decided that, in respect of the Static vs. Dynamic Rate Issue, the Trustee is required to use the original rates of the Non-Discount Mortgage Loans, then the two competing approaches under the Computation Method Issue would be mathematically equivalent.

While the Static vs. Dynamic Rate Issue that was described in the February 2019 Notice to Holders involves an argument that the Trustee should *increase* payments to IO Certificates (by using the original unmodified interest rates of the Non-Discount Mortgage Loans), a change in the Trustee's practice with respect to the Computation Method Issue would reduce or eliminate payments to IO Certificates.

In an Order, dated May [●], 2019 (the "Order"), the Court has ordered, among other things, 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 limitation 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 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 Interest 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 [May 30], 2019; and
- Any Interested Person who fails to appear in the manner required by the Court shall be deemed to have waived the right to support or oppose the Petition (including any right of appeal) and shall be forever barred from raising such objection before the Court or in any other action or proceeding, unless the Court orders otherwise.

Following the Final Hearing, the Court will determine, among other things, whether and how to instruct the Trustee. If the instruction is issued and becomes final and non-appealable (including the expiration of any time to apply for discretionary review), the instruction will become effective and will affect the rights and interests of all Interested Persons and their successors-in-interests and assigns. All Interested Persons will be bound by the instruction whether or not they appeared in the matter or submitted any objection to the Petition.

The Petition, any papers filed in support or in opposition of the Petition, any orders entered by the Court in the Article 77 Proceeding and any other documents filed with the Court will be available at the Court's website: <http://iapps.courts.state.ny.us/iscroll/>. The docket for the Article 77 Proceeding is also available at: <http://inre278rmbstrusts.com>.

**YOU ARE URGED TO REVIEW THE PETITION AND ALL OTHER DOCUMENTS FILED WITH THE COURT ON OR PRIOR TO THE DATE OF THIS NOTICE CAREFULLY AND TO CONSULT WITH YOUR ADVISORS.**

### III. Miscellaneous

Questions or requests for additional information about this Notice, the Petition, or the Order should be directed to [DAGUS@bnymellon.com](mailto:DAGUS@bnymellon.com). **Certificateholders in the Petition Trusts Should NOT direct inquiries to the Court or the Clerk of the Court.**

This Notice summarizes developments in the Article 77 Proceeding and is not a complete statement of the Article 77 Proceeding or a summary or statement of relevant law or of relevant legal procedures. Certificateholders in the Petition Trusts and other potentially interested persons are urged to carefully consider the implications of the Article 77 Proceeding and to consult with their own legal and financial advisors.

Certificateholders in the Petition Trusts and other persons interested in the Petition Trusts should not rely on the Trustee, Trustee's counsel, experts or other advisors retained by the Trustee, as their sole source of information.

THE TRUSTEE MAY CONCLUDE THAT A SPECIFIC RESPONSE TO PARTICULAR INQUIRIES FROM INDIVIDUAL CERTIFICATEHOLDERS IN THE PETITION TRUSTS IS NOT CONSISTENT WITH EQUAL AND FULL DISSEMINATION OF MATERIAL INFORMATION TO ALL CERTIFICATEHOLDERS IN THE PETITION TRUSTS. NOTHING HEREIN IS INTENDED TO, OR SHALL, WAIVE ANY TERM OR PROVISION OF ANY PETITION TRUST TRANSACTION DOCUMENT, OR ANY RIGHTS OF THE TRUSTEE THEREUNDER, ALL OF WHICH ARE HEREBY FULLY RESERVED.

NOTE, THE TRUSTEE MAKES NO RECOMMENDATIONS AND GIVES NO INVESTMENT ADVICE HEREIN OR AS TO CERTIFICATES IN THE PETITION TRUSTS GENERALLY. FURTHERMORE, THE TRUSTEE MAKES NO REPRESENTATION AND ACCEPTS NO RESPONSIBILITY OR LIABILITY AS TO THE COMPLETENESS OR ACCURACY OF THE INFORMATION PROVIDED HEREIN. THIS NOTICE DOES NOT CONSTITUTE ACCOUNTING, LEGAL, OR TAX ADVICE; YOU SHOULD SEEK YOUR OWN ADVICE ON THIS MATTER.

NOTICE PURSUANT TO IRS CIRCULAR 230. THIS DISCUSSION IS NOT INTENDED OR WRITTEN BY THE TRUSTEE OR ITS COUNSEL TO BE USED, AND CANNOT BE USED, BY ANY PERSON FOR THE PURPOSE OF AVOIDING TAX PENALTIES THAT MAY BE IMPOSED UNDER U.S. TAX LAWS. EACH PERSON SHOULD SEEK ADVICE BASED ON THE PERSON'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR CONCERNING THE POTENTIAL TAX CONSEQUENCES OF ACTIONS DESCRIBED HEREIN.

THE TRUSTEE RESERVES ALL OF THE RIGHTS, POWERS, CLAIMS, AND REMEDIES AVAILABLE TO IT UNDER THE GOVERNING AGREEMENTS AND APPLICABLE LAW. NO DELAY OR FORBEARANCE BY THE TRUSTEE TO EXERCISE ANY RIGHT OR REMEDY UNDER THE TERMS OF THE GOVERNING AGREEMENTS,

OTHER DOCUMENTATION RELATING THERETO OR UNDER APPLICABLE LAW, SHALL IMPAIR ANY SUCH RIGHT OR REMEDY OR CONSTITUTE A WAIVER THEREOF OR ACQUIESCENCE THEREIN.

Dated: May [●], 2019

**The Bank of New York Mellon, as Trustee for the Petition Trust**