

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

**AFFIRMATION OF NIDHI
 NINA YADAVA IN SUPPORT
 OF [PROPOSED] PARTIAL
 SEVERANCE ORDER AND
 PARTIAL FINAL JUDGMENT
 (4 SETTLEMENT TRUSTS)**

I, Nidhi Nina Yadava, an attorney duly admitted to practice law in the Courts of the State of New York, affirm under penalty of perjury as follows:¹

1. I am a partner at the law firm Jones Day, counsel for petitioner U.S. Bank National Association (“U.S. Bank”), solely in its respective capacities as trustee, indenture trustee, and/or securities administrator (as named in such role or as a successor to the named party) for the Subject No Appearance Settlement Trusts.

2. In accordance with the August 5, 2020 Decision and Order (NYSCEF No. 879) (the “August 5 Order”), I submit this affirmation in support of the contemporaneously filed [Proposed] Partial Severance Order And Partial Final Judgment (4 Settlement Trusts) (the “Proposed Order” or “PO”). The Proposed Order covers the Subject No Appearance Settlement Trusts: GPMF 2007-HE1, PRIME 2007-3, SACO 2005-WM2, and SACO 2006-1. This affirmation sets forth the basis for the settlement distributions in the Proposed Order, as dictated by the Merits Ruling as well as

¹ All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Petition (NYSCEF No. 1) or Proposed Order, as applicable.

the provisions of the Settlement Agreement and the Subject Governing Agreements.

EXHIBITS

3. Attached hereto are true and correct copies of the following documents: the GPMF 2007-HE1 Indenture (Exhibit A); the PRIME 2007-3 Pooling and Servicing Agreement (Exhibit B); the SACO 2005-WM2 Pooling and Servicing Agreement (Exhibit C); the SACO 2006-1 Indenture (Exhibit D); and the Settlement Agreement dated as of November 15, 2013 and modified as of July 29, 2014, previously filed as Exhibit B to the Petition (NYSCEF No. 3) (Exhibit E).

OVERVIEW OF ISSUES

4. Each of the four Subject No Appearance Settlement Trusts present the issue of whether to use the Pay First Method or the Write-Up First Method. *See* Petition Ex. D. Under the Merits Ruling, the Write-Up First Method applies for all of the No Appearance Settlement Trusts. The Proposed Order (¶ 4) thus provides for application of the Write-Up First Approach. *See infra* § I.

5. PRIME 2007-3 raises the issue of whether only certain subordinate certificates are eligible to receive a Settlement Payment Write-Up. *See* Petition Ex. E. Consistent with the Merits Ruling, and as provided in the Proposed Order (¶ 5), only specified subordinate certificates would be eligible to receive the Settlement Payment Write-Up. *See infra* § II.

6. GPMF 2007-HE1 and PRIME 2007-3 present the issue of how to apply the Settlement Payment Write-Up. *See* Petition Ex. F. For GPMF 2007-HE1, the Merits Ruling requires the Settlement Payment Write-Up to be applied in reverse order of previously allocated losses. *See* PO ¶ 6. For PRIME 2007-3, the Merits Ruling requires the Settlement Payment Write-Up to be applied in order of payment priority. *See* PO ¶ 5. *See infra* § III.

7. SACO 2005-WM2 raises the issue of whether and how to apply the Retired Class Provision. *See* Petition Ex. G. Consistent with the Merits Ruling, the Proposed Order (¶ 7) would treat any Zero Balance Classes as: (1) eligible to be increased or written up by the Settlement

Payment Write-Up and (2) eligible to receive distributions of the applicable Subject Allocable Shares to the extent any portion of the Settlement Payment Write-Up is actually applied to such Zero Balance Classes prior to the distributions of such Subject Allocable Shares. *See infra* § IV.

8. SACO 2006-1 presents the issue of whether to treat the Subject Allocable Shares as principal or interest. *See* Petition Ex. H. Under the Merits Ruling, all Allocable Shares are treated as principal, and the Proposed Order (¶ 8) provides the same for SACO 2006-1. *See infra* § V.

ANALYSIS

I. Settlement Trusts That Do Not Clearly Specify Whether The Pay First Method Or The Write-Up First Method Should Be Used (Petition Exhibit D)

9. In the Merits Ruling, the Court ruled that for Settlement Trusts where the Governing Agreements specify that either the Pay First Method or Write-Up First Method must be used, the relevant Governing Agreements—and not the Settlement Agreement—dictate which method is applicable for the purposes of the distribution and administration of the Settlement Payment. Merits Ruling at 9-10. Conversely, for Governing Agreements that do not specify whether the Pay First Method or Write-Up First Method must be used, the Court held that the Settlement Agreement controls and that it requires use of the Pay First Method. *See id.*

10. In reviewing these issues, the Court observed that the BSABS 2005-AQ2 Pooling and Servicing Agreement (“BSABS 2005-AQ2 PSA”) “contains terms typical of those in PSAs that require application of the Write-Up First Method.” Merits Ruling at 11. The Court first examined Section 5.04(a) and (b) of the BSABS 2005-AQ2 PSA. *See id.* at 11-12. Those provisions concern the distribution of principal and interest funds as well as the application of Subsequent Recovery write-ups. *See id.* The Court ultimately concluded that they are “silent as to whether the write-up must occur before or after the distribution” and do not resolve this issue. *Id.*

11. As a result, the Court turned to the “Certificate Principal Balance” definition in the BSABS 2005-AQ2 PSA. Merits Ruling at 12-16. That definition reads as follows:

As to any Certificate (other than the Class CE Certificates or any Class R Certificate) and as of any Distribution Date, the Initial Certificate Principal Balance of such Certificate plus, in the case of a Class A Certificate and Class M Certificate, any Subsequent Recoveries added to the Certificate Principal Balance of such Certificate pursuant to Section 5.04(b), less the sum of (i) all amounts distributed with respect to such Certificate in reduction of the Certificate Principal Balance thereof on previous Distribution Dates pursuant to Section 5.04, and (ii) any Applied Realized Loss Amounts allocated to such Certificate on previous Distribution Dates. As to the Class CE Certificates and as of any Distribution Date, an amount equal to the Uncertificated Principal Balance of the Class CE Interest.

Id. at 13 n.9. The Court noted that this “provides for addition not only of previously distributed Subsequent Recoveries but of ‘any’ Subsequent Recoveries as of ‘any distribution date.’” *Id.* at

13. In light of this language, the Court held that the BSABS 2005-AQ2 PSA and similar Governing Agreements require use of the Write-Up First Method. *Id.* at 12-16.

12. Here, the pertinent terms of each of the Subject Governing Agreements are materially similar to the BSABS 2005-AQ2 PSA with respect to this issue, and thus the Proposed Order (¶ 4) requires the Write-Up First Method for each of the Subject No Appearance Settlement Trusts.

A. GPMF 2007-HE1

13. For the GPMF 2007-HE1 Indenture, “Note Principal Balance” is defined as:

With respect to any Note as of any Payment Date, will equal such Note’s initial principal balance on the Closing Date, as reduced by (i) all amounts distributed on previous Payment Dates on such Note with respect to principal, (ii) the principal portion of all Charge-Off Amounts allocated prior to such Payment Date to such Note, plus any Subsequent Recoveries added to the Note Principal Balance of such Note. With respect to any Class of Note, the Note Principal Balance thereof shall be equal to the sum of the Note Principal Balances of all Outstanding Notes of such Class.

Ex. A at 118. Similar to the “Certificate Principal Balance” definition in the BSABS 2005-AQ2 PSA, this definition includes “*any* Subsequent Recoveries” and is “as of *any* Payment Date.” *Id.* (emphasis added). Moreover, Section 3.02 of the GPMF 2007-HE1 Indenture corresponds to

Section 5.04(a) of the BSABS 2005-AQ2 PSA, and it too is silent as to whether the Pay First Method or Write-Up First Method should be used. *Id.* at 10-13. And, it appears that there is no provision in the GPMF 2007-HE1 Indenture that is equivalent to Section 5.04(b) of the BSABS 2005-AQ2 PSA. *See id.*

14. In light of the foregoing, the Merits Ruling requires the use of the Write-Up First Method for the purposes of the administration and distribution of the Subject Allocable Shares for GPMF 2007-HE1, and the Proposed Order (§ 4) requires the same.

B. PRIME 2007-3

15. For the Prime 2007-3 Pooling and Servicing Agreement (“PRIME 2007-3 PSA”), the definition of “Current Principal Amount” is as follows:

With respect to any Certificate (other than an Interest Only Certificate) as of any Distribution Date, the initial principal amount of such Certificate plus any Subsequent Recoveries added to the Current Principal Amount of such Certificate pursuant to Section 6.01(g), and reduced by (i) all amounts distributed on previous Distribution Dates on such Certificate or Component with respect to principal, (ii) the principal portion of all Realized Losses allocated prior to such Distribution Date to such Certificates, taking account of the Loss Allocation Limitation and (iii) in the case of a Subordinate Certificate, such Certificate’s pro rata share, if any, of the related applicable Subordinate Certificate Writedown Amount for previous Distribution Dates. With respect to any Class of Certificates (other than an Interest Only Certificate), the Current Principal Amount thereof will equal the sum of the Current Principal Amounts of all Certificates in such Class. Notwithstanding the foregoing, solely for purposes of giving consents, directions, waivers, approvals, requests and notices, the Class I-R-1, Class I-R-2 and Class II-R Certificates after the Distribution Date on which they each receive the distribution of the last dollar of their respective original principal amount shall be deemed to have Current Principal Amounts equal to their respective Current Principal Amounts on the day immediately preceding such Distribution Date.

The Current Principal Amount of any Exchangeable Certificates that have been surrendered and cancelled for Exchanged Certificates shall be equal to zero. The Current Principal Amount of any Exchanged Certificates that have not been exchanged for Exchangeable Certificates shall be equal to zero.

Ex. B at 7. Similar to the “Certificate Principal Balance” definition in BSABS 2005-AQ2 PSA, this definition includes “*any* Subsequent Recoveries” and is “as of *any* Distribution Date.” *Id.*

(emphasis added). Moreover, Section 6.01(a) of the PRIME 2007-3 PSA corresponds to Section 5.04(a) of the BSABS 2005-AQ2 PSA, and it too is silent as to whether the Pay First Method or Write-Up First Method should be used. *Id.* at 39-40. In addition, Section 6.01(g) of the PRIME 2007-3 PSA corresponds to Section 5.04(b) of the BSABS 2005-AQ2 PSA, and similarly is silent as to whether the Pay First Method or Write-Up First Method should be used. *Id.* at 41.

16. In light of the foregoing, the Merits Ruling requires the use of the Write-Up First Method for the purposes of the administration and distribution of the Subject Allocable Shares for PRIME 2007-3, and the Proposed Order (§ 4) requires the same.

C. SACO 2005-WM2

17. Under the SACO 2005-WM2 Pooling and Servicing Agreement (“SACO 2005-WM2 PSA”), “Certificate Principal Balance” is defined as:

As to any Certificate (other than any Class C Certificate or Class R Certificate) and as of any Distribution Date, the Initial Certificate Principal Balance of such Certificate plus, in the case of a Class A, Class M or Class B Certificate, any Subsequent Recoveries added to the Certificate Principal Balance of such Certificate pursuant to Section 5.04(b), less the sum of (i) all amounts distributed with respect to such Certificate in reduction of the Certificate Principal Balance thereof on previous Distribution Dates pursuant to Section 5.04, and (ii) any Applied Realized Loss Amounts allocated to such Certificate on previous Distribution Dates.

Ex. C at 7. Similar to the “Certificate Principal Balance” definition in the BSABS 2005-AQ2 PSA, this definition includes “*any* Subsequent Recoveries” and is “as of *any* Payment Date.” *Id.* (emphasis added). Moreover, Section 5.04(a) of the SACO 2005-WM2 PSA corresponds to Section 5.04(a) of the BSABS 2005-AQ2 PSA, and it too is silent as to whether the Pay First Method or Write-Up First Method should be used. *Id.* at 80-84. And, Section 5.04(b) of the SACO 2005-WM2 PSA corresponds to Section 5.04(b) of the BSABS 2005-AQ2 PSA, and similarly is silent as to whether the Pay First Method or Write-Up First Method should be used. *Id.* at 84-85.

18. In light of the foregoing, the Merits Ruling requires the use of the Write-Up First Method for the purposes of the administration and distribution of the Subject Allocable Shares for SACO 2005-WM2, and the Proposed Order (§ 4) requires the same.

D. SACO 2006-1

19. For the SACO 2006-1 Indenture, “Note Principal Balance” is defined as:

With respect to any Note as of any Payment Date, will equal such Note’s initial principal balance on the Closing Date, as reduced by (i) all amounts distributed on previous Payment Dates on such Note with respect to principal, (ii) the principal portion of all Charge-Off Amounts allocated prior to such Payment Date to such Note, plus any Subsequent Recoveries added to the Note Principal Balance of such Note. With respect to any Class of Note, the Note Principal Balance thereof shall be equal to the sum of the Note Principal Balances of all Outstanding Notes of such Class.

Ex. D at 125. Similar to the “Certificate Principal Balance” definition in BSABS 2005-AQ2 PSA, this definition includes “any Subsequent Recoveries” and is “as of any Payment Date.” *Id.* (emphasis added). Moreover, Section 3.02 of the SACO 2006-1 Indenture corresponds to Section 5.04(a) of the BSABS 2005-AQ2 PSA, and it too is silent as to whether the Pay First Method or Write-Up First Method should be used. *Id.* at 14-17. And, there is no provision in the SACO 2006-1 Indenture that is equivalent to Section 5.04(b) of the BSABS 2005-AQ2 PSA. *See id.*

20. In light of the above, the Merits Ruling requires use of the Write-Up First Method for the Subject Allocable Shares for SACO 2006-1, and the Proposed Order (§ 4) requires the same.

II. 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 (Petition Exhibit E)

21. In the Merits Ruling, the Court held that under the Governing Agreements for certain Settlement Trusts, senior certificates are allocated losses, but only subordinate certificates are eligible to be written up for subsequent recoveries. *See Merits Ruling* at 31-35. For these Settlement Trusts, the Governing Agreements control such that senior certificates in the impacted

Settlement Trusts cannot be written up by the Settlement Payment Write-Up. *See id.* PRIME 2007-3 is the only Subject No Appearance Settlement Trust with this issue. *See* Petition Ex. E.

22. Section 6.01(g) of the PRIME 2007-3 PSA reads, in pertinent part, as follows:

If, after taking into account such Subsequent Recoveries, the amount of a Realized Loss is reduced, the amount of such Subsequent Recoveries *will be applied to increase the Current Principal Amount of the related Class of Subordinate Certificates with the highest payment priority to which Realized Losses have been allocated*, but not by more than the amount of Realized Losses previously allocated to that Class of Subordinate Certificates pursuant to Section 6.03. *The amount of any remaining Subsequent Recoveries will be applied to sequentially increase the Current Principal Amount of the related Subordinate Certificates*, beginning with the Class of such Subordinate Certificates with the next highest payment priority, up to the amount of such Realized Losses previously allocated to such Class of Certificates pursuant to Section 6.03. Holders of such Certificates will not be entitled to any payment in respect of current interest on the amount of such increases for any Interest Accrual Period preceding the Distribution Date on which such increase occurs. *Any such increases shall be applied to the Current Principal Amount of each Subordinate Certificate of such Class in accordance with its respective Fractional Undivided Interest.*

Ex. B at 41 (emphasis added). This provisions references only Subordinate Certificates (as defined in the PRIME 2007-3 PSA) as eligible to receive subsequent recovery write-ups. *Id.* It is substantially similar to Section 6.04(h) of the BALTA 2006-3 PSA, which the Court construed as providing “only for the write-up of the balances of the specified subordinate certificates.” Merits Ruling at 33. Thus, the Merits Ruling requires the Settlement Payment Write-Up to be applied only to Subordinate Certificates in PRIME 2007-3, and the Proposed Order (¶ 5) requires the same.

III. Settlement Trusts With Realized Loss Allocation Methods That Differ From Subsequent Recovery Write-Up Methods (Petition Exhibit F)

23. Where the Governing Agreements contain instructions concerning the manner in which to apply subsequent recovery write-ups, the Court held that such instructions control over the Settlement Agreement Write-Up Instruction. *See* Merits Ruling at 26-31. However, where the Governing Agreements are silent, the Settlement Agreement Write-Up Instruction controls—which requires the Settlement Payment Write-Up to be applied in the reverse order of previously

allocated losses. *See id.*; Ex. E § 3.06(b). GPMF 2007-HE1 and PRIME 2007-3 raise this issue, *see* Petition Ex. F, and the Proposed Order contains instructions consistent with the Merits Ruling.

A. GPMF 2007-HE1

24. The GPMF 2007-HE1 Indenture does not have an instruction for the order of subsequent recovery write-ups. *See* Ex. A. Thus, the Merits Ruling requires the Settlement Payment Write-Up to be applied in the reverse order of previously allocated losses (per the Settlement Agreement Write-Up Instruction), and the Proposed Order reflects this. *See* PO ¶ 6.

B. PRIME 2007-3

25. Section 6.01(g) of the PRIME 2007-3 PSA reads, in pertinent part, as follows:

If, after taking into account such Subsequent Recoveries, the amount of a Realized Loss is reduced, the amount of such Subsequent Recoveries will be applied to increase the Current Principal Amount of the related Class of Subordinate Certificates with the highest payment priority to which Realized Losses have been allocated, but not by more than the amount of Realized Losses previously allocated to that Class of Subordinate Certificates pursuant to Section 6.03. The amount of any remaining Subsequent Recoveries will be applied to sequentially increase the Current Principal Amount of the related Subordinate Certificates, beginning with the Class of such Subordinate Certificates with the next highest payment priority, up to the amount of such Realized Losses previously allocated to such Class of Certificates pursuant to Section 6.03.

Ex. B at 41. Under this provision, subsequent recovery write-ups are applied by payment priority. Because the PRIME 2007-3 PSA addresses the order of subsequent recovery write-ups, the Merits Ruling requires that it controls, and the Proposed Order provides the same. *See* PO ¶ 5.

IV. Settlement Trusts With (1) Retired Class Provisions And/Or (2) Class A Redirection Provisions (Petition Exhibit G)

26. The Merits Ruling (pp. 35-39) held that the Retired Class Provisions in the Governing Agreements do not prohibit Zero Balance Classes from being written up by the Settlement Payment Write-Up. Thus, to the extent the Write-Up First Method applies to a Settlement Trust with a Retired Class Provision, the Court held that any Zero Balance Classes therein may be written

up before distributions are made. *See id.* This, in turn, means that such classes may be entitled to distributions of Allocable Shares to the extent of the Settlement Payment Write-Up. *See id.* Here, this issue only impacts SACO 2005-WM2.

27. Section 5.04(a) of the SACO 2005-WM2 PSA contains a Retired Class Provision applicable to the Class A, Class M, and Class B Certificates (as defined in the SACO 2005-WM2 PSA). Ex. C at 84. However, as discussed *supra* § I.C, the Write-Up First Method must be applied to SACO 2005-WM2. Thus, under the Merits Ruling (pp. 35-39), any Zero Balance Classes for SACO 2005-WM2 may be written up as appropriate prior to any distributions and may receive the Subject Allocable Shares to the extent that they are written up by some portion of the Settlement Payment Write-Up. The Proposed Order (¶ 7) provides the same.²

V. Settlement Trusts For Which Subsequent Recoveries Appear To Be Treated As Interest Collections And Not Principal Collections (Petition Exhibit H)

28. The Merits Ruling (p. 40) provides that for all Settlement Trusts listed in Petition Ex. H, “Allocable Shares should be treated as principal” and not interest. This issue was raised with respect to SACO 2006-1 due to certain provisions suggesting that subsequent recoveries should be treated as interest. *See* Petition Ex. H. It was not raised with respect to any other of the Subject No Appearance Settlement Trusts. *See id.* Consistent with the Merits Ruling, the Proposed Order requires the Subject Allocable Shares for SACO 2006-1 to be treated as principal. *See* PO ¶ 8.

Dated: October 13, 2020
New York, New York

By: /s/ Nidhi Nina Yadava
Nidhi Nina Yadava

² SACO 2005-WM2 currently has no Zero Balance Classes that would be eligible to be written up by the Settlement Payment Write-Up, but the Proposed Order nevertheless addresses Zero Balance Class issues to account for the possibility that Zero Balance Classes eligible for write-ups could exist at the time the Proposed Order is entered by the Court. *See* PO ¶ 7 n.2.