

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 \_\_, 2019

**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]  
CONSENTED-TO ORDER  
REGARDING SUBMISSIONS  
ON IMPACT OF  
DISTRIBUTION  
METHODOLOGIES**

WHEREAS, the Petitioners identified in the above case caption commenced this proceeding under CPLR Article 77 (the “Article 77 Proceeding”) 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, filed with the Court at NYSCEF No. 1; and

WHEREAS, Tilden Park Investment Master Fund LP; Tilden Park Management I LLC; Tilden Park Capital Management LP; D.E. Shaw Refraction Portfolios, LLC; Strategos Capital Management LLC; Ambac Assurance Corporation; Olifant Fund, Ltd.; FFI Fund Ltd.; FYI Ltd.; HBK Master Fund LP; Poetic Holdings VI LLC; Poetic Holdings VII LLC; Prophet Mortgage Opportunities LP; U.S. Bank, solely in its capacity as Indenture Trustee for certain NIM Trusts and solely at the direction of HBK Master Fund LP, Poetic Holdings VI LLC, Poetic Holdings VII LLC, and Prophet Mortgage Opportunities LP; 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 Advisors, 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; Western Asset Management Company; American General Life Insurance Company; American Home Assurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA.; The United States Life Insurance Company in the City of New York; The Variable Annuity Life Insurance Company; GMO Opportunistic Income Fund; GMO Global Real Return (UCITS) Fund; Nover Ventures LLC; The Bank of New York Mellon Trust Company, National Association (solely in its capacity as Indenture Trustee and pursuant to direction from the Controlling Class under the Duke IX Indenture); DW Partners LP; and Ellington Management Group LLC (collectively, the “Responding Parties”) have appeared in the Article 77 Proceeding and have asserted positions concerning the Settlement Payment Application Process for those certain

Settlement Trusts for which there are disagreements among the Responding Parties (the “Disputed Trusts”); and

WHEREAS, on December 10, 2018, the Court held a hearing during which the Responding Parties presented oral argument addressing the merits of the questions presented in the Petition, including the Settlement Payment Application Process for the Disputed Trusts (the “Merits Hearing”); and

WHEREAS, at the Merits Hearing, the Court requested that the Petitioners perform financial modeling demonstrating the impact of the various methodologies for the Settlement Payment Application Process for no more than ten Disputed Trusts, which the Court indicated should be selected and identified by the Responding Parties; and

WHEREAS, on January 22, 2019, the Responding Parties selected and identified the final list of Disputed Trusts for financial modeling set forth on Schedule 1 hereto (the “Sample Trusts”); and

WHEREAS, Wells Fargo Bank, National Association (“Wells Fargo”) is Payment Administrator for five of the Sample Trusts and U.S. Bank National Association (“U.S. Bank”) is Payment Administrator for four of the Sample Trusts (each a “Subject Payment Administrator” and collectively, the “Subject Payment Administrators”).

NOW, THEREFORE, IT IS

1. ORDERED that the Subject Payment Administrators shall submit to the Court summaries of the results of financial modeling performed by the Subject Payment Administrators demonstrating the impact of the various methodologies for the Settlement Payment Application Process for the Sample Trusts in accordance with the provisions set forth herein (the “Deal Submissions”); and it is further

2. ORDERED that the Deal Submissions shall test the impact of the following five issues (each a “Tested Issue” and collectively, the “Tested Issues”) concerning the Settlement Payment Application Process: (a) “Settlement Trusts That Do Not Clearly Specify Whether The Pay First Method Or The Write-Up First Method Should Be Used” (*see* Exhibit D to the Petition); (b) Settlement Trusts for which the Pay First Method raises certain questions concerning overcollateralization issues that are disputed among the Responding Parties (*see* paragraphs 24-34 of Petition); (c) “Settlement Trusts With Both (1) Subsequent Recovery Write-Up Instructions That Apply Only To Subordinate Classes And (2) Provisions That Apply Losses To Senior Classes” (*see* Exhibit E to the Petition); (d) “Settlement Trusts With Realized Loss Allocation Methods That Differ From Subsequent Recovery Write-Up Methods” (*see* Exhibit F to the Petition); and (e) “Settlement Trusts With (1) Retired Class Provisions And/Or (2) Class A Redirection Provisions” (*see* Exhibit G to the Petition); and it is further

3. ORDERED that for each Tested Issue, unless otherwise agreed to between the Subject Payment Administrators and the Responding Parties, two Sample Trusts shall be reviewed for the purpose of demonstrating the impact of such Tested Issue on the Settlement Payment Application Process, and the Responding Parties shall instruct the Subject Payment Administrators as to which Sample Trust shall be reviewed for each Tested Issue; and it is further

4. ORDERED that where a Sample Trust implicates an issue or issues identified in the Petition other than the Tested Issue (a “Non-Tested Issue”), the Subject Payment Administrator shall not review the Non-Tested Issue and the Responding Parties shall instruct the Subject Payment Administrator concerning the assumptions that it should apply for the Non-Tested Issue in connection with its review of the Tested Issue. For example, the Responding Parties may select a Sample Trust that appears both on Exhibit D to the Petition (whether the Pay First Method or the

Write-Up First Method should be used) and Exhibit G (what effect should be given to the Retired Class Provision and/or Class A Redirection Provision). If the Responding Parties were to designate the issue on Exhibit D as the Tested Issue, the issue on Exhibit G would constitute a Non-Tested Issue, and, for the purposes of the review of the Tested Issue, the Responding Parties would instruct the Subject Payment Administrator how to treat the issue in Exhibit G, *i.e.*, whether it should or should not give effect to the Retired Class Provision and, if applicable, Class A Redirection Provision; and it is further

5. ORDERED that the Subject Payment Administrators shall prepare Deal Submissions for the Sample Trusts using data from the investor reports for the December 2018 distribution date, as if the Settlement Payment for each Sample Trust was distributed on the December 2018 distribution date; and it is further

6. ORDERED that consistent with the descriptions above, the Deal Submissions shall be substantially in the form of Exhibit A hereto; and it is further

7. ORDERED that the Subject Payment Administrators shall file the Deal Submissions with the Court on or before February 27, 2019; and it is further

8. ORDERED that immediately after the Deal Submissions are filed with the Court, the Petitioners shall post them on the public settlement website created by the Petitioners located at <http://www.rmbstrusteesettlement.com>; and it is further

9. ORDERED that the Deal Submissions shall not be considered a forecast of how the Settlement Payment or any other payment will actually be distributed and administered, and that the Subject Payment Administrators shall not incur any liability for any claim or cause of action asserting, alleging, or contending that the Deal Submissions represent the manner in which the

Settlement Payment, or any other payment, must be distributed and administered under the Governing Agreements and/or the Settlement Agreement, as applicable; and it is further

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

Dated: New York, New York

\_\_\_\_\_, 2019

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Hon. Marcy Friedman. J.S.C.

Judgment signed and entered this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

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Clerk of New York County

## **SCHEDULE 1**

### **Sample Trusts<sup>†</sup>**

BSABS 2005-HE6

BSABS 2006-SD4

BSABS 2007-AQ1

GPMF 2005-AR1

GPMF 2006-AR1

SACO 2005-WM3

SACO 2005-4

SAMI 2007-AR2, Group 1

SAMI 2007-AR3, Group 2

<sup>†</sup> The Subject Payment Administrators agreed to model the Pay First Method or Write-Up First Method issue for three Sample Trusts because the Responding Parties were unable to agree to only two Sample Trusts to model for that issue.

**EXHIBIT A**

**Form of Sample Submission**

**[Attached]**