

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

In the Matter of the Application of

U.S. BANK NATIONAL ASSOCIATION and U.S.  
BANK TRUST COMPANY, NATIONAL ASSOCIATION  
(as Trustee, Securities Administrator, Paying Agent, and/or  
Calculation Agent under various Pooling and Servicing  
Agreements),

*Petitioner,*

For Judicial Instructions Under CPLR Article 77.

Index No. 656028/2021

Justice Andrew S. Borrok

IAS Part 53

**AFFIRMATION IN SUPPORT OF  
ORDER TO SHOW CAUSE FOR  
ORDER RESETTING TRIAL DATES**

I, Caitlin Halpern, an attorney admitted to the practice of law before the courts of the State of New York, and not a party to the above-captioned matter, hereby affirm the following to be true under penalties of perjury pursuant to CPLR 2106(a):

1. I am an attorney with the law firm Gibbs & Bruns, LLP, counsel for Pacific Investment Management Company LLC (**PIMCO**) in the above-referenced action. I am familiar with the proceedings in this matter and submit this affirmation based on my personal knowledge and review of the filings.

2. I make this affirmation in support of PIMCO and HBK Master Fund L.P.'s Proposed Order to Show Cause for Order Resetting Trial Dates filed contemporaneously herewith, which seeks entry of the [Proposed] Order Resetting Trial attached hereto as **Exhibit 1**.

3. Trial in the above-captioned matter is currently set for December 11-15, 2023. The Second Amended Petition (**SAP**) raises two issues: (1) whether payments of deferred principal should be treated as Subsequent Recoveries under the PSAs, and (2) how to calculate and apply distributions for trusts with principal balances that have been reduced to zero. SAP ¶ 2. The Petition alleges that resolution of the first issue may impact the second. *Id.*

4. The first issue was raised in an earlier-filed matter before this Court, *In the Matter of Wells Fargo Bank, National Association* (Index No. 154984/2021) (**Wells Fargo**). On October 23, 2023, the Court issued rulings on motions in *limine* in the *Wells Fargo* matter (Decision and

Order on Motion, NYSCEF Doc. No. 823). The Court found that “Deferred Principal Payments are Subsequent Recoveries,” and that this issue was “already resolved by” the First Department’s decision in *Wells Fargo Bank v. Aegon USA Inv. Mgt., LLC*, 154 N.Y.S.3d 305 (1st Dept. 2021) (**JPM II**).

5. During a conference on October 27, 2023 in *Wells Fargo*, the Court confirmed that it stood by its October 23 ruling and declined to hear further argument on that issue. Multiple parties advised the Court that they are considering or intend to appeal the Court’s October 23 ruling in *Wells Fargo*. Certain parties may also appeal *JPM II* to the Court of Appeals in the coming months.

6. The outcome of these appeals will impact the resolution of the instant case. If the case proceeds to trial now, the appellate decisions may necessitate a new trial in the future on all, or a significant portion, of the issues in dispute. Given that Petitioners allege substantial overlap between the issues in this matter and *Wells Fargo*, granting a stay pending appeal or a continuance to November 4-8, 2025 would conserve the resources of the parties and the Court.

7. Accordingly, good cause exists for this Court to issue an Order resetting trial for November 4–8, 2025.

8. This motion is brought by order to show cause rather than by ordinary notice of motion because of the need to resolve this issue before the forthcoming trial dates in December and because the Court at the conference urged PIMCO to bring on this motion as quickly as possible for the Court’s consideration.

9. No prior application for the relief herein requested has been made.

Dated: Houston, Texas  
November 3, 2023

/s/ Caitlin Halpern  
Caitlin Halpern

**WORD COUNT CERTIFICATION**

This Affirmation complies with this Court's Rule 17 of Section 202.70 (Rules of the Commercial Division) and contains 530 words as calculated by Microsoft Word, excluding the parts of the brief exempted by Rule 17.

Dated: November 3, 2023

By: /s/ Caitlin Halpern

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