

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 _____, 2020

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
(7 TRUSTS)**

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 the Institutional Investors,² the Tilden Park

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.

² All references to the “Institutional Investors” in this Partial Severance Order and Partial Final Judgment include each and every one of the sixteen institutions identified in the Institutional Investors’ Notice of Appearance (Dkt. No. 135).

Parties,³ DW Partners LP (“DW”), D. E. Shaw Refraction Portfolios L.L.C. (“D.E. Shaw”), and Ellington Management Group, L.L.C. (“Ellington”) have asserted an interest in one or more of the 7 Settlement Trusts identified in Exhibit A hereto (the “Undisputed Trusts”); and

WHEREAS, Nover Ventures, LLC (the “Indirect Holder”) also asserted an interest in BSABS 2005-AC2, BSABS 2006-AC3, and SAMI 2006-AR3 through ownership interests in other structures, either CDO, re-REMIC, or NIM trusts, but not in certificates issued by those trusts;

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

WHEREAS, in the Standing Decision, the Court afforded the Indirect Holder an opportunity to substitute into the proceeding the trustees of the other CDO, re-REMIC, or NIM trust structures through which it asserted an interest in BSABS 2005-AC2, BSABS 2006-AC3, and SAMI 2006-AR3;

WHEREAS, on September 14, 2018, the Court so-Ordered a Stipulation and Order Regarding Trustee Substitutions, under which the Indirect Holder did not substitute into this case the trustees of the other CDO, re-REMIC, or NIM trust structures for BSABS 2005-AC2, BSABS 2006-AC3, and SAMI 2006-AR3 (Dkt. No. 514) (the “Trustee Substitution Stipulation”);

³ The “Tilden Park Parties” include Tilden Park Investment Master Fund LP, Tilden Park Management I LLC and Tilden Park Capital Management LP, on behalf of themselves and their advisory clients.

WHEREAS, after giving effect to the Standing Decision and the Trustee Substitution Stipulation, the Institutional Investors, the Tilden Park Parties, DW, D.E. Shaw, and Ellington are the only parties with standing to appear with respect to the Undisputed Trusts;

WHEREAS, by Notice of Appeal dated September 6, 2018, the Indirect Holder appealed the Standing Decision to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department;

WHEREAS, the Indirect Holder did not request or receive a stay of the Standing Decision during the pendency of its appeal and the Standing Decision was affirmed, by decision dated June 27, 2019 (173 A.D.3d 626 [1st Dep't 2019]);

WHEREAS, on February 13, 2020, the Court issued a Decision and Order on the Petition, and Ordered, among other things, that “as to any Settlement Trust in which all interested respondents are able, after the issuance of this decision 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”;

WHEREAS, the Institutional Investors, the Tilden Park Parties, DW, D.E. Shaw, and Ellington, as the only interested respondents with standing to appear with respect to the Undisputed Trusts, agree and consent to this [proposed] Partial Severance Order and Partial Final Judgment (the “Order”), which resolves the issues for which judicial instructions were sought concerning the administration and distribution of the Allocable Shares for the Undisputed Trusts (the “Subject Allocable Shares”);

WHEREAS, as identified in Exhibit A hereto, The Bank of New York Mellon (“BNYM”), The Bank of New York Mellon Trust Company, N.A. (“BNYMTC”), U.S. Bank

National Association (“U.S. Bank”), Wells Fargo Bank, National Association (“Wells Fargo”), and Wilmington Trust, National Association (“Wilmington Trust”) are the trustees, successor trustees, and/or indenture trustees for the Undisputed Trusts (in such capacities, the “Subject Trustees”) and Wells Fargo is the securities administrator, paying agent, and/or calculation agent for the Undisputed Trusts (in such capacities, the “Subject Payment Administrator”) (the Subject Payment Administrator and the Subject Trustees collectively, the “Subject Petitioners”); and

WHEREAS, as used herein, the term “Judgment Entry Date” means the first date on which counsel of record to the parties hereto receive a copy of this Order signed by the Court by email or NYSCEF service, without regard to when the Court actually signs or the Clerk actually enters this Order; and

WHEREAS, for each Undisputed Trust included in Exhibit B hereto, the term “Overcollateralization Amount Calculation” is used herein to refer to the terms in the applicable Governing Agreements prescribing that the “overcollateralization amount” is equal to the excess of the aggregate balances of the mortgage loans held by the Undisputed Trust over the aggregate certificate principal balances of certain designated classes of certificates, as more fully defined and described in the applicable Governing Agreements; and

WHEREAS, as used herein the term “Transfer Month” means the second 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 (as that term is defined in the applicable Governing Agreements) for each of the Undisputed Trusts occurring in the Transfer Month, and

NOW, THEREFORE, on the motion of Warner Partners, P.C. and Gibbs & Bruns LLP, attorneys for the Institutional Investors,, Schindler Cohen & Hochman LLP and Kramer Levin Naftalis & Frankel LLP, attorneys for the Tilden Park Parties, Goulston & Storrs PC, attorneys for D.E. Shaw, and Perry, Johnson, Anderson, Miller & Moskowitz, LLP, attorneys for DW and Ellington, it is hereby

ORDERED, ADJUDGED and DECREED that, on or before the Transfer Target Date, the Subject Trustees (each with respect to the Undisputed Trusts for which each act as trustee) are to (i) cause escrowed assets to be liquidated to cash with a value equal to the Subject Allocable Shares plus any investments earnings thereon, and (ii) cause the Subject Allocable Shares and investment earnings thereon to be deposited in the respective distribution accounts of the Undisputed Trusts. From the time of the aforescribed deposit, the amount so deposited shall be deemed the Subject Allocable Shares for the Undisputed Trusts 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 Shares not received at the time escrowed assets are liquidated to cash pursuant to the immediately preceding paragraph (“Trailing Interest”) shall (i) for Undisputed Trusts where the Subject Trustee and Subject Payment Administrator are the same party, be distributed on the Distribution Date for the month the Trailing Interest is received by the Subject Trustee so long as the Trailing Interest is received on or before the fifteenth day of the month or, if the Trailing Interest is received after the fifteenth day of

the month, the Trailing Interest be distributed on the Distribution Date for the immediately following month or (ii) for Undisputed Trusts where the Subject Trustee and Subject Payment Administrator are different parties, (x) be transferred from the Subject Trustee to the Subject Payment Administrator promptly following the Subject Trustee's receipt of such Trailing Interest and (y) be distributed on the Distribution Date for the month the Trailing Interest is transferred so long as such transfer takes place on or before the fifteenth day of the month or, if the Trailing Interest is transferred after the fifteenth day of the month, be distributed on the Distribution Date for the immediately following month. Any Trailing Interest shall be deemed a Subject Allocable Share for the Undisputed Trust on whose Allocable Share such Trailing Interest was accrued, and any Trailing Interest shall be administered and distributed as a Subject Allocable Share subject to the terms of the Settlement Agreement and this Order; and

ORDERED, ADJUDGED and DECREED that the Subject Payment Administrator shall distribute the Subject Allocable Shares to certificateholders of the Undisputed Trusts on the AS Distribution Date; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Undisputed Trust, the Subject Payment Administrator (i) shall first distribute the Subject Allocable Shares 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 Subject Allocable Shares for each Undisputed Trust identified in Exhibit B hereto, the Subject Payment Administrator shall account for both the distribution of the Subject Allocable Shares 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, the Subject Payment Administrator shall calculate the aggregate certificate principal balances used for the Overcollateralization Amount Calculation by (i) first increasing such certificate principal balances by the amount of the Settlement Payment Write-Up and (ii) then reducing such certificate principal balances by an amount equal to the applicable Subject 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 Subject Allocable Shares are distributed, the instructions in this paragraph and the immediately preceding paragraph are intended to and shall prevent the Undisputed Trusts from being overcollateralized as a result of the receipt, administration, and/or distribution of the Subject Allocable Shares (but shall not impact whether the Undisputed Trusts are overcollateralized on such Distribution Date as result of anything unrelated to the receipt, administration, and/or distribution of the Subject Allocable Shares); and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Undisputed Trust included in Exhibit C hereto, the Subject Payment Administrator shall increase the certificate principal balances of the applicable

classes of certificates in the amount of the Settlement Payment Write-Up in accordance with the subsequent recovery write-up provisions in the applicable Governing Agreements (the “Governing Agreement Write-Up Instructions”); *provided, however*, that the Governing Agreement Write-Up Instructions shall be applied in conjunction with the Settlement Agreement Write-Up Instruction in a manner that causes all classes of certificates, specifically including any senior certificates, as defined in the applicable Governing Agreements, with outstanding unpaid realized losses to be eligible to be increased by the amount of the Settlement Payment Write-Up under the same order and priority scheme provided for in the Governing Agreement Write-Up Instructions (without regard to any language in the Governing Agreement Write-Up Instructions that could be construed as rendering any classes of certificates ineligible to be increased by the Settlement Payment Write-Up); and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Undisputed Trust included in Exhibit D hereto, the Subject Payment Administrator shall not use the Settlement Agreement Write-Up Instruction for any purposes, and shall increase the certificate principal balances for the applicable classes of certificates in the amount of the Settlement Payment Write-Up using the applicable Governing Agreement Write-Up Instructions; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Undisputed Trust included in Exhibit E hereto, the Subject Payment Administrator shall (i) apply the Retired Class Provision to prevent the distribution of the Subject 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

Subject 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 Subject 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 an Undisputed Settlement Trust or of an individual loan group of an Undisputed Settlement Trust with multiple loan groups therein, such excess amount of the Settlement Payment Write-Up shall be applied to Retired Classes in such Undisputed Trust or loan group in a manner consistent with this Order; and (iii) if the Class A Redirection Provision is in the applicable Governing Agreement for an Undisputed Trust and the aggregate certificate principal balance of the Class A certificates in a loan group in such Undisputed Trust is zero dollars (\$0.00) at the time of the distribution of the Subject Allocable Shares, (the “Zero Balance Loan Group”), apply the Class A Redirection Provision to cause the Subject Allocable Share assigned to the Zero Balance Loan Group to be distributed to Class A certificates that are both from a different loan group (or loan groups) and have an aggregate certificate principal balance greater than zero dollars (\$0.00) (the “Outstanding Class A Certificates”), and cause the accompanying Settlement Payment Write-Up to be applied to the certificates in the same loan group (or loan groups) as the Outstanding Class A Certificates 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 Subject Allocable Shares not expressly addressed in this Order shall be performed as provided for in the Governing Agreements 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 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 any of the Undisputed Trusts are barred from asserting claims against any of the Subject Petitioners with respect to any conduct taken to implement and comply with the terms of this Order and with respect to such Subject Petitioners' administration and distribution of the Settlement Payment with respect to such Undisputed Trusts, so long as such conduct is performed in accordance with the terms of this Order; and it is further

ORDERED, ADJUDGED and DECREED that upon the occurrence of the Judgment Entry Date, Subject Petitioners shall promptly post a copy of this Order, bearing the Court's signature, on <http://rmbstrusteesettlement.com/>, the website established by Petitioners; 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
_____, 2020

Hon. Marcy Friedman. J.S.C.

Judgment signed and entered this _____ day of _____ 2020.

Clerk of New York County

EXHIBIT A

Trust	Trustee	Payment Administrator
BSABS 2005-AC2	U.S. Bank	Wells Fargo
BSABS 2006-AC3	U.S. Bank	Wells Fargo
BSMF 2006-AR2	Wells Fargo	Wells Fargo
BSMF 2006-AR3	Wells Fargo	Wells Fargo
BSMF 2007-AR3	Wells Fargo	Wells Fargo
SAMI 2006-AR3	BNY Mellon	Wells Fargo
SAMI 2007-AR1	Wilmington Trust	Wells Fargo

EXHIBIT B

Trust
BSABS 2005-AC2
BSABS 2006-AC3
BSMF 2006-AR2
BSMF 2006-AR3
BSMF 2007-AR3
SAMI 2006-AR3
SAMI 2007-AR1

Exhibit C

Trust
BSMF 2006-AR2
BSMF 2006-AR3
BSMF 2007-AR3
SAMI 2006-AR3

Exhibit D

Trust
SAMI 2006-AR3
SAMI 2007-AR1

Exhibit E

Trust
BSABS 2005-AC2
BSABS 2006-AC3