

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 located at 60 Centre Street, New York, New York on the ___ day of __, 2021

P R E S E N T : Hon. Marcy S. Friedman, Justice.

In the matter of the application of

WELLS FARGO BANK, NATIONAL ASSOCIATION, U.S. BANK NATIONAL ASSOCIATION, THE BANK OF NEW YORK MELLON, THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., WILMINGTON TRUST, NATIONAL ASSOCIATION, HSBC BANK USA, N.A., and DEUTSCHE BANK NATIONAL TRUST COMPANY (as Trustees, Indenture Trustees, Securities Administrators, Paying Agents, and/or Calculation Agents of Certain Residential Mortgage-Backed Securitization Trusts),

Petitioners,

For Judicial Instructions under CPLR Article 77 on the Distribution of a Settlement Payment.

Index No. 657387/2017

**[PROPOSED]
PARTIAL SEVERANCE
ORDER AND PARTIAL
FINAL JUDGMENT**

(SACO 2005-9)

WHEREAS, the Petitioners identified in the above case caption commenced this proceeding under CPLR Article 77 by filing a petition (the “Petition”) seeking judicial instructions concerning the administration and distribution of a settlement payment (the “Settlement Payment”) for 270 residential mortgage-backed securities trusts identified in Exhibit A to the Petition (the “Settlement Trusts”) under a settlement agreement dated as of November 15, 2013 and modified as of July 29, 2014 (the “Settlement Agreement”); and

WHEREAS, this Partial Severance Order and Partial Final Judgment (the “Order”) concerns SACO 2005-9 (the “Undisputed Trust”), which is one of the Settlement Trusts subject to the Settlement Agreement; and

WHEREAS, the Undisputed Trust is governed by a Pooling and Servicing Agreement (the “Subject PSA”), pursuant to which U.S. Bank National Association is the payment administrator and trustee (in all such capacities collectively, the “Subject Petitioner”); and

WHEREAS, all capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Petition or the Subject PSA, as applicable; and

WHEREAS, pursuant to the Settlement Agreement, the Settlement Payment is to be apportioned among the Settlement Trusts, including the individual loan groups therein and classes of principal only certificates therein, based on “Allocable Shares” calculated in an expert report filed with the Court at NYSCEF Nos. 178 and 179; and

WHEREAS, by Order to Show Cause dated December 19, 2017 and Interim Order dated December 20, 2017 (collectively, the “December Orders”), the Court authorized and directed the Petitioners to place the Allocable Shares for the Settlement Trusts in escrow; and

WHEREAS, the Court has been advised that the escrow provisions of the December Orders have been complied with and that the Allocable Shares for the Settlement Trusts, plus any investment earnings thereon, are currently invested as directed in the December Orders; and

WHEREAS, under the December Orders, the Court directed the Petitioners to provide notice of this proceeding pursuant to the notice program described in the December Orders (the “Notice Program”), and the Court found that the Notice Program was the best notice practicable, was reasonably calculated to put interested persons on notice of the proceeding, and constituted due and sufficient notice of the proceeding in satisfaction of federal and state due process requirements and other applicable law; and

WHEREAS, the Notice Program directed that interested persons respond to the Petition on or before January 29, 2018, and only the following parties asserted an interest in the Undisputed

Trust: (i) D. E. Shaw Refraction Portfolios L.L.C. (“DES”); (ii) Poetic Holdings VI LLC, Poetic Holdings VII LLC, and Prophet Mortgage Opportunities LP (collectively, “Poetic”); (iii) Nover Ventures, LLC (“Nover”); and (iv) AEGON USA Investment Management, LLC, BlackRock Financial Management, Inc., Cascade Investment, LLC, the Federal Home Loan Bank of Atlanta, the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae), Goldman Sachs Asset Management L.P., Voya Investment Management LLC, Invesco Advisers, Inc., Kore Advisors, L.P., Metropolitan Life Insurance Company, Pacific Investment Management Company LLC, Teachers Insurance and Annuity Association of America, the TCW Group, Inc., Thrivent Financial for Lutherans, and Western Asset Management Company (each for themselves and, to the extent applicable, as investment managers of funds and accounts, and collectively, the “Institutional Investors”);

WHEREAS, Poetic asserted ownership interests in the Undisputed Trust through its interests in the BSSP 2005-32N NIM trust (the “NIM Trust”), but not in certificates issued by the Undisputed Trust; and

WHEREAS, on August 7, 2018, the Court granted a motion for summary judgment filed by the Institutional Investors and other investors, thereby dismissing Poetic as respondent with respect to any Settlement Trust in which it does not hold certificates (NYSCEF No. 471) (the “Standing Decision”); and

WHEREAS, in the Standing Decision, the Court afforded Poetic an opportunity to substitute into the proceeding the trustee of the NIM Trust through which it asserted interests in the Undisputed Trust; and

WHEREAS, on September 14, 2018, the Court so-Ordered a Stipulation and Order Regarding Trustee Substitutions, under which Poetic substituted into this case U.S. Bank National

Association, solely in its capacity as trustee of the NIM Trust (“U.S. Bank as NIM Trustee”) (NYSCEF No. 514) (the “Trustee Substitution Stipulation”);¹ and

WHEREAS, after giving effect to the Standing Decision and the Trustee Substitution Stipulation, DES, U.S. Bank as NIM Trustee, Nover, and the Institutional Investors are the only parties with standing to appear with respect to the Undisputed Trust; and

WHEREAS, on February 13, 2020, the Court issued a Decision and Order (NYSCEF No. 843) (the “Merits Ruling”) concerning administration and distribution issues for certain Settlement Trusts, including the Undisputed Trust; and

WHEREAS, Poetic filed a Notice of Appeal of the Merits Ruling on March 10, 2020 (NYSCEF No. 849) with respect to those Settlement Trusts in which Poetic has asserted an interest, including the Undisputed Trust, and various other parties filed appeals; and

WHEREAS, Poetic’s appeal was limited to challenging the portion of the Merits Ruling concerning the Retired Class Provision; and

WHEREAS, the Merits Ruling was affirmed by the First Department, Appellate Division on August 19, 2021; and

WHEREAS, certain parties to the appeal, including Poetic, filed motions seeking further review of the First Department’s ruling, and those motions were denied on November 16, 2021; and

¹ This substitution was effectuated pursuant to and in accordance with a direction and indemnity agreement by and among Poetic and U.S. Bank as NIM Trustee. At the direction of Poetic, U.S. Bank as NIM Trustee agrees and consents to this Order as indicated herein. As set forth in the applicable agreements, U.S. Bank’s capacity in its role as NIM Trustee is separate and distinct from U.S. Bank’s capacity in its role as trustee and/or payment administrator for the Settlement Trusts, and these separate roles were created at the closing of the applicable transactions. In this proceeding, U.S. Bank has separate counsel for its NIM Trustee roles and trustee/payment administrator roles.

WHEREAS, certain parties to the appeal are seeking further review of the First Department's ruling with the Court of Appeals; and

WHEREAS, the Merits Ruling provides that "as to any Settlement Trust in which all interested respondents are able, after the issuance of [the Merits Ruling] and in consultation with the Trustees, to resolve a dispute as to any issue that is the subject of this proceeding, they may do so independent of the court's ultimate determination as to how such issue should be resolved among parties that continue to dispute the issue"; and

WHEREAS, DES, U.S. Bank as NIM Trustee, Nover, and the Institutional Investors agree and consent to this Order, which resolves the issues for which judicial instructions were sought concerning the administration and distribution of the Allocable Share for the Undisputed Trust (the "Subject Allocable Share") in a manner consistent with the Merits Ruling; and

WHEREAS, as used herein, the term "Judgment Entry Date" means the date on which the Clerk's docketing of this Order first appears publicly on the New York State Court Electronic Filing System, without regard to when the Court actually signs or the Clerk actually enters this Order; and

WHEREAS, as used herein the term "Transfer Month" means the month after the Judgment Entry Date; and

WHEREAS, as used herein, the term "Transfer Target Date" means the fifteenth day of the Transfer Month; and

WHEREAS, as used herein, the term "AS Distribution Date" means the Distribution Date for the Undisputed Trust occurring in the Transfer Month, and

NOW, THEREFORE, on the motion of Perry, Johnson, Anderson, Miller & Moskowitz, LLP, attorneys for DES; Warner Partners, P.C. and Gibbs & Bruns LLP, attorneys for the

Institutional Investors; Perkins Coie LLP, attorneys for U.S. Bank National Association, solely in its capacity as trustee of the NIM Trust; and McKool Smith, P.C., attorneys for Nover, it is hereby

ORDERED, ADJUDGED and DECREED that, on or before the Transfer Target Date, the Subject Petitioner is to (i) cause escrowed assets to be liquidated to cash with a value equal to the Subject Allocable Share plus any investments earnings thereon, and (ii) cause the Subject Allocable Share and investment earnings thereon to be deposited in the distribution account of the Undisputed Trust. From the time of the aforescribed deposit, the amount so deposited shall be deemed the Subject Allocable Share for the Undisputed Trust for all purposes under the Settlement Agreement and this Order; and it is further

ORDERED, ADJUDGED and DECREED that sums representing investment earnings accrued on the Subject Allocable Share not received at the time escrowed assets are liquidated to cash pursuant to the immediately preceding paragraph (“Trailing Interest”) shall be distributed (x) on the Distribution Date for the month the Trailing Interest is received by the Subject Petitioner so long as the Trailing Interest is received on or before the fifteenth day of the month or (y) if the Trailing Interest is received after the fifteenth day of the month, on the Distribution Date for the immediately following month. Any Trailing Interest shall be deemed to be the Subject Allocable Share for the Undisputed Trust, and any Trailing Interest shall be administered and distributed as the Subject Allocable Share subject to the terms of the Settlement Agreement and this Order; and it is further

ORDERED, ADJUDGED and DECREED that the Subject Petitioner shall distribute the Subject Allocable Share to certificateholders of the Undisputed Trust on the AS Distribution Date; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Share for the Undisputed Trust, the Subject Petitioner (i) shall first increase the applicable certificate principal balances in the amount of the Settlement Payment Write-Up (the “Written-Up Certificate Principal Balances”), and, after applying the Settlement Payment Write-Up, (ii) shall then distribute the Subject Allocable Share to certificateholders based on the Written-Up Certificate Principal Balances, in each of the cases of (i) and (ii) above in a manner consistent with the other terms in this Order; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Share for the Undisputed Trust, the Subject Petitioner shall treat the Retired Class Provision as being inapplicable with respect to the Subject Allocable Share such that the Subject Petitioner (i) shall distribute the Subject Allocable Share or a portion thereof to classes of certificates with aggregate certificate principal balances of zero dollars (\$0.00) on the date of the distribution of the Subject Allocable Share (“Zero Balance Classes”) that would otherwise receive the distribution of the Subject Allocable Share or a portion thereof *but for* application of the Retired Class Provision in a manner that would prevent distributions to Zero Balance Classes and (ii) shall apply the Settlement Payment Write-Up or a portion thereof to Zero Balance Classes that would otherwise be written up in the amount of the Settlement Payment Write-Up or a portion thereof *but for* application of the Retired Class Provision in a manner that would prevent write-ups from being applied to Zero Balance Classes, in each of the cases of (i) and (ii) above (x) only to the extent that one or more Zero Balance Class exists on the AS Distribution Date that meets the criteria set forth in (i) and (ii) above and (y) in a manner consistent with the other terms of this Order; and it is further

ORDERED, ADJUDGED and DECREED that any aspects of the administration and distribution of the Subject Allocable Share for the Undisputed Trust not expressly addressed in this Order shall be performed as provided for in the Subject PSA and the Settlement Agreement; and it is further

ORDERED, ADJUDGED and DECREED that this Order is not applicable to, and shall be without prejudice to and shall have no precedential effect on, (i) any argument of any party concerning the appropriate administration and distribution of the Settlement Payment where there is a dispute among the parties regarding how the Settlement Payment should be administered and distributed, (ii) the Settlement Trusts for which no investors have appeared in this proceeding or any trust, indenture, or other securitization other than the Undisputed Trust, or (iii) any applications to certificate balances (*e.g.*, write-ups) or distributions of payments or funds other than the Subject Allocable Share; and it is further

ORDERED, ADJUDGED and DECREED that certificateholders, noteholders, and any other parties claiming rights or interests in the Subject Trust are barred from asserting claims against the Subject Petitioner with respect to any conduct taken to implement and comply with the terms of this Order and with respect to the Subject Petitioner's administration and distribution of the Settlement Payment with respect to the Subject Trust, so long as such conduct is performed in accordance with the terms of this Order; and it is further

ORDERED that the Clerk of New York County be, and he hereby is, directed to enter this Order forthwith and without delay.

Dated: New York, New York

_____, 2021

Hon. Melissa Anne Crane

Judgment signed and entered this _____ day of _____ 2021.

Clerk of New York County