

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK

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.

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**THE BANK OF NEW YORK MELLON’S MEMORANDUM OF LAW IN SUPPORT OF
ITS PROPOSED NOTICE PROGRAM**

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Petitioner The Bank of New York Mellon (“BNYM” or the “Trustee”), solely in its representative capacity as trustee of the Trusts listed in Exhibit A to the concurrently-filed Petition (the “Covered Trusts”), respectfully submits this memorandum of law in support of its proposed notice program described in the concurrently-filed Petition (the “Petition”) and Affirmation of Matthew Ingber (“Ingber Affirmation”).

PRELIMINARY STATEMENT

As described in detail in the Petition, BNYM, as Trustee, seeks judicial instruction regarding construction of the operative trust instruments governing the Covered Trusts—Pooling and Servicing Agreements, or PSAs. The PSAs contain provisions describing the proper method for calculating the “Pass-Through Rate”—the rate used to calculate distributions amount to interest-only certificates (“IO Certificates”) in the Covered Trusts. The Trustee believes that the proper method for calculating the Pass-Through Rate is by using the current interest rate on each mortgage loan, reflecting any modifications made to the mortgage rate over the life of the mortgage loan. The Trustee’s reasons for believing that this is the proper method for calculating the Pass-Through Rate are explained in depth in the Petition. *See* Petition ¶¶ 42 – 53. Certain IO Certificateholders have recently argued that the Pass-Through Rate should instead be calculated by using a static rate—*i.e.* one that is calculated based on the original mortgage rate, without adjustments for modifications to mortgage rate over time. The Trustee’s reasons for believing that this is a mistaken reading of the relevant provisions in the PSAs are also articulated in the Petition. *See* Petition ¶¶ 54 – 65.

In light of this disagreement as to the proper method for calculating the Pass-Through Rate, the Trustee has filed a Petition seeking judicial instructions on the matter. The Trustee expects that holders of securities other than the IO Certificates, which would be harmed by changing the calculation as the IO Certificateholders suggest, may wish to be heard on these points.

The Ingber Affirmation accompanying the Petition describes the Trustee's proposed plan for notifying interested parties of this action, and attaches a proposed form of notice (Exhibit A to the Ingber Affirmation).

ARGUMENT

BNYM's Notice Procedure Is Appropriate

As part of the process of seeking judicial instruction from the Court regarding how to calculate the Pass-Through Rate for the Covered Trusts, BNYM has engaged in a notice procedure to inform all Certificateholders in the Covered Trusts about this Article 77 proceeding through the notice provision laid out in the PSA. Specifically, BNYM plans to provide notice to these Certificateholders by: (a) mailing a copy of the 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 each Trust; (b) providing the Notice to The Depository Trust Company ("DTC"), which will transmit the Notice electronically to Certificateholders in accordance with DTC's established procedures; and (c) posting a notice on the Trustee's investor reporting website.

This notice program is similar to those approved in other CPLR Article 77 proceedings concerning the distribution of funds to RMBS investors. *See, e.g., In re U.S. Bank Nat'l Ass'n*, Index No. 651625/2018 (Sup. Ct. N.Y. Cnty. Apr. 20, 2018); *In re Wells Fargo Bank*, Index No. 657387/2017, Dkt. No. 30 (Sup. Ct. N.Y. Cnty. Dec. 19, 2017); *In re Bank of New York Mellon (GE-WMC 2006-1)*, Index No. 653558/2015, Dkt. No. 16 (Sup. Ct. N.Y. Cnty. Oct. 27, 2015).

Due process requires that notice be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see also*

Mac Naughton v. Warren Cnty., 20 N.Y. 3d 252, 257 (2012) (same). Here, the investors in each trust agreed to receive notices through the addresses on the Certificate Registry and to receive performance data on the investor reporting website. Accordingly, the proposed notice program satisfies this standard.

CONCLUSION

For the foregoing reasons, BNYM respectfully requests that the Court affirm its proposed notice plan.

Dated: January 24, 2019
New York, New York

Respectfully submitted,

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