

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

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 Administration and Distribution of a
Settlement Payment.

Index No. 657387/2017

**NOTICE OF [PROPOSED]
PARTIAL SEVERANCE
ORDER AND PARTIAL
FINAL JUDGMENT (SACO
2005-3)**

TO THE HONORABLE MARCY FRIEDMAN:

The undersigned certificateholders (the “Undersigned”) jointly move for the entry of judgment issuing a judicial instruction to Petitioners concerning the administration and distribution of the Allocable Share of the Settlement Payment for SACO 2005-3 (the “SACO 2005-3 Allocable Share”) identified in the proposed judgment attached as Exhibit A. The undersigned comprise all certificateholders claiming an interest in the SACO 2005-3 Allocable Share in this proceeding, and each respectfully urges the Court to enter the attached proposed judgment. As there is no triable issue of fact as to SACO 2005-3 or the entry of this judgment, the Undersigned request that the judgment be entered without further delay so that the Subject Allocable Share can promptly be paid to SACO 2005-3. The undersigned have conferred with

the Trustee and Payment Administrator, Wells Fargo Bank, National Association, who has confirmed it can implement the proposed judgment and has no objection to it.

Dated: New York, NY
September 11, 2018

**PATTERSON BELKNAP WEBB & TYLER
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Attorneys for the Institutional Investors

Exhibit A

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 _____, 2018

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**

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, all capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Petition; 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;¹ 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 Olifant Fund, Ltd., FFI Fund Ltd. and FYI Ltd. (the “Olifant

¹ The term “loan pool” as used herein refers to any loan group, loan subgroup, loan pool, loan subpool, or any other applicable grouping, pooling, or other assemblage of loans. Additionally, the term “certificate” as used herein refers to certificates, notes, or other applicable securities.

Funds”) and the Institutional Investors have asserted an interest in the Settlement Trust, SACO 2005-3 (the “SACO 2005-3 Trust”); and

WHEREAS, the Olifant Funds and the Institutional Investors agree and consent to this [proposed] Partial Severance Order and Partial Final Judgment (the “Order”), which resolves the issues for which judicial instruction were sought concerning the administration and distribution of the Allocable Shares of the Settlement Trusts, including for the SACO 2005-3 Trust (the “SACO 2005-3 Allocable Share”); and

WHEREAS, as identified on Exhibit A of the Petition, Wells Fargo Bank, National Association (“Wells Fargo”) is the trustee and securities administrator for the SACO 2005-3 Trust; 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 immediately following 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, as that term is defined in the Pooling and Servicing Agreement for the SACO 2005-3 Trust (the “SACO 2005-3 PSA”), occurring in the Transfer Month, and

WHEREAS, as used herein, the term “Overcollateralization Amount Calculation” refers to the terms in the SACO 2005-3 PSA prescribing that the “Overcollateralization Amount” is equal to the

excess of the aggregate balances of the mortgage loans held by the SACO 2005-3 Trust over the aggregate certificate principal balances of certain designated classes of certificates, as more fully defined and described in the SACO 2005-3 PSA; and

NOW, THEREFORE, on the motion of Patterson Belknap Webb & Tyler LLP, attorneys for the Olifant Funds and Warner Partners, P.C. and Gibbs & Bruns LLP, attorneys for the Institutional Investors, it is hereby

ORDERED, ADJUDGED, and DECREED that, on or before the Transfer Target Date, Wells Fargo is to (i) cause escrowed assets to be liquidated to cash with a value equal to the SACO 2005-3 Allocable Share plus any investment earnings thereon, and (ii) cause the SACO 2005-3 Allocable Share and investment earnings thereon to be deposited in the Distribution Account for the SACO 2005-3 Trust. From the time of the aforementioned deposit, the amount so deposited shall be deemed the SACO 2005-3 Allocable Share for the SACO 2005-3 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 SACO 2005-3 Allocable Share, not received at the time escrowed assets are liquidated to cash pursuant to the immediately preceding paragraph (“Trailing Interest”), shall be distributed on the Distribution Date for the month following the month Wells Fargo receives such Trailing Interest, which month may be subsequent to the Transfer Month. Any Trailing Interest for the SACO 2005-3 Trust shall be distributed in the manner provided for in this Order for the SACO 2005-3 Allocable Share, subject to the terms of the Settlement Agreement and this Order; and

ORDERED, ADJUDGED, and DECREED that Wells Fargo shall distribute the SACO 2005-3 Allocable Share to Certificateholders of the SACO 2005-3 Trust on the AS Distribution Date; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the SACO 2005-3 Allocable Share, Wells Fargo shall account for both the distribution of the SACO 2005-3 Allocable Share and accompanying Settlement Payment Write-Up when performing the Overcollateralization Amount Calculation; and it is further

ORDERED, ADJUDGED and DECREED that to effectuate the immediately preceding paragraph, Wells Fargo shall calculate the aggregate certificate principal balance used for the Overcollateralization Amount Calculation by (i) first increasing such certificate principal balance by the amount of the Settlement Payment Write-Up and (ii) then reducing such certificate principal balance by an amount equal to the applicable SACO 2005-3 Allocable Share, and this paragraph and the immediately preceding paragraph shall have no application to the calculation of certificate principal balances for any purposes other than performing the Overcollateralization Amount Calculation, and, further, for the avoidance of doubt, with respect to the Distribution Date on which the SACO 2005-3 Allocable Share is distributed, the instructions in this paragraph and the immediately preceding paragraph are intended to and shall prevent the SACO 2005-3 Trust from being overcollateralized as a result of the receipt, administration, and/or distribution of the SACO 2005-3 Allocable Share (but shall not impact whether the SACO 2005-3 Trust is overcollateralized on such Distribution Date as result of anything unrelated to the receipt, administration, and/or distribution of the SACO 2005-3 Allocable Share); and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the SACO 2005-3 Allocable Share, Wells Fargo (i) shall first distribute the SACO 2005-3 Allocable share to certificateholders based on certificate principal balances that have not been adjusted by the Settlement Payment Write-Up, and, after such distribution, (ii) shall then increase the applicable certificate principal balances in the amount of the Settlement Payment Write-Up in a manner consistent with this Order; and it is further

ORDERED, ADJUDGED, and DECREED that in administering and distributing the SACO 2005-3 Allocable Share, Wells Fargo shall: (i) apply the Retired Class Provision to prevent the distribution of the SACO 2005-3 Allocable Shares to any applicable class of certificates with aggregate certificate principal balances of zero dollars (\$0.00) at the time of the distribution of the SACO 2005-3 Allocable Shares (“Retired Classes”), (ii) apply the Retired Class Provision to permit the Settlement Payment Write-Up to be applied only to classes of certificates with aggregate certificate principal balances greater than zero dollars (\$0.00) at the time of the distribution of the SACO 2005-3 Allocable Shares (the “Outstanding Classes”); *provided, however,* that if the Settlement Payment Write-Up exceeds the aggregate unpaid realized losses of all Outstanding Classes of the SACO 2005-3 Trust, such excess amount of the Settlement Payment Write-Up shall be applied to Retired Classes in the SACO 2005-3 Trust, in the order of highest payment priority to which Realized Losses have been allocated, and in a manner consistent with this Order; and it is further

ORDERED, ADJUDGED and DECREED that any aspects of the administration and distribution of the SACO 2005-3 Allocable Shares not expressly addressed in this Order shall be

performed as provided for in the SACO 2005-3 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 for the Settlement Trusts for which 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 Trusts, or (iii) any applications to certificate balances (*e.g.*, write-ups) or distributions of payments or funds other than the Subject Allocable Shares; and it is further

ORDERED, ADJUDGED and DECREED that certificateholders, noteholders, and any other parties claiming rights or interests in the SACO 2005-3 Trust are barred from asserting claims against Wells Fargo with respect to any conduct taken to implement and comply with the terms of this Order and with respect to Wells Fargo's administration and distribution of the Settlement Payment with respect to the SACO 2005-3 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

_____, 2018

Hon. Marcy Friedman, J.S.C.

Judgment signed and entered this _____ day of _____ 2018.

Clerk of New York County