

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

In the matter of the application of

Wells Fargo Bank, National Association, *et al.*,

Petitioners,

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

Index No. 657387/2017

IAS Part 60

Hon. Marcy S. Friedman

CONCLUDING STATEMENT OF U.S. BANK NA, IN ITS CAPACITY AS TRUSTEE FOR THE NIM TRUSTS LISTED ON EXHIBIT A, AND POETIC AND PROPHET, ON THE ORDER OF THE DISTRIBUTION OF THE SETTLEMENT PAYMENT

Respondents U.S. Bank National Association, solely in its capacity as Indenture Trustee for the NIM Trusts listed on Exhibit A (the “NIM Trusts”), at the direction of Poetic and Prophet, and together with Poetic and Prophet as certificateholders in the Settlement Trusts listed on Exhibit B (the “Poetic / Prophet Trusts”), jointly submit this concluding statement on the Order of Payments Issue.¹ For the reasons stated in Respondents’ prior briefs on this issue (Dkt. 568 and 676) it is Poetic and Prophet’s position that the Write-Up First Method should be used with respect to the Poetic / Prophet Trusts.

¹ Pursuant to the Court’s Order dated September 14, 2018 and at the direction of Respondents Poetic and Prophet (each in their capacities as holders of notes issued by the NIM Trusts), U.S. Bank, solely in its capacity as Indenture Trustee under the NIM Trusts referenced on Exhibit A hereto, has substituted into this proceeding in place of Respondents Poetic and Prophet. This statement reflects the position of Poetic and Prophet and addresses only the Order of Payments Issue. U.S. Bank, in its capacity as Indenture Trustee under certain other NIM Trusts, has also substituted into this proceeding on behalf of Respondent HBK Master Fund LP (“HBK”) and at HBK’s direction, is submitting a concluding brief addressing the Order of Payments Issue (the “HBK Concluding Brief”). The HBK Concluding Brief, may, in some respects, advance positions contrary those asserted herein. Additionally, U.S. Bank, in its capacity as Indenture Trustee for all the NIM Trusts participating in this proceeding, at the direction of HBK, Poetic and Prophet, together with Poetic and Prophet, is also submitting a concluding brief addressing issues raised in the Petition regarding the Retired Class Provision. As contemplated by the Court’s substitution order, U.S. Bank has taken appropriate measures to address any potential or actual conflicts of interest. Furthermore, U.S. Bank’s capacity in its role as NIM Trustee hereunder is a separate and distinct capacity from that of U.S. Bank in its role as Petitioner and Trustee of the Settlement Trusts.

Dated: October 10, 2018

Respectfully submitted,

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EXHIBIT A

NIM Trusts	Settlement Trusts
BSNIM 2005-HE3N	BSABS 2005-HE3
BSNIM 2005-HE6N	BSABS 2005-HE6
BSSP 2005-29N	SACO 2005-WM3
BSSP 2005-32N	SACO 2005-9
BSSP 2006-3	SACO 2005-10

EXHIBIT B

Settlement Trust
<u>BSABS 2005-HE3</u>
<u>SACO 2005-4</u>
<u>SACO 2005-7</u>
<u>SACO 2005-WM1</u>